

# Procedure

## Procedure Title

Diversity and Workplace Conduct Procedure

## Parent Policy

Diversity and Workplace Conduct Policy

## Preamble

If you witness or are subjected to unacceptable behaviour in the workplace, please make sure we know.

All concerns of unacceptable behaviour will be treated in a sensitive, fair and timely manner.

This procedure is to be used to resolve complaints or concerns involving:

- workplace bullying
- discrimination
- sexual harassment or
- victimisation.

Morningstar Hospitality Management encourages, where appropriate, the informal direct resolution of workplace conduct concerns in the first instance by raising the concerns directly with the person, and / or with their manager or supervisor.

However, Morningstar Hospitality Management recognises that this may not always be possible and formal approaches to resolution may need to be taken.

This procedure does not prevent an employee from taking their concerns to:

- The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or the Human Rights and Equal Opportunity Commission of Australia (HREOCA)
- Fair Work Ombudsman
- WorkSafe Victoria
- Victoria Police – where staff are feeling unsafe or the matter may include criminal behaviour.

The owner or their delegate, may, in the first instance, refer a complaint or concern to Victoria Police.

## Responsibilities

### 1.1 Employees

Morningstar Hospitality Management employees are required to:

- treat others with dignity, courtesy and respect, and to not engage in conduct that may constitute unlawful discrimination, sexual harassment, bullying or victimisation of others (“unlawful behaviour”);
- Seek resolution (where appropriate) in accordance with this procedure;
- Refrain from making false, vexatious or frivolous complaints about others;
- Act with good faith in any initiatives taken under this procedure to resolve concerns or complaints; and
- Maintain confidentiality in respect of any complaint or concern made by themselves or to which they become privy to.

### 1.2 Managers

Morningstar Hospitality Management Managers are required to:

- Provide leadership and act as a role model in relation to professional, fair and appropriate behaviour in the workplace;
- Ensure employee management practices are applied fairly and consistently;
- Ensure that they and their employees have completed the Morningstar Hospitality Management Equal Employment Opportunity (EEO) online training modules
- Educate employees on the Diversity and Workplace Conduct Policy and Complaint Procedure;
- Seek advice from People & Culture where unlawful behaviour is observed or alleged;
- Encourage employees to seek resolution in accordance with this procedure (where appropriate); and
- Monitor the workplace environment and respond appropriately and sensitively, to attempt to prevent unlawful behaviour.

## Definitions

<b>1.3 Confidentiality</b>	<p>Refers to the general requirement that 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.</p> <p>An important exception to this general requirement is that employees may divulge details of a concern or complaint to the people outlined in List 1:</p> <p><i>List 1: Confidentiality exceptions list</i></p> <ul style="list-style-type: none"> <li>• Their immediate manager</li> <li>• Their manager's manager</li> <li>• Members of the Morningstar Hospitality Management People &amp; Culture team</li> <li>• Their personal legal representative</li> <li>• An industrial officer of a Union</li> <li>• An Employee Assistance Program Counsellor</li> <li>• Their treating doctor or psychologist for the purposes of obtaining necessary advice, support or for otherwise acting in a manner consistent with this procedure.</li> </ul>
<b>Complainant(s)</b>	<p>A complainant is an employee who makes a complaint to the Morningstar Hospitality Management People &amp; Culture team or their supervisor/manager about the alleged breach of the policy by another employee.</p>
<b>Respondent(s)</b>	<p>A respondent is a member of staff who is alleged to have breached the policy as outlined in the complaint.</p>
<b>Parties</b>	<p>A term used to describe both the respondent(s) and the complainant(s) usually during the course of resolution. For example, "the parties attended mediation and reached agreement".</p>
<b>Misconceived</b>	<p>Refers to the situation where the alleged facts of a complaint, even where capable of being proven, would not constitute a breach of the policy.</p>

## **Vexatious**

Vexatious conduct refers to failure by a complainant to act in good faith or to knowingly or recklessly make a complaint that is without foundation.

## **Employee Assistance Program (EAP)**

If at any stage throughout the procedure either of the parties, or any other person requires counselling, referral may be made to the Company's EAP. The EAP is a service offered by Mathewson O'Hare (phone 1301 330 684). EAP is free to all Morningstar Hospitality Management staff and their families and is a 24/7 confidential service.

## **Discrimination**

Discrimination is treating or proposing to treat an individual unfavourably due to an attribute. These attributes (known as protected attributes) include:

- age
- impairment
- industrial or employment activity
- political belief or activity
- marital status, parental status or status as a carer
- physical features
- pregnancy
- race, religious belief or activity
- sex
- lawful sexual activity, sexual orientation or gender identity
- personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.

## **Direct discrimination**

Occurs when someone is treated less favourably than another person or group in a similar situation, because of one of the above attributes.

## **Indirect discrimination**

Involves imposing an unreasonable requirement, condition or practice that operates to disadvantage someone with an above attribute.

## **Harassment**

Harassment is unwelcome conduct that might reasonably cause a person to be offended, humiliated or intimidated, because they

## Sexual Harassment

have one of the above attributes. Harassment behaviours can be overt or subtle, verbal, non-verbal or physical.

Sexual harassment is:

- an unwelcome sexual advance or
- an unwelcome request for sexual favours or
- engaging in other unwelcome conduct of a sexual nature

These behaviours occur in circumstances in which a reasonable person\* (having regard to all the circumstances) would anticipate that the person concerned would be offended, humiliated or intimidated. Sexual harassment is not behaviour based on mutual attraction, friendship and respect. If the behaviour is consensual, it is not sexual harassment.

*\*A reasonable person exercises average care, skill, and judgment in conduct, and who serves as a comparative standard for determining liability.*

## Hostile Work Environment

A hostile workplace is one in which an employee is made to feel uncomfortable or excluded by the workplace environment.

**For example:** a workplace where racially or sexually crude conversations, innuendo or offensive jokes are part of the accepted culture. An employee can complain about such conduct as harassment even if the conduct in question was not specifically targeted at him or her.

## Bullying

Bullying is unreasonable behaviour directed towards another person in the workplace, or group of persons, that creates a risk to health and safety.

**For example:**

- Aggressive or intimidating conduct
- Belittling or humiliating comments
- Spreading malicious rumours
- Teasing, practical jokes or 'initiation ceremonies'
- Exclusion from work-related events
- Unreasonable work expectations, including too much or too little work, or work below or beyond a worker's skill level
- Displaying offensive material
- Pressure to behave in an inappropriate manner.

Unintentional bullying may still be dealt with under the Diversity and Workplace Conduct Policy

## Victimisation

Subjecting, or threatening to subject, someone to a detriment because they have:

- made a complaint alleging discrimination or harassment (unless the allegation was false and was not made in good faith).
- made a complaint to the Commission or Tribunal.

## Vilification

Conduct that incites:

- hatred against
- serious contempt for or
- revulsion/severe ridicule of a person or group of people because of their race or religion.

Such conduct can be a single event or series of events over a period. It may include the use of internet, Facebook, Twitter and e-mail to publish or transmit statements.

Conduct may not be vilification where it can be shown to be reasonable, undertaken in good faith and it represents genuine artistic, academic, religious or scientific endeavours.

## Procedure

Ref	Steps	Responsibility
1.	Staff members should raise issues of alleged workplace bullying, discrimination, sexual harassment or victimisation (hereafter referred to as 'a complaint') with the person directly if they are comfortable to do so in an attempt to resolve the issue.	Employee
2.	Where staff are not comfortable to raise the issue directly with the person concerned or this fails to resolve the issue, the staff member should raise the issue with their immediate supervisor or manager and attempt to resolve such claims locally and informally. Where such resolution fails or is not appropriate, staff should discuss the matter with the next most senior manager.	Employee Immediate Supervisor/Manager

3.	In the case of all such complaints, the School will review the allegations and respond to the staff member who raised the complaint.	Immediate Supervisor/Manager
4.	<p>While the procedural requirements of the various complaint resolution mechanisms vary, the School aims to ensure that:</p> <ul style="list-style-type: none"> <li>• complaints are addressed sensitively, promptly and in accordance with relevant School policy and principles of natural justice;</li> <li>• all reasonable steps are taken to respect the confidentiality of the people involved in a complaint;</li> <li>• fairness and impartiality prevail throughout the appropriate resolution process - until a complaint is investigated and a decision is made, a complaint is an allegation, not a fact;</li> <li>• appropriate records are maintained throughout the resolution process;</li> <li>• persons who notify of a complaint are protected from victimisation or reprisal; and</li> <li>• persons who notify a complaint are regularly informed of the progress of the matter, including the consequences of any finding that the allegation is substantiated or not substantiated.</li> </ul>	Complainant Immediate Supervisor/Manager
5.	In circumstances where the complaint is unable to be resolved at the informal stage or local level, the immediate supervisor or next most senior manager who has received the complaint may refer the matter to the appropriate delegated officer, the Director, People and Culture or nominee who will either make a relevant determination about the complaint, conduct a preliminary investigation into the circumstances regarding the complaint or formally investigate the matter to make findings or refer the matter to an external investigator to make findings.	Immediate Supervisor/Manager Human Resources

6.	<p>If the complaint is dealt with formally, the School will aim to ensure:</p> <ul style="list-style-type: none"> <li>• Before a complaint is investigated, the complainant describes the allegations they wish to make (in most instances, but not all, this will need to be in writing), including particulars of the allegations so that they can be investigated appropriately;</li> <li>• The respondent is provided with a copy of the allegations that will be investigated; and</li> <li>• All parties are informed in writing of the outcomes of any investigative process.</li> </ul>	Human Resources Complainant Respondent
7.	<p>Outcome and Referral</p> <p>If a complaint is investigated under Point 5 of this procedure and findings are made that substantiate any or all of the allegations made, the owner or nominee may refer the matter to the relevant nominated supervisor/delegated officer. The relevant nominated supervisor/Delegated Officer may:</p> <ul style="list-style-type: none"> <li>• Counsel the staff member involved on their behaviour and the findings made as a result of the investigation;</li> <li>• Take disciplinary action in accordance with clause 16 of the Morningstar Hospitality Management Pty Ltd Enterprise Agreement 2015</li> <li>• Take some other form of appropriate action; or</li> <li>• Take no further action.</li> </ul>	Human Resources Immediate Supervisor/Manager
8.	<p>This policy in no way limits a staff member's rights, including their access to a State based WorkCover Authority or the Fair Work Commission or any other jurisdiction (court or tribunal).</p>	



<b>Legislation and Standards</b>	<ol style="list-style-type: none"> <li>1. <i>Equal Opportunity Act 2010 (Vic)</i></li> <li>2. <i>Equal Opportunity Amendment Act 2011(Vic)</i></li> <li>3. <i>Occupational Health and Safety Act 2004 (Vic)</i></li> <li>4. <i>Charter of Human Rights and Responsibilities Act 2006 Vic</i></li> <li>5. <i>Racial and Religious Tolerance Act 2001 (Vic)</i></li> <li>6. <i>Human Rights and Equal Opportunity Commission Act 1986 (Cth)</i></li> <li>7. <i>Racial Discrimination Act 1975 (Cth)</i></li> <li>8. <i>Sex Discrimination Act 1984 (Cth)</i></li> <li>9. <i>Disability Discrimination Act 1992 (Cth)</i></li> <li>10. <i>Age Discrimination Act 2004 (Cth)</i></li> <li>11. <i>Fair Work Act 2009 (Cth)</i></li> <li>12. <i>Workplace Gender Equality Act 2012 (Cth)</i></li> <li>13. <i>Morningstar Hospitality Management Pty Ltd Enterprise Agreement 2015</i></li> </ol>
<b>Reference Policies and Supporting Documentation</b>	<p>Diversity and Workplace Conduct Complaints Procedure</p> <p>Staff Personal and Professional Code of Conduct – specifically clause 4.5</p> <p>Staff Interaction with Students Code of Conduct</p> <p>Employee Assistance Program</p> <p>Recruitment Policy</p> <p>Recruitment Procedures</p> <p>Workplace Flexibility Guidelines</p> <p>Social Media Policy</p> <p>Disciplinary Policy</p>
<b>Responsibility for Implementation</b>	Human Resources
<b>Status</b>	Revised
<b>Key Stakeholders</b>	<p>Senior Leadership Team</p> <p>Senior Managers and Team Leaders</p> <p>Human Resources Manager</p> <p>Morningstar Hospitality Management Employees</p>

<b>Approval Body</b>	Senior Leadership Team
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<b>Owner Job Title</b>	Director People and Culture People and Culture
<b>Procedure Author</b>	Senior Human Resources Business Partner
<b>Contact</b>	

### Change History

Version number	Approval date	Approved by	Brief outline of changes
2.0	June 2016	Senior Leadership Team	