

# DISCRIMINATION, HARASSMENT AND BULLYING POLICY

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## Policy Statement

Murraylands Training & Employment is committed to ensuring all work environments where employees are working are free from unlawful discrimination, harassment and bullying.

mteSA will provide an environment where employees and others in the workplace are treated fairly and with respect.

mteSA will ensure that when employment decisions are made, they are based on merit, not on irrelevant attributes or characteristics that an individual may possess. mteSA will also work to create work environments with promote good working relationships.

## Policy Guidelines:

1. This policy applies to all employees, agents and contractors of mteSA
2. Is not limited to the workplace or work hours, this policy extends to all functions and places that are work related, including but not limited to work lunches, conferences, social functions and client functions
3. An employee of mteSA must understand and comply with this policy
4. An employee of mteSA must ensure they do not engage in any unlawful conduct towards other workplace employees, customers/clients or others with whom they come into contact through work
5. Ensure they do not aid, abet or encourage other persons to engage in unlawful conduct
6. Follow the Complaints and Grievance Policy if they experience any unlawful conduct
7. Report any unlawful conduct they see occurring to other in the workplace in accordance with the Complaints and Grievance Policy
8. Maintain confidentiality if they are involved in the complaint procedure

Workplace employees should be aware that they can be held legally responsible for their unlawful conduct.

Workplace employees, who aid, abet or encourage other persons to engage in unlawful conduct, can also be legally liable.

### Failing to comply with this policy

All workplace employees are required to comply with this policy at all times. If an employee breaches this policy, they may be subject to disciplinary action. In serious cases this may

include termination of employment. Contractors who are found to have breached this policy may have their contracts with mteSA terminated or not renewed.

If a person makes an unfounded complaint in bad faith (e.g. making up a complaint to get someone else in trouble or making a complaint where there is no foundation for the complaint), that person may be disciplined and may be exposed to a defamation claim.

## **Discrimination**

Direct discrimination in employment occurs when a person is treated less favourably than another in their employment because of a reason or ground which is prohibited by law. The prohibited grounds of discrimination are set out in the Federal, State and Territory anti-discrimination laws and include sex, race, age etc.

A full list of the grounds of discrimination which operate federally and in the State and/or Territories in which workplace participants undertake their work for mteSA will be relevant and are listed below:

- Race (including colour, nationality, descent, ethnic, ethno-religious or national origin)
- Religious belief, affiliation, conviction or activity
- Sex
- Marital status, domestic status, relationship status
- Pregnancy (including potential pregnancy)
- Homosexuality, transsexuality, sexuality, sexual preference/orientation, lawful sexual activity, gender identity
- Carers' responsibilities, family responsibilities, carer or parental status, being childless
- Disability/impairment, including physical, mental and intellectual disability
- Breastfeeding
- Age (including compulsory retirement)
- Industrial/trace union membership, non-membership or activity
- Political belief, opinion, affiliation, conviction or activity
- Employer association membership, non-membership or activity
- HIV/AIDS
- Defence service
- Association (i.e. association with a person who has one of more of the attributes for which discrimination is prohibited)
- Religious appearance or dress (in work or study) (SA only)
- Association with a child (in customer service)

While discrimination on the basis of irrelevant criminal records is only unlawful in the Northern Territory and Tasmania, a person may still make a complaint to the Australian Human Rights Commission about being discriminated against because of their irrelevant criminal record. Because this type of discrimination is not 'unlawful' under the Commonwealth laws, the Commission has no powers to make orders for compensation or make other orders to compel a party to do something. The Commission's powers are limited to making a recommendation for action (whether compensation or otherwise) and to 'tabling' their report in parliament (which is tantamount to 'naming and shaming').

Separately to ordinary discrimination laws, there are laws in the Commonwealth, New South Wales, Queensland, the Australian Capital Territory, Northern Territory, Western Australia and Tasmania, that prohibit persons from taking spent criminal records into account or otherwise disclosing the details of a spent criminal record.

## **Harassment**

Harassment is unwelcome conduct directed towards a person based on a ground of discrimination (as set out above), that a reasonable person would expect to offend, humiliate or intimidate the other person.

Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated. Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person. However, conduct will not be sexual harassment if a reasonable person, having regard to all the circumstances, would not have anticipated that the conduct would offend, humiliate or intimidate the other person.

Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a hostile working environment for other participants can also be unlawful.

Examples of sexual harassment include, but are not limited to:

- Physical contact such as pinching, touching, grabbing, kissing or hugging
- Staring or leering at a person or at parts of their body
- Sexual jokes or comments
- Requests for sexual favours
- Persistent requests to go out, where they are refused
- Sexually explicit conversations
- Displays of offensive material such as posters, screen savers, internet material etc
- Accessing or downloading sexually explicit material from the internet
- Suggestive comments about a person's body or appearance
- Sending rude or offensive emails, attachments or text messages

## **Bullying**

### **What is workplace bullying?**

Workplace bullying is repeated, unreasonable behaviour by an individual or group of individuals, directed towards a worker or a group of workers that create a risk to health and safety. It includes both physical and psychological risks and abuse.

'Repeated behaviour' refers to the persistent nature of behaviour and can refer to a range or pattern of behaviours over a period of time (for example, verbal abuse, unreasonable criticism, isolation and subsequently being denied opportunities – i.e. a pattern is being established from a series of events).

'Unreasonable behaviour' means behaviour that a reasonable person, having regard to all circumstances, would view as unreasonable in the circumstances may result in that employee feeling victimised, humiliated, undermined or threatened by that behaviour.

Bullying behaviours can take many different forms, from the obvious (direct) to the more subtle (indirect).

**Direct bullying includes:**

- Abusive, insulting or offensive language or comments
- Spreading misinformation or malicious rumours
- Behaviour or language that frightens, humiliates, belittles or degrades, including over-criticising, or criticism that is delivered with yelling or screaming
- Displaying offensive material
- Inappropriate comments about a person's appearance, lifestyle, family, sexual preferences or any personal or private matter
- Teasing or regularly making someone the focus of pranks or practical jokes
- Interfering with a person's personal property or work equipment
- Harmful or offensive initiation practices

**Indirect bullying includes:**

- Unreasonably overloading a person with work, or not providing enough work
- Setting timeframes that are difficult to achieve, or constantly changing them
- Setting tasks that are unreasonably below, or above, a person's skill level
- Deliberately excluding or isolating a person from normal work activities
- Withholding information that is necessary for effective performance of the person's job
- Deliberately denying access to resources or workplace benefit and entitlements (for example, training, leave etc.)
- Deliberately changing work arrangements, such as rosters and leave to inconvenience a particular worker or workers

The above examples do not represent a complete list of bullying behaviours. They are indicative of the type of behaviours which may constitute bullying and therefore are unacceptable to mteSA.

A single incident of unreasonable behaviour does not usually constitute bullying. However, it should not be ignored as it may have the potential to escalate into bullying behaviour.

A person's intention is irrelevant when determining if bullying has occurred. Bullying can occur unintentionally, where actions which are not intended to victimise, humiliate, undermine or threaten a person actually have that effect.

Bullying in the workplace is harmful not only to the target of the behaviour but damages mteSA culture and reputation. It is unacceptable and will not be tolerated.

**What does not constitute workplace bullying?**

Managing workplace employees does not constitute bullying, if it is done in a reasonable manner. Managers have the right, and are obligated to manage workplace employees. This includes directing the way in which work is performed, undertaking performance reviews and providing feedback (even if negative), and disciplining and counselling staff.

Examples of reasonable management practices include:

- Setting reasonable performance goals, standards and deadlines in consultation with workers and after considering their respective skills and experience
- Allocating work fairly
- Rostering and allocating work hours in a fair and reasonable manner
- Transferring a workplace employee for legitimate and explained operational reasons
- Deciding not to select a workplace employee for promotion, following a fair and documented process
- Informing a workplace employee about unsatisfactory work performance in a constructive way and in accordance with any workplace policies or agreements
- Informing a workplace employee about inappropriate behaviour in an objective and confidential way
- Implementing organisational changes or restructuring
- Conducting performance management processes