



**SADA**

THE SOUTH AFRICAN  
DENTAL ASSOCIATION

## **POLICY DOCUMENT**

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**ACRONYMS**

BCEA	Basic Conditions of Employment Act, 75 of 1997
COIDA	Compensation for Occupational Injuries and Diseases Act, 130 of 1993
CONSTITUTION	The Constitution of the Republic of South Africa Act, 108 of 1996
EEA	Employment Equity Act, 55 of 1998
LGBTQIA+	Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, Questioning, Asexual plus all other sexualities, sexes and genders not included (LGBTQIA +) persons
LRA	Labour Relations Act, 66 of 1995
PDA	Protected Disclosures Act, 26 of 2000

## 1. DEFINITIONS

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- 1.1. **BULLYING** means unwanted conduct in the workplace, which is persistent or a single incident which is serious and insults, demeans, humiliates, lowers self-esteem or self-confidence or creates a hostile or intimidating environment or is calculated to induce by submission or by actual or threatened adverse consequences, which includes the abuse of coercive power by either an individual or a group of individuals in the internal or external workplace or by an external client.
- 1.2. **CYBER BULLYING** refers to the inappropriate use of technology, expression of psychological and sexual Violence and Harassment through email, text, cartoons, memes, and web posts on any other form of online communication or electronic technology which has the same effect as conventional bullying. Cyberbullying / cyber harassment may take place inside or outside the physical workplace and includes online violence.
- 1.3. **DISCRIMINATION** means any act or omission, including a policy, law, rule, practice, condition, or situation which directly or indirectly imposes burdens, obligations or disadvantage on; or withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds, namely: race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, birth and HIV & AIDS status; or any other ground where discrimination based on that other ground causes or perpetuates systemic disadvantage, undermines human dignity or adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in section 6(1) of the EEA.
- 1.4. **VIOLENCE AND HARASSMENT** means violence or abuse, and includes physical, sexual, psychological and economic violence, as well as coercive control, carried out by an employer, employee or officers. This can include sending, delivering, or causing the delivering of letters, telegrams, packages, facsimiles, electronic mail or other objects to the complainant (s) or a related affected person(s) or leaving any such objects where they will be found by, given to, or brought to the attention of the complainant or a related person; or amounts to harassment of the complainant(s).
- 1.5. **INTIMIDATION** means the (intentional) behaviour that "would cause a person of ordinary sensibilities" to fear injury or harm. It is not necessary to prove that the behaviour was so violent as to cause mean terror or that the victim was frightened.
- 1.6. **MOBBING** is a form of harassment by a group of people targeted at an individual. Like bullying, mobbing occurs when an individual is ridiculed, humiliated or otherwise targeted with hostile or harmful behaviours.
- 1.7. **ONLINE VIOLENCE** includes any act of Violence and Harassment that is committed, assisted or aggravated in part or fully by the use of Information and Communications Technology (ICT), such as mobile phones and smartphones, the internet, social media platforms or email.
- 1.8. **PSYCHOSOCIAL RISKS** refer to the psychosocial hazards and risks related to the structural or organisational features of a person's work. Psychological, physical, and sexual Violence and Harassment are considered psychosocial risks. Violence and Harassment is a potential work - related stress factor.
- 1.9. **PSYCHOLOGICAL VIOLENCE AND HARRASSMENT** refers to the prejudicial effects such conduct has on the psychological integrity and well-being of the complainant.

- 1.10. **SEXUAL GENDER -BASED VIOLENCE AND HARASSMENT** refers to any sexual act or unwanted sexual comments, verbal or nonverbal advances, attention, proposition, coercion, threats of harm or physical force, by any person regardless of their relationship to the complainant (s) in any setting. It may be driven by power differences and perceived gender norms. It includes forced sex, sexual coercion and rape of adult and adolescent men and women, and child sexual abuse and rapes.
- 1.11. **SEXUAL HARASSMENT** means unwelcome conduct of a sexual nature that violates the rights of any complainant, considering all the following factors:
- 1.11.1. whether the harassment is on the prohibited grounds of sex and /or gender and/or;
  - 1.11.2. sexual orientation;
  - 1.11.3. whether the sexual conduct was unwelcome;
  - 1.11.4. the nature and extent of the sexual conduct; and
  - 1.11.5. the impact of the sexual conduct on the complainant.
- 1.12. **VICTIMISATION** means the action of singling someone out for cruel or unjust treatment.
- 1.13. **VIOLENCE AND HARASSMENT** in the world of work as a single term refers to "a range of unacceptable behaviours and practices, or threats thereof, whether a single occurrence or repeated, that aim at, result in, or are likely to result in physical, psychological, sexual or economic harm and includes gender-based Violence and Harassment.
- 1.14. **VIOLENCE AND HARASSMENT RELATED TO GENDER -BASED VIOLENCE AND HARASSMENT** means Violence and Harassment directed at persons because of their sex or gender or affecting persons of a sex or gender disproportionately and includes sexual harassment. This form of Violence and Harassment is rooted in unequal power relations between (and among) women and men, which reflects and reinforces the subordinate status of women in many societies. Anyone can, however, be victim of such Violence and Harassment, including those who do not conform to gender norms or traditional societal expectations based on gender, for example, LGBTQIA+persons.
- 1.15. **VIOLENCE AND HARASSMENT RELATED TO PROTECTED DISCLOSURE** means Violence and Harassment related to protected disclosure (whistleblowing) and shall be read in terms of the definition of "occupational detriment" in the PDA. Section 51 of EEA as well as the PDA provide protection for workers against victimisation, retaliation or suffering an occupational detriment as a result of exercising a right in terms of the EEA or the PDA. Occupational detriment in the PDA should be read with section 186(2)(d) of the LRA and includes employer actions such as disciplinary action, dismissal, suspension, intimidation, failure, or refusal to promote and an adverse reference.
- 1.16. **VIOLENCE AND HARASSMENT RELATED TO RACE OR ETHNIC OR SOCIAL ORIGIN** means Violence and Harassment based on race or ethnic or social origin, and include conduct complained of as unwanted conduct which was persistent or serious and demeans, humiliates or created a hostile or intimidating environment; or is calculated to induce submission by actual or threatened adverse consequences and is related to race or a characteristic with such group.
- 1.17. **VIOLENT CRIME OR CRIME OF VIOLENCE AND HARASSMENT** is a crime in which an offender or perpetrator uses or threatens to use force upon a victim. This entails both crimes in which the violent act is the objective, such as murder or rape, as well as crimes where Violence and Harassment is a means to an end.

## **2. VALUE STATEMENT**

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- 2.1. The South African Dental Association (SADA/Association) seeks to build an inclusive, affirming and transformed institutional culture.
- 2.2. SADA rejects and condemns racism, sexism, homophobia, transphobia, xenophobia, ethnic chauvinism, religious intolerance, unfair discrimination, hate speech, sexual harassment and harassment based on other prohibited grounds, gender-based violence and violence based on other prohibited grounds; and retaliation, in all its forms.
- 2.3. SADA regards Violence and Harassment as a form of unfair discrimination that includes all forms of Violence and Harassment, Sexual harassment, Gender-based violence and Bullying. It is acknowledged that Violence and Harassment may include physical abuse, psychological abuse, emotional abuse, and sexual abuse. It also includes the use of physical force or power, threatened or actual, against oneself, another person or against a group or community, that either results in, or has a high likelihood of resulting in injury, death, physical and psychological harm, mal-development or deprivation.
- 2.4. Violence and Harassment includes three types of violence: Self-directed Violence, Interpersonal Violence and Collective Violence. Violence and Harassment against women, men and LGBTQIA + persons in the workplace or within the Association is an abuse of power.
- 2.5. The Association commits itself to the eradication of these practices.
- 2.6. This policy aims to create an enabling framework to address individual, structural and systemic forms of discrimination and exclusion, violence and harassment and to ensure procedural as well as substantive justice. It mandates the Association to offer forms of redress to individual complainants which are just, fair and transparent; and to pro-actively prevent unfair discrimination.

## **3. APPLICATION OF THE CODE**

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- 3.1. This policy applies to all who in one way or other are associated with the Association including:
  - 3.1.1. Directors;
  - 3.1.2. Branch Committees;
  - 3.1.3. Board Committee including operational committees;
  - 3.1.4. SADA officers (in any capacity or position);
  - 3.1.5. Members acting on behalf of the Association as its representatives on outside organisations;
  - 3.1.6. Managers and supervisors;
  - 3.1.7. All employees including those suspended;
  - 3.1.8. Persons in training including learnerships;
  - 3.1.9. Volunteers;
  - 3.1.10. Job seekers and applicants;
  - 3.1.11. Members of the Association;
  - 3.1.12. Suppliers;
  - 3.1.13. Contractors; and
  - 3.1.14. others having dealings with the Association.

## 4. MAIN FORMS OF VIOLENCE AND HARASSMENT

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This policy addresses various forms of Violence and Harassment and the manifestations thereof but is not limited to the forms of Violence and Harassment specifically included in this policy.

### 4.1. Sexual Violence and Harassment

4.1.1. Sexual Violence and Harassment in the workplace or Association is a form of unfair discrimination that is prohibited on one or more grounds, including sex, gender, and /or sexual orientation. Same-sex harassment can amount to discrimination based on sex, gender, and sexual orientation.

4.1.2. Sexual Violence and Harassment means directly or indirectly engaging in conduct that the perpetrator knows or ought to know is not welcome, is offensive to the complainant and makes the complainant feel uncomfortable and interferes with work, causes harm or inspires the reasonable belief that harm may be caused to the complainant or a related person by unreasonably:

- 4.1.2.1. following, watching, pursuing, or accosting of the complainant or a related person, or loitering outside of or near the building or place where the complainant or a related person resides, works, carries on business, studies, or happens to be.
- 4.1.2.2. any unwelcome sexual attention, advances or proposals from a person who knows or ought reasonably to know that such attention is unwelcome.
- 4.1.2.3. unwelcome explicit or implicit behaviour, suggestions, messages, advances, attention, proposals or remarks of a sexual nature that have the effect of offending, intimidating or humiliating the complainant or a related person in circumstances which a reasonable person, having regard to all the circumstances, would have anticipated that the complainant or related person would be offended, humiliated or intimidated, (implied or expressed), promise of reward for complying with a sexually orientated request, proposal, advances or attention; or
- 4.1.2.4. implied or expressed threat of reprisal or actual reprisal for refusal to comply with a sexually oriented request, advance, attention, or proposals.

### 4.2. Forms of Sexual Violence and Harassment include:

4.2.1. **Victimisation** occurs where a complainant (s) or affected person(s) is victimised or intimidated for failing to submit to sexual advances, attention or proposal.

4.2.2. **Quid pro quo harassment** occurs where a person such as an owner, employer, supervisor, manager, member of management or co-employee, influences or attempts to influence an employee's employment circumstances (for example engagement, promotion, training, discipline, dismissal, salary increments or other benefits) by coercing or attempting to coerce an employee to surrender to sexual advances.

4.2.3. **Sexual Favouritism** is a form of quid pro quo harassment and occurs where a person in authority in the workplace rewards only those who responds to sexual advances. Those who are not approached for sexual favours are not harassed but may be discriminated against.

4.2.4. **Hostile working environment** occurs when a person is deprived of their dignity but not of any tangible benefit. The ongoing work environment has a negative impact on the complainant and constitutes a barrier to sexual equality. Hostile working environment harassment includes conduct that creates an intimidating, hostile or humiliating working environment.

- 4.2.5. **Unwelcome physical conduct** of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex.
- 4.2.6. **Verbal forms** of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or directed towards them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling directed at a person or group of persons.
- 4.2.7. **Non-verbal** forms of sexual harassment include unwelcome gestures, indecent exposure and the unwelcome display of sexually explicit pictures and objects.
- 4.2.8. **Psychological sexual behaviour** such as repeated unwanted social invitations for dinner, drinks or movies, sexual favours and requiring/requesting a subordinate or person to wear sexy, revealing or suggestive clothes.

#### **4.3. Nature and extent of the conduct**

- 4.3.1. The unwelcome conduct must be of a sexual nature, and includes physical, verbal, or non-verbal conduct.
- 4.3.2. Physical conduct of a sexual nature includes all unwelcome physical contact, ranging from touching to sexual assault and rape, as well strip search by or in the presence of the opposite sex.
- 4.3.3. Verbal conduct includes unwelcome innuendos, suggestions, hints, sexual advances, comments with sexual overtones, sex-related jokes or insults, graphic comments about a person's body made in their presence or to them, inappropriate enquiries about a person's sex life, whistling of a sexual nature and the sending by electronic means or otherwise of sexually explicit text.
- 4.3.4. Non-verbal conduct includes unwelcome gestures, indecent exposure and the display or sending by electronic means or otherwise of sexually explicit pictures or objects.
- 4.3.5. Sexual harassment may include, but is not limited to, victimisation, hostile work environment, quid pro quo harassment and sexual favouritism.
- 4.3.6. Single incident of unwelcome sexual conduct may constitute sexual Violence and Harassment.

#### **4.4. Impact of the conduct**

- 4.4.1. The conduct should constitute an impairment of the complainant's dignity, taking into account:
  - 4.4.1.1. circumstances of the complainant
  - 4.4.1.2. the respective positions of the complainant and the perpetrator in the workplace.



4.4.1.3. A single incident of unwelcome sexual conduct may constitute sexual Violence and Harassment.

4.4.2. The test to be applied for Sexual Violence and Harassment:

4.4.2.1. The subjective feelings of the complainant should be evaluated against the objective standard of a "reasonable person /complainant" test which involves how the reasonable person would have reacted in the circumstances.

4.4.3. Sexual attention becomes sexual Violence and Harassment when:

4.4.3.1. The behaviour is persistent in, although a single incident of harassment can constitute sexual harassment; and /or

4.4.3.2. recipient has made it clear that the behaviour is considered offensive; and /or

4.4.3.3. The perpetrator knows or ought to have known that the behaviour is regarded as unacceptable.

#### **4.5. RACIAL ETHNIC OR SOCIAL ORIGIN VIOLENCE AND HARRASSMENT**

4.5.1. Racial Violence and Harassment is a form of racial discrimination and it is prohibited by section 6(1) of the EEA.

4.5.1.1. Racial Violence and Harassment is unwanted conduct which is persistent or a single incident which is serious demeans, humiliates or creates a hostile or intimidating environment or is calculated to induce submission by actual or threatened adverse consequences and which is related to a person's membership or presumed membership of a group identified by one or more of the prohibited grounds or a characteristic associated with such group.

4.5.1.2. Racial Violence and Harassment shall include, direct or indirect behaviour which involve issues such as racist verbal and nonverbal conduct, remarks, abusive language, racist name calling, offensive behaviour gestures and racist cartoons, memes, or innuendos.

#### **4.5.2. Forms of Racial, Ethnic, Social Violence and Harassment may include:**

4.5.2.1. Abusive Language and racist jokes, cartoons, or memes;

4.5.2.2. Racially offensive written or visual material, including cyber harassment;

4.5.2.3. Racist name calling and /or negative stereotyping impacting dignity;

4.5.2.4. Offensive behaviour in the form of open hostility to persons of a specific racial or ethnic group;

4.5.2.5. Subtle or blatant exclusion from workplace interaction and activities;

4.5.2.6. Marginalisation; and

4.5.2.7. Threatening behaviour, which intimidates a person and creates a hostile environment.

#### **4.5.3. Factors to be considered in Racial Violence and Harassment:**

4.5.3.1. Whether the language or conduct complained of is abusive;

4.5.3.2. Whether the language or conduct complained of impairs the dignity of the complainant(s);

4.5.3.3. Whether the language or conduct is directed at a particular complainant or complainants;

4.5.3.4. The level of malice;

4.5.3.5. The extend and degree of abuse or impairment to dignity; and

4.5.3.6. The impact of the conduct.

#### **4.5.4. The test to be applied for Racial Violence and Harassment includes:**

- 4.5.4.1. Racial Harassment has to be assessed objectively with reference to the reaction of the normal or reasonable person.
- 4.5.4.2. To establish racial violence and harassment based on race or ethnic origin, it has to be established on a balance of probabilities that the conduct complained of:
  - 4.5.4.2.1. Was unwanted conduct, which was persistent or serious, demeaned, impaired dignity, humiliated, or created a hostile or intimidating environment or was calculated to induce submission by actual or threatened adverse consequences and was related to race, ethnic origin, or a characteristic with such group.
  - 4.5.4.2.2. Whether a perpetrator would have spoken the words or behaved in the manner complained of towards the complainant but for the complainant's race or ethnic origin.
  - 4.5.4.2.3. How the alleged perpetrator treats other persons not of the complainant's racial group or ethnic origin, even if the conduct complained of is race -neutral and whether language or other conduct is considered Violence and Harassment might depend on the circumstances; and the motives of the perpetrator.
  - 4.5.4.2.4. The impact of the Violence and Harassment; and
  - 4.5.4.2.5. Whether the language or conduct is regarded as Violence and Harassment might depend on the particular circumstances and whether the language and conduct are directed at a particular person(s) and is insulting, abusive and /or derogatory.

#### **4.6. WORKPLACE BULLYING**

- 4.6.1. Workplace Bullying is unwanted conduct which is persistent or a single incident which is serious demeans, humiliates, or creates a hostile or intimidating environment, or is aimed to induce, through submission or through actual or threatened adverse consequences. It includes any unfavourable or offensive conduct which has the effect of creating a hostile workplace environment.
- 4.6.2. Workplace bullying includes either physical, verbal, or psychological acts.
- 4.6.3. The terms "harassment ", "bullying" or "mobbing" are interpreted interchangeably and do not differentiate between physical, psychological, and non -physical conduct.
- 4.6.4. Workplace Bullying as a form of Psychological Violence and Harassment may be perpetrated through repeated behaviour, of a type, which alone may be relatively minor, but which cumulatively can become a very serious form of Violence and Harassment.
- 4.6.5. Workplace Bullying and mobbing includes the abuse of coercive power by either an individual or a group of employees /colleagues in the internal or external workplace.
- 4.6.6. Workplace bullying includes a wide range of insulting, demeaning or intimidating behaviour that lowers the self-esteem or self-confidence of a complainant including:
  - 4.6.6.1. Harassing, offending, professionally or socially excluding someone or negatively affecting someone's work tasks.
  - 4.6.6.2. Physical bullying: Examples of physical bullying include physical attack, simulated violence, or gestures (such as raising a fist as if to strike or throwing objects near a person).
  - 4.6.6.3. Tangible /material bullying: Using formal power (i.e. title, position, or supervisory control) or material leverage (i.e. financial, informational, resource or legal) as forms of intimidation, threat, harassment, and /or harm or to dominate and control the complainant.
  - 4.6.6.4. Verbal bullying: may include threats; shaming; hostile teasing; insults; constant negative judgment and criticism; or racist, sexist, or LGBTIQ+ phobia language.

- 4.6.6.5. Passive -aggressive or covert bullying: Examples of passive - aggressive and covert bullying include negative gossip, negative joking at someone's expense, sarcasm, condescending eye contact, facial expression or gestures, mimicking to ridicule, deliberately causing embarrassment and insecurity, invisible treatment, marginalisation, social exclusion, professional isolation, and deliberately sabotaging someone's dignity, well- being, happiness, success and career performance.
- 4.6.7. Examples of this form of Violence and Harassment may include but not limited to:
- 4.6.7.1. Slandering or maligning a complainant;
  - 4.6.7.2. Deliberately withholding work-related information or supplying incorrect information;
  - 4.6.7.3. Deliberately sabotaging or impeding the performance of work;
  - 4.6.7.4. Ostracising, boycotting, or disregarding the complainant;
  - 4.6.7.5. Persecution in various forms, threats, and the inspiration of fear and degradation;
  - 4.6.7.6. Deliberate insults, being hypercritical or negative response or attitude or ridicule;
  - 4.6.7.7. Supervision or surveillance of a complainant without their knowledge and with harmful intent;
  - 4.6.7.8. Offensive administrative punitive sanctions without objective cause, explanation, or efforts to problems solving;
  - 4.6.7.9. Intolerance of psychological, medical, disability or personal circumstances;
  - 4.6.7.10. Demotion without justification;
  - 4.6.7.11. Humiliation and demeaning conduct;
  - 4.6.7.12. Abuse of disciplinary proceedings;
  - 4.6.7.13. Wrongful conduct causing harm;
  - 4.6.7.14. Pressure to engage in illegal activities;
  - 4.6.7.15. Recommendation to resign; and
  - 4.6.7.16. Spreading of rumours maliciously.
- 4.6.8. Factors to be considered in Workplace Bullying:
- 4.6.8.1. Interpersonal conflict may not be bullying if the incident is an isolated event or if two parties of approximately equal strength are in conflict. Bullying may be an escalating process in the course of employment in which the complainant ends up in an inferior position and becomes the target of systematic negative social acts.
  - 4.6.8.2. Workplace Bullying may take the "form of aggressive behaviour in which someone systematically and repeatedly causes another person injury or discomfort."
  - 4.6.8.3. Workplace bullying is a form of Psychological Violence and Harassment may be associated with emotional abuse and it constitutes unwelcome, any employee who has reason to believe that the information concerned shows or tend to show improprieties."
  - 4.6.8.4. Employees have the right to disclose information about any criminal and other irregular conduct in the workplace, without fear of reprisals by their employer.
  - 4.6.8.5. No employee may be subjected to any occupational detriment by their employer on account or partly on account of making a protected disclosure.
  - 4.6.8.6. The experience of a whistle-blower who is subjected to an occupational detriment is regarded as similar to an employee subjected to discrimination.

## 5. PROCEDURES FOR MANAGING DISCRIMINATION, VIOLENCE OR HARASSMENT

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This policy must be read in conjunction with the SADA Code of Conduct and the Employee Handbook where necessary.

### 5.1. Advice and Assistance

- 5.1.1. Discrimination, Violence and Harassment may be brought to the attention of the Association as an employer or the Association through the Chairperson of the SADA Strategy, Ethics & Remuneration Committee (SERCOM) by the complainant(s) or any other person(s) aware of the Discrimination, Violence and Harassment for example a friend, colleague or human resources official acting on the request of the complainant(s), where the complainant has indicated that he/she wishes the Association as employer or the Association to be made aware of the conduct.
- 5.1.2. Where the Discrimination, Violence and Harassment are of a particularly serious nature, the complainant(s) should be encouraged to inform the Association directly.
- 5.1.3. The steps to be taken by the Association on receipt of a complaint by the complainant(s) or affected person(s), should include but not be limited to the following:
  - 5.1.3.1. Advising the complainant of the informal and formal procedures available to deal with the Discrimination, Violence and Harassment.
  - 5.1.3.2. Where reasonably practicable, offering the complainant advice, assistance and counselling including during any disciplinary enquiry in the case of a complainant or in terms of the Code of Conduct in other cases that may be instituted.
  - 5.1.3.3. Following the procedures required in a manner that is sensitive, dignified and procedurally and substantively fair.
  - 5.1.3.4. Providing advice and assistance.
- 5.1.4. A complainant may require advice and assistance, including counselling.
- 5.1.5. As far as is practicable, a person outside of line management or a person designated by SERCOM may be approached to request advice and / or counselling. Such a person could be a person employed by the Association or a member of SERCOM or its designate to perform such a function, or a professional engaged to perform such activity.

### 5.2. Advising the complainant of procedures to deal with Discrimination, Violence and Harassment

- 5.2.1. When a complaint of Discrimination, Violence and Harassment is brought to the attention of the Association, the Association should:
  - 5.2.1.1. Immediately advise the complainant that there are either formal or informal procedures which could be followed to address the problem.
  - 5.2.1.2. Explain the formal and informal procedures to the complainant.
  - 5.2.1.3. Advise the complainant that they may choose which procedure should be followed by the Association as an employer or SERCOM in other cases, and that in certain limited circumstances, the Association may choose to follow a formal procedure even if the complainant does not wish to do so.
  - 5.2.1.4. Reassure the complainant(s) or affected person(s) that there will not be any adverse consequences if they choose to follow either the formal or informal procedure.

- 5.2.1.5. Advise the complainant(s) or affected person(s) that the matter will be dealt with confidentially if the complainant so chooses.

### **5.3. Informal procedure**

- 5.3.1. A complainant(s) may choose to follow a whistleblowing facility where the process of investigation will be as stated in this policy or a formal procedure, either with or without first following an informal procedure.
- 5.3.2. The complainant/ may choose of the following informal procedures:
  - 5.3.2.1. The complainant(s) or another appropriate person(s) explains to the alleged perpetrator that the conduct complained of is not welcome, that it offends the complainant, makes the complainant feel uncomfortable, and that it interferes with work.
  - 5.3.2.2. An appropriate person appointed by the Association or SERCOM approaches the alleged perpetrator, with or without revealing the identity of the complainant, and explains to the alleged perpetrator that certain forms of conduct constitute Discrimination, Violence and Harassment, are offensive and unwelcome and that the perpetrator have been accused of making an anonymous complainant feel uncomfortable.
  - 5.3.2.3. The investigator must give the alleged perpetrator an opportunity to state his/her case, explain the outcome that the complainant requests (an informal settlement) and advise the alleged perpetrator of the possible consequences if proved guilty of discrimination or harassment in a formal hearing or meeting where the complainant's identity will be disclosed.
  - 5.3.2.4. The investigator shall again meet with the complainant, advise him/her of the alleged perpetrator's response and, if the complainant is satisfied, invite both parties where the complainant has chosen not to remain anonymous to meet to consider resolving and settling the matter without the need for formal disciplinary action.
  - 5.3.2.5. The investigator will assess what support and assistance the complainant may require after settlement.
- 5.3.3. The Association should consider any further steps, which can be taken to assist in dealing with the complaint.
- 5.3.4. The role of the investigator is that of a mediator. On being appraised of the allegations, the investigator may of his/her own accord initiate the formal procedures set out below.
- 5.3.5. If the informal approach has not provided a satisfactory outcome, if the case is severe or if the conduct continues, it may be more appropriate to embark upon a formal procedure.
- 5.3.6. If a complainant chooses not to follow a formal procedure, the Association should still assess the risk to other persons in the workplace or the Association where formal steps have not been taken against the alleged perpetrator.
- 5.3.7. In assessing such risk, the Association must consider all relevant factors, including the severity of the Discrimination, Violence and Harassment and whether the alleged perpetrator has a history of Discrimination, Violence and Harassment.
- 5.3.8. If it appears to the Association after a proper investigation that there is a significant risk of harm to other persons in the workplace or the Association, the Association may follow a formal procedure, irrespective of the wishes of the complainant, and advise the complainant; accordingly.

#### **5.4. Formal procedure**

- 5.4.1. Where a formal procedure has been chosen by the complainant, a formal procedure for resolving the grievance is available in terms of the SADA Employees Policies Handbook and/or SADA Code of Conduct where necessary and applicable.
- 5.4.2. If a complainant is an employee and the case is not resolved satisfactorily, the issue can be dealt with in terms of the relevant Code under labour legislation.
- 5.4.3. In case of formal procedures against an officer bearer or member of the Association:
  - 5.4.3.1. The complainant should lodge a grievance in writing addressed to the Chairperson of the SERCOM and where required by SERCOM the complaint shall be in the form of an affidavit;
  - 5.4.3.2. Complaints must state the circumstances which form the basis of the of the complaint;
  - 5.4.3.3. The complainant should make reference to timeframes which allow the grievance to be dealt with expeditiously; and
  - 5.4.3.4. The complainant may further state a required outcome.

#### **5.5. Investigation and disciplinary action**

- 5.5.1. Care should be taken during any investigation of a grievance of Discrimination, Violence and Harassment, that the aggrieved person is not disadvantaged, and that the position of other parties is not prejudiced if the grievance is found to be unwarranted.
- 5.5.2. In a case where the complaint is against the conduct of an employee, management will appoint a disciplinary panel to consider any complaint.
- 5.5.3. In the case of an officer of SADA or member, the members of SERCOM shall constitute the disciplinary panel to consider any complaint or allegation of breach of this policy and/or SADA Code of Conduct. The duties of the Disciplinary Committee and the sanctions that may be imposed by the Committee are set out in the SADA Code of Conduct.
- 5.5.4. The officer or member will be notified in writing of the complaint(s).
- 5.5.5. The nature of the complaint will be clearly defined. If the officer or member does not understand the complaint, further clarity must be requested and received in writing.
- 5.5.6. The officer or member will be afforded sufficient time to prepare for a written reply.
- 5.5.7. If an enquiry is to be held the officer member is entitled to a representative but this is restricted to a fellow SADA officer or member and no legal representation is permitted.
- 5.5.8. The officer or member will have the opportunity to be heard and to provide evidence in defence of a complaint. The officer or member may request the services of an interpreter.
- 5.5.9. The officer or member has the right to bring witnesses and introduce relevant evidence in support of his case. It is the member's responsibility to ensure that the witnesses are present.
- 5.5.10. The officer or member will be advised in writing of the outcome of the enquiry.
- 5.5.11. In case of an employee, the SADA Disciplinary Code provides that an employee may be dismissed for serious misconduct or repeated offences. Serious incidents of sexual harassment or continued harassment after warnings are dismissible offences.

- 5.5.12. In cases of persistent harassment or single incidents of serious misconduct, SADA shall follow the procedures set out in the SADA Disciplinary Code or the SADA Code of Conduct as the case maybe.
- 5.5.13. The range of disciplinary sanctions to which perpetrator will be liable shall be clearly stated in the SADA Disciplinary Code and/or SADA Code of Conduct, and it should also be made clear that it will be a disciplinary offence to victimise or retaliate against a complainant who, in good faith, lodges a grievance of sexual harassment.

## **6. CRIMINAL AND CIVIL CHARGES**

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A victim of discrimination, violence or harassment has the right to institute separate criminal and/or civil charges against an alleged perpetrator, and the legal rights of the victim are in no way limited by this policy.

## **7. CONFIDENTIALITY**

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- 7.1. SADA, officers and employees must ensure that grievances about Discrimination, Violence and Harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential.
- 7.2. In cases of sexual harassment, management, employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary enquiry. Only appropriate members of management as well as the aggrieved person, representative, alleged perpetrator, witnesses and interpreter, if required, must be present in the disciplinary enquiry.
- 7.3. In cases of sexual harassment, where the alleged perpetrator is an officer of the Association, the person appointed by SERCOM must endeavour to ensure confidentiality in the enquiry. Only the Disciplinary Committee of SERCOM as well as the aggrieved person, representative, alleged perpetrator and witnesses, if required, must be present in the enquiry.
- 7.4. SADA shall be required to disclose to either party or to their representatives such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this policy.

## **8. CONFLICT OF INTEREST**

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All staff and officers involved in the informal or formal resolution of complaints of Discrimination, Violence and Harassment will ensure that they have no conflict of interest or bias in relation to any party to the complaint and there is no perception by the parties that they have a conflict of interest or bias.

Members of staff and SERCOM members who have concerns about perceptions of possible conflict of interest or partiality should exclude themselves from the process and seek advice or refer the matter to another staff of officer.

## **9. VICTIMISATION**

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- 9.1. Complaints of victimisation will be treated seriously. Victimisation of complainants is not permitted. It includes any unfavourable treatment of a person who has been involved in or with a Discrimination, Violence and Harassment complaint. Unfavourable treatment could include adverse changes in the working environment or official position, denial of promotion or training, or making negative, unfounded or belittling comments.
- 9.2. Complaints of victimisation related to a sexual harassment complaint will be dealt with in the same manner as complaints of sexual harassment and may result in action.

## **10. VEXATIOUS / MALICIOUS COMPLAINTS**

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If the complaint is found to be vexatious/malicious, action against the complainant may be taken in terms of the SADA Staff Policies Handbook, SADA constitution or SADA's Code of Conduct.

## **11. ADDITIONAL SICK LEAVE**

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In the case of an employee being the victim, whose existing sick leave entitlement has been exhausted, SADA should give due consideration to the granting of additional sick leave in cases of serious sexual harassment, where the employee, on medical advice, requires trauma counselling.