

DISCRIMINATION, HARASSMENT & BULLYING POLICY & PROCEDURE

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1. Introduction

This document details the Discrimination, Harassment & Bullying Policy (“Policy”) for an Employee of Norwood Industries Pty Ltd (“Norwood”). Norwood is an equal employment opportunity employer and is committed to ensure that people are treated as individuals, respected for their unique attributes and not excluded, harassed or bullied through unconscious bias, stereotypes or unlawful actions that may form the basis of discrimination, harassment, bullying, vilification or victimisation.

The policy explains the conduct that is prohibited and sets out examples of discrimination, harassment and bullying. It also establishes a complaints procedure to be followed if a person has a complaint of a breach of Policy.

2. Purpose

The purpose of this Policy is to:

- Create a working environment which is free from unlawful discrimination, harassment, sexual harassment, bullying, vilification and victimisation and where all workplace participants are treated with dignity, courtesy and respect;
- Implement awareness raising strategies to ensure that all workplace participants know their rights and responsibilities. Among other things, this may include training, providing copies of the policy to employees and discussion at meetings;
- Ensure workplace participants are treated fairly on the basis of merit and not on the basis of irrelevant personal characteristics such as their age, sex, race or disability;
- Provide a comprehensive procedure for dealing with complaints of harassment, sexual harassment, discrimination, vilification, victimisation and/or bullying if they occur;
- Explain the procedure to follow if there is a suspected breach of this Policy and encourage reporting of suspected breaches;
- Treat all complaints in a sensitive, fair, timely and discreet manner;
- Prevent victimisation or reprisals; and
- Promote appropriate standards of conduct at all times.

3. Who is covered by the policy?

This Policy applies to:

- All employees including casuals;
- Job applicants;
- Contractors; and
- Employees from other organisations working at Norwood; and persons working under the same roof but for different employers.

The general term used to describe these people is “workplace participants”.

4. Discrimination and harassment

Norwood will not tolerate unlawful discrimination or harassment in the workplace. Any employee found to have unlawfully discriminated against or harassed another workplace participant (including a customer or client) may be the subject of disciplinary action which may result in termination of their employment. Appropriate action will also be taken where a workplace participant who is not an employee is found to have unlawfully discriminated against or harassed another workplace participant.

5. Meaning of discrimination

Discrimination occurs when a person or group is treated less favourably than another due to a characteristic that is protected by legislation e.g. age, gender, race, religion, disability, health or marital status. Unlawful discrimination can occur either directly or indirectly.

Direct discrimination is any action which specifically excludes a person, or a group of people from a benefit or opportunity, or significantly reduces their chances of obtaining it because a personal characteristic, irrelevant to the situation, is applied as a barrier. That is, a person, or group of people is treated less favourably than others on the basis of a characteristic listed as a ground of discrimination, e.g. age, sex, race, disability or marital status.

Indirect discrimination may occur if the outcome of rules, practices and decisions, which appear to treat people equally and to be neutral, actually has an adverse effect on a group of people or an individual (as appropriate) thus reducing a benefit or opportunity. That is: Practices appear fair in form but are discriminatory in outcome.

An example of indirect discrimination is a height requirement for a job. Generally speaking, men are taller than women. Accordingly, the requirement to be of a particular height will mean less women than men will be eligible for the employment.

However, the discrimination will not be unlawful if the requirement is reasonable in the circumstances.

6. Meaning of harassment

Harassment is described as any unwelcome and uninvited behaviour (verbal, non-verbal, physical, written or visual) which has no legitimate workplace function and which intimidates, humiliates or offends another person or persons. Harassment on the basis of a ground of discrimination such as sex, age, marital status, race, disability, etc. is unlawful.

In harassment cases, the intention of the alleged harasser is irrelevant. What is important is what a reasonable person would think of the situation. Harassment can be a single or repeated act of offensive behaviour.

Legal action for harassment can be taken against workplace participants as individuals. Norwood can also be held vicariously liable for the behaviour of employees and contractors who engage in harassment. There is no requirement that, before making a complaint under legislation, a person being harassed must advise the alleged harasser that their behaviour is unwelcomed.

7. What is Sexual Harassment?

Norwood will not tolerate sexual harassment in the workplace. Any employee found to have sexually harassed another workplace participant (including a customer or client) may be the subject of disciplinary action which may result in termination of employment. Appropriate action will also be taken where a workplace participant who is not an employee is found to have sexually harassed another workplace participant.

8. Responsibilities of all workers

Sexual harassment is any unwelcomed conduct of a sexual nature which has the possibility of intimidating, humiliating or offending another person or persons.

Sexual harassment is against the law and legal action for sexual harassment can be taken against workplace participants as Individuals. Workplace participants may not always realise that the behaviour constitutes sexual harassment, but they must recognise that what is acceptable to one person may not be acceptable to another.

Examples of sexual harassment include:

- Staring or leering;
- Wolf Whistling;
- Unnecessary familiarity, such as brushing up against a person, touching, patting, pinching or fondling;
- Suggestive comments or jokes;
- Sexually explicit comments or jokes;
- Offensive and suggestive body language;
- Insults or taunts of a sexual nature;
- Unwelcome questions or comments about a person's sex life, appearance or dress;
- Sexual demands, request for sex or unwanted requests to go out on dates;
- Displaying offensive objects, calendars, magazines or screen savers;
- Accessing sexually explicit internet sites;
- Sending emails or text messages containing inappropriate advances or sexually explicit content;
- Inappropriate content sent or posted via social media sites; including inappropriate advances or content of a sexual nature;
- Electronically storing, distributing or displaying sexually explicit pictures or videos; and
- Behaviour that may also be considered to be a criminal offence, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

Harassment can be a single or repeated act of offensive behaviour. Sexual harassment is not behaviour which is based on mutual attraction, friendship and respect that is invited, consensual or reciprocated.

Sexual harassment is not just unlawful during working hours or in the workplace itself. Sexual harassment is unlawful in any work-related context including conferences, work functions, Christmas parties, and business or field trips.

9. Vilification

Norwood will not tolerate vilification in the workplace. Any employee found to have engaged in vilification may be the subject of disciplinary action which may result in termination of employment. Appropriate action will also be taken where a workplace participant who is not an employee is found to have engaged in vilification.

10. Meaning of vilification

Vilification is a public act that incites or encourages hatred, serious contempt, revulsion or severe ridicule against another person or group of people because of their race and/or religion.

Racial vilification is unlawful under the *Racial Discrimination Act, 1975* and the following forms of vilification are also prohibited under state/territory law:

- Victoria- racial and religious vilification
- NSW - homosexual vilification, transgender vilification, HIV/AIDS vilification
- Queensland - vilification on the basis of race, religion, sexuality or gender identity
- Western Australia - incitement to racial hatred/vilification

11. Bullying

Norwood will not tolerate bullying in the workplace. Any employee found to have bullied another employee or workplace participant may be the subject of disciplinary action which may result in termination of employment.

Appropriate action will also be taken where a workplace participant who is not an employee is found to have bullied another workplace participant.

12. Meaning of bullying

Workplace bullying is repeated, unreasonable behaviour directed towards a worker, or a group of workers, which creates a risk to a worker's mental or physical health and safety.

Unreasonable behaviour is that which a reasonable person, having regard to all circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening. Risk to health and safety includes risk to the psychological, emotional or psychological health of a person.

Repeated behaviour does not necessarily refer to repeated instances of the same type of unreasonable behaviour. A pattern of behaviour involving a series of different types of unreasonable behaviour may constitute bullying.

Bullying can lead to serious breaches of occupational health and safety laws, claims under the Fair Work Act can also be prosecuted under common law.

13. What is not bullying?

Reasonable management action carried out in a reasonable manner does not amount to workplace bullying. All employers have a legal right to direct and control how work is done.

Reasonable management action can include:

- Allocating work;
- Rostering work hours;
- Setting performance goals and deadlines;
- Giving fair and constructive feedback on a worker's performance;
- Informing a worker about unsatisfactory work performance or inappropriate behaviour;
- Restructuring the workplace or other significant change regarding how work is done;
- Deciding not to award or provide a promotion; and
- Action taken in a reasonable manner to demote, discipline, counsel, retrench or dismiss an employee.

14. Conflict at work

People are bound to have occasional differences of opinion and these are a normal part of working life. Disagreements can leave people feeling upset, but they should not be confused with bullying behaviour.

15. What is bullying behaviour?

Examples of bullying behaviour:

- Isolating or excluding a person from a work team;
- Psychological abuse which destroys self-esteem and confidence;
- Initiation practices;
- Sabotaging another's work;
- Ridiculing another's opinions;
- Unfair or excessive criticism;
- Spreading rumours;
- Targeting a person via social media tools (e.g. Twitter, Facebook, Instagram, YouTube etc.);
- Setting impossible deadlines; and
- Using aggressive language.
- Acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for his or her own safety or that of another person.

16. Criminal Charges for bullying behaviour

Workplace participants who engage in the following types of behaviour could be subject to criminal charges:

- Making threats to another workplace participant;
- Using abusive or offensive words to, or in the presence of, another workplace participant;
- Performing abusive or offensive acts in the presence of another workplace participant;
- Directing abusive or offensive acts towards another workplace participant;
- Acting in any other way that could reasonably be expected to cause physical or mental harm to another workplace participant, including self-harm; and
- Acting in any other way that could reasonably be expected to arouse apprehension or fear in the victim for his or her own safety or that of another person.

17. Victimisation

Victimisation is the term used to describe any "pay-backs", retribution or intimidation associated with a discrimination or harassment complaint. Victimisation refers not only to intimidation of the person making a complaint, but also to the alleged harasser or discriminator, witnesses, supporters and those resolving or investigating any complaints.

There is also legislation which makes it unlawful to victimise someone who has made a complaint relating to bullying.

Workplace participants must not victimise or treat adversely anyone involved in a complaint of discrimination, harassment, sexual harassment or bullying. Persons found to have victimised another employee or workplace participant will be subject to disciplinary processes.

Related documents

- **Staff Grievance and Dispute Resolution Policy**
- **Equal Employment Opportunity Policy**
- **Occupational Health & Safety Policy**

18. Complaints Procedure

Method of handling complaints/concerns

The following procedure is designed to help address concerns raised by employees about incidents of harassment, discrimination and bullying or other offensive workplace behaviour.

The handling of any such issues will be

Confidential. Only the people directly involved in making or investigating a complaint will have access to information about the complaint. Other employees (e.g. as witnesses) or managers may be involved but only on a need to know basis. Any documents prepared as part of the resolution process are confidential.

Impartial. Both sides will have a chance to tell their side of the story. No assumptions will be made and no action will be taken until all relevant information has been collected and considered.

Free of repercussions. No action will be taken against anyone for making a complaint or helping someone make a complaint provided the complaint is made in good faith. Management will take all necessary steps to ensure that no victimisation occurs against anyone who makes a complaint or is involved in a complaint.

Timely. All complaints will be dealt with as quickly as possible in the circumstances

19. Complaint resolution procedure

This Policy sets out complaint resolution options where employees are subject to behaviour in breach of this Policy.

The terms 'informal' and 'formal' do not relate to how serious a concern is but related to how formal (or investigative) the process is.

Step 1 - If the individual feels confident to do so, try to resolve the matter directly with the other party involved by letting the person responsible for the behaviour know that the behaviour is offensive and unacceptable.

The individual can seek information or support from a contact officer at this stage.

Step 2 - If the incident is unable to be resolved directly between those involved, the issue should be referred to a supervisor or manager for assistance to try to resolve this issue.

Where appropriate, the supervisor or manager will try to resolve the issue informally (e.g. by talking to both parties separately or together, or arrange a mediation if appropriate in the circumstances.)

Step 3 - If informal resolution is not appropriate or has not been successful, a more formal approach will be necessary which would include an investigation in most cases.

20. Formal Resolution Process

The formal process is a formal investigation of a complaint with a key objective of establishing whether a complaint is substantiated or not. Whether a complaint is substantiated or not is determined after an investigation and consideration of the evidence. It is decided on a balance of probabilities. That is, is it more probable than not that the conduct complained of did or did not occur and if it did occur, does it constitute a breach of this Policy.

The complaint should be formally recorded in writing and, where possible, include:

- The name of the person(s) against whom the complaint is made;
- The nature of the allegation(s);
- Dates and times when incidents occurred; and
- Names of any witnesses to incidents.

Any action already taken by the complainant to stop the offensive behaviour.

- The steps involved in a formal complaint are usually as follows:
- The complainant is interviewed and the allegations are set out in writing;
- The allegations are communicated to the respondent;
- The respondent is given the opportunity to respond and defend him/herself against the allegations;
- If there is a dispute over relevant facts, statements from any witnesses and other relevant evidence may be gathered;
- A finding is made as to whether the complaint has substance; and
- A decision is made on a course of action to resolve the complaint.

Any investigation will be kept confidential, on a need to know basis.

Note: Norwood may need to investigate or take other action in relation to a complaint where serious allegations are made. This may be the even if an individual does not want to make a formal complaint.

21. Working arrangements during an investigation

During a complaint resolution process, working arrangements may be altered to protect the safety and wellbeing of those involved in the complaint process, to prevent victimisation and/or to protect the integrity of the investigation process.

22. Resolution

During a complaint resolution process, working arrangements may be altered to protect the safety and wellbeing of those involved in order to prevent victimisation and/or to protect the integrity of the investigation process.

- Seeking an apology;
- Seeking an undertaking that the behaviour will cease;
- Formal counselling of the respondent to the complaint;
- Mediation;
- Disciplinary action, e.g. transfer, formal warning, termination of employment;
- Awareness raising / training session;
- Dismissing the complaint; or
- Encouraging a workplace participant to report a matter to the police if appropriate.

23. If complaint not substantiated

If, after thorough investigation, Norwood decides that there has been no breach of policy or is unable to substantiate a complaint, the following steps will be taken:

- The reasons for the decision will be explained to the parties involved.
- The complainant will be advised of his or her right to take the matter to external organisation's or jurisdictions.
- Any notes concerning the allegations will not be kept on either party's personnel file - a separate and confidential file of the incident will be kept.
- A watching brief will be maintained on the situation after the investigation.

24. False complaints

If, after investigation, an employee is found to have made a false or frivolous complaint or deliberately supplied false or misleading information in relation to a complaint or its investigation, then the employee may face disciplinary action which may include termination of employment.

25. Complaints by other workplace participants

If a complaint is made by a workplace participant who is not an employee, the organisation will attempt to resolve the complaint. Where necessary, an investigation will be carried out and appropriate action will be taken.

26. Other resources

In investigating discrimination, harassment or bullying complaints, it may be necessary for Norwood to use resources from outside the organisation to help resolve the situation. These may include:

- Use of independent investigator; or
- Use of an independent mediator (where both parties agree to mediation).

Any decision to involve outside assistance will be communicated to the parties involved where relevant.

27. Method of handling complaints/concerns

Information and assistance in resolving complaints of harassment, discrimination, or bullying may also be provided by the external contacts:

- **Victoria**
Victorian Equal Opportunity and Human Rights Commission
<http://www.humanrightscommission.vic.gov.au/>
- **New South Wales**
Anti-Discrimination Board of NSW <http://lawlink.nsw.gov.au/adb>
- **Western Australia**
Equal Opportunity Commission <http://www.eoc.wa.gov.au>
- **Queensland**
Anti-Discrimination Commission Queensland <http://www.adcq.qld.gov.au/>

- **Fair Work Ombudsman**

The Fair Work Ombudsman has the power to investigate complaints by employees about breaches of the general protections provisions which include workplace discrimination and adverse action for exercising a workplace right such as making a complaint of discrimination, harassment or bullying.

Website: <http://www.fwo.gov.au/Pages/default.aspx>

- **Fair Work Commission**

From 1 January 2014, a worker who reasonably believes that he or she has been bullied at work can apply to the Commission for an order to stop the bullying. The Commission must start to deal with the application within 14 days.

Website: <http://www.fwc.gov.au>

- **Work health and safety**

Bullying, harassment and discrimination can be considered a work health and safety (“WHS”) issue. WHS legislation varies and is administered separately by the relevant government body in each state or territory. Contact details for the state and territory bodies responsible for administering WHS legislation are set out below.

- **New South Wales**

WorkCover NSW www.workcover.nsw.gov.au

- **Victoria**

WorkSafe Victoria www.worksafe.vic.gov.au

- **Queensland**

Workplace Health and Safety Queensland www.worksafe.qld.gov.au

- **Western Australia**

WorkSafe WA www.commerce.wa.gov.au/WorkSafe/

Norwood Industries Pty Ltd

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