



Bullying, Harassment and Anti-Discrimination	
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## 1.0 INTRODUCTION

Our Rainbow House Inc. is committed to creating a work environment which is free from discrimination, sexual harassment, bullying and victimisation ensuring all members of the Our Rainbow House community are treated with dignity, courtesy and respect. In implementing this policy, we commit to providing a safe, flexible and respectful environment for staff and clients free from all forms of discrimination, bullying, sexual harassment and vilification.

Our Rainbow House Inc. recognises and respects the differing facets of its community members and values the individual skills and abilities each brings to the workplace. Behaviour that is discriminating, bullying, or harassing will not be tolerated from any person regardless of position held.

## 2.0 REFERENCE

- Age Discrimination Act 2004 (Cwth)*
- Anti-Discrimination Act 1991*
- Australian Human Rights Commission Act 1986 (Cwth)*
- Crime and Corruption Act 2001*
- Criminal Code Act 1899*
- Disability Discrimination Act 1992 (Cwth)*
- Racial Discrimination Act 1975 (Cwth)*
- Right to Information Act 2009*
- Sex Discrimination Act 1984 (Cwth)*
- Work Health and Safety Act 2011*
- Workplace Gender Equality Act 2012 (Cwth)*
- and associated Regulations and Codes of Practice*

## 3.0 DEFINITIONS

**Our Rainbow House Inc. Community** shall mean all board members, employees and volunteers and student placements. Any person who is caused to undertake tasks or duties on behalf of Our Rainbow House Inc.

**Employee** shall mean any board member, employee, student placement, apprentice, contractor, sub-contractor or volunteer.

**Frivolous complaint** shall mean a complaint which is considered to be:

- made without evidence to cause annoyance;
- regularly focused on a trivial matter to the extent which is out of proportion to its significance and the person raising the complaint continues to focus on this matter;
- continually lodged to invoke a desired response; or

- on a matter which the person persists in pursuing despite the board’s reasonable efforts to help them specify their concerns, and/or where the concerns identified are not within the realm of the board to investigate, and/or where the board has advised the person that the matter has been investigated and resolved.

**Vexatious complaint** shall mean a complaint which is considered to be:

- made maliciously to damage a person’s career or reputation, or the reputation of Our Rainbow House Inc.;
- a threat of violence against others or property; or
- collusion between others, in an effort to discredit others or take retribution or to have an employee removed from the workplace.

#### **4.0 SCOPE**

This policy applies to:

- board members
- all staff, including full-time, part-time or casual, temporary or permanent staff; job candidates; student placements, apprentices, contractors, subcontractors and volunteers
- how Our Rainbow House Inc. provides services to clients and how it interacts with other members of the public
- all aspects of employment, recruitment and selection; conditions and benefits; training and promotion; task allocation; shifts; hours; leave arrangements; workload; equipment and transport
- on-site, off-site or after-hours work; work-related social functions; conferences – wherever and whenever staff may be as a result of their Our Rainbow House Inc. duties
- staff treatment of other staff, of clients, and of other members of the public encountered in the course of their Our Rainbow House Inc. duties.

#### **5.0 PURPOSE**

The purpose of this policy is to ensure all members of the Our Rainbow House Inc. community have a clear understanding of the organisation’s expectations in relation to appropriate behavior in the workplace.

#### **6.0 POLICY STATEMENT**

##### **Responsibilities**

All members of the Our Rainbow House Inc. community contribute to the creation of a discrimination free and inclusive workplace and a healthy workplace culture by:

- complying with this policy;
- supporting the organisation to maintain a safe work environment;
- reporting incidents; and
- not participating in discriminatory or harassing behaviour.

Those persons in positions of authority have a particular obligation to ensure acceptable standards of conduct are observed at all times including:

- modelling appropriate behaviour;
- promoting this policy;
- treating all complaints seriously and responding to them promptly;

- acting fairly to resolve issues enforce workplace behavioural standards, making sure relevant parties are heard;
- referring formal complaints about breaches of this policy to the appropriate officer for investigation;
- ensuring those who raise an issue or make a complaint are not victimised; and
- monitoring the work environment and seek expert help for complex or serious matters.

## Discrimination

**Direct discrimination** occurs when a person (or a group of people) is singled out for worse treatment, compared to others in similar circumstances, because of one or more of the attributes. Direct discrimination may involve:

- making offensive 'jokes' about another person's racial or ethnic background, sex, sexuality, age or impairment;
- expressing negative stereotypes about particular groups or using stereotypes as a basis for decisions about work e.g. 'Women with young children shouldn't work.' or 'Older workers can't learn new skills.'
- using selection processes based on irrelevant attributes such as age, race or impairment rather than on skills really needed for the job.

**Indirect discrimination** occurs when one rule applies to all, but in fact disadvantages a person (or group of people) because they are unable, or less able to comply with the rule because they have an attribute. The fact that the disadvantage was not intended is not an excuse. For example:

- Requiring everyone to be available for all shifts might be unfair to a person with responsibilities to care for children or an elderly parent.
- Only hiring people who have never had a back injury or a workers' compensation claim might rule out an employee whose health has returned and can do the job well.
- Not considering the provision of some reasonable adjustments would disadvantage a person with an impairment, who may be able to perform the essential parts of the job in a different way.

Discrimination, victimisation, sexual harassment, vilification and seeking unnecessary information on which discrimination might be based are illegal and includes:

- race, (including colour, descent or ancestry, nationality, national or ethnic origin);
- age (whether young or older);
- impairment (including biological, functional, learning, physical, sensory, mobility, cognitive, psychological, psychiatric impairment or the presence of an organism capable of causing disease);
- religious belief or activity;
- sex or gender identity;
- relationship status (including being married, single, divorced, separated, de facto or in a same sex relationship);
- sexuality;
- pregnancy, breastfeeding, parental status (including being or not being a parent, guardian, foster parent, adoptive parent, or step parent);

- family responsibilities (including the responsibility to care for and support a dependant child or immediate family member);
- lawful sexual activity as a sex worker;
- trade union activity;
- political belief or activity;
- association with someone else who is identified because of one of these attributes.

Other behaviour that is against the law includes:

- seeking unnecessary information on which discrimination might be based;
- victimisation because a person has made a complaint, agreed to be a witness or has had a complaint made against them;
- sexual harassment is prohibited under both state legislation and the federal Sex Discrimination Act 1984 ;
- vilification on the basis of a person's race, religion, gender identity or sexuality.
- Federal anti-discrimination legislation also prohibits discrimination on the basis of criminal record, medical record or social origin.

### **Harassment**

A person unlawfully harasses another person if he or she makes that other person (another employee or member of the public) feel offended, humiliated or intimidated because of one of the protected attributes listed above. It may involve inappropriate actions, behaviour, comments or physical contact that is objectionable or causes offence.

It is important to note that from a legal perspective it is irrelevant whether or not the harassing behaviour was intended.

Unlawful harassment may have occurred if the behaviour makes the victim feel:

- offended and humiliated; and/or;
- intimidated or frightened.

Unlawful harassment can include behaviour such as:

- telling insulting jokes about particular racial groups;
- sending explicit or sexually suggestive emails;
- displaying offensive or pornographic posters or screen savers;
- making derogatory comments or taunts about an individual's race or religion;
- asking intrusive questions about someone's personal life, including their sex life.

## **Sexual Harassment**

Sexual harassment occurs when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to another person, or engages in any other unwelcome conduct of a sexual nature in relation to another person. Sexual harassment has nothing to do with mutual attraction or consenting friendships, whether sexual or otherwise.

Sexual harassment is unlawful in pre-employment activities and in the workplace. The workplace includes any place a person goes for the purpose of carrying out any function in relation to his/her employment and can also extend to social functions.

Some examples of sexual harassment include:

- Persistent, unwelcome demands or even subtle pressures for sexual favours or outings;
- Staring or leering at a person or at parts of their body;
- Unwelcome patting, pinching, touching or unnecessary familiarity, such as unnecessarily brushing up against a person;
- Offensive comments or questions about a person's physical appearance, dress or private life;
- Sexually explicit pictures or posters or screen savers (words and images);
- Sexually explicit telephone calls, letters, faxes, emails or voice mail messages;
- Humour such as smutty or suggestive jokes or comments;
- Innuendo, including sexually provocative remarks, suggestive or derogatory comments about a person's physical appearance, inferences of sexual morality, or tales of sexual performance;
- Requests for sex;
- Insults or taunts based on sex;
- Sexually explicit physical contact.

Some types of sexual harassment may also constitute offences under the criminal law. A single incident is enough to constitute sexual harassment – it doesn't have to be repeated.

## **Bullying**

Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety. To clarify, unreasonable behaviour means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Bullying behaviour, whether intentional or unintentional, create a risk to health and safety. Examples of the type of behavior that may be workplace bullying if they are repeated, unreasonable include but are not limited to:

- abusive, insulting or offensive language or comments
- aggressive and intimidating conduct
- belittling or humiliating comments
- victimisation
- practical jokes or initiations
- unjustified criticism or complaints

- deliberately excluding someone from work-related activities
- withholding information that is vital for effective work performance
- setting unreasonable timelines or constantly changing deadlines
- setting tasks that are unreasonably below or beyond a person's skill level
- denying access to information, supervision, consultation or resources to the detriment of the person
- spreading misinformation or malicious rumours (gossip), and
- changing work arrangements such as rosters and leave to deliberately inconvenience a particular person or persons.

Bullying will not be tolerated by Our Rainbow House Inc. and does not constitute appropriate behavior. These behaviours pose a significant health and safety risk due to the harm that can be caused to a person's health and wellbeing. Bullying may also be unlawful if it is linked to, or based on, one of the above-specified protected attributes covered by anti-discrimination legislation.

### **Victimisation**

Victimisation is subjecting or threatening to subject someone to a detriment because they have asserted their rights based on a protected attribute, made a complaint, helped someone else make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation. It is also victimisation to threaten someone (such as a witness) who may be involved in investigating a complaint.

Our Rainbow House Inc. has a zero tolerance approach to victimization and breaches of this policy may result in disciplinary action.

### **Reasonable Management Action**

An organisation may take reasonable management action to effectively direct and control the way work is carried out. It is reasonable for managers and supervisors to allocate work and give feedback on an employee's performance. These actions are not considered to be workplace bullying if they are carried out in a lawful and reasonable way, taking the particular circumstances into account.

Reasonable management action can include:

- setting reasonable performance goals, standards and deadlines;
- informing a worker of their unsatisfactory work performance;
- deciding not to select a worker for promotion where a reasonable process was followed;
- informing a worker of their inappropriate behaviour in an objective and confidential way;
- rostering and allocating working hours where the requirements are reasonable;
- transferring a worker for operational reasons;
- implementing organisational changes or restructuring;
- taking disciplinary action including suspension or termination of employment when warranted.

## **7.0 PROCEDURE STATEMENT**

Our Rainbow House Inc. will treat all concerns and complaints quickly, fairly and seriously. The objective of this procedure is to provide a mechanism for complaints to be raised without fear of retribution and for corrective actions to be taken where necessary.

No person will be penalised or disadvantaged as a result of raising legitimate concerns or complaints relating to discrimination, harassment or bullying. Where a complaint is substantiated it may result in disciplinary action up to and including termination of employment. If unsubstantiated or found to be vexatious it may also result in disciplinary action against the complainant.

## Responding to Complaints

Effectively responding to issues when they are raised is key in ensuring that unacceptable behaviour is addressed promptly and eliminated. In addressing complaints the following principles should be applied at all times.

	Complain
Act promptly	All complaints should be responded to quickly and within the documented timeframes. Relevant parties should be kept informed of the progress of the process to reassure them that their issue is being addressed.
Treat all matters seriously	All complaints/reports should be treated as serious and based on their merit and facts.
Maintain confidentiality	The confidentiality of all involved parties must be maintained at all times. Only those directly involved in assessing/investigating/resolving the matter should be privy to the facts.
Ensure procedural fairness	<p>The respondent to the allegations should be treated as innocent unless the allegations are proven to be true. Respondents must be apprised of the content of the allegations and be given an opportunity to respond.</p> <p>The person raising the complaint/issue must be given due diligence and be given the opportunity to have their concerns heard. All allegations are to be treated as credible and reliable unless proven otherwise.</p> <p>Both parties are to be advised of the opportunity to have decisions reviewed.</p>
Remain neutral	Avoid any personal or professional bias by remaining neutral at all times. Ensure those tasked with managing and responding to complaints are not involved in the matter.
Support all parties	Parties to the matter should be advised what support mechanisms are in place for them to access. Ensure all parties are provided with the opportunity to bring support persons to interviews or meetings.
Protect disclosers from victimisation	Protection of disclosers is critical to ensure they are not victimised for speaking out. Witnesses should also be protected from victimisation.

Communicate	All parties should be informed of the process, how long it will take and what they can expect will happen during and at the end of the process. Should the process be delayed for any reason, all parties should be made aware of the delay and advised when the process is expected to resume. Finally, reasons for actions that have been taken and in some circumstances not taken should be explained to the parties.
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## Procedure

The intent of the process outlined below is to assist Our Rainbow House Inc. in determining whether inappropriate conduct has occurred and, if so, to take appropriate disciplinary action and implement measures to prevent any further inappropriate conduct from occurring.

The resolution process focuses on a two stage process:

- Informal process
- Formal process

### Informal Process

Where a person believes that they have been the subject of discrimination, harassment or bullying they may seek to resolve the issue personally by approaching the person concerned (either on their own or with a support person) or in writing and:

- notifying that their behaviour is causing distress, is unwelcome and unacceptable;
- asking for it to stop immediately and for it not to occur again; and
- keeping a record of the action taken.

Any person who has concerns about or becomes aware of unacceptable behaviour has an obligation to actively intervene to prevent such conduct continuing and may seek to resolve any concerns directly with the parties under this clause, if appropriate.

All complaints should be made in a timely manner.

### Assisted Resolution

Where assisted resolution is deemed appropriate or requested by the person raising the complaint, it may include but is not limited to:

- clarifying a misunderstanding;
- an apology.
- a facilitated discussion
- an agreed plan of action to avoid future incidents
- requiring attendance at awareness-raising sessions about appropriate behaviour;
- a warning given to the relevant party.



## Formal Process

Where the allegation cannot be resolved through the informal process, or the person raising the complaint does not wish to address the issue directly, a formal process may be undertaken. This will require the person to make the complaint in writing. All formal complaints should be addressed using the following three stage process to resolve the complaint.

### Stage 1 – Preliminary assessment

The complaint must be immediately discussed with the board during a special meeting (excluding any member/s that are mentioned in the complaint either as the respondent or as a witness). The board will assign a delegate who will manage the process. The delegate must:

1. Immediately acknowledge receipt of the complaint and notify the person raising the complaint of the process that will be undertaken;
2. Obtain all relevant information pertaining to the complaint from the person and discuss with them what (if any) action can be taken to resolve the issue.
3. Discuss how the matter will be handled where the person requests their identity is not disclosed.
4. Assess how the matter will be progressed. This may include:
  - a) Collecting and reviewing all provided materials
  - b) Providing advice to the board on whether the matter is deemed appropriate for assisted resolution using the informal process or whether further investigation is required.

Any party meeting with the board's delegate for the purposes of assessing a complaint is entitled to bring a support person that is not a witness or a person involved in the complaint in any way. All persons required for interviewing must be interviewed separately.

Prior to progressing to assisted resolution the respondent must be given a copy of the allegations made.

### Stage 2 – Investigation

An investigation may be initiated from the outset based on the content of the complaint and reasons for proceeding to stage two may include:

- for more serious complaints (as determined by the board taking into consideration the content of the complaint and circumstances surrounding the complaint);
- where the board's delegate determines that assisted resolution is not appropriate; or
- where assisted resolution has not been successful.

Where a formal investigation is required, the board may choose to delegate a separate investigator or continue with the delegated assessor. In conducting the investigation the delegate will assess how the matter will be progressed. This may include:

- Meeting with all relevant parties and any witnesses
- Taking individual statements
- Researching and collaborating the accusations made
- Collecting and reviewing all statements and evidentiary materials

Any party meeting with the board's delegate for the purposes of investigating a complaint is entitled to bring a support person that is not a witness or a person involved in the complaint in any way. All persons required for interviewing must be interviewed separately.

Upon conclusion of the investigation the investigator must make a finding of the facts and where appropriate provide a recommendation for resolution of the complaint to the board. The finding of the facts must be provided in writing and include the reasons for each of the findings.

All attempts should be made to conclude the investigation within 30 days of the conclusion of the board delegate's preliminary assessment (where applicable) or meeting with the person raising the complaint. In the instance where the 30 day timeframe is not reasonable, both parties must be advised of the reasons and the anticipated timeframe for conclusion of the investigation.

Depending on the content of the complaint the board may decide to stand down the employee on full pay (where applicable) until the investigation is concluded.

### **Stage 3 – Resolution**

If a complaint is found to be unsubstantiated, no further action will be taken against the respondent. The reason/s for this decision must be communicated to both parties in writing. Other instances where no further action is to be taken may include:

- Insufficient detail or evidence of the allegation is able to be provided to enable the matter to be properly investigated;
- The complaint is deemed frivolous, vexatious or malicious;
- The complaint pertains to alleged conduct that occurred more than 12 months prior to the complaint being made and the conduct has not reoccurred during that time.

If a complaint is substantiated the decision and actions to be taken must be communicated in writing to both parties. Actions that may be taken include:

- formal mediation between the parties to reach an agreement of how to resolve the complaint
- an apology from the respondent to the complainant and an agreement on future behaviour;
- action to rectify the behaviour the subject of the complaint;
- transferring either of the parties to a different work location (where possible);
- counselling; or
- taking disciplinary action against the respondent to the complaint.

### **Withdrawing a Complaint**

Complaints may be withdrawn at any time with no further action taken, except where the Board feels that a breach of this policy has occurred. In that instance the Board may decide to continue to investigate the complaint to determine if follow-up action is needed.

## **Vexatious Complaints and False Accusations**

Our Rainbow House Inc. views all complaints as serious. As such any person making intentionally false accusations or those that are deemed frivolous or vexatious in nature may be investigated using this same procedure. If the complaint is found to be intentional or malicious the board may then decide to take disciplinary action as a result.

### **Record keeping**

Matters dealt with in accordance with this procedure must be documented and stored confidentially. The record must include:

- a copy of the original complaint;
- any correspondence sent to involved parties;
- all evidence gathered;
- statements from all persons interviewed;
- an outline of the process;
- a copy of the fact of findings and recommendation to the board (where applicable);
- outcomes and further actions taken; and
- copies of correspondence finalising the matter.

### **Reviewing systems of work**

Upon completion of addressing any matter involving bullying, harassment, discrimination, vilification or victimisation, the workplace should be examined to identify and address any underlying actors that may have contributed. This includes reviewing workloads, staff levels and existing policies, procedures and training for effectiveness.

To assist with prevention of unacceptable behaviours, all matters should be recorded in a register that can be used to analyse trends and determine required training and improvements. All records must be kept confidential.

## **7.0 REVIEW**

Date of next review: 14/05/2021 or after any serious incident, to determine if the policy and associated procedure has been effective.