

<b>Title: Workplace Conduct Policy (including Complaints Procedure)</b>		Policy No: 43100
<b>Policy Owner:</b> Chief Executive Officer		
<b>Policy Operational Delegate:</b> People & Culture Manager		
<b>Last Reviewed:</b> September 2023		<b>Suggested Review date:</b> September 2025
<b>Reference or source:</b> State and Federal Discrimination Laws		
<b>Purpose:</b> <ul style="list-style-type: none"> <li>To create a working environment where all employees, contractors and clients are treated with dignity, courtesy and respect;</li> <li>To create a working environment that is free from unlawful discrimination, harassment, victimisation and bullying;</li> <li>To clearly outline Family Life's expectations regarding standards of workplace conduct; and</li> <li>To provide an effective and fair procedure for the handling of complaints.</li> </ul>		
<b>Application:</b> All employees, prospective employees, temporary employees, contractors, and volunteers	<b>Type:</b> Policy	<b>Policy group:</b> People
<b>Relevant Policies:</b> Code of Conduct; Disciplinary Policy		

## 1. POLICY STATEMENT

Family Life is committed to providing employees, prospective employees, temporary employees, contractors, and volunteers (known collectively as "Employees"), where reasonably practicable, with an environment free from all forms of unlawful discrimination, harassment (including, but not limited to, sexual harassment), bullying and victimisation.

Family Life requires all Employees to treat others with dignity, courtesy and respect, and to not engage in conduct that may constitute unlawful discrimination, harassment, bullying or victimisation of others ("Unlawful Behaviour"). Family Life considers Unlawful Behaviour to be unacceptable and it will not be tolerated under any circumstances.

**Note:** Where concerns are raised in good faith in relation to "improper conduct associated with Family Life" under the scope of the Whistleblower Policy, then this conduct will be managed in accordance with the Whistleblower Policy.

## 2. UNLAWFUL BEHAVIOUR

Unlawful Behaviour includes (but is not limited to):

### Harassment

Harassment is any unwelcome and/or uninvited verbal or physical behaviour or conduct that intimidates, humiliates, vilifies or offends another person(s).

Harassment does not refer only to sexual harassment, but also includes harassment on any basis including, but not limited to, race, impairment, gender, pregnancy, potential pregnancy, a person's sexual orientation, personal characteristics, appearance or beliefs.

Harassment includes 'vilification', which is a public act which incites, encourages, or urges others to hate, have serious contempt for, or severely ridicule a person or group of people because they are (or are thought to be) members of a particular group.

## **Racial Harassment**

Racial harassment may involve hostile or offensive physical, verbal or non-verbal behaviour of a racist nature. Racial harassment is against the law.

### **Examples of Racial Harassment**

Racial harassment includes, but is not limited to:

- Abusive language, racist jokes, racist name calling;
- Display or circulation of racially offensive written or visual material;
- Physical threats/assault or insulting behaviours/gestures (based on a person's race);
- Open hostility or humiliation (towards or based on a person's race);
- Unfair allocation of work and responsibilities (based on a person's race);
- Exclusion from normal workplace conversation or social events (based on a person's race);
- Offensive e-mails or other correspondence of a racist nature; and
- Racial vilification.

## **Sexual Harassment**

Sexual harassment is any unwanted or unwelcome sexual behaviour, which could be reasonably expected to make a person feel offended, humiliated or intimidated. Unintentional sexual harassment may also give rise to liability; no actual harm needs be suffered by the recipient of sexual harassment. Sexual harassment is also against the law.

### **Examples of Sexual Harassment**

Sexual harassment can be physical, verbal or written. Sexual harassment takes many forms, from relatively mild banter to actual physical violence. People may not always realise that their behaviour constitutes sexual harassment, but they must recognise that what is acceptable to one person may not be acceptable to another.

Sexual harassment includes, but is not limited to the following:

- Insensitive jokes, innuendo, teasing, pranks or comments of a sexual nature;
- Sexually explicit conversation(s);
- sexually suggestive behaviour, such as leering or staring;
- Emails sent to another person involving jokes or any other material containing sexual or other inappropriate references;
- Uninvited touching and/or unnecessary body contact (including brushing up against someone, touching, fondling or hugging);
- Sexual gestures;
- requests for sex;
- Threat of dismissal, loss of promotion, etc. for the refusal of sexual favours;
- Downloading offensive material from the internet or other electronic media which may be seen, inadvertently or otherwise, by another person, whether willingly or not;
- Lewd comments about appearance or dress;

- Displays of sexually offensive material, e.g. pin-ups, screen savers, photos, calendars or objects;
- Speculation about a person's private life and sexual activities; and
- Threatening or actual sexual violence.

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

Some types of sexual harassment can also be a criminal offence. These include indecent exposure, stalking and sexual assault, as well as obscene or threatening phone calls, letters, emails, text messages and posts on social networking sites.

Sexual harassment is against the law. Sexual harassment does not have to be repeated. A single incident is enough to constitute sexual harassment. Sexual harassment can occur in the workplace, at work-related events, or between colleagues outside of work.

## Discrimination

There are Federal and State laws to help protect people from discrimination and harassment. Federal laws generally overlap with State laws and prohibit the same type of discrimination, however there are some gaps and differences in the protections offered. Employers are required to comply with both Federal and State laws.

Discrimination is defined as the treatment, or proposed treatment, of another person unfavourably, because of a personal characteristic protected by the law, such as sex, age, race or disability.

Discrimination can occur in two forms - either directly or indirectly:

**Direct Discrimination** is when a person or group is treated less favourably than another person or group in a similar situation because of a personal characteristic protected by law.

For example, an employee is harassed and humiliated because of their race or an employee is refused promotion because they are 'too old'.

**Indirect Discrimination** is when an unreasonable requirement, condition or practice is imposed that has, or is likely to have, the effect of disadvantaging people with a personal characteristic protected by law.

For example, redundancy is decided based on people who have had a worker's compensation claim rather than on merit.

## Protected personal characteristics under State and Federal laws include:

- Age
- Parental status or status as a carer
- Sex
- Disability (including physical, sensory and intellectual disability, work related injury, medical conditions, and mental, psychological and learning disabilities)
- Race (including colour, nationality, ethnicity and ethnic origin)
- Gender Identity
- Intersex status
- Lawful Sexual Activity
- Sexual Orientation
- Employment Activity
- Marital Status
- Physical Features
- Relevant Criminal Record

- Relevant Medical Record
- Political Belief or Activity
- Industrial Activity
- Pregnancy
- Breastfeeding
- Religious Belief or Activity
- Personal association with someone who has, or is assumed to have, any of these personal characteristics.

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

## Vicarious Liability

While the person who sexually harasses or discriminates against someone else is liable and accountable for their own behaviour, employers can also be held vicariously liable for acts of sexual harassment or discrimination engaged in by their employees or agents.

## Bullying

Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety. Reasonable management action that is carried out in a reasonable way is not bullying.

**Repeated behaviour** refers to the persistent nature of the behaviour, and can involve a range of behaviours over time.

**Unreasonable behaviour** refers to behaviour that a reasonable person, having regard to all the circumstances, would see as unreasonable, and/or would expect to victimise, humiliate, intimidate, undermine and/or threaten the other person.

**Risk to health and safety** includes risk to the mental or physical health of the Employee.

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour or an abuse or misuse of power, which undermines, humiliates, denigrates or injures the recipient.

Bullying behaviour may involve (but is not limited to) any of the following types of behaviour:

- aggressive or intimidating conduct;
- abusive, insulting or offensive language or comments;
- unjustified criticism or complaints;
- belittling or humiliating comments;
- spreading misinformation or malicious rumours;
- teasing, practical jokes or 'initiation ceremonies';
- exclusion from work-related events;
- setting unreasonable work timelines, or constantly changing deadlines;
- unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level;
- using a system of work as a means of victimising, humiliating, undermining, punishing or threatening;
- withholding information that is vital for effective work performance;
- displaying offensive material;

- pressure to behave in an inappropriate manner.

This behaviour must be repeated and unreasonable, and must create a risk to health and safety, in order for it to be bullying.

Bullying within the workplace can take place between:

- an Employee and a manager;
- co-workers, including trainees;
- an Employee and another person in the workplace (for example, a contractor, service provider, customer or union representative).

## Cyber bullying

Bullying may also include cyber bullying. Cyber bullying is bullying using technology.

For example, using the internet, mobile phone or other technology to bully another person.

## Reasonable management action is not workplace bullying

Reasonable management action carried out in a reasonable manner does not constitute bullying.

Reasonable management action may include for example:

- performance management processes, which is conducted in a reasonable manner;
- disciplinary action for misconduct, which is carried out in a reasonable manner;
- informing an employee about unsatisfactory work performance or inappropriate work behaviour;
- directing an employee to perform duties in keeping with their job;
- investigating complaints made against employees;
- maintaining reasonable workplace goals and standards.

Any reasonable management actions must be conducted in a reasonable manner. If not conducted in a fair and reasonable manner, management actions could constitute bullying or harassment.

## Occupational Violence

Occupational violence includes any incident where an Employee is physically attacked or threatened in the workplace.

Occupational violence may include but is not limited to:

- Striking, kicking, scratching, biting, spitting or any other type of direct physical contact;
- Throwing objects;
- Attacking with knives, guns, clubs or any other type of weapon;
- Pushing, shoving, tripping, grabbing;
- Conducting 'initiation' ceremonies for new employees;
- Any form of indecent physical contact.

## 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 constitute discrimination, sexual harassment or victimisation.

Victimisation is against the law.

It is also victimisation to threaten someone (such as a witness) who may be involved in the investigating of an equal opportunity concern or complaint.

Victimisation is a very serious breach of this policy, and if found to have occurred, may result in formal disciplinary action against the Employee.

Family Life has a zero tolerance approach to victimisation.

## 3. RESPONSIBILITIES

### Employee, Volunteer and Contractor Responsibilities

Family Life Employees, volunteers and contractors must:

- Treat others with dignity, courtesy and respect;
- Not engage in conduct that may constitute unlawful discrimination, harassment, bullying or victimisation of others (“Unlawful Behaviour”);
- Not encourage or assist others to engage in conduct that may constitute Unlawful Behaviour;
- Take reasonable steps to prevent Unlawful Behaviour occurring in the workplace;
- Seek resolution, where appropriate, in accordance with the Complaints Procedure;
- Refrain from making false, vexatious or frivolous complaints about others;
- Act in good faith in any initiatives taken under the Complaints Procedure to resolve concerns or complaints; and
- Maintain confidentiality in respect of any complaint or concern made or to which they become privy to.

### Manager and Team Leader Responsibilities

Family Life managers, supervisors and team leaders must:

- Model appropriate standards of behaviour;
- Take steps to educate and make Employees aware of their obligations under this policy and the law;
- Intervene promptly and appropriately when they become aware of inappropriate behaviour and/or Unlawful Behaviour;
- Act impartially in resolving issues and enforcing workplace behavioural standards, making sure relevant parties are heard;
- Assist Employees, where appropriate, in informal resolution of complaints;
- Seek advice from the People & Culture team, where Unlawful Behaviour is observed or alleged;
- Refer formal complaints about breaches of this policy to the People & Culture team;
- Take reasonable steps to ensure that Employees who raise an issue or make a complaint are not victimised for doing so;

- If involved in gathering information or investigating a complaint, ensure that confidentiality in relation to all aspects of the complaint is maintained; and
- Monitor the workplace environment and respond appropriately and sensitively to attempt to prevent Unlawful Behaviour.

## **Preventing Sexual Harassment in the Workplace**

In order to create a safe physical and online working environment, Family Life will:

- provide information, instruction, training and support about the importance of preventing and addressing sexual harassment in the workplace;
- address unwanted or offensive behaviour as early as it becomes aware of it;
- encourage the reporting of sexual harassment; and
- ensure it has an effective complaints procedure in place to deal with complaints of sexual harassment.

Sexual harassment which is engaged in within the course of employment is considered serious misconduct and can be a valid reason for dismissal. It can also result in instant dismissal (without notice).

## **4. COMPLAINTS PROCEDURE**

Family Life strongly encourages any Employee who believes they have been discriminated against, bullied, harassed or victimised, to take appropriate action.

Where appropriate, Employees are encouraged to consider resolving their concerns in the first instance through an informal process.

Bystanders will be supported to report unlawful discrimination, harassment (including sexual harassment), and bullying in the workplace.

### ***Informal Resolution***

In most cases, the earlier that a person directly raises their concerns about the behaviour of another person, the greater the prospect that both the inappropriate behaviour ceases, and the working relationship between the Employees improves.

Wherever possible, an Employee or a Manager/Team Leader who is concerned about the behaviour of another Employee, should make a clear, polite and discreet request for them to cease the behaviour.

This may be done informally in one of the following ways:

- Individually approaching the Employee face to face;
- Approaching the Employee with the support of their Manager/Team Leader;
- Asking their Manager/Team Leader to raise their concern with the Employee on their behalf;
- Composing an appropriate email, letter or other form of communication, to the Employee, setting out their concern and requesting they cease engaging in the behaviour of concern;
- A combination of the above.

## ***People & Culture Assistance***

Any Employee at any time may refer their complaint about another person's alleged inappropriate behaviour in the workplace, to a member of the People & Culture team.

In particular where:

- They feel they would be more comfortable discussing their concern with someone outside their work area; or
- Their Manager/Supervisor/Team Leader may be the person behaving inappropriately; or
- They have attempted to resolve their concern informally and directly already, without success.

A Manager/Supervisor/Team Leader may also at any time, refer a complaint to a member of the People & Culture team, where they are of the view that a concern of an Employee that has been brought to their attention is sufficiently serious or complex, or where they require assistance in resolving the complaint.

## ***How to Make a Complaint***

Referral by an Employee of their complaint to the People & Culture team, may be done in the following manner:

- ***In person*** - complaints may be referred by making an appointment with a member of the People & Culture team, who will interview them regarding their complaint. People & Culture may require the Employee to sign a statement of their complaint as a record of interview.
- ***In writing*** – an Employee may make a complaint in writing. This should be submitted in a sealed envelope and be marked confidential, and attention to a member of the People & Culture team, or alternatively may be submitted via email, with the subject marked confidential. Subject to the nature of and detail contained within the complaint, People & Culture may still require an interview.

Employees making a written complaint will need to ensure that they provide as many of the following details:

- Their name, title, area and contact details;
- The specific section of the policy alleged to have been breached;
- The particulars of the complaint including the following:
  - What is alleged to have happened
  - When it happened (date, time)
  - Where it happened (situational context, location)
  - Who was involved (names)
  - Any witnesses to the situation (names if known)
  - Whether there are any relevant documents (e.g. letters or emails) pertaining to the complaint

## ***Preliminary Assessment by People & Culture***

Upon receipt of a complaint, People & Culture will make a preliminary assessment of the complaint. People & Culture will consult with the Employee/s alleged to have been subjected to the inappropriate behaviour, and/or their Manager/Team Leader, prior to determining the manner in which People & Culture will attempt to resolve the complaint.

In determining the form of resolution to be attempted, People & Culture will have regard to all the relevant circumstances of the matter.

During this preliminary assessment stage, People & Culture may make an assessment that the complaint does not indicate a breach of the policy, and/or is misconceived.

### ***Resolution Approaches***

Following preliminary assessment, People & Culture will attempt one or possibly more of the following approaches as deemed appropriate in an effort to resolve the complaint:

- Offering the parties to the complaint, conciliation or a facilitated discussion;
- Determining that the complaint needs to be the subject of formal investigation;
- Advising the Employee or Manager/Team Leader that the alleged behaviour does not constitute a breach of the policy and is misconceived;
- Referral of the matter to the police.

### ***Conciliation/Facilitated Discussions***

Where People & Culture has assessed the parties as being both willing to resolve the complaint, and it is appropriate given the circumstances, conciliation or a facilitated discussion may be organised.

Conciliation/facilitation is a confidential process where an independent and neutral third party, the conciliator/facilitator, assists the parties to develop resolution ideas and to negotiate and reach an agreement about how the complaint might be resolved. Unlike formal complaint investigation, the conciliator or facilitator will not impose a decision upon the parties. However, through their facilitation and technical skills they are able to assist the parties to explore the issues in depth, options for resolution and reach agreement about resolving the complaint. They may make suggestions for an agreement; give advice on likely agreement terms; and encourage the parties to reach an agreement.

During a conciliation or facilitation, a conciliator/facilitator will:

- give all parties involved a fair chance to have their say, and explore ways to resolve the complaint;
- keep personal information, discussions and any agreement reached, confidential;
- not take sides; and
- not make findings or impose an outcome.

### **Principles applicable to both conciliations and facilitated discussions**

Parties participating in conciliation or facilitation are required at all times to show respect for the other person/s involved, and are expected to genuinely seek to reach agreement about the resolution of the complaint.

Agreements, including undertakings for resolution, will be in writing and signed by both parties. A copy of the agreement will be provided to the parties and their managers and kept on their confidential employee file.

Parties to a conciliation or facilitated discussions are required at all times to maintain confidentiality about the complaint, the conciliation or facilitated discussion, and any agreement reached.

### **Misconceived complaints**

Where People & Culture make a preliminary assessment that the complaint does not allege a breach of the policy, it will advise the complainant that their complaint is misconceived.

It is important to note that whilst the behaviour of concern may not constitute a breach of the policy, the complainant may be raising legitimate workplace concerns such as interpersonal conflict, where conciliation/facilitated discussion may still be an appropriate means of dispute resolution. People & Culture will advise the complainant on the next steps in such circumstances.

## **Formal Complaint Procedure**

Where informal methods of resolution fail, or where a more serious incident is alleged to have occurred, Employees should follow the procedure set out below.

Formal complaint investigation may only be initiated by a complaint in the following circumstances:

- Where People & Culture determines that conciliation or facilitated discussion is not an appropriate approach to resolving the complaint, taking into account all of the relevant circumstances; or
- Where previous attempts to conciliate or mediate a complaint have been unsuccessful.

Note: any investigation undertaken in accordance with this procedure may be deemed to be a misconduct investigation and as such may replace the requirement for a misconduct investigation under the Family Life Disciplinary Policy.

## **Principles applicable to formal complaint procedure**

Formal complaint investigations will be undertaken in a confidential, timely manner and the principles of natural justice will be observed, including:

- The right of each party to be heard;
- The right of the respondent to be given the opportunity to respond;
- The right of each party to be treated fairly;
- The right of the respondent to have a support person present at any interviews related to the investigation;
- The right of the respondent to know the allegations made against them; and
- The right of the parties to a decision maker who acts fairly and in good faith.

## **Respondents**

Employees who are respondents to a complaint will be provided with a reasonable timeframe within which to provide a written response to a complaint, which is the subject of a formal complaint investigation.

## **Confidentiality**

Parties to a formal complaint investigation are required at all times to maintain confidentiality about the complaint, findings made and the outcomes following those findings.

Employees who are either a party themselves or who have direct or indirect knowledge of a concern or complaint are not to divulge to others, directly or by inference, details of a complaint or concern (or even a potential one). This requirement includes a duty to not divulge the manner in which the complaint or concern is being resolved or the resolution itself.

Gossiping or the spreading of rumours as a result of, or in connection with, a process followed under this policy, will not be tolerated under any circumstances and may lead to disciplinary action for those concerned.

A breach of confidentiality by a party to, or a participant in, a formal complaint procedure, may result in disciplinary action for those concerned.

An important exception to the general requirement of confidentiality, is that Employees may divulge details of a concern or complaint for the purposes of obtaining necessary advice, support or for otherwise acting in a manner consistent with this procedure, to the following people:

- Their immediate Manager;
- Their Manager's Manager;
- Members of the People & Culture team;
- Their personal legal representative;
- An industrial officer of a Union of which they are a member;
- An Employee Assistance Program Counsellor that is currently providing them support; or
- Their treating doctor or psychologist.

## Investigators

People & Culture will appoint a competent investigator to investigate the complaint. Investigators appointed may be either internal (including a member of the People & Culture team) or from an external organisation.

## Standard of proof

The standard required for an investigator to determine whether a complaint is proven will be on the balance of probabilities.

## Findings

Investigators will make findings as to whether a complaint is either:

- Substantiated, meaning the complaint allegations are proven;
- Partially substantiated, meaning some but not all of the complaint allegations are proven; or
- Unsubstantiated, meaning the complaint was not proven to the standard of proof required.

The investigator will notify People & Culture of their findings in writing; and the respondent to the complaint will be notified in writing of the findings, however a copy of the full investigation report will generally not be made available to the respondent (or any other parties).

## Further actions/outcomes

Based on the investigation findings, the relevant Family Life Executive level decision maker will make a decision regarding any further appropriate action.

In the event of a finding that the complaint is substantiated or partially substantiated, this may include disciplinary action in accordance with the Family Life Disciplinary Policy, against a respondent whose behaviour has been found to be in breach of this policy.

## Referral of the matter to appropriate authorities

Certain behaviours in breach of this policy may also constitute a criminal offence and be referred to the police and/or other appropriate authorities.

## Breach of Policy

Family Life views a breach of this policy very seriously. A breach of this policy by an Employee may result in disciplinary action up to and including termination of employment.

## 5. DEFINITIONS

### **Workplace**

The law defines the workplace as "any place where a person attends for the purpose of carrying out any functions in relation to his or her employment, occupation, business, trade or profession and need not be a person's principal place of business or employment". The 'workplace' may therefore include employees attending work functions, conferences, business or field trips.

### **Complainant(s)**

A complainant is an Employee who makes a complaint to the Family Life People & Culture team or their Manager/Supervisor/Team Leader about the alleged breach of the policy by another Employee.

### **Respondent(s)**

A respondent is an Employee who is alleged to have breached the policy as outlined in the complaint.

### **Parties**

A term used to describe both the respondent(s) and the complainant(s) usually during the course of resolution. For example, "the parties attended conciliation and reached agreement".

### **Unlawful Behaviour**

Unlawful Behaviour includes unlawful discrimination, harassment, bullying or victimisation of others.

### **Employee**

An Employee includes an employee, prospective employee, temporary employee, contractor, and/or volunteer.