

Workplace Conduct Policy

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1. Scope

- (a) In this policy, Banco Chambers is a reference to Tersplit Pty Ltd. The areas leased by Banco Chambers on behalf of its members are referred to as the Floor. The Board is a reference to the Board of Banco Chambers.
- (b) This policy applies to:
 - (i) Barristers who have chambers on the Floor or are door tenants of the Floor, whether or not they are members or licensees of Banco Chambers (paying and non-paying), including all readers (**Floor Barristers**)
 - (ii) All workers working on the Floor in any capacity including employees, contractors, casuals, volunteers, job candidates, student placements, apprentices, contractors, sub-contractors and volunteers, whether engaged by Banco Chambers or directly by Floor Barristers (**Floor Workers**)
 - (iii) Solicitors, clients, other visitors and/or other barristers working with Floor Barristers, whilst working on the Floor or attending a work-related function hosted by the Floor (**Floor Visitors**)
 - (iv) On-site, off-site or after-hours work (including work at courts, tribunals, other bodies, arbitrations, and mediations); work-related social functions; conferences – wherever and whenever Floor Barristers or Floor Workers may be as a result of their work associated with Banco Chambers.
- (c) This policy applies from the date that it is adopted, and the processes described in paragraph 6 will be available from that date, including in respect of any previous conduct.

2. Aims

- (a) Banco Chambers recognises the importance of fairness, dignity and respect for others in the workplace. Banco Chambers is committed to providing a safe, secure and respectful environment for Floor Barristers, Floor Workers and Floor Visitors that is free from all forms of bullying, harassment, sexual harassment, other forms of unlawful discrimination, vilification and violence.
- (b) The objects of this policy are to define clear standards of appropriate behaviour as well as to provide methods by which any person who is concerned that this policy is being or has been breached can raise the matter in confidence in the knowledge that the matter will be addressed in a way with which they are comfortable.

3. Rights and responsibilities

- (a) All Floor Barristers, Floor Workers and Floor Visitors are entitled to:
 - (i) work free from bullying, harassment, sexual harassment, discrimination, vilification and violence
 - (ii) raise issues and/or make an enquiry or complaint in a reasonable and respectful manner without being victimised.
- (b) All Floor Workers are entitled to:
 - (i) recruitment and selection decisions based on merit and not affected by irrelevant personal characteristics
 - (ii) reasonable flexibility in working arrangements (in accordance with any relevant Award), especially where needed to accommodate their family responsibilities, disability, religious beliefs or culture.
- (c) All Floor Barristers, Floor Workers and Floor Visitors must:
 - (i) follow the standards of behaviour outlined in this policy
 - (ii) offer support to people who experience inappropriate workplace behaviour, including providing information about how to make a complaint
 - (iii) respect the confidentiality of complaint resolution procedures, including by avoiding gossip about any complaints
 - (iv) treat everyone with dignity, courtesy and respect.

3.1 Additional responsibilities of Floor Barristers and Banco Chambers

- (a) Floor Barristers of Banco Chambers must also:
 - (i) model appropriate standards of behaviour
 - (ii) intervene quickly and appropriately when they become aware of inappropriate behaviour
 - (iii) act fairly to resolve issues and enforce workplace behavioural standards, making sure relevant parties are heard
 - (iv) help those to whom this policy applies resolve complaints informally or formally

- (v) ensure that those who raise an issue or make a complaint are not victimised
- (vi) ensure that recruitment decisions are based on merit and that no discriminatory requests for information are made
- (vii) seriously consider requests for flexible work arrangements.

(b) Banco Chambers must:

- (i) publish this policy in a place accessible to relevant persons
- (ii) inform new Floor Barristers and Floor Workers of this policy upon that person commencing work on the Floor
- (iii) provide appropriate training in and information about the operation and effect of this policy
- (iv) regularly remind Floor Barristers and Floor Members of their obligations under this policy
- (v) review the content and operation of this policy from time to time as necessary.

4. Unacceptable workplace conduct

- (a) Discrimination, bullying and sexual harassment are unacceptable at Banco Chambers and may be unlawful under the following legislation:
 - (i) *Anti-Discrimination Act 1977 (NSW)*
 - (ii) *Sex Discrimination Act 1984 (Cth)*
 - (iii) *Racial Discrimination Act 1975 (Cth)*
 - (iv) *Disability Discrimination Act 1992 (Cth)*
 - (v) *Age Discrimination Act 2004 (Cth)*
 - (vi) *Fair Work Act 2009 (Cth)*
 - (vii) *Australian Human Rights Commission Act 1986 (Cth)*.
- (b) In relation to Floor Barristers, rule 123 of the *Legal Profession Uniform Conduct (Barristers) Rules 2015 (NSW)* (**Barristers' Conduct Rules**) relevantly provides that a barrister must not in the course of practice, engage in conduct which constitutes (a) unlawful discrimination, (b) unlawful sexual harassment, or (c) workplace bullying.
- (c) Discrimination, sexual harassment, workplace bullying and other forms of inappropriate workplace behaviour can also constitute a breach of other Barristers' Conduct Rules.
- (d) Discrimination, sexual harassment, workplace bullying and other forms of inappropriate workplace behaviour, including where it constitutes a breach of the Barristers' Conduct Rules, can constitute professional misconduct and/or unsatisfactory professional conduct within the meaning of Division 1, Part 5.4 of the *Legal Profession Uniform Law (NSW)*.

4.1 Discrimination

- (a) Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by the law, such as sex, age, race or disability.
- (b) Discrimination can occur:

Directly, when a person or group is treated less favourably than another person or group in a similar situation because of a personal characteristic protected by law (see list below).

For example, a worker is harassed and humiliated because of their race

or

A worker is refused promotion because they are 'too old'

Indirectly, when an unreasonable requirement, condition or practice is imposed that has, or is likely to have, the effect of disadvantaging people with a personal characteristic protected by law (see list below).

For example, redundancy is decided based on people who have had a worker's compensation claim rather than on merit.

- (c) **Protected personal characteristics** under discrimination law include:

- (i) a disability, disease or injury, including work-related injury
- (ii) the physical appearance of a person
- (iii) parental status or status as a carer, for example, because they are responsible for caring for children or other family members
- (iv) race, colour, descent, national origin, or ethnic background
- (v) age, whether young or old, or because of age in general
- (vi) sex
- (vii) industrial activity, including being a member of an industrial organisation like a trade union or taking part in industrial activity, or deciding not to join a trade union
- (viii) religion
- (ix) pregnancy and breastfeeding
- (x) sexual orientation, intersex status or gender identity, including gay, lesbian, bisexual, transsexual, transgender, queer and heterosexual
- (xi) marital status, whether married, divorced, unmarried or in a de facto relationship or same sex relationship
- (xii) political opinion
- (xiii) social origin
- (xiv) medical record
- (xv) an association with someone who has, or is assumed to have, one of these characteristics, such as being the parent of a child with a disability.

- (d) It is also against the law to treat someone unfavourably because you assume they have a protected personal characteristic or may have it at some time in the future.

4.2 Bullying

- (a) Workplace bullying is unreasonable and belittling, insulting, aggressive or intimidating conduct directed towards a person or group of persons in the workplace.
- (b) Bullying can take many forms, including:
- (i) jokes, teasing and nicknames
 - (ii) sarcasm and other forms of demeaning language
 - (iii) inappropriate emails, pictures or text messages
 - (iv) threats, abuse or shouting
 - (v) coercion
 - (vi) isolation and ignoring people
 - (vii) inappropriate blaming
 - (viii) ganging up
 - (ix) constant unconstructive criticism
 - (x) deliberately withholding information or equipment that a person needs to do their job or access their entitlements
 - (xi) deliberate exclusion from work-related activities
 - (xii) unreasonable refusal of requests for leave, training or other workplace benefits.
- (c) If someone is being bullied because of a personal characteristic protected by equal opportunity law, it is a form of discrimination. This behaviour does not have to be repeated to be discrimination – it may be a one-off event.
- (d) Reasonable allocation of work and supervision, including the giving of feedback on work, and reasonable management action in the workplace is not workplace bullying. Justified and reasonable criticism, differences of opinion and disagreements are generally not workplace bullying.

4.3 Sexual harassment

- (a) Sexual harassment is a specific and serious form of harassment. It is unwelcome sexual behaviour, which could be reasonably expected to make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, spoken or written. It can include:
- (i) comments about a person's private life or the way they look
 - (ii) lavishing attention on a particular person, including requests for private meetings in chambers not about work, or unwelcome gifts
 - (iii) sexually suggestive behaviour, such as leering or staring
 - (iv) brushing up against someone, touching, fondling or hugging

- (v) sexually suggestive comments or jokes
 - (vi) displaying offensive screen savers, photos, calendars or objects
 - (vii) repeated unwanted requests to go out or socialise, including repeated requests to attend lunches, drinks, social functions and/or requests to attend a person's home
 - (viii) requests for sex
 - (ix) sexually explicit posts on social networking sites
 - (x) insults or taunts of a sexual nature
 - (xi) intrusive questions or statements about a person's private life
 - (xii) sending sexually explicit emails or text messages
 - (xiii) inappropriate advances on social networking sites
 - (xiv) accessing sexually explicit internet sites
 - (xv) behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.
- (b) Just because someone does not object to inappropriate behaviour in the workplace at the time, it does not mean that they are consenting to the behaviour.
- (c) Sexual harassment is covered in the workplace when it happens at work, at work-related events, between people sharing the same workplace, or between colleagues outside of work.
- (d) All Floor Barristers, Floor Workers and Floor Visitors have the same rights and responsibilities in relation to sexual harassment.
- (e) A single incident is enough to constitute sexual harassment – it doesn't have to be repeated.
- (f) All incidents of sexual harassment – no matter how large or small or who is involved – require Floor Barristers and Floor Workers to respond quickly and appropriately.
- (g) Banco Chambers recognises that comments and behaviour that do not offend one person can offend another. This policy requires all Floor Barristers and Floor Workers to respect other people's limits.

4.4 Victimisation and Vilification

- (a) Victimation is subjecting or threatening to subject someone to a detriment because they have asserted their rights under equal opportunity law, made a complaint, helped someone else make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation. Victimation is against the law.
- (b) It is also victimisation to threaten someone (such as a witness) who may be involved in investigating an equal opportunity concern or complaint.
- (c) Vilification includes behaviour towards a person by reference to that person's gender, sexuality, homosexuality, transgender status, HIV status, ethnicity, racial or religious background or nationality, which behaviour is likely, in all of the circumstances, to offend, insult, humiliate or intimidate the person.

- (d) Victimisation and vilification are serious breaches of this policy. Banco Chambers has a zero tolerance approach to victimisation and vilification.

4.5 Breaching confidences about complaints of inappropriate workplace behaviour

- (a) It is unacceptable (and it is a serious breach of this policy) for any Floor Barrister or Floor Worker at Banco Chambers to:
- (i) Breach the confidentiality of a complaint or investigation under Section 6 of this policy (for example, gossip about an incident the subject of a complaint or investigation); or
 - (ii) Inappropriately disclose personal information obtained in a professional role (for example, as a manager).

5. Merit at Banco Chambers

- (a) All recruitment and job selection decisions at Banco Chambers will be based on merit – the skills and abilities of the candidate as measured against the inherent requirements of the position – regardless of personal characteristics.
- (b) It is unacceptable and may be against the law to ask job candidates questions, or to in any other way seek information, about their protected personal characteristics as set out in paragraph 4.1(c) above, unless this can be shown to be directly relevant to a genuine requirement of the position.

6. Resolving issues at Banco Chambers

6.1 Procedure for raising concerns

- (a) Banco Chambers strongly encourages any Floor Barrister, Floor Worker or Floor Visitor who believes they have been discriminated against, bullied, sexually harassed or victimised, or any person who witnesses such conduct, to make a complaint. Such a complaint can be made formally or informally. A flowchart explaining the processes for making a complaint is set out in Annexure A to this policy.
- (b) Consistently with any reporting requirements, complainants of or witnesses to unacceptable workplace conduct will be offered anonymity and confidentiality (though anonymity may inhibit how the complaint is dealt with). All such persons will be offered support without risk of adverse repercussions. Any person with concerns or complaints about unacceptable workplace conduct is encouraged to seek support, information and advice from the external consultant who has been engaged by Banco Chambers. The contact details of the external consultant will be included in a factsheet to be provided annually to all Floor Barristers and Floor Workers and provided on request to any Floor Visitor.
- (c) Banco Chambers encourages any Floor Barrister, Floor Worker or Floor Visitor who wishes to make a complaint in the first instance to do so by contacting (at the complainant's option) either:
- (i) The following Floor Barristers: Cameron Moore SC and/or Tiffany Wong SC (or any other senior counsel who is a member of the Board in the event that either Mr Moore or Ms Wong are involved in the complaint); or
 - (ii) The external consultant who has been engaged by Banco Chambers for this purpose.

- (d) The role of the external consultant is to advise the affected person as to the steps he or she can take in relation to his or her complaint, and as to resources available to deal with any issues. If the affected person wishes the external consultant to do so (or if the external consultant considers this is necessary), she will raise the matter anonymously and confidentially with Mr Moore SC and Ms Wong SC (or any other senior counsel who is a member of the Board in the event that either Mr Moore or Ms Wong are involved in the complaint) for review as to the steps to be taken, including whether an external investigation should be conducted or the matter referred to the OLSC or NSW Bar Association, or whether any other appropriate steps should be taken. The external consultant will maintain an informal, confidential register of complaints and concerns brought by any Floor Barrister, Floor Worker or Floor Visitor. The external consultant may, from time to time, report to the Board the fact complaints or concerns have been raised and the number of complaints or concerns that have been raised, on an anonymised and confidential basis.
- (e) The confidential counselling service provided by BarCare is also available to any member of the NSW Bar Association and their immediate family members to provide professional support and counselling related to personal or practice related matters. Upon a person contacting BarCare:
 - (i) BarCare may provide confidential support or refer the person to any other support services that may be appropriate; but
 - (ii) in contacting BarCare, a person will not automatically engage any of the resolution processes set out in paragraph 6.2 below unless they also make contact with any of the persons identified in paragraph 6.1(c)(i) or (ii) above, and the person indicates that they wish to engage any of the resolution processes set out in paragraph 6.2 below.
- (f) Where concerns or complaints are raised, this will be kept confidential to the extent possible, having regard to the need to investigate the complaint, any obligations to report particular conduct, the wishes of the complainant and the need to afford procedural fairness to all concerned. If the complainant has also requested that the complaint be kept anonymous, the matter will also be dealt with anonymously, to the extent possible (having regard to each of the matters referred to in the previous sentence).
- (g) Upon the making of a complaint that comes to the attention of Mr Moore SC and/or Ms Wong SC:
 - (i) The following information will be disclosed to the Board by Mr Moore SC and/or Ms Wong SC:
 - A. The fact of the existence of a complaint; and
 - B. The fact of the resolution of the complaint or the fact that the complaint has not been resolved, as the case may be.
 - (ii) Further details about the complaint may also be disclosed to the Board (such as the identity of the persons involved or the specific circumstances of the complaint), but this will only happen with the consent of the person who has made the complaint, subject to the matters identified in cl. 6.1(f).

6.2 Processes for resolving matters

- (a) The following means of resolving matters arising under this policy are available to those affected:
 - (i) The person/people about whom the complaint is made is/are informed of the matter in a way which, to the extent practicable, does not identify the person affected, or alternatively, which does identify the person making the complaint but only with their consent.

- (ii) An informal discussion between the person affected and the person/people about whom the complaint is made, either with or without the attendance of a third party.
 - (iii) A mediation, in which the different people involved set out their view of what has occurred and there is a frank discussion of how matters can be resolved. Unless everyone involved agreed otherwise, the mediation would be confidential and *without prejudice*, but the reason for the mediation and its outcome would be recorded and confidentially maintained by one or more of the persons referred to in clause 6.1(c).
 - (iv) A more formal process in which an investigator is appointed (by the Board) to investigate matters and report to the Board with a recommendation about what steps should be taken. The general process for such an investigation is set out in Annexure B to this policy.
- (b) This part of the policy is not prescriptive: there may be other means of resolving matters appropriate to particular circumstances. In some instances, informal procedures which focus on resolving the issue rather than substantiating an underlying complaint may be appropriate. These are matters which can be discussed between the affected person and the persons referred to in paragraph 6.1(c).
- (c) Which action is taken depends on the nature and gravity of the conduct about which the complaint is made. In particular, a formal process is usually appropriate where a person has been victimised or where the concern or complaint involves serious allegations of inappropriate workplace behaviour.
- (d) Other than where persons are under a legal obligation to report particular conduct, the decision about which of the above processes is appropriate is a decision for the person making the complaint.
- (e) Complainants will be kept informed of and consulted regarding the nature of the steps that are proposed for any formal or informal resolution process and the progress and outcome of those steps.
- (f) All documents relating to a complaint under this policy will be kept confidential to the extent possible, having regard to the potential need for the investigator to investigate the complaint and any obligations to report particular conduct.

6.3 Consequences of engaging in inappropriate workplace behaviour

- (a) Conduct found to have occurred in contravention of this Policy may result in:
- (i) disciplinary action by any employing entity up to and including termination of employment
 - (ii) a complaint being made to the Legal Services Commissioner, NSW Bar Association, and/or any other relevant body where appropriate
 - (iii) a licensee's licence being terminated or a reader's readership being terminated;
 - (iv) a resolution of shareholders that a Floor Member has brought Banco Chambers into disrepute or is substantially interfering with the good management or harmony of Banco Chambers.

6.4 Other matters

- (a) The availability of processes under this policy does not preclude any Floor Barrister, Floor Worker or Floor Visitor from exercising any other rights they may have, including:

- (i) complaining to the Legal Services Commissioner or the New South Wales Bar Association under the provisions of the *Legal Profession Uniform Law*
 - (ii) speaking with any relevant external agency, such as Anti-Discrimination NSW, the Australian Human Rights Commission, the Fair Work Commission and/or the Fair Work Ombudsman
 - (iii) seeking independent legal advice and/or pursuing remedies that may be available, including under the relevant laws.
- (b) Subjecting a person to detriment by reason of them having taken any actions under this policy constitutes victimisation (as described in paragraph 4.4, above), and is itself a breach of this policy.

7. More information

- (a) If you have a query about this policy or need more information please contact the Clerk of Banco Chambers.

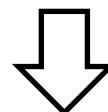
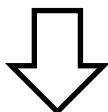
8. Review details

- (a) This policy was adopted by Banco Chambers on 14 December 2020 to have effect from 1 February 2021
- (b) This policy was last updated on 8 March 2020
- (c) This policy is to be reviewed on or before December 2022

Annexure A – Complaint Making Processes

In accordance with paragraph 6.1, the affected person reports the complaint, in the first instance, to either:

- Mr Moore SC and/or Ms Wong SC (or any other senior counsel on the Board of Banco Chambers in the event Mr Moore or Ms Wong are involved in the complaint) or
- The external consultant.



If reported to **Mr Moore and/or Ms Wong** (or another senior counsel on the Board of Banco Chambers if the complaint involves Mr Moore or Ms Wong):

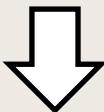
- Mr Moore and/or Ms Wong (or the other senior counsel) give advice as to the options for dealing with the matter, and resources available.
- Mr Moore and/or Ms Wong (or the other senior counsel) will disclose the fact of the existence of the complaint and whether or not it has been resolved to the Board.
- Other aspects of the complaint, such as the identity of the parties or the circumstances of the conduct, will only be disclosed to the Board with the Complainant's consent (subject to the matters identified in cl. 6.1(f)).

If reported to the **external consultant**:

- The external consultant gives advice as to the options for dealing with the matter, and resources available.
- The external consultant determines whether the matter **must** be raised (anonymously if requested) with Mr Moore and Ms Wong for review as to next steps.



Complaint-receiver offers the affected person anonymity, support and confidentiality. All parties keep the matter confidential and preserve any anonymity, to the extent possible.



Complainant selects either an informal or formal resolution process in accordance with paragraph 6.2. The process to be undertaken will depend on the nature and gravity of the complaint.

Alternatively, the affected person may exercise any other rights the person may have as set out in paragraph 6.4.

Annexure B – Process for Formal Investigation

1. A person making a complaint is referred to as the **Complainant**.
2. As soon as practicable after the Complainant decides (after speaking, if they wish, to a contact person referred to in paragraph 6.1 of the Policy) to commence a formal complaint process pursuant to paragraph 6.2(a)(iv), the details of that complaint will be referred to the Board which will appoint an Investigator. Those details will include the information that is necessary for the Board to appoint an Investigator.
3. Where the complaint is about a person or persons who are on the Board, that person or those persons will not be involved in any decisions of the Board in relation to that complaint.
4. The Investigator will, as a first step, obtain all necessary information from the Complainant about their complaint.
5. The Investigator will then put a summary of the information they have received to the person or people about whom the complaint is made in order to get their side of the story.
6. If the Investigator considers it necessary to do so, they may:
 - (a) speak to other persons (such as any necessary witnesses);
 - (b) speak again to the Complainant or the person or people about whom the complaint is made; or
 - (c) put any matters arising from those discussions to the Complainant or the person or people about whom the complaint is made.
7. Within 4 weeks of his or her initial appointment (or any longer period agreed by the Board after request from the Investigator), the Investigator will report their findings to the Board along with any recommendations as to how the complaint should be resolved.
8. Any Investigator appointed for the purposes of this policy is required to keep all matters confidential, subject only to the need to afford procedural fairness to the person or people about whom the complaint is made, but with an appreciation that it is ordinarily in the interests of both the Complainant and those about whom complaint is made that the matter remain confidential.