



2020 Annual Members Meeting September 17, 2020
Ethics/Conduct Policies, Investigations & Resolutions Workshop

Assessment Resource, A Workshop Companion Guide

Assessing Harm, Formal & Informal Resolution Processes & Remedies

Part A. Harm: Guiding Principles & Criteria (p. 2)

Part B. Aligning Process: With Aims, Harm, Potential Remedies (p. 3)

Part C. Community Building: Remedial Process Aims, Options (p. 4)

Part D. Inclusive Community Building Aim: Drives Informal Processes (p. 5)

Part E. Informal Process: Criteria (p. 6)

Part F. Formal Process: Aims & Criteria (p. 7)

Arrow Banner Key: Connecting the Pyramid Tool to the Assessment Resource (p. 8)

Assessment Resource and Pyramid Tool

Assessment Resource: *A Companion Document to this Workshop's Discussion Guide*

- (1) Provides key principles, aims and criteria for assessing harm, choosing resolution processes, and considering a continuum of possible remedies
- (2) Use to evaluate the hypothetical scenarios in the workshop and later to resolve real-life conduct concerns

Pyramid Tool: *A Visual 3-Step Resolution Rubric*

- (1) Landscape diagram of misconduct criteria that inform and connect severity of harm to resolution process options and to a continuum of potential remedies;
- (2) Direct links to the Part(s) of the Assessment Resource that correspond to the Pyramid Tool's 3-step resolution rubric: assessing harm, process type, and choosing remedies

The Pyramid Tool is [here](#).

Part A. HARM: GUIDING PRINCIPLES & CRITERIA

- ❖ **Combination of criteria + amplification + attenuation + judgment, applied to facts of a situation = Level of Harm**
- ❖ **Facts + society policy (conduct standards/criteria/perspectives) will differ—so will determinations of harm.**
- ❖ **Each society alone should judge harm for policy + legal reasons.**

- **Overarching Criterion** → Deleterious effect on inclusive community aims
 - ✓ Effect on undermining inclusive conduct standards + driving talent from the field
 - ✓ Harm to inclusive community aims is generally more severe than harm primarily to any individual's interest (although the two may be intertwined when harm to an individual also harms the community)
- **Scope of Harm's Effect (Amplification if Broad)** → Individual vs. small group vs. society community or field
- **Safety (Amplification if Severe Instance)** → Physical violence, emotional abuse—actual or serious threat
 - ✓ Significant effect of a single incident or cumulative incidents
 - ✓ Gender-based put-downs/sexism, if severe or repetitive, cause equivalent psychological harm to that caused by sexual coercion and unwanted sexual attention
- **Persistence (Amplification) or Isolation (Attenuation)** → Aged conduct concern, without recurrence—Whether conduct is fleeting & isolated—Whether it is repetitive/frequent/persistent
- **Adding to a Pattern Amplification** → Whether data indicate a pattern of the type of conduct concern in the society/unit/activity that needs disruption
- **Power Effect Amplification** → Accused in a senior stage of career, leadership role, role of honor
- **Everyone Knows + Corroboration** → Repetitive similar allegations against the accused—or persistent, widespread rumors over time without reports—if there is any corroboration
 - ✓ Isolated bare rumors warrant monitoring;
 - ✓ Persistent, widespread allegations/rumors without corroboration warrant serious review, ongoing monitoring, protective + community-building measures (even if punishment isn't possible)
- **Other Effects (Amplification if Severe):** Impact on reputation; operation; legal exposure; finances or resources of field, society, individuals
- **Responsibility Attenuation** → Accused takes responsibility (when due), demonstrates appreciation of the severity of misconduct/harm, and takes or credibly commits to action to remedy the harm.

Part B. ALIGNING PROCESS: WITH AIMS , HARM, POTENTIAL REMEDIES

- ❖ The severity of harm factors into whether (and what severity of) punishment or lesser consequences would be needed as a remedy—and therefore the choice of an informal or formal resolution process.
- ❖ If a process to advance Community Building Objectives would remedy the harm, additional remedies generally wouldn't be needed. An informal process likely would be effective. (Assessment Resource Parts B, C , D, E)
- ❖ Generally, a “fundamentally fair” process with a formal finding of responsibility is needed for remedies beyond a voluntary community building process. Ideally, the accused and target *also* agree to engage in community building. (Temporary preventative safety and non-disruption actions do not require a finding of responsibility; but include an informal chance to be heard.) Assessment Resource Parts B, C, D, F
- ❖ Remedies beyond community building may result from an informal process when the accused owns responsibility and agrees to such remedies without a formal process.

Resources: [Pyramid Tool](#) + Arrow Banner Key in Assessment Resource, p. 8; Model Notices Regarding Temporary Measures When Allegations Implicate Safety, found [here](#).

Example remedies that may be included in a society policy (clustered to align with severity of harm):

When remedying harm requires a formal finding of responsibility and severe punitive action

- ✓ Termination or denial of employment;
- ✓ Permanent expulsion from or denial or revocation of all affiliations with the society (no membership, roles, privileges, honors);

When remedying harm requires a formal finding + some remedy + community-building (in descending order of severity)

- ✓ Suspension* of employment or other discipline short of termination;
- ✓ Suspension or deferral* of membership + associated privileges;
- ✓ Revocation, denial, suspension, or deferral of honors or awards (with/without potential future conferral);
- ✓ Removal or suspension* from a volunteer position (with/without potential for future service);
- ✓ Removal or suspension* from a leadership position (with/without potential for future service);
- ✓ Public reprimand or statement;
- ✓ Permanent prohibition or suspension* from attending or making presentations at Society meetings;
- ✓ Administrative leave from any role for the Society;*
- ✓ Temporary or fixed-term no-contact requirements for the accused + identified target;*
- ✓ Private reprimand;
- ✓ Notification of the finding of a violation (just fact of allegation + finding) to the violator's home/affiliated institution(s);

When harm is best remedied by informal community building processes

- ✓ A community building process to achieve Community Building Objectives, where no formal finding of responsibility or further remedy is needed to address community, individual or legal needs

**These can be temporary measures that provide a remedy after a finding—or they can be temporary preventative measures prior to a formal finding, with clarity in policy and communications that they do not reflect a judgement or findings, but are imposed as mission-driven, preventative non-disruption and safety measures.*

PART C. COMMUNITY-BUILDING: REMEDIAL PROCESS AIMS, OPTIONS

❖ **Informal resolution must (and formal resolution also may) involve any of the following persons engaging the accused and identified target (and sometimes others in the society community) in an informal process to advance the “Community Building Objectives” (see Part D for definition)**

Resources: [Compendium of Resources/Community Building and Restorative Actions Resources and Initiatives](#); Google Doc: “In Our Experience 2: Shared Investigative Services” (2020 Convening Day 1 Breakout (to be posted on members’ website)); [Restorative Remedies Slide Deck](#) (2019 Convening).

- **A person with facilitation skills/experience facilitates discussion(s) of the Community Building Objectives, with specificity related to the situation (may be the fact-finder resolving the concerning conduct, sometimes in real-time when the concern is raised)**
 - ✓ Learns from the identified target the target’s experience of harm and needs for recovery, and, with target’s permission, shares the harm and needs with the accused; **and**
 - ✓ Obtains specific commitments from the accused that should prevent recurrence, and with accused’s permission, shares them with the target; **and**
 - ✓ Provides accountability measure(s) (e.g., check-in with the parties, collecting data to identify additional allegations made against the same accused, or revealing a trend in an activity/unit that needs disruption)

OR

- **A specially trained ombudsperson or mediator leads such facilitation**
 - ✓ Often helpful, but may be needed for complex or highly sensitive conduct concerns, or when involving the broader community

OR

- **A circle or other restorative practice expert leads such facilitation**
 - ✓ Often helpful, but may be needed for complex or highly sensitive conduct concerns, or when involving the broader community

Part D. INCLUSIVE COMMUNITY BUILDING AIM: DRIVES INFORMAL PROCESSES

- ❖ **The outcome-focused aim of informal resolution processes is ownership of inclusive community conduct standards by members of the society’s community, not formal findings and punishment.**
- ❖ **Informal resolution de-escalates harm, and achieves “Community-Building Objectives.”**

Community-Building Objectives

- **The accused internalizes specific inclusive conduct expectations** that relate to the particular conduct concern (and more).
- **Misunderstandings are corrected—Needed lessons are learned.**
- **Whether or not it is determined that a conduct policy was breached as a technical matter, the accused understands that an identified target or the community experienced harm, and owns specifically how the accused’s conduct caused or contributed to that.**
- **The accused authentically commits to prevent recurrence**, with a specific understanding of how (how to engage differently—what conduct not to repeat and why).
 - ✓ For accountability, check-ins with the parties may be conducted, if needed; tracking whether additional allegations are made against the accused is a good practice
- **The identified target’s needs to be included, welcome and not to feel physically or emotionally threatened are satisfied** (this applies whether a “reasonable person” would have experienced harm or not, of course within reasonable bounds that enable the work to get done).
- **The relationships of the parties are repaired** (or foundations for this goal are laid).
- **If warranted, additional members of the community are engaged** to elevate understanding, emphasize seriousness of Community-Building Objectives related to the particular incident or type of conduct concern.

Part E. INFORMAL PROCESS: CRITERIA

❖ Criteria for use of informal resolution processes address community and individual needs

The criteria are:

- **Both parties agree, without coercion, and the society concurs, that the dominant need is achieving the Community Building Objectives; and**
- **The experience of harm arises largely from misunderstandings that have been corrected or lessons that needed to be learned and have been learned; and**
- **There isn't a recurring conduct issue**
or
If there is a recurring conduct issue, the accused owns responsibility and can identify specific reasons why it will not occur again—and the target would be retraumatized by a formal approach and seeks to avoid it;

and
- **There is no reason to believe recurrence is likely** (the accused's commitment to prevent recurrence is authentic and specific, and some monitoring/support is provided for accountability if needed); **and**
- **Considering all of this and the assessment of the severity of harm, Community Building Objectives are alone enough to advance an inclusive community, remedy any harm, and address any legal requirements, without the need for a formal finding of responsibility and severe punishment or even lesser additional consequences**
 - ✓ If a punishment or additional consequence is needed, an informal process may still be used, if the accused owns responsibility and agrees to such a remedy without a formal process

Part F. FORMAL PROCESS: AIMS & CRITERIA

- ❖ The outcome-focused aims of formal resolution approaches are enforcement of conduct standards, formally deciding responsibility for breaching them, and, if warranted, imposing punishment or consequences to remedy serious harm, address the community's and target's needs, and satisfy any legal requirements.
- ❖ The criterion for use of a formal resolution is failure to satisfy the criteria for an informal resolution—which may include preference of the identified target or accused (which the society takes that into account in choosing the process) or need for remedies beyond a community building process.
- ❖ A fundamentally fair process and formal finding of responsibility are generally needed to impose punishment/consequences, unless the accused agrees to engage in an informal process where a punishment/consequence is imposed without the evidence-building and standard of proof required in a formal process.

ARROW BANNER KEY

Connecting the Pyramid Tool to the Assessment Resource

The Pyramid Tool links **directly** to the Part(s) of this Assessment Resource that correspond to each of the Pyramid Tool's 3 Steps to resolve conduct concerns (harm, process, remedies):

Pyramid Tool Step 1—Harm (+ Early Action, without prejudging) → **Assessment Resource Parts A + B**

Pyramid Tool Step 2—Process → **Assessment Resource Parts B-E or Parts B-D + F or Parts B + F***

Pyramid Tool Step 3—Remedies → **Assessment Resource Parts A, C, D or Parts A-D or Parts A, B****

Each of the Pyramid's links leads directly to a document (containing the Relevant Assessment Resource Parts) with an arrow banner at the top of each page. These banners mark the relevant resolution Step at the link. Step 2 involves choosing the process option that aligns with harm + potential remedy. Step 3 involves choosing remedies, informed by severity of harm. To help inform these choices, the banners for Steps 2 + 3 also include a color code for severity of harm:

- **Step 2: Process Choice** (aligning process type with harm and potential remedy) *
 - **Green** → Informal Process for Inclusive Community Building Remedy (**Parts B-E**)
 - **Orange** → Formal Process for Punishment or Consequence + Community Building (**Parts B-D, F**)
 - **Red** → Formal Process for Strong Punitive Action (may sever affiliation with the society) (**Parts B, F**)

- **Step 3 = Ultimate Remedy Choice** (action needed to remedy harm) **
 - **Green** → Community Building Process (**Parts A, C, D**)
 - **Green/Orange** → Punishment/Lesser Consequence + Community Building Process (**Parts A-D**)
 - **Red** → Strong Punitive Action (may sever affiliation with the society) (**Parts A, B**)