

SERVICE AREA	Human Resources
POLICY & PROCEDURE NAME	Anti - Discrimination, Bullying & Harassment
BOARD ENDORSEMENT DATES	23 February 2016
EFFECTIVE DATE	27 May 2016
DATE FOR REVIEW	23 February 2019
VERSION NUMBER	4

PURPOSE OF THE POLICY

This Policy outlines Sunshine's policy on discrimination, harassment and bullying, the rights and responsibilities of all Sunshine employees with respect to those matters, and processes when dealing with an incident or allegation involving discrimination, bullying or harassment.

Sunshine promotes a diverse workplace and values the talent, expertise and experience of all employees. We aim to provide employees with a fair, flexible and safe working environment free from discrimination, harassment and bullying.

Sunshine regards discrimination, harassment, bullying and vilification as completely unacceptable and they will not be tolerated. Individuals who are found to have engaged in such conduct or to be in breach of this Policy will be subject to disciplinary action.

Sunshine may vary the terms and application of this policy and its procedures at its complete discretion. This policy does not form part of an employee's contract of employment.

SCOPE

This policy applies to all Sunshine employees, Board members, Volunteers, Contractors and Consultants, during work hours, as well as during any situations where employees are engaged in work related activities (such as work-related functions) and non-work related activities (such as use of social media) which impacts Sunshine, its employees and customers, whether during or outside of work hours. It also applies to other persons or organisations with their interaction with Sunshine.

DEFINITIONS

Bullying is any kind of repeated, verbal or non-verbal unreasonable behaviour directed towards an employee or a group of employees, that creates a risk to health and safety. Bullying can be a form of unreasonable behaviour, or a series of similar or different behaviours, which can be obvious or subtle.

Bullying in the workplace can take place between anyone.

Bullying includes, but is not limited to:

- Verbal and non-verbal aggression;
- Abusive, threatening, offensive or derogatory language;
- Physical abuse or intimidation;

- Behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling or screaming;
- Constant and unreasonable criticism;
- Spreading misinformation or malicious rumours;
- Inappropriate comments about a person's appearance, lifestyle or their family;
- Teasing and making someone the target of pranks or practical jokes;
- Belittling someone's opinions;
- Interfering with a person's personal property or work equipment;
- Unreasonably overloading a person with work or not providing enough work;
- Deliberately excluding, isolating or marginalising a person from normal work activities;
- Withholding information that is vital for effective work practices;
- Setting timelines that are difficult to achieve or constantly changing deadlines; and
- Setting tasks that are unreasonably below or beyond a person's skill level.

Discriminate means to treat a person or group (deliberately or unintentionally) less favourably due to a **personal attribute** or **belief** of that person (or group of people). This includes circumstances where such treatment occurs because a person is associated with someone else who has the relevant personal attribute or belief. Under the relevant legislation, both direct and indirect discrimination is unlawful:

Direct discrimination means: obvious unequal treatment.

Indirect discrimination means: treatment that appears fair but has the effect of being unequal and "unreasonable in all the circumstances" to a person or group with a particular characteristic.

Harassment is uninvited, unwanted behaviour that makes a person feel offended, humiliated or intimidated, where it is reasonable in the circumstances for them to feel that way.

Unlawful harassment can include, (but is not limited to):

- Verbal abuse or comments that put someone down or stereotype people because of their race, sexuality, pregnancy, disability, etc;
- Jokes based on race, sexuality, pregnancy, disability, etc.;
- Mimicking someone's accent, or the habits of someone with a disability;
- Offensive gestures based on race, sexuality, pregnancy, disability, etc;
- Ignoring or isolating a person or group because of their race, sexuality, pregnancy, disability etc; or
- Display or circulation of racist or other offensive material.

Inherent requirements refers to those core or essential activities, skills or other requirements of a job, that are: essential to a workplace in general and to a specific position in particular, cannot be allocated elsewhere, are an essential part of the job, and result in significant consequences if they are not performed. These need to be determined in the circumstances of each job and may include:

- the ability to perform the tasks or functions which are a necessary part of the job productivity, safety and quality requirements;
- the ability to work effectively in the team or other type of work organisation or site concerned;
- the ability to work safely.

Sexual harassment is any unwelcome sexual advance or request for sexual favours which makes a person feel offended, humiliated or intimidated. The offending behaviour does not have to be repeated to be considered sexual harassment. For all intents and purposes, any reference to the word "harass" or "harassment" in this Policy should be read as including sexual harassment.

Sexual harassment can include (but is not limited to):

- Staring, leering or unwelcome touching;
- Suggestive comments or jokes;
- Sending sexually explicit emails or text messages;
- Repeated unwanted requests to go out on dates;
- Intrusive questions about a person's private life;
- Requests for sex; and
- Displaying posters, magazines or screen savers of a sexual nature.

Victimisation occurs when a person subjects or threatens to subject another person to detriment on the basis that the person has:

- Made a complaint or grievance against them or proposes to make a complaint;
- provided or proposes to provide information or documents in relation to a complaint or grievance;
- appeared or proposes to appear as a witness in a hearing; or
- made an allegation that they have done an act that is unlawful under the legislation.

Vilification generally means any act that happens publicly (as opposed to privately) and could incite others to hate, have serious contempt for, or severely ridicule a person or group of people, on the grounds of the race, religion, sexuality or gender identity.

PROCEDURE

Discrimination

Both state and federal legislation prohibits unlawful discrimination against individuals or groups of people. For employees working in New South Wales, this legislation includes the *Racial Discrimination Act 1975 (Cth)*, *Sex Discrimination Act 1984 (Cth)*, *Disability Discrimination Act 1992 (Cth)*, *Age Discrimination Act 2004 (Cth)*, *Anti-Discrimination Act 1977 (NSW)* and the *Fair Work Act 2009 (Cth)*.

No.	Procedure	Due Date	Person Accountable
1.	No discrimination No Sunshine employee may discriminate against: <ul style="list-style-type: none"> • another employee; • a customer or client; or • any other visitor to our workplace, because of a protected attribute.	Ongoing	ALL Employees
2.	Protected Attributes It is unlawful to discriminate on the basis of a person's: <ul style="list-style-type: none"> • Age; • Race; • Family/carer's responsibility; • Gender; • Marital or domestic status; • National or ethnic origin; • Physical, mental, intellectual, or psychiatric disability; • Political opinion; • Pregnancy or potential pregnancy and breast feeding; • Religious beliefs; • Sexual preferences; • Transgender; or • Any other legislated characteristics 	Ongoing	ALL Employees
3.	Lawful Exceptions It is a lawful exception for Sunshine to discriminate in circumstances where the attribute in question prevents the person from <ul style="list-style-type: none"> • performing the inherent requirements of the job; AND • no reasonable accommodations can be made to allow the person to perform the job. 		
4.	Discipline for Violations Where employees breach these legal obligations, Sunshine may be liable for their unlawful conduct.	As arising	ALL Employees

5.	In some instances, breaches of these legal requirements may amount to criminal conduct for which the employee engaging in that conduct will be personally liable. Employees may also be exposed to personal liability if they have caused, instructed, aided or permitted another person to discriminate, harass or bully another employee.	As arising	ALL Employees
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Bullying and Harassment

There are many types of verbal, non-verbal and physical behaviour that could amount to bullying and harassment (including sexual harassment) and such conduct may not only be a breach of this policy but may also be a breach of workplace health and safety laws, and in some cases, criminal laws.

No.	Procedure	Due Date	Person Accountable
1.	No Sunshine employee may bully, harass (sexually or otherwise) or vilify: <ul style="list-style-type: none"> • another employee; • a customer or client; or • any other visitor to our workplace, for any reason, or at any time.	Ongoing	ALL Employees
2.	Reasonable management action Reasonable management action, carried out in a fair way, is not bullying. Managers and supervisors have a right to direct the way work is carried out and to monitor and give feedback on performance. They are also entitled to allocate work according to work systems, skills and customer/ client preferences. Reasonable management action includes, but is not limited to: <ul style="list-style-type: none"> • Performance management processes; • Informing an employee about inappropriate behaviour in an objective way; • Informing an employee about unsatisfactory work performance in a constructive way and in accordance with any workplace policies or agreements; and • Setting reasonable performance goals, standards and deadlines taking into account employee's respective skills and experience. 	Ongoing	All managers & supervisors
3.	Vilification No Sunshine employee may vilify any person or group of people, because they are (or are thought to be) of a certain race, sexual preference, or living with HIV/AIDS. Such conduct is against the law, will not be tolerated by Sunshine and will result in disciplinary action which may include dismissal.	Ongoing	ALL Employees

Sunshine's and Employees' Responsibilities

No.	Procedure	Due Date	Person Accountable
1.	<p>Leadership Team members</p> <p>All Sunshine leaders must do what they can reasonably, practically do to prevent unlawful discrimination, harassment and bullying within their teams. Specifically, they must:</p> <ul style="list-style-type: none"> • Be a good role model and not engage in behaviour that could be interpreted as discrimination, harassment or bullying; • Monitor the working environment to ensure acceptable standards of conduct are observed at all times; • Ensure that the people they supervise understand this Policy; • Make it clear that they will not tolerate any behaviour which could be in breach of this Policy; • Treat all grievances seriously and take immediate action to address and resolve the matter; and • Refer grievances to another officer if they do not feel that they are the best person to deal with the case (for example, if there is a conflict of interest or if the grievance is particularly complex or serious). 	Ongoing	ALL managers & supervisors
2.	<p>ALL Employees' Responsibilities</p> <ol style="list-style-type: none"> 1. Everyone has a responsibility to respect the rights of others and never participate in, or encourage discrimination, harassment, bullying or vilification. 2. All employees have a responsibility to: <ul style="list-style-type: none"> • Comply with this Policy; • Report breaches of this Policy; • Encourage anyone who is being bullied, harassed or discriminated against, to get help and advice (they should not, however, approach the bully or harasser themselves). 		ALL Employees

Discipline for Violations

No.	Procedure	Due Date	Person Accountable
1.	Sunshine will take all appropriate disciplinary or corrective action against any employee found to have violated this Policy, up to and including termination of employment, depending on the severity of the infringement.	As arising	

2.	In some instances, breaches of these requirements may amount to criminal conduct for which the employee engaging in that conduct will be personally liable. Employees may also be exposed to personal liability if they have caused, instructed, aided or permitted another person to discriminate, harass or bully another employee.	As arising	
3.	Where employees are in breach of legal obligations, Sunshine may be liable for their unlawful conduct.		

What to do if you are discriminated against, harassed or bullied

No.	Procedure	Due Date	Person Accountable
1.	If you feel you have been discriminated against, harassed or bullied, you may choose to lodge a grievance under Sunshine's Grievance & Dispute Handling Policy and Procedure.	Ongoing	ALL Employees
2.	Employee Assistance Program Sunshine has an employee assistance program operated by an external agency that employees dealing with any difficult work or family circumstances can access directly.	As arising	ALL Employees

RELATED POLICY

Grievance & Dispute Handling Policy

Code of Conduct

WH&S

LEGISLATION / REGULATIONS / STANDARDS

Work Health and Safety Act and Regulations (NSW)

Workers Compensation Act 1987

Racial Discrimination Act 1975 (Cth)

Sex Discrimination Act 1984 (Cth)

Disability Discrimination Act 1992 (Cth)

Age Discrimination Act 2004 (Cth),

Anti-Discrimination Act 1977 (NSW)

Fair Work Act 2009 (Cth)

National Standards for Disability Services, Standard 6 – Service Management

ASSOCIATED FORMS

AUTHORITY FOR APPROVING AMENDMENTS:

- 1. All amendments to the policy statement are to be approved by the persons responsible for policies from HR, WHS and Finance and Administration, the Policy Committee and the Board.**
- 2. All amendments to the format and procedures are to be approved by the persons responsible for policies from HR, WHS and Finance and Administration and the Policy Committee.**