

GOOD WORKING RELATIONSHIPS

PREFACE

We aim to be an effective organisation. This will only be possible if all members of staff are able to work in an environment that fosters positive and professional working relationships with other staff and management. Our goal is to achieve a productive, safe and equitable work environment by avoiding practices which lead to or support harassment, bullying or discrimination.

PURPOSE

The purpose of this policy is to:

- define harassment, bullying and discrimination
- outline the impact of harassment, bullying and discrimination in the workplace
- outline the Ombudsman's position in relation to harassment, bullying or discrimination, and
- outline how complaints about harassment, bullying or discrimination will be dealt with.

RESPONSIBILITY

All members of staff are responsible for ensuring that the workplace is free from all forms of harassment, bullying and discrimination. In particular, managers and supervisors are responsible for undertaking all necessary steps to prevent and deal with harassment, bullying and discrimination in their work area.

LEGISLATIVE FRAMEWORK

Anti-Discrimination Act 1977 and related Commonwealth legislation

Public Sector Employment and Management Act 2002

Occupational Health and Safety Act 2000

DEFINITIONS

1. *What is harassment?*

Harassment generally relates to power relationships, and involves a person or a group of people wielding power in an inappropriate manner over another person or group of people. It is usually people with the least power in the workplace that are most likely to experience harassment, but it can occur between managers, supervisors and staff, or between staff members.

In general, harassment is any form of unreasonable behaviour that:

- someone does not want or does not return
- offends, humiliates, intimidates or deliberately upsets them, and/or
- targets them because of their sex, pregnancy, race, age, marital status, homosexuality, disability, transgender status or responsibilities as a carer.

Harassment may include:

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- material in the workplace that is racist, sexist, homophobic and so on, such as posters, websites, SMS messages and emails
- verbal abuse or comments that put down or stereotype people because of their sex, pregnancy, race age, marital status, homosexuality, disability, transgender status or responsibilities as a carer, and
- offensive jokes based on sex, pregnancy, race and so on.

Harassment that occurs away from the workplace or outside normal working hours may also be against the law if it is at a work related event.

It only takes one person to find a particular type of behaviour offensive, intimidating or humiliating for it potentially to be harassment and against the anti-discrimination law. The person does not always have to say they want the behaviour to stop for it to be classified as harassment, as they may be too intimidated to do so.

Harassment isn't always intentional. Sometimes people don't realise that their behaviour is harassing or how it affects the other person. Because of this, harassment is an area that is open to misinterpretation and dispute.

Section 4 below outlines the types of behaviour that could amount to harassment.

2. *What is bullying?*

Bullying in the workplace may be unlawful under anti-discrimination law if it relates to a person's sex, pregnancy, race, age, marital status, homosexuality, disability, transgender status or responsibilities as a carer.

Generally, workplace bullying is any behaviour or series of behaviours that is unreasonable or undesirable at the place of work and/or in the course of or related to employment which intimidates, humiliates and/or undermines a person or group of people.

Bullying will generally meet the following four criteria:

- it is repeated
- it is unwelcome and unsolicited
- the recipient/s considers the behaviour to be offensive, intimidating, humiliating or threatening
- based on the available information, the behaviour would be considered offensive, intimidating, humiliating or threatening to the individual it is directed at, or, for that matter, others who are witness to or affected by it.

Examples of bullying behaviour include:

- verbal abuse
- threatening body language or physical intimidation
- public humiliation
- excluding or isolating people
- unreasonable criticism
- continually changing the 'rules'
- deliberately changing work rosters to inconvenience someone
- deliberately establishing unreachable work goals, including giving people meaningless or impossible tasks
- deliberately withholding important information
- continually undermining the person's achievements, and
- threatening to dismiss or demote the person without a lawful reason.

In some cases, workplace bullying may be an occupational health and safety issue.

3. *What is discrimination?*

Throughout Australia all employers, managers and supervisors must treat all their employees, and anyone who applies for a job with them, fairly. That means their employees and potential employees must be assessed and treated on the basis of their individual merit rather than irrelevant personal characteristics. Employers must also make sure that their employees do not harass any other employee or job applicant.

Discrimination occurs when:

- someone belongs to a particular group of people or has a particular characteristic, or is thought to have a particular characteristic, and
- they are treated less favourably in comparison to other people who don't belong to that group or have that characteristic.

Under the NSW Anti-Discrimination Act, discrimination on the basis of the following characteristics is against the law:

- sex, including pregnancy and breastfeeding
- race, including ethno-religion
- age
- marital status
- homosexuality
- disability
- transgender status
- responsibilities as a carer, and
- discrimination because a relative or associate has one of these characteristics (except responsibilities as a carer).

4. *What is our workplace?*

For the purpose of this policy, our workplace is defined broadly, and includes:

- our premises at 580 George Street Sydney
- any temporary location at which one or more staff members is working or visiting in a work related capacity, and
- the homes of staff who are working at home under an approved working at home agreement.

It is important to remember that harassment, bullying and discrimination can occur both within and outside of the workplace. If an incident occurs outside of workplace, it may still be considered harassment, bullying or discrimination, depending on the circumstances.

POLICY STATEMENT

1. We do not allow harassment, bullying or discrimination in our workplace

Harassment will not be tolerated under any circumstances. A harassment, bullying and discrimination free workplace is a workplace where people respect and tolerate the rights and differences of others. The NSW Ombudsman is an equal opportunity employer. This means we make sure that every job applicant and every employee gets a fair go. Your sex, marital status, pregnancy, age, disability, homosexuality, responsibilities as a carer or transgender make no difference to us. What matters to us is that you are the best person for the job and that you do a good job.

We recognise that harassment, bullying and discrimination can have a physical and emotional impact. You can't do a good job or be fully productive if you feel that someone you have to work with (including customers, clients or visitors to the workplace) is harassing, bullying or discriminating against you in either a sexual way, or because of your sex, race, age, and so on. These types of behaviour can also pose an occupational health and safety risk, as well as breaching State and Federal laws. That is why we will not support any type of harassment, bullying or discrimination in our work or workplace.

2. What are my responsibilities?

It is the responsibility of all staff to respect the rights of others and never get involved in or encourage harassment, bullying or discrimination. All staff will receive training in preventing harassment, bullying and discrimination in the workplace.

You must never do or get involved in any of the behaviours that are banned in this workplace.

You must respect other people. We are all different with different views about what we find acceptable and what we don't. Each of us has the legal right to a workplace that feels safe, and that is not sexual, sexist, racist, homophobic, anti-disability, ageist, or stereotyping in any other way.

You must be careful about anything that could be interpreted as sexual or stereotyping (putting down) people because of the group they happen to belong to. For example, be careful of:

- the words you use, the tone you use, and how you say things
- throw-away comments
- sexual or stereotyping jokes
- sexual or stereotyping pictures, cartoons, verse – on paper, walls, boards, faxes or computers
- any type of touching
- standing too close
- gestures
- sexual behaviour of any sort
- isolating or segregating others
- initiation rites.

Either don't do it, or check first to see if it's likely to be OK. Back off immediately (and apologise) if they say, or indicate in any other way, that they don't like it.

- If you are harassed, if you can, tell them to stop it. If you don't feel comfortable doing this, or they don't stop, please use our grievance procedure so that we can sort it out.
- If you see or hear anyone else do anything you think could amount to harassment, you should try to talk with them about why you think it constitutes bullying, harassment or discrimination, and why they should stop doing it.
- If you become aware that someone you work with is being bullied, harassed or discriminated against, you should help prevent it by offering to support them. For example:

- refuse to join in the harassment
- tell them they have the legal right to a harassment-free workplace
- tell them they can say ‘no’ to the person or people who are harassing them
- tell them that they should report the harassment using our grievance procedure if it doesn’t stop, and/or
- tell them that you are willing to act as a witness if they decide to lodge a complaint.
- If you become aware indirectly that someone you work with might be being bullied, harassed or discriminated against you must not say anything to the person who they say is harassing them. You must not spread rumours about them. If you do either of these things, we may have to discipline you. It is also possible that the person you spread rumours about could sue you for defamation.

If you are not sure what to do, you can consult your supervisor, Division Manager, Statutory officer or personnel for further information and assistance.

3. Managers role/ responsibility

Supervisors must make sure that the workplace is free from all forms of harassment, bullying and discrimination. They should understand and apply the principles of equal employment opportunity and ensure that the staff they supervise are informed of these principles. Supervisors should also take all necessary steps, such as training and other active measures to prevent and deal with harassment, bullying and discrimination in their work area. All supervisors and managers will receive training in preventing and if necessary dealing with harassment, bullying and discrimination.

As a manager or supervisor receiving a complaint of harassment, you must:

- treat the complaint and the complainant seriously and sensitively
- inform the person accused of harassment of the nature of the allegations
- investigate the complaint quickly, discreetly and impartially—it is essential that you listen to both sides of the story and speak to any known witnesses
- act immediately to stop the harassment if you believe that any of the allegations are true, and
- liaise with your Team/Division manager, the Manager Corporate or the Personnel officer if you believe that disciplinary action is warranted against either party involved in the complaint.

Procedures to support managers and supervisors in effectively handling a complaint of harassment can be found in Appendix A.

If you witness harassment you should take immediate action to stop it, whether or not the staff member being harassed has lodged a complaint.

4. What types of behaviour could amount to harassment

There are many types of verbal, non-verbal and physical behaviour that could amount to harassment. The basic rule is that if someone else finds it harassing then it could be harassment. In this workplace we have decided to ban the following types of behaviour. We have done this because these behaviours are extremely likely to offend others. If we find out that you have been involved in any of the following banned behaviours, you will definitely be disciplined, may be dismissed, and could face criminal charges.

Behaviours banned in our workplace

- sex at work
- touching anyone else’s sexual parts of the body
- initiation rules that are sexual, or could offend, humiliate or intimidate someone
- showing of X-rated videos

- strip-o-grams, or any other form of striptease, or naked display of sexual parts of your own or someone else's body
- indecent or sexual assault (from simple touching of the parts of the body to more serious forms of assault)
- referring to a person who is transgender by their previous name or gender, or calling him or her "it"
- downloading pornography from the internet
- displaying any pornography (soft or hard), or any sexual or naked pictures anywhere that any other employee, customer, client or visitor to our workplace can see them
- stalking another employee, customer, client or workplace visitor.

Verbal behaviour that could amount to harassment

- sexual or suggestive remarks
- making fun of someone because of their race, disability, age, sex, sexuality, and so on
- imitating someone's accent or disability
- unwanted sexual propositions
- repeated, unwelcome invitations to go out with someone
- spreading sexual rumour about someone
- obscene or racist, sexist, homophobic (and so on) telephone calls, letters, faxes, or e-mail messages
- obscene or racist, sexist, homophobic (and so on) language or illustrations in any work sponsored publication
- offensive jokes
- repeated, unwelcome comments about someone else's dress
- repeated, unwelcome questions about someone else's personal life
- sexual, sexist, racist, homophobic (and so on) threats or insults
- the use of language that is not suitable in the workplace – for example, sexual, sexist, racist, homophobic (and so on) name calling.

Non-verbal behaviour that could amount to harassment

- putting sexually suggestive, offensive or degrading/insulting material on walls, computer screen savers, faxes, e-mail, and so on
- suggestive looks or leers
- offensive hand or body gestures
- unnecessarily leaning over someone or standing too close to them
- wolf whistling
- unwelcome practical jokes
- displaying or circulating racist, sexist and so on cartoons or literature
- mimicking someone with a disability
- ignoring someone, not sharing information with someone, or being particularly cold or distant with them, and
- continually ignoring or dismissing someone's contribution in a work meeting or discussion.

Physical behaviour that could amount to harassment

- unnecessary physical contact (pinching, patting, brushing up against a person, touching, kissing, hugging against a person's will)
- pushing, shoving or jostling
- initiation rites that involve anything that could be regarded as sexual, sexist, racist and so on, and
- putting your hand or an object (like a pay slip or wage packet) into someone's pocket.

5. *What if I am accused of harassment?*

If another staff member makes a complaint accusing you of harassing, bullying or discriminating against them, you have the right to know what the allegations against you are. You must be given the opportunity to respond to the allegations. You must be given a fair hearing. If the complaint is found to be unsubstantiated, you may be entitled to an apology, reinstatement of any loss of privileges and the removal or destruction of records relating to the complaint.

If the complaint is found to be substantiated, you may be subject to disciplinary action as set out in the Personnel Handbook.

6. *Responding to incidents*

Our Grievance Policy will be used to deal with any allegations of harassment, bullying or discrimination made by staff.

7. *Where to get more help*

There are a range of internal and external people or organisations that provide assistance if you feel you are being harassed, bullied or discriminated against. At the office, your Division Manager and/or Personnel Officer is able to provide support and information.

You can contact the Anti-Discrimination Board at any time for advice. If you don't feel that your harassment grievance is being handled properly at work you can ask them to help sort out your complaint.

Anti-Discrimination Board of NSW Ph: (02) 9268 5555

Web: <http://www.lawlink.nsw.gov.au/adb>

Public Service Association Ph: (02) 9290 1555

Web: <http://www.psa.labor.net.au/>

Employee Assistance Program Ph: 1300 762 989

Web: <http://www.rehabmanagement.com.au/employee-assistance-program-eap>

WorkCover Ph: 13 10 50

Web: <http://www.workcover.nsw.gov.au>

OMBUDSMAN APPROVAL



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