

## EQUAL OPPORTUNITY, ANTI DISCRIMINATION, ANTI HARRASSMENT AND ANTI BULLYING POLICY

<b>Policy Number</b>	P-STA-001	<b>Version Number</b>	3.00
<b>Drafted by</b>	Director of Education	<b>Approved Date:</b> <b>Review Date:</b>	January 2022 January 2023
<b>Responsibility</b>	The Board of Bubup Womindjeka Family and Children's Centre Association (Inc.)		
<b>Related Service Policies</b>	<ul style="list-style-type: none"> <li>Occupational Health and Safety Policy</li> <li>Staff Code of Conduct Policy</li> <li>Grievances and Complaints Policy</li> </ul>		
<b>Legislation and Standards</b>	<p>Relevant legislation and standards include but are not limited to:</p> <ul style="list-style-type: none"> <li>Equal Opportunity Act 2010 (Vic)</li> <li>Charter of Human Rights and Responsibilities Act 2006 (Vic)</li> <li>Racial and Religious Tolerance Act 2001 (Vic).</li> <li>Racial Discrimination Act 1975 (Cth)</li> <li>Sex Discrimination Act 1984 (Cth)</li> <li>Disability Discrimination Act 1992 (Cth)</li> <li>Age Discrimination Act 2004 (Cth).</li> <li>Disability Act 2006 (Vic)</li> </ul>		
<b>Sources</b>	<ul style="list-style-type: none"> <li>Legislation as listed above.</li> </ul>		

### AUTHORISATION

This policy was adopted by the Bubup Womindjeka Family and Children's Centre Board of Governance on 15<sup>th</sup> August 2016.

### PURPOSE

This policy is intended to ensure that there is a shared understanding amongst all Bubup Womindjeka Family and Children's Centre employees, volunteers, students and the Board with regard to acceptable and appropriate behaviour within the workplace and that reasonable steps are taken to ensure a workplace free of all forms of discrimination and harassment, including sexual harassment and bullying and to support equality of opportunity for all employees.

### POLICY STATEMENT

Bubup Womindjeka Family and Children's Centre is committed to the following values:

- Equal employment opportunity encourages a diverse organisation and workforce reflecting the broad diversity of the community.
- 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, vilification or victimisation.
- Everyone in the workplace has rights and responsibilities under equal opportunity and anti discrimination legislation. This responsibility ensures the working environment is safe, inclusive and promotes respect for others.
- All leadership team members have a responsibility to comply with legislation, monitor the work environment and encourage respect and diversity and to act promptly where concerns arise or complaints are made.

### SCOPE

This policy applies to the Approved Provider, Persons with Management or Control, Nominated Supervisor, Persons in day-to-day Charge, staff, contractors, volunteers, students on placement, parents/guardians, children and others attending the programs and activities of Bubup Womindjeka Family and Children's Centre.

## BACKGROUND

### Equal Opportunity

Equal opportunity is a requirement under both Victorian and Commonwealth legislation. In Victoria, the main piece of legislation which makes it unlawful to discriminate is the *Equal Opportunity Act 2010* (Vic) (EO Act 2010).

Protected attributes in Victoria include:

- age
- colour
- descent or national or ethnic origin
- disability/impairment
- industrial activity/inactivity
- lawful sexual activity/sexual orientation or preference
- gender identity
- marital status, including de facto
- physical features
- political belief or activity
- pregnancy/breastfeeding
- race
- religious belief or activity
- sex
- status as a parent or carer
- personal association with someone of the above attributes
- irrelevant criminal conviction (under the Australian Human Rights Commission Act 1986 (Cth)).

### Discrimination

Workplace discrimination can occur in:

- recruiting and selecting staff
- terms, conditions and benefits offered as part of employment
- who receives training and what sort of training is offered
- who is considered and selected for transfer, promotion, retrenchment or dismissal
- any other unfavourable treatment including harassment.

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

The Equal Opportunity Act 2010 includes a **positive duty** on employers and persons who have obligations under the Act to eliminate discrimination, sexual harassment and victimisation. This positive duty to eliminate discrimination obliges workplaces to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation.

The Equal Opportunity Act 2010 provisions impose a positive obligation on employers to take action to eliminate prohibited conduct before it occurs or prior to a complaint being made as far as possible. The provisions require employers to think proactively about compliance with the anti-discrimination laws. This means for example, ensuring staff are undertaking training, regularly assessing workplace compliance and taking measures to ensure compliance and achieve improvement.

The duty on employers to take action to eliminate discrimination is also present in a different form in Commonwealth legislation such as the Disability Discrimination Act 1992, which also applies to Victorian workplaces.

### Bullying

Bullying is a significant occupational health and safety issue, as it can cause harm to a person's health and wellbeing, both physical and psychological. Under the *Victorian Occupational Health and Safety Act 2004* employers have a primary legal duty to provide a healthy and safe workplace. Employees also have a responsibility to abide by safety standards and to cooperate with their employer's actions to ensure a healthy and safe workplace is maintained.

Bullying may also be unlawful under federal and state anti-discrimination legislation where the bullying is linked to, or based on, one of the attributes covered by the various pieces of legislation (for example, age, sex, race, disability, etc.).

Serious cases of bullying may also be illegal under the *Crimes Act (Vic) 1958* and can result in imprisonment of up to 10 years.

## Victimisation

Victimisation is unlawful under the *Victorian Equal Opportunity Act 2010 (Vic)*. It is unlawful for a person to subject or to threaten to subject another person to any detriment because the other person, or someone associated with the other person, has made an allegation or complaint of discrimination, harassment or bullying on the basis of a protected attribute.

## Harassment

Harassment is unlawful under the *Victorian Equal Opportunity Act 2010*. A person unlawfully harasses another person if they make 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;
- intimidated or frightened; and/or
- uncomfortable at work.
- 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 someone's race or religion
- asking intrusive questions about someone's personal life, including their sex life.

## Sexual Harassment

Sexual harassment is unlawful under the *Victorian Equal Opportunity Act 2010* and under federal legislation (*Sex Discrimination Act 1984 (Cth)*). 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, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated. It has nothing to do with mutual attraction or consenting friendships, whether sexual or otherwise.

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

In Victoria, co-workers can be named sole respondents in cases of alleged sexual harassment.

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.

## DEFINITIONS

The terms defined in this section relate specifically to this policy.

**Direct discrimination** is treating or proposing to treat a person with a protected attribute unfavourably because of that attribute (listed above). The new test is whether or not certain treatment was less favourable to the person claiming discrimination, placing emphasis on the consequences of the treatment on the person claiming direct discrimination because of a protected attribute.

**Indirect discrimination** can occur when there is a requirement or condition or practice that is the same for everyone but disadvantages a person or is likely to disadvantage a person because they have one or more of the following protected attributes and which is not reasonable.

**Bullying** The following types of behaviour, where repeated or occurring as part of a pattern of behaviour could be considered to be workplace bullying:

- physical or verbal abuse
- intimidation
- yelling, screaming or offensive language
- excluding or isolating employees
- psychological harassment
- constant unreasonable and unconstructive criticism

Bullying does not cover situations where an employee has a grievance about legitimate and reasonable:

- performance management processes
- disciplinary action
- allocation of work in compliance with systems

**Unreasonable behaviour** means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the other person.

**Behaviour** includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining, punishing or threatening.

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

**Disability** The EO Act 2010 defines disability (also known as impairment) as:

- Partial or total loss of a bodily function or part of the body
- The presence in the body of a disease- causing organism
- Malfunction of a part of the body, including a mental or psychological disease or disorder, or learning disability
- Malformation or disfigurement of a part of the body, including an impairment that may exist in the future (including because of a genetic predisposition to that impairment) and behaviour that is a symptom or manifestation of an impairment.

## PROCEDURES

### When discrimination bullying or harassment occurs

- If a person believes they are being bullied, harassed or discriminated, and if that person feels able to do so, they should speak with the discriminator, bully or harasser regarding the unwanted, unwelcome or inappropriate behaviour.
- If that person feels unable to communicate directly with the bully, discriminator or harasser, the matter should be referred to the Human Resources Coordinator for assistance.
- Where an employee believes a colleague is being exposed to discrimination, bullying or harassment, that person has a duty to assist the colleague and bring the matter to the Human Resources Coordinator attention.
- If a staff member needs to ask any questions about any aspect of unacceptable conduct they may contact the Human Resources Coordinator or Nominated Supervisor.

## Action by Bubup Womindjeka Family and Children's Centre

- Human Resources Coordinator and Nominated Supervisor will consider a range of steps in response to a complaint even though the complainant may not want this to occur.
- If the Human Resources Coordinator and Nominated Supervisor considers this is necessary, this will be discussed with the complainant who will be advised as to the further steps considered necessary.
- Human Resources Coordinator and Nominated Supervisor may also decide to stand aside a staff member on pay or relocate an individual to different duties whilst a complaint is being investigated.

## Investigation of complaints

- Human Resources Coordinator and Nominated Supervisor will investigate all alleged breaches of this policy.
- All issues will be investigated and handled confidentially in line with the Staff Complaints and Grievance Policy and the Privacy and Confidentiality Policy. The purpose of the investigation is to determine, using the principles of natural justice, whether any unacceptable conduct has occurred.
- Investigations may be conducted internally, and an external investigator may be appointed or arranged for an investigation by a panel of both internal and external investigators.

## Intention

In relation to cases of discrimination, bullying or harassment, the fact that the alleged perpetrator may not have intended to discriminate against the other person or bully or harass them, is irrelevant

## Principles of natural justice

- Any allegations of unacceptable conduct should be investigated promptly.
- The person who is alleged to have committed acts constituting unacceptable conduct should be treated as innocent until such time as findings are made that any of the allegations are substantiated and that unacceptable conduct has occurred.
- The person alleged to have committed the unlawful conduct must be given the opportunity to provide his or her response or comment on the allegations.

## No victimisation or detrimental action

A complainant will not be disadvantaged in their role at BWFCC for making a complaint, being a witness or being an informant to an investigation of a complaint.

Some examples of unlawful victimisation include ostracising, demoting or dismissing the person because they are a complainant, where the complaint has been made in good faith.

## Vexatious complaints

Bubup Womindjeka Family and Children's Centre will not tolerate vexatious complaints. If a claim is not initiated in good faith (for example; is initiated without reasonable grounds to do so), disciplinary action may be taken.

## Consequences for breach of this policy

If a complaint against a Bubup Womindjeka Family and Children's Centre staff member is substantiated, they will face appropriate disciplinary action by Bubup Womindjeka Family and Children's Centre, commensurate with the seriousness of the matter.

Appropriate disciplinary action may include provision of an apology, a warning, formal counselling and / or termination of employment (including termination without notice). 'One-off' or non-intentional breaches may result in the full range of disciplinary action.

The person may also be subject to complaints under applicable state or federal legislation.

## EVALUATION

In order to assess whether the values and purposes of the policy have been achieved, the Nominated Supervisor will:

- regularly seek feedback from everyone affected by the policy regarding its effectiveness
- monitor the implementation, compliance, complaints and incidents in relation to this policy
- keep the policy up to date with current legislation, research, policy and best practice
- revise the policy and procedures as part of the service's policy review cycle, or as required
- notify parents/guardians at least 14 days before making any changes to this policy or its procedures.

### Relevant Forms/Documents

### Version History

Date	Version	Author/s	Details
July 2014	1.00	Public officer	New policy
April 2016	2.00	Chief Executive Officer	Revision for updated format, document ID, related policies and relevant legislation and standards. Addition of definitions and evaluation.
December 2019	3.00	Executive Officer Director of Education Human Resources Coordinator	Reviewed and updated policy procedures to be in line with current organisational structure.
January 2021	3.00	Human Resources Coordinator	Policy reviewed and no changes made.
January 2022	3.00	Director of Education	Policy reviewed and minor editorial amendments made.