

ABC Policy - Anti-Discrimination, Anti-Bullying and Anti-Harassment Policy

POLICY STATEMENT

We encourage and support positive workplace behaviours that reflect our values of integrity, respect, collegiality and innovation.

Behaviour like bullying, discrimination and harassment is clearly at odds with our values, as well as potentially breaching the law – and this will not be tolerated.

PURPOSE OF THIS POLICY

This policy is to make you aware of your obligations together with the ABC Grievance Resolution Guidelines:

- not to harass, discriminate, bully or victimise others and the consequences of such conduct; and
- how to make a grievance or complaint.

For information on how to raise issues of bullying, harassment and discrimination, and information about the approach we may take to resolve these issues, see the ABC Grievance Resolution Guidelines.

WHO AND WHEN

This policy applies to all ABC employees, all ABC suppliers, contractors and subcontractors, work experience students, interns and all ABC volunteers (**Workers**).

The expectations of behaviour set out in this policy apply:

- in the workplace (including outside normal working hours),
- while undertaking work activities (including interactions with third parties and while working away from the ABC's premises),
- at work-related events (including conferences and social functions whether during or outside business hours where the interaction is with other workers, whether in person, through email, messaging, social media and other means of communication).

OUR COMMITMENT

We will:

- take all reasonable steps to ensure that our workplaces are free from unlawful discrimination, harassment and bullying. This includes taking reasonable and proportionate measures to eliminate sexual harassment, sex-based harassment, hostile workplace environments on the ground of sex and victimisation in relation to complaints under this policy;
- respect the right of and encourage our people to raise legitimate issues or concerns and lodge grievances or complaints in accordance with this policy and the [ABC Grievance Resolution Guidelines](#);
- treat all grievances raised under this policy seriously;
- take appropriate action to address inappropriate workplace behaviours;
- ensure that people involved in the grievance process are supported and not victimised.

YOUR OBLIGATIONS

You must not engage in any behaviour which may constitute unlawful:

- bullying;
- discrimination;
- harassment (including sex-based and sexual harassment); or
- subjecting of a person to a work environment that is hostile on the ground of sex.

That behaviour will not be tolerated by the ABC. If you see inappropriate behaviour, you should raise it straight away with your manager or ABC People & Culture.

In resolving grievances, you must:

- ensure that any grievances or complaints that you raise are genuine and not false, malicious, frivolous, misconceived or vexatious; and
- participate in any grievance resolution process in good faith, clearly identify the issues of the grievance and provide all relevant information in support of the grievance.

BULLYING

All of us at the ABC have a legal obligation not to bully anyone and to treat each other with respect and courtesy.

Bullying in our workplace is unacceptable and will not be tolerated.

What is bullying?

Workplace bullying is repeated, unreasonable behaviour directed towards a Worker or a group of Workers, which creates a risk to health and safety.

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

Unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

The following types of behaviour, whether intentional or unintentional, may be workplace bullying if they are repeated, unreasonable and create a risk to health and safety:

- abusive, insulting or offensive language or comments;
- aggressive and intimidating conduct;
- belittling or humiliating comments;
- victimisation;
- practical jokes or initiation;
- unjustified criticism or complaints;
- threatening to expose an individual's sexuality, intersex status, or trans or gender diverse identity;
- withholding information that is vital for effective work performance;
- intentionally setting unreasonable timelines or constantly changing deadlines;
- intentionally setting tasks that are unreasonably below or beyond a person's skill level;
- denying access to information, supervision, consultation or resources to the detriment of the Worker;
- spreading misinformation or malicious rumours;

- changing work arrangements such as rosters and leave to deliberately inconvenience a particular Worker or Workers;
- speculating with colleagues about an individual's sexuality, intersex status, or trans or gender diverse identity;
- deliberately excluding someone from work-related activities.

Workplace bullying can be carried out in a variety of ways, including through verbal or physical abuse, through email, text messages, internet chat rooms, instant messaging or other social media channels.

In some cases, workplace bullying can continue to take place outside of the workplace. It can be directed at a single Worker or a group of Workers and be carried out by one or more person.

Workplace bullying can occur upwards (i.e. directed towards a manager or supervisor), sideways (i.e. directed towards a colleague or contractor) or downwards (i.e. directed towards a subordinate or work experience participant).

What is not bullying?

A single incident of unreasonable behaviour is not workplace bullying but can be raised as a workplace grievance.

Reasonable management action carried out in a reasonable manner is not workplace bullying.

The ABC may take reasonable management action to effectively direct and control the way work is carried out. It is reasonable for managers and supervisors to allocate work and give feedback on a Worker's performance. These actions are not workplace bullying if they are carried out in a lawful and reasonable way, taking the particular circumstances into account.

A manager exercising legitimate authority at work may cause some discomfort for a Worker. The question of whether management action is reasonable is determined by considering the actual management action rather than a Worker's perception of it. Where management action involves a significant departure from established policies or procedures, whether the departure was reasonable in the circumstances will need to be considered.

The following examples could be considered as reasonable management action:

- setting realistic and achievable performance goals, standards and deadlines;
- fair and appropriate rostering and allocation of working hours;
- transferring a Worker to another area or role for operational reasons;
- informing a Worker about unreasonable behaviour in an objective and confidential way;
- implementing organisational changes or restructuring;
- providing reasonable feedback as part of the performance appraisal and/or management process;
- taking disciplinary action, including suspension or terminating employment where appropriate or justified in the circumstances.

Differences of opinion and disagreements are not workplace bullying. People can have differences or disagreements in the workplace without engaging in repeated, unreasonable behaviour that creates a risk to health and safety. Some people may also take offence at action taken by management, but that does not mean that the management action in itself was

unreasonable. However, in some cases conflict that is not managed may escalate to the point where it becomes workplace bullying.

DISCRIMINATION

What is unlawful discrimination?

Discrimination can be direct or indirect.

Direct discrimination is treating one person less favourably than another because of one of the prohibited grounds of discrimination.

In Australia, unlawful grounds include, but are not limited to:

- (a) sex;
- (b) race, colour, descent, nationality or national origin;
- (c) age;
- (d) impairment/disability;
- (e) sexual preference;
- (f) gender identity and transgender status;
- (g) pregnancy or potential pregnancy;
- (h) marital status;
- (i) family responsibilities, responsibilities as a carer and/or parental/carer status;
- (j) religious or political beliefs; and
- (k) trade union membership or industrial activity.

An example of direct discrimination would be deciding not to employ a person because they are from a particular ethnic background.

Indirect discrimination describes a situation or condition which seems at face value to be neutral, or the same for everybody, but with which a person or group of people with a protected attribute (e.g. parental status, impairment, race) are unable or less able to comply because of that attribute. An example of this is a person with a disability is prevented from accessing the equipment they need to do the job because of the way the workplace is designed.

It is unlawful to discriminate on a prohibited ground even if it was unintended.

There are exceptions from anti-discrimination laws which may apply in some situations - for example, because of the inherent requirements of a particular job, an occupational qualification, where it would otherwise cause unjustifiable hardship to the employer in the case of disability or where it is necessary to comply with other laws including those relating to health and safety.

UNLAWFUL HARASSMENT

What is unlawful harassment?

Unlawful harassment is a form of unlawful discrimination. It is any form of behaviour that is unwelcome or uninvited, that a reasonable person would have anticipated would humiliate, offend or intimidate the person exposed to the conduct, and that is based on one of the grounds of unlawful discrimination.

Harassment, like discrimination, can be unlawful if it is based on one of the prohibited grounds.

Unlawful harassment can include behaviour such as:

- telling offensive jokes about particular racial groups;
- making insulting comments or taunts about someone's race or religion;
- humiliating comments or actions about a person's disability, such as insults;
- conduct that contributes to a working environment that is hostile or intimidating towards a particular sex, race, or culture;
- harassing colleagues through social networking media sites; and
- sending harassing text messages to colleagues.

While harassment generally involves a pattern of behaviour, it can also result from a single incident.

SEX-BASED HARASSMENT

What is sex-based harassment?

Sex-based harassment occurs where a person:

- engages in unwelcome conduct of a demeaning nature; and
- the unwelcome conduct is in relation to another person by reason of another person's sex (or a characteristic appertaining generally or generally imputed to that person's sex, e.g. gender stereotypes),

in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Examples of sex-based harassment include:

- making offensive jokes about a person's sex or a characteristic appertaining generally or generally imputed to that person's sex, for example around gender stereotypes;
- making suggestive or offensive comments about a particular sex; or
- verbally abusing, threatening or taunting someone because of their sex.

Sex-based harassment does not necessarily need to involve conduct of a sexual nature, however where it does, it may also amount to sexual harassment.

SEXUAL HARASSMENT

What is sexual harassment?

Sexual harassment occurs where a person:

- makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person; or
- engages in other unwelcome conduct of a sexual nature in relation to the other person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated **the possibility** that the person harassed would be offended, humiliated or intimidated.

Examples of sexual harassment include:

- showing or sending obscene, suggestive or pornographic pictures, emails, text or graphics;
- asking intrusive questions or making unwelcome comments about a colleague's personal life or body, including their sex life;
- unnecessary familiarity, such as deliberately brushing up against a person;
- using suggestive or sexualised nick-names for colleagues;
- suggestive comments or jokes;
- unwanted invitations to go out on dates or requests for sex;
- staring or leering; and
- behaviour that would also be an offence under criminal law such as indecent assault, sexual assault, indecent exposure, stalking or obscene communications.

Mutual attraction between people is not sexual harassment. Conduct which is welcome or consensual is not unlawful, and friendships (sexual or otherwise) which develop between people who meet at work are a private concern provided they do not adversely impact on the workplace or create a conflict of interest.

However, you should take great care before engaging in conduct you believe to be welcome. Always remember that some people may not feel comfortable telling you that your behaviour is offending them and is not welcome. This may be because of their personality or may be because of the relative status of the people involved (e.g. they are too worried about the possible impact on their employment if they complain).

It is your responsibility to ensure that you do not engage in conduct which is not welcome. Before acting or speaking, consider whether your conduct might be unwelcome. Not having considered the impact, saying that your conduct was a joke or didn't mean anything is not an excuse. Your actions may amount to sexual harassment regardless of intent.

You should also remember that even conduct which is welcome may not be appropriate in the workplace. If you are unsure whether conduct is appropriate, you should speak to your manager or People and Culture.

You will be liable for your own unlawful conduct. The ABC may also become liable for that conduct.

If you do not feel comfortable with someone else's behaviour, you should tell them, or if you don't feel able to do so, raise the issue with your manager or People and Culture.

HOW TO RAISE A GRIEVANCE

You can raise a grievance or concern about unlawful bullying, harassment and discrimination using the ABC Grievance Resolution Guidelines. The Guidelines also set out information about the approaches we may take to resolve these issues.

CONSEQUENCES OF BREACH

Breaches of this policy may lead to disciplinary action, including possible termination of employment or, for independent contractors termination of contract. Where a breach of this policy constitutes a breach of any law, action may also be taken in accordance with that law.

RELATED DOCUMENTS

This policy should be read in conjunction with the following related documents:

- ABC Grievance Resolution Guidelines
- ABC Workplace Complaint/Grievance Form
- Work Health, Safety & Wellbeing Policy
- ABC WHS Consultation Arrangements/other WHS policies.

This policy summarises some of the rights and obligations which are created by the legislation. The policy is not intended to go beyond the legislation. If you are an employee, you should read this policy in conjunction with the applicable ABC employment agreement, but it does not form part of your contract of employment.

QUESTIONS?

If you have any questions about this policy, your obligations or the grievance process, please contact People & Culture.

DOCUMENT HISTORY

- Reviewed 2023 (Endorsed by PSC 31 Mar 23; Approved by ABC Board 19 April 2023)
- Updated 2022 (Approved by Head Employee Relations)
- Updated 2020 (Approved by Head Employee Relations)
- Reviewed 2017 (Approved by ABC Board 30 November 2017)
- Superseded policies - Workplace Behaviour Policy