

Prevention, Detection and Action Protocol for cases of harassment on the grounds of sexual orientation and gender identity and expression

The Catalan Institute of Nanoscience and
Nanotechnology

February 2024

CONTENTS

DECLARATION OF PRINCIPLES	3
SCOPE OF APPLICATION	3
REGULATORY REFERENCES.....	4
DEFINITIONS	7
PREVENTIVE MEASURES.....	7
PROCEDURE	9
Principles of the procedure.....	9
Reporting harassment.....	9
Outline of the action procedure to be followed in cases of harassment	11
Phase 1: Reporting and advice.....	12
Phase 2: Internal complaint and investigation	13
Phase 2.1 Internal procedure.....	14
Phase 2.2 External procedure	15
MONITORING AND ASSESSMENT	17
ANNEXES	18

DECLARATION OF PRINCIPLES

The Catalan Institute of Nanoscience and Nanotechnology Foundation and the workers' legal representatives sign this protocol with the express and firm commitment not to tolerate within ICN2 any kind of discriminatory practices that are considered harassment on the grounds of sexual orientation, gender identity and/or gender expression, and all such conducts are expressly prohibited.

In order to ensure a working environment that respects the aforementioned rights of the members of this organisation, ICN2 and the workers' legal representatives undertake to address any harassment that may arise within the organisation with utmost due diligence. In such cases, ICN2 shall make full use of its managerial and disciplinary powers.

Through this protocol, ICN2 undertakes to establish a method to deal with potential cases of harassment on the grounds of sexual orientation, gender identity and/or gender expression. This method will be applied both for prevention purposes, through awareness raising, training, responsibility and the provision of information to all staff on harassment on the grounds of sexual orientation, gender identity and/or gender expression, and to resolve complaints made by victims, with all appropriate guarantees and taking into account the European, regional and employment legislation concerning the right of workers to enjoy a harassment-free working environment.

SCOPE OF APPLICATION

ICN2 must guarantee the health and safety at work of all the people who work at the Institute and ensure the existence of working environments that are free from risks to physical and psychological wellbeing. Consequently, this protocol shall be applied to everyone working at the Institute, seconded staff, the personnel of contractors or subcontractors, visiting staff, visitors and self-employed workers connected to the Institute.

ICN2 also undertakes to inform external collaborators and suppliers about the Institute's policy to combat harassment on the grounds of sexual orientation, gender identity and gender expression and, therefore, about the existence of this protocol and its mandatory nature.

REGULATORY REFERENCES

- **The Spanish Constitution, 1978.** This recognises the dignity of people and their inviolable rights as fundamental inherent rights, as well as the free expression of personality (Article 10.1), equality and non-discrimination based on gender in the broadest sense (Article 14), the right to life and to physical and psychological wellbeing, and not to be subjected to degrading treatment (Article 15), the right to honour, personal and family privacy and own image (Article 18.1). Article 35.1 of the Constitution establishes the right to non-discrimination on the grounds of gender within the scope of workplace relations.
- **Directive 2006/54/EC** by the European Parliament and of the Council of 5 July 2006 concerning the application of the principle of equal opportunities between men and women in matters of employment and occupation defines sexist behaviour and sexual harassment and establishes that said situations shall be considered as discriminatory and, therefore, shall be prohibited and penalised appropriately, proportionally and as a deterrent.
- **Organic Law 3/2007**, of 22 March, on the effective equality of men and women, Article 7, establishes that:
 1. Without prejudice to the provisions of the Criminal Code, for the purposes of this Law any behaviour, whether verbal or physical, of a sexual nature that has the intention or produces the effect of attacking the dignity of a person, particularly when this creates an intimidating, degrading or offensive environment, constitutes sexual harassment.
 2. Any behaviour based on the gender of a person, that has the intention or produces the effect of attacking their dignity and of creating an intimidating, degrading or offensive environment, constitutes gender-based harassment.
 3. Sexual harassment and gender-based harassment shall, without exception, be considered as discriminatory.
 4. The conditioning of a right or of an expectation right to the acceptance of a situation that constitutes sexual harassment or gender-based harassment shall also be considered as an act of gender-based discrimination.

In Article 48 it establishes that: businesses must create working conditions that avoid sexual harassment and gender-based harassment and establish specific procedures for their prevention and channel any complaints or claims that might be made by those who have been subject to it and must negotiate the actions to be taken with workers' representatives.

- **Organic Law 10/2022**, of 6 September, on the comprehensive guarantee of sexual freedom, Article 13, establishes that:
 - o Public administrations, public bodies and constitutional bodies must promote working conditions that prevent conducts restricting workplace sexual freedom and psychological wellbeing, with special emphasis on sexual and gender-based harassment, including in the digital environment. They must also establish specific procedures or protocols for the prevention, early detection and reporting of such conducts and counselling for the victims.
 - o The competent public administrations and their related or dependent bodies shall promote information and awareness raising and offer their personnel, public authorities and elected public officials training for comprehensive protection against sexual violence.

- **Law 4/2023, of 28 February**, on the real and effective equality of transgender people and to guarantee the rights of LGBTI people, Articles 14 and 15, provide as follows:
 - o Promote the development of codes of ethics and procedures in public administrations and companies that include measures to protect against discrimination on the grounds set forth in this law.
 - o Companies with more than fifty workers must have in place, within twelve months following the entry into force of this law, a set of measures and resources to achieve actual and effective equality for LGBTI people, including an action protocol to deal with harassment or violence against them. To that end, measures shall be agreed through collective bargaining and with the workers' legal representatives. The content and scope of these measures shall be further developed by regulations.

- **Law 15/2022**, of 12 July, comprehensive for equal treatment and non-discrimination.
- **Law 5/2008**, of 24 April, on the right of women to the eradication of gender-based abuse.
- **Law 17/2015**, of 21 July, on the effective equality of men and women.
- **The Spanish Criminal Code**, Title VIII of Book II.
- **The Workers' Statute, approved by Royal Legislative Decree 2/2015, of 23 October, Article 4.2c.**
- **Resolution of 28 July 2011, by the State Department for Public Administration**, which approves and publishes the Resolution of 27 July 2011 of the General Negotiation Board of the Civil Service concerning the procedures for sexual harassment and gender-based harassment in the area of the Civil Service and of public organisations connected to it.
- **Law 8/1988**, of 27 April, on Social Order Offences and Penalties (LISOS).
- **Law 31/1995**, of 8 November, on Health and Safety at Work.

- **Organic Law 3/2018 on the Protection of Personal Data and guarantee of digital rights.**
- **Law 2/2023**, of 20 February, on the protection of persons who report regulatory breaches and the fight against corruption.

DEFINITIONS

Any behaviour based on a person's sexual orientation, gender identity and/or gender expression that is intended or has the effect of violating their dignity or physical or psychological wellbeing or creating an intimidating, hostile, degrading, humiliating or offensive environment shall be considered harassment on the grounds of sexual orientation, gender identity or gender expression. This shall be considered discriminatory behaviour. (See Annex)

Based on perpetrator behaviour, there are three types of harassment:

- **Downward harassment:** harassment by a hierarchical superior of the victim (by a superior to a subordinate).
- **Upward harassment:** harassment by a hierarchical subordinate of the victim (by a subordinate to a superior).
- **Horizontal harassment:** where there is no hierarchical relationship between the perpetrator and the victim (peer to peer).

PREVENTIVE MEASURES

The following measures shall be put in place to prevent actual or potential harassment:

1. Dissemination and communication of the protocol to all staff. Similarly, all the external collaborators of the Institute must be made aware of and respect the Institute's policy on this issue.
2. Including prevention, action and eradication of harassment on the grounds of sexual orientation, gender identity and/or gender expression in the ICN2 training programme.
3. Workers' legal representatives must participate in, support and promote awareness-raising agreements for the prevention of harassment on the grounds of sexual orientation, gender identity and/or gender expression.
4. Promoting an environment of respect and propriety in the working environment by

instilling in all employees the values of equal treatment, respect, dignity and the freedom to develop one's personality.

5. Prohibition of insinuations or statements contrary to the above principles, in both language and in communications and attitudes. Among other measures, any images, posters, advertisements, etc. containing LGBTI-phobic views or that incite LGBTIphobia must be removed.
6. When unacceptable behaviour is identified in a certain group or work team, the management team at ICN2 shall immediately contact the person responsible for that group/team to inform them of the situation identified, the applicable obligations and the consequences of non-compliance, and launch the agreed protocol.
7. Ensure privacy.

PROCEDURE

PRINCIPLES OF THE PROCEDURE

The procedure shall be governed by the following principles, which must be observed at all times:

- Guaranteed confidentiality and protection of the privacy and dignity of the people involved, guaranteeing the preservation of the identity and personal circumstances of the person making the complaint at all times.
- Priority and urgent processing. The procedure sets out the deadlines for issuing resolutions in each phase in order to reach a resolution as quickly as possible.
- An exhaustive investigation of the facts, which is objective and impartial, and led by specialised professionals if necessary.
- Guaranteed action, by taking the necessary measures, including, as appropriate, those of a disciplinary nature against the person or people whose harassing behaviour has been proven, and also in relation to any person who maliciously makes a false allegation or complaint.
- Protection against reprisals, guaranteeing that there shall be no adverse treatment or negative effects for a person as a consequence of said person making a complaint or statement of any kind in order to stop a situation involving harassment and to initiate this procedure, (without prejudice to any disciplinary measures that may be established for situations of proven false complaints).
- Assurance that the victim of the harassment can continue in their job under the same conditions if they so wish.

REPORTING HARASSMENT

Any person falling within the scope of this protocol who considers themselves a victim of harassment on the grounds of sexual orientation or gender identity and/or gender expression, or any other person who is aware of a situation of harassment, must report this to the people appointed to the **Harassment Committee** (hereinafter, the "**Committee**") using the procedure described below.

The procedure shall be initiated by reporting the harassment on the grounds of sexual orientation or gender identity and/or expression, which may be done in the following ways:

1. Direct reporting by the affected person.
2. Reporting by any person who suspects workplace harassment.
3. Reporting by the workers' legal representatives.

The procedure set forth in this protocol will not apply to the following:

- Complaints relating to matters pertaining to other types of claims not covered by this protocol.

All Institute staff shall be informed of the identity of the *members of the Committee* and of how they can be contacted.

At the time of drafting this procedure, the people appointed to the Committee at the Institute are:

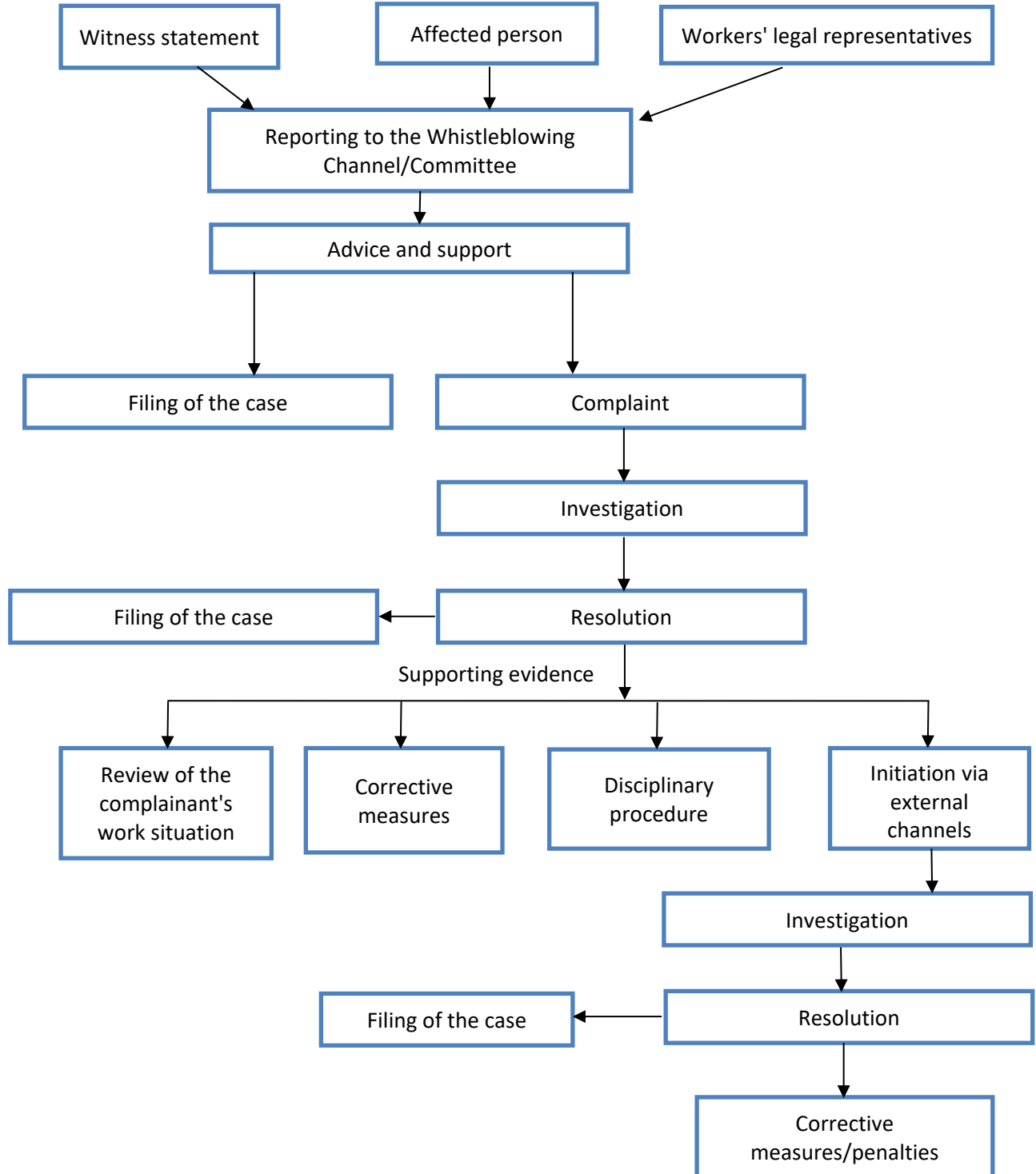
- **Julio Gómez** (Head of Human Resources)
- **José Pérez** (Health & Safety Coordinator)
- **Nadia Vallvé** (Labour Relations Coordinator)

The Human Resources Department must notify the workforce if any of these people are replaced.

The Committee shall keep a record of reports received in a system designed for this purpose.

Once a report has been received, the harassment procedure described below shall apply.

OUTLINE OF THE ACTION PROCEDURE TO BE FOLLOWED IN CASES OF HARASSMENT



PHASE 1: REPORTING AND ADVICE

The aim of this phase is to provide information, advice and support to the affected person and to prepare the internal complaint and investigation phase (phase 2) if applicable.

This phase, which takes three to five working days, starts with a report of perceived or suspected harassment. This triggers the reporting and advice actions.

As stated above, the report may be made by:

- The affected person.
- Any person(s) who become(s) aware of any harassment.
- The workers' legal representatives:

The Committee, based on the information received, may also consider it necessary to take action due to the existence of signs of harassment.

Once the Committee has received the report, it must:

1. Inform and advise the affected person.
2. Support the affected person throughout the process.
3. Propose precautionary and/or preventive measures.

This phase can lead to two different outcomes:

- a) The affected person may decide to file a complaint.
- b) The affected person may decide not to file a complaint, and the Committee may consider, based on the information received, that there is some evidence of harassment affecting a group of people. In such case, if so permitted by the circumstances, the Committee may activate the protocol of its own accord by reporting the matter on the Whistleblowing Channel and informing the management team, while respecting the confidentiality of the people involved, so that ICN2 can adopt any preventive, awareness and/or training measures or any other actions that it may deem necessary to deal with the signs of harassment identified.

The Committee is in charge of the management and safekeeping of any documents during the reporting and advice phase, ensuring the confidentiality of all the documents and information produced during that phase.

If the affected person decides not to continue with the action, they must have all the documents provided returned to them. If they decide to continue with the complaint, the

documents must be attached to the investigation file that will be created.

PHASE 2: INTERNAL COMPLAINT AND INVESTIGATION

The aim of this phase is to carry out a thorough investigation of the facts in order to issue a binding report on whether or not harassment exists and to propose intervention measures.

The complaint must be made in writing through the ICN2 Whistleblowing Channel via the following link: <http://whistleblower-channel.icn2.cat/>. Only the people responsible for this channel appointed as members of the Committee shall have access to the Whistleblowing Channel.

Responsibility for managing the procedure shall always lie with the members of the Committee appointed at ICN2, who shall be in charge of initiating the procedure and ensuring that the guiding principles set forth in it are respected throughout.

The people who participate in this process are subject to the obligation of professional secrecy concerning any information to which they have access during the processing of the procedure. A breach of this obligation may be subject to penalisation. To this end, the people involved must sign the document entitled ["Confidentiality Agreement"](#).

During the processing of the case, the parties involved may be assisted and accompanied by a person of trust, who must maintain confidentiality concerning any information to which they have access.

This person of trust may be present during the taking of statements and the communications that the instructing party makes to the people involved.

The parties involved may also be assisted by the workers' legal representatives at all stages of the procedure.

The following information must be provided in order to process the complaint:

- The identity details of the person(s) who is/are allegedly engaging in the harassment.
- A description of the facts, including dates and other relevant information.

Once the complaint has been ratified, the Committee:

- Shall inform the affected person that the information to which it has access during the investigation and any reports on the investigation that may be drawn up will be treated as secret and confidential unless they must be used by ICN2 in court or administrative proceedings.

- May decide as early as this initial phase to order interim measures if it deems it necessary.
- In certain cases, it may be agreed with the affected person that they can be named in order to move the investigation forward.

False Allegations

False allegations are those in which an investigation of the facts reveals that the following two requirements are fulfilled:

- a) the complaint lacks any basis or evidence;
- b) the complaint was made in bad faith by the person making it or for the sole purpose of harming the person being accused (harassment against the employer) in accordance with the above definitions.

Phase 2.1 Internal procedure

a) Opening the file

When the harassment is flagged and formally reported within seven (7) calendar days following receipt of the complaint, an internal procedure to resolve the situation, aiming to resolve the problem immediately, shall be automatically initiated. If it is considered following an analysis of the complaint that the action is outside the Committee's powers, as well as to make it more objective, the external procedure shall be used.

b) Development and conclusion

In this phase of the procedure, the Committee shall meet with the parties to clarify the facts and resolve the situation. The Committee may rely on external professionals to analyse the situation as objectively as possible and obtain an expert report.

The Committee must record everything concerning the investigation (interviews, documents provided by the parties, etc.) on the Binding Report form.

Under no circumstances shall the internal procedure take more than ten (10) working days to resolve. However, the Committee may extend this period in exceptional cases.

c) Resolution

A resolution on the case shall be issued based on the binding report drawn up during the investigation within the deadlines set forth in the Whistleblowing Channel's internal procedure.

- If there is sufficiently proven evidence of harassment:
 - The disciplinary procedure is initiated on the grounds of a proven case of harassment; and
 - Corrective measures (of an organisational nature, such as a change of job, if applicable, or the start of a disciplinary procedure, indicating the offensive behaviour and the penalty level) are adopted.
- If there is not sufficiently proven evidence of harassment:
 - The complaint is filed.

If the investigation leads to the conclusion that a type of misconduct other than harassment defined in the current legislation or in the applicable collective agreement (such as, among others, false allegations) has been committed, an appropriate disciplinary procedure will be initiated.

Similarly, whether or not the procedure results in a penalty, a follow-up/review of the complainant's work situation shall be carried out.

In summary, following the result of the procedure, the Committee may:

- Close the internal procedure as a result of the resolution of the dispute, issuing a report that presents their conclusions and the commitments adopted by the parties.
- Begin an external procedure, if they consider that harassment exists that has not been possible to resolve in the internal procedure.
- During the procedure, the Committee may recommend and apply urgent interim measures until it has been resolved. Under no circumstances shall these measures represent a detriment to the working conditions of the people involved.

Phase 2.2 External procedure

a) Development

The external procedure shall begin with delegating the management of the dispute to external consultants with accredited experience in the resolution of disputes in organisations. ICN2 shall follow the external recommendations with regard to taking actions considered necessary for the clarification of the reported facts.

In the shortest possible time, which may under no circumstances be more than thirty (30) calendar days, the external consultants must draft a report containing a description of the reported facts, the circumstances, the seriousness of the facts, whether they have happened before, the degree of impact on the alleged victim's work obligations and working environment, their opinion on whether or not the reported facts have been proven and whether they qualify as harassment, and any proposed measures and/or recommendations. The report shall be sent to the ICN2 Committee, who shall inform the Institute's management team.

The Committee shall also draw up a report on its conclusions with an assessment of the entire process.

b) Resolution and closure of the procedure

If it is decided that harassment or signs of harassment exist

The Institute, taking into account the external consultant's report and the Committee's report with its own conclusions, shall consider within a maximum of fifteen (15) calendar days the sanctioning measures to be applied.

If corrective measures have to be applied, the Committee and the ICN2 management shall agree on the actions to be taken.

If it is determined that there is no harassment

If it is determined that there is no harassment in any of its forms, the complaint will be filed. If there is evidence of malicious intent by the person who made the complaint, the relevant disciplinary measures shall be applied.

In either case

In any event, the Committee may ask the Human Resources Department to apply alternative measures at the Institute, such as holding training and/or information actions, in order to raise awareness among the entire workforce in general and the parties in particular on the significance and implications of harassment.

This procedure shall be applied regardless of any legal actions that may be filed by the complainant before any courts or administrative bodies.

In any case, the internal/external procedure may not take more than three (3) months from receiving the complaint and completing the investigation to giving the reporting party a

response on its conclusions. Exceptionally, taking into account the specific circumstances of the case and if the case is particularly complex, the Committee may extend the investigation period for a further three (3) months.

All matters not expressly provided for in this protocol shall be governed by the provisions of the "Internal Received Information Management Procedure" of the Whistleblowing Channel.

MONITORING AND ASSESSMENT

Meetings of, among others, the ICN2 management team, the Protocol Committee and the Equality Plan Negotiating Committee shall be held on a regular basis to monitor and assess the protocol.

In addition, the Equality Plan Negotiating Committee shall be informed of the number of complaints received and of the type of harassment reported in them.

The duration of this protocol shall be linked to the duration of the ICN2 Equality Plan. Specifically, it shall be valid for four (4) years: from 2023 to 2026.

ANNEXES

GLOSSARY

- ⇒ **Discriminatory harassment**: Any conduct carried out on the basis of any of the grounds for discrimination established by law that is intended or has the effect of attacking the dignity of a person or a group to which they belong and of creating an intimidating, hostile, degrading, humiliating or offensive environment.

- ⇒ **Direct discrimination**: A situation in which a person or a group to which they belong may be or has been treated, on the grounds of sexual orientation, gender identity and/or gender expression, less favourably than another person in a similar situation.

- ⇒ **Indirect discrimination**: A situation in which an apparently neutral provision, criterion, interpretation or practice may place lesbian, gay, bisexual, transgender or intersex people at a particular disadvantage compared to people without these characteristics.

- ⇒ **Discrimination by association**: A situation in which a person is discriminated against on the grounds of sexual orientation, gender identity and/or gender expression as a result of their relationship with an LGBTI person or group.

- ⇒ **Discrimination by mistake**: A situation in which a person or a group of people are discriminated against on the grounds of sexual orientation, gender identity and/or gender expression as a result of an erroneous assessment.

- ⇒ **Multiple and intersectional discrimination**: A situation in which a person is discriminated against on the grounds of sexual orientation, gender identity and/or gender expression because they belong to other groups that are also discriminated against, and is the subject of aggravated and specific forms of discrimination.

- ⇒ **Instruction to discriminate**: Any instruction that involves direct or indirect discrimination on the grounds of sexual orientation, gender identity and/or gender expression.

- ⇒ **Discriminatory retaliation**: Adverse treatment or an adverse effect against a person as a result of filing a complaint, claim, report, lawsuit or appeal of any kind aimed at preventing, reducing or reporting discrimination or harassment committed against them.

- ⇒ **Biphobia**: Any attitude, behaviour or discourse of rejection, repudiation, prejudice, discrimination or intolerance towards bisexual people on the basis that they are, or are perceived to be, bisexual.

- ⇒ **Homophobia**: Any attitude, behaviour or discourse of rejection, repudiation, prejudice, discrimination or intolerance towards homosexual people on the basis that they are, or are perceived to be, homosexual.

- ⇒ **LGBTIphobia**: Any attitude, behaviour or discourse of rejection, repudiation, prejudice, discrimination or intolerance towards LGBTI people on the basis that they are, or are perceived to belong to the LGBTI community.

- ⇒ **Transphobia**: Any attitude, behaviour or discourse of rejection, repudiation, prejudice, discrimination or intolerance towards transgender people on the basis that they are, or are perceived to be, transgender.