MANAGING EQUAL OPPORTUNITY COMPLAINTS
IN THE VICTORIA POLICE FORCE -
THE VALUE THAT EXTERNAL CONCILIATORS CAN ADD TO THE PROCESS

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Introduction

The objective of this paper is to discuss the current process for managing and investigating Equal Opportunity/Harassment complaints within the Victoria Police Force and to explore the contention of The Police Association that this process can be significantly advanced through the involvement of independent external conciliators.

Background

Both The Police Association and the Victoria Police Force are committed to adopting a conciliatory approach to the resolution of complaints. The shared objective of the parties, as articulated in a jointly developed Equal Opportunity Policy is to provide for prompt resolution of complaints in an environment that is perceived to be both neutral and non-threatening.

The Police Association believes that a "best practice" model for the resolution of equal opportunity/harassment complaints involves establishing complaint resolution processes that provide for an expeditious resolution of the complaint at the earliest possible stage and level. The Police Association believes that a key component in achieving this objective lies with outsourcing the conciliation and investigation of complaints to independent professional conciliators.

It is the position of The Police Association that introduction of external conciliators is critical to the achievement of a complaints resolution process that provides for the most efficient resolution of complaints, and the fair and just treatment of both complainants and respondents.

Why a complaint should be referred to an external conciliator

Under both State and Federal Anti-Discrimination legislation, the Victoria Police Force has a responsibility to take all reasonable steps to prevent discrimination, victimisation, vilification and harassment and to put in place procedures for dealing with complaints.

Internal policies and procedures are an expression of an organisation's commitment to creating a working environment that is free from discrimination and harassment. Policies should outline expectations of professional standards of behaviour, and there should be a clear statement that behaviour which constitutes unlawful discrimination or harassment will not be tolerated.

It is acknowledged that local informal complaint resolution processes are successfully utilised by the Victoria Police Force in many cases. However, The Police Association establishes that when this process breaks down and the Victoria Police Force do not utilise a conciliator external to the process as it exists at that time, the chances of resolution commence to drastically reduce. Further, the longer this situation continues the more entrenched the parties become with the resultant effect that resolution is near impossible. Therefore it is imperative that local management must recognise when they are unable to deal with matters appropriately and expeditiously at the local level.
Internal procedures should also be implemented by staff appointed to provide advice and assistance regarding the complaint, however the staff that provide this role should not be the conciliator or the investigator of the complaint. Keeping role distinction within an organisation is essential to satisfying the principles of natural justice and to ensure that procedures are credible.

The discrete steps in complaint resolution are:

* Advice and Support
* Conciliation and Mediation
* Formal Investigation

It is not possible to be all things to all people. Therefore, those that have been involved in providing a support or advice role should not be the conciliator or investigator of the complaint. This position applies equally to employers and unions alike.

A best practice approach to the resolution of complaints recognises that external conciliators can provide the following:

1. Independence
2. Reduced Costs
3. Professional Expertise

1. Independence

For a complaint resolution process to be both credible and effective, it is critical that those involved in resolving the dispute be seen to be independent and impartial. Managers or supervisors (and Union officials primarily representing the complainant) will in many cases not be perceived as being an impartial party to the dispute. In a hierarchical structured organisation, a higher ranking uniformed officer will often only be perceived as a representative of the Victoria Police Force - the employer. The unequal power balance between a management representative and subordinate can mitigate against the perceived role of the independent third party. This is even more so in situations where the complainant is an unsworn member and the alleged harasser a sworn member.

The potential problems with having a manager or supervisor appointed to be involved in an attempted conciliation of a dispute is also compounded if it is the manager or supervisor (or another manager or supervisor) who is the alleged harasser/discriminator.

The involvement of an external conciliator, who is not an employee of the Victoria Police Force will remove the "power" aspect from the conciliation process. External conciliators will enable employees to feel more secure that the Victoria Police Force is dealing with complaints in a fair and impartial manner and importantly, ensure consistency in decision making across similar complaints.
2. **Reduced Costs**

The costs associated with having complaints left untreated or having these complaints escalate beyond the local level can be extremely high. Staff hours involved in the investigation of the complaint, conciliation between the parties, and resolution of the dispute can easily escalate beyond fifty hours or more. In an investigative model other staff will often need to be interviewed regarding the complaint and the number of staff hours involved rises again.

In addition to staff hours, the economic cost of a complaint that is not resolved expeditiously is often compounded by loss of productivity in the workplace, increased absenteeism and reduced staff morale. Unresolved complaints may result in employees resigning or requesting transfers. The loss of these employees then incurs not only a loss of the investment made in these employees but also results in further costs in retraining and/or recruitment also being incurred. Moreover, should the complaint proceed to the Anti-Discrimination Tribunal for resolution not only are significant legal costs incurred but there are many precedents of complainants being awarded substantial damages for non pecuniary losses.

The Police Association believes it is misguided economics to focus concern on the additional cost to the organisation in investing resources in the resolution of complaints through external independent conciliation when compared to the actual “real” costs being borne by an organisation with an ineffective resolution process. The effective resolution of complaints through conciliation will in the majority of cases negate the need for resource intensive and costly investigations. It is also impossible to quantify in monetary terms the cost of the loss of organisational commitment that can result when employees perceive that they have been failed by their employer.

3. **Professional Expertise**

The conciliation of equal opportunity or sexual harassment complaints is an extremely difficult process requiring specialised skills in conflict resolution, counselling and a comprehensive knowledge and commitment to workplace discrimination issues. It is an obvious objective to have managers or supervisors with the required level of expertise in these areas, however it is realistic to acknowledge that most organisations do not.

There are also the inherent difficulties in having individuals employed in the policing industry performing sexual harassment conciliations and investigations. In this environment, guilt or innocence, right or wrong is what law enforcement is about.

The relevant standard of proof in equal opportunity/sexual harassment complaints is based on the civil law concept of "balance of probability" (that is, on the balance of probabilities did the harassment or discrimination occur). Within the policing
industry the standard of proof required in these complaints is therefore based on criminal law. Accordingly, the result of most investigations is that the complaint is found to be "not substantiated" and the effect that this “unsubstantiated” verdict has on the complainant is invariably devastating.

In contrast external conciliators, focusing on conciliated resolution, are less concerned with establishing a "guilty" or "not guilty" outcome, but rather are more focused on resolving the complaint in a manner which is fair and acceptable to all parties.

Moreover, The Police Association also believes that it is not enough for the harassing behaviour to simply stop. A preventative approach stemming more easily from a conciliation model needs to be adopted by ongoing monitoring of the work environment. Independent conciliators are trained in recommending strategies to ensure appropriate workplace behaviours are adopted and understood by all in the workplace.

**Conclusion**

The Police Association believes that independent conciliators have much to contribute to the efficiency of the complaint resolution process within the Victoria Police Force. The intention of divesting responsibility for the conciliation of equal opportunity and sexual harassment complaints to external parties, is not to remove authority or accountability from local management in these areas. It is to provide a more appropriate process (economically and systemically) as well as expanding the educative benefits of greater professional utilisation.

For low-level complaints, it is important that a process of local informal resolution be attempted prior to proceeding with professional conciliation. Local informal resolution does not include involving anyone other than the immediate parties, investigation or arbitration of the complaint. Nor does the involvement of external conciliators escalate the dispute beyond the local level. The express intention of involving external conciliators is to resolve the complaint efficiently and expeditiously at the earliest stage at the local level, to minimise the number of people involved in the complaint, and to negate the need for lengthy and stressful investigations.

Finally, while a conciliator may be involved in making a series of recommendations following a conciliation, it remains the responsibility of the Victoria Police Force to not only implement these recommendations but most importantly address the behaviours that created the environment in which a complaint could have occurred.

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