

## **DISCRIMINATION, HARASSMENT, BULLYING & SEXUAL HARASSMENT POLICY**

Australian Theatre for Young People (ATYP) has a zero tolerance policy for discrimination, harassment, bullying & sexual harassment in the workplace.

If you have experienced discrimination, harassment, bullying & sexual harassment in the workplace, ATYP encourages its workers (employees, contractors & volunteers) to report any issues or concerns at the earliest opportunity with their immediate supervisor.

The preferred process involves workers being able to resolve issues to their satisfaction internally, without feeling they have to refer to external organisations or authorities for assistance.

Open communication and feedback are regarded as essential elements of a safe and productive work environment. Workers should feel comfortable with discussing issues with their manager or supervisor in accordance with the procedures outlined below.

All formal avenues for handling of grievances will be fully documented and the employee/volunteer's wishes will be taken into account in the determination of appropriate steps and actions.

In exchange for this trust, ATYP management takes all concerns extremely seriously and works hard to achieve positive outcomes for all workers in our grievance procedures. No workers will be intimidated or unfairly treated in any respect if they utilise this Policy to resolve an issue.

This Policy applies to permanent, casual and part-time paid employees, contracted tutors, technical and creative employees and volunteer workers. For information on ATYP's Working With Children Policies, please refer to the company Code of Conduct and Behaviour Policy.

The purpose of this document is to provide an avenue through which employees and volunteers, and their managers/supervisors, can resolve work-related discrimination, harassment, bullying & sexual harassment complaints as they arise and allow them to continue to work in a safe environment.

### **Definitions**

Please see the Definitions of Discrimination, Harassment, Bullying & Sexual Harassment as an Appendix to this Policy. These definitions are taken from Live Performance Australia's *Australian Live Performance Industry Code of Practice to Prevent Workplace Discrimination, Harassment, Sexual Harassment and Bullying*

### **Responsibilities:**

It is the responsibility of **Management and Supervisors** to ensure that:

- They identify, prevent and address potential problems as early as possible
- They are aware of, and are committed to the principles of communicating and information sharing with their employees and volunteers
- All decisions relating to employment practices are made with consideration given to the ramifications for the individual, as well as ATYP in general
- Any report of sexual harassment is handled in the most appropriate manner at the earliest opportunity
- All employees and volunteers are treated fairly and without fear of intimidation

It is the responsibility of **Workers** to ensure that:

- Any report is clearly described by the worker
- They attempt to resolve any issues through their immediate supervisor and through internal processes at the earliest opportunity

It is the responsibility of the **Executive Director** to ensure that:

- All managers, supervisors, employees and volunteers are aware of their obligations and responsibilities in relation to communication and information sharing with their employees
- Ongoing support and guidance is provided to all employees in relation to employment and communication issues
- All managers, supervisors, employees and volunteers are aware of their obligations and responsibilities in relation to handling grievances
- Any grievance that comes to the attention of managers or supervisors is handled in the most appropriate manner at the earliest opportunity

### **What is the Reporting Procedure?**

All managers and supervisors should be aware of the possible ramifications of their actions when dealing with worker issues. They must ensure that all workers are treated with fairness, equality and respect.

If there are any doubts or queries in relation to how to deal with a particular set of circumstances, managers or supervisors should speak to the Executive Director for advice at the earliest opportunity.

Where a claim has been brought to a manager's attention, they should inform the Executive Director so that the Executive Director can assist with the grievance process and ensure the guidelines below are followed.

### **Grievances and Dispute Resolution**

An employee or volunteer who considers that they have experienced Discrimination, Harassment, Bullying & Sexual Harassment in their work place should **raise the matter with their immediate supervisor** as a first step towards resolution.

For ATYP staff, this is the Executive Director or Artistic Director, for schools' and workshop tutors, this is the Workshop Manager or Head of Learning, for production staff/creatives, this is the Production Manager. The two parties should discuss the matter openly and work together to achieve a desired outcome. In most cases if problems are discussed as soon as they arise with the people involved, they can be quickly resolved.

The manager must ensure that the manner in which the meeting is conducted will be conducive to maintaining positive working relationships, and will provide a fair, objective and independent analysis of the situation.

All parties are to maintain complete confidentiality at all times.

If matters are not resolved via this verbal process and the employee/volunteer wishes to pursue it, the employee/volunteer can **notify ATYP's Executive Director/Artistic Director in writing** as to the substance of the grievance and the remedy sought.

The manager concerned should also forward to the Executive Director/Artistic Director any additional information thought relevant. Within one week, the Executive Director /Artistic Director, will arrange a meeting between the employee/volunteer and the other relevant party to discuss the issues openly and objectively and ensure they are fully understood. Following this process, the Executive Director /Artistic Director will provide a written response to the employee/volunteer and can make a resolution plan, or organise a mediation process.

If the complaint is one involving the workers manager, the complainant may discuss the issue directly with the Executive Director or Artistic Director in the first instance.

If the matter continues to be unresolved, the Executive Director /Artistic director must refer the matter to **ATYP's Chair of the Board of Directors** who will provide a written response to the worker. A grievance taken to this level must be submitted in writing by the worker. All correspondence will be confidential.

If the matter continues to be unresolved, the worker will be advised of his/her rights to pursue the matter with external authorities if they so wish. This may include the Arts Law centre funded by the Australia Council, which runs a mediation service or other legal advice.

Policy Date: May 2022

Review Date: May 2024

## APPENDIX 1

*Australian Live Performance Industry  
Code of Practice to Prevent Workplace Discrimination, Harassment, Sexual Harassment and Bullying*

### 3. DEFINITIONS

#### 3.1 Discrimination

Discrimination is **treating, or proposing to treat, someone unfavourably** because of a **personal characteristic protected by law**, such as sex, age, race or disability.

Personal characteristics protected under federal discrimination law include, but are not limited to:

- A disability, disease or injury, including work-related injury;
- Parental status or status as a carer;
- Race, colour, descent, national origin or ethnic background;
- Age;
- Gender, gender identity;
- Sexual orientation;
- Industrial activity;
- Religion;
- Pregnancy and breastfeeding;
- Marital status;
- Political opinion;
- Social origin;
- Medical record; and
- Associating with someone who has, or is assumed to have, one of these characteristics, such as being

the parent of a child with a disability.

It is also against the law to treat someone unfavourably because you assume they have a protected personal characteristic or may have it at some time in the future.

Discrimination can be either direct or indirect:

- **Direct discrimination** is usually easy to identify and occurs when a person or group of people with a particular protected characteristic (actual or assumed) are treated less favourably because of that characteristic.
- **Indirect discrimination** is less obvious and occurs when a policy or practice appears neutral, yet has the effect of discriminating against those with a particular protected characteristic.

#### BOX 3: EXAMPLES OF DIRECT AND INDIRECT DISCRIMINATION

##### Direct

- An employer refusing to hire someone based on their age.
- A worker harasses another because of their race.



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### **What is not discrimination?**

In certain circumstances, it will not be unlawful discrimination to treat workers differently because of a protected personal characteristic. The main exceptions are where the discriminatory act or practice:

- Is necessary to comply with other legislation;
- Is taken because the complainant cannot perform the inherent (essential) requirements of their job, even where reasonable adjustments are made;
- Is a genuine occupational requirement (an exemption may be required, depending on the law in the relevant state or territory);
- Is necessary to protect health and safety; or
- Is permitted because an exemption or 'special measure' applies (e.g. affirmative action recruitment programmes open only to Aboriginal and Torres Strait Islander peoples).

### **3.2 Harassment**

Harassment is **unwelcome and unsolicited behaviour** that a **reasonable person would consider to be offensive, intimidating, humiliating or threatening**.

Harassment is prohibited by anti-discrimination legislation where the behaviour targets an individual or group because of a protected characteristic (such as age, sex or race, as outlined above). Harassment that is not related to a protected characteristic is still inappropriate in the workplace and should be dealt with accordingly.

Harassment can be physical, spoken or written. It can include, but is not limited to:

- Intimidation, verbal abuse, or repeated threats or ridicule;
- Sending offensive messages by text, email or other means;
- Derogatory comments;
- Display of offensive materials, pictures, comments or objects;
- Ridiculing someone because of their accent or English-speaking ability;
- Telling offensive jokes or making practical jokes based on a protected characteristic;
- Belittling or teasing someone based on a protected characteristic; and
- Isolating, segregating or humiliating someone because of a protected characteristic.

#### **Indirect**

- A policy of only offering bonuses to full time workers risks indirect discrimination on the basis of sex, as a greater proportion of part time workers are female.



### 3.3 Sexual harassment

Whilst the definition varies slightly according to the jurisdiction, generally sexual harassment occurs where a person engages in **unwelcome conduct of a sexual nature** in circumstances where a **reasonable person would be offended, humiliated or intimidated**.

Sexual harassment can be physical, spoken or written. It can include, but is not limited to:

- Staring or leering at a person or parts of their body;
- Excessive or unwelcome familiarity or physical contact, such as touching, hugging, kissing, pinching, massaging and brushing up against someone;
- Suggestive comments, jokes, conversations or innuendo;
- Insults or taunts of a sexual nature or obscene gestures;
- Intrusive questions or comments about someone's private life;
- Displaying or disseminating material such as posters, magazines or screen savers of a sexual nature;
- Making or sending sexually explicit phone calls, emails or text messages;
- Inappropriate advances on social networking sites;
- Accessing sexually explicit internet sites in the presence of others;
- Unwelcome flirting, requests for sex or repeated unwanted requests to go out on dates;
- Inappropriate or unwanted gifts; and
- Behaviour that may also be considered to be an offence under criminal law, such as physical or sexual assault, indecent exposure, stalking or obscene communications.

If someone does not object to inappropriate behaviour in the workplace at the time, it does not mean that they are consenting to the behaviour.

Behaviour can constitute sexual harassment even if:

- it is a one-off incident;
- the person engaging in the behaviour does not intend for the other person to be offended, humiliated or intimidated;
- some people in the workplace are not offended by the behaviour; or
- the behaviour was previously an accepted practice in the workplace.

#### **What is not sexual harassment?**

Sexual interaction, flirtation, attraction or friendship, which is invited, mutual, consensual or reciprocated is not sexual harassment.



### 3.4 Workplace bullying

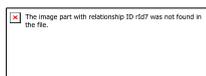
Workplace bullying is where an individual or group of individuals **repeatedly behave unreasonably** to another person or group of persons at a workplace, which creates a **risk to health and safety**.

Bullying can take many forms. It can be physical, spoken, written, overt or covert. Behaviours that may constitute bullying include, but are not limited to:

- Physical intimidation or abuse;
- Aggressive or intimidating conduct or threatening gestures;
- Manipulation, intimidation or coercion;
- Threats, abuse, offensive language, shouting or belittling;
- Innuendo, sarcasm and other forms of demeaning language;
- Ganging up;
- Public humiliation or belittling;
- Initiation activities;
- Practical jokes, teasing, or ridicule;
- Isolation, exclusion or ignoring people;
- Inappropriate blaming;
- Inappropriate emails/pictures/text messages;
- Unreasonable accusations or undue unconstructive criticism;
- Allocating unpleasant, meaningless or impossible tasks;
- Placing unreasonably high work demands on selected workers;
- Deliberately withholding information, resources, support, supervision or consultation that a person needs to do their job or access their entitlements;
- Unreasonable refusal of requests for leave, training or other workplace benefits;
- Withholding access to opportunities;
- Deliberately changing hours of work for a person or group to inconvenience them; and
- Unreasonable timelines or constantly changing deadlines targeted at a specific person or group.

Bullying may also constitute unlawful harassment or discrimination, if it is connected to a protected characteristic, such as age or race.

The live performance industry is creative and continually strives for artistic excellence. Achieving such artistic outcomes often involves 'pushing the boundaries'. All workers in this process should behave in a manner that is professional, appropriate and does not constitute harassment or bullying.



### What is not bullying?

Bullying is not:

- Single incidents of inappropriate behaviour (although it may still constitute harassment or worker misconduct);

Reasonable management action undertaken in a reasonable manner, such as:

- – Employer directions (e.g. providing instructions on the way work is to be carried out);
- – Performance management processes (e.g. providing feedback on a worker's performance);
- – Disciplinary action; or
- – Maintaining reasonable workplace standards; or

Differences of opinion or disagreements (e.g. differences of opinion on the artistic interpretation or direction of a production). People can have differences or disagreements in the workplace without engaging in repeated, unreasonable behaviour that creates a risk to health and safety.

### 3.5 Vilification

Vilification is any **public act that incites hatred, serious contempt, or severe ridicule** against another person or group of people due to their race (including ethno-religious origin), homosexuality, transgender status or HIV/AIDS status.

Vilification is unlawful in all states and territories other than the Northern Territory.

### 3.6 Victimisation

Victimisation is **subjecting or threatening to subject someone to a detriment** because they have asserted their rights under equal opportunity law, made a complaint, helped someone else make a complaint, or refused to do something because it would be discrimination, harassment, sexual harassment or bullying.

It is also victimisation to threaten someone (such as a witness) who may be involved in an investigation of a complaint.

Victimisation is unlawful in all states and territories.

Any form of retaliation taken against a worker who has made a complaint should be reported and investigated immediately, with appropriate disciplinary action taken where the conduct is proven.