

Anti-Discrimination, Harassment and Bullying Policy and Procedure

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This Policy applies to the staff of Murdoch Childrens Research Institute (“**MCRI**”), which includes the Victorian Clinical Genetics Services (“**VCGS**”).

1 Introduction

- 1.1 The purpose of this policy is to provide a mechanism for staff to raise a grievance in regards to discrimination, harassment and bullying without fear of retribution. It also aims to ensure that such grievances are appropriately investigated, that respondents receive fair and equitable treatment and that disciplinary action is taken where appropriate. We do not condone or tolerate discrimination, any form of harassment and/or bullying behaviour.
- 1.2 This policy is not exhaustive. It does not purport to set out all relevant staff obligations. In addition, this policy does not form part of any contract of employment, nor does it form part of any contract of service. This policy is not to be taken as making any representation or promise on which staff can or should rely.
- 1.3 We are committed to creating a culture of harmony and respect and encouraging staff to realise their potential regardless of gender, age, ethnicity, cultural background, disability, religion and sexual orientation. We support an environment that actively promotes health, wellbeing and safety whilst ensuring we meet legal and compliance responsibilities.

- 1.4 We aim to deal with allegations of discrimination, harassment and bullying in a prompt and confidential manner.
- 1.5 It may be against the law to authorise or assist another person to discriminate or harass and/or bully someone. As such, a person must not ask, instruct, or encourage anyone person to discriminate against, harass or bully another person. To comply with such a request could result in a complaint being lodged against either or both parties.
- 1.6 Refer to the [Human Resources Policy Dictionary](#) for terms requiring definition.

2 Responsibilities of management

- 2.1 To guard against discrimination, bullying, adverse action and harassment, we expect Line Managers to:
 - know their legal responsibilities and our expected standard of commitment;
 - set an appropriate standard of behaviour and lead by example;
 - ensure that all people covered by this Policy feel free to make complaints without fear or recrimination;
 - assist with, and be supportive of, any investigation that is undertaken;
 - exercise judgement to discourage frivolous or false complaints;
 - take early corrective action in consultation with HR to deal with behaviour that may be offensive or intimidating to some people;
 - contact HR immediately if they receive a complaint of bullying, harassment or discrimination.
- 2.2 We will not discriminate in the application of the complaints resolution procedure in respect of age; disability; gender; race; nationality; ethnic or national origin; religion or belief or sexual orientation. In addition, reasonable adjustments will be put in place, as appropriate, to support staff with a disability or for staff where English is their second language.
- 2.3 This policy has been developed in accordance with legal provisions of relevant legislation such as the:
 - [Australian Human Rights Commission Act 1986 \(Cth\)](#)
 - [Workplace Gender Equity Act 2012 \(Cth\)](#)
 - [Sex Discrimination Act 1984 \(Cth\)](#)
 - [Racial Discrimination Act 1975 \(Cth\)](#)
 - [Racial and Religious Tolerance Act 2001 \(Vic\)](#)
 - [Disability Discrimination Act 1992 \(Cth\)](#)
 - [Equal Opportunity Act 2005 \(Vic\)](#)
 - [Charter of Human Rights and Responsibilities Act 2006](#)
 - [Occupational Safety Act 2004 \(Vic\)](#)
 - [Age Discrimination Act 2004 \(Cth\)](#)
 - [Fair Work Act 2009 \(Cth\)](#)

3 Anti-Discrimination

- 3.1 You must not discriminate against another person or group of people. Discrimination in employment occurs when one person is treated less favourably than someone else is treated, or would be treated, in the same or similar circumstances, because that person has a particular attribute.
- 3.2 There are two types of discrimination:
 - direct discrimination; and
 - indirect discrimination.
- 3.3 Discrimination does not have to be calculated, intentional or even conscious.

3.4 *Direct Discrimination*

3.4.1 Direct discrimination means to treat someone with an attribute less favourably than a person without the attribute in the same or similar circumstances. The attributes covered are:

- race, colour, national extraction, or social or ethnic group
- marital status
- gender equality or intersex status
- political belief or activity
- medical condition (not affecting work performance)
- breastfeeding
- any other attributes protected by law
- sex
- age
- lawful sexual activity
- family or carer's responsibility
- religious belief or activity
- physical features
- trade union activity (or inactivity)
- employment activity
- pregnancy or potential pregnancy
- sexual orientation
- impairment (incl physical or mental disability)
- personal association with a person who is identified by reference to a protected attribute

3.5 *Indirect Discrimination*

3.5.1 Indirect discrimination occurs when an unreasonable requirement, condition or practice is imposed and persons with an attribute associated with one of the above grounds cannot comply with the condition or practice, whereas a greater proportion of persons without the attribute can comply.

3.5.2 For example, an employer has a policy of not letting any staff work part-time. People with children or family responsibilities could be disadvantaged.

3.6 *Exceptions*

3.6.1 There are some exceptions to anti-discrimination laws which apply in limited situations. If an exception applies, something which might otherwise constitute unlawful discrimination may not be unlawful.

3.6.2 It is not unlawful to decide not to employ a person who has an attribute, for example a disability, which makes it impossible for the person to perform the inherent requirements of the position. However, whether conduct amounts to unlawful discrimination will depend on the circumstances of each individual case.

4 Harassment

4.1 Harassment is any uninvited, unwelcomed or unreciprocated behaviour that offends, humiliates or embarrasses another person where a reasonable person would expect this to be the effect of the behaviour. It does not matter whether or not it was intended to humiliate, embarrass or offend the person. Harassment on any basis is prohibited and may be against the law if it is associated with one or more of the grounds listed in paragraph 3.4.1 above. It can consist of bullying, disability harassment or racial or religious vilification.

4.2 Harassment need not be repeated or continuous; a single incident can amount to harassment.

4.3 Harassment can be physical, verbal, visual or written. It can include words, pictures or statements. It may be transmitted by post, phone, fax, video, e-mail, mobile phone text message, computer screens or screensavers.

4.4 Seemingly harmless acts such as gossip, jokes, teasing or the use of inappropriate nicknames, can constitute harassment.

- 4.5 However, reasonable management action, taken by us in a reasonable way in connection with a worker's employment, is not harassment.
- 4.6 Any form of harassment will be regarded as serious misconduct or misconduct and a breach of the employment contract which may result in disciplinary action. Serious Misconduct is behaviour or action warranting immediate suspension of a staff member and instant dismissal from employment without notice or pay in lieu.
- 4.7 *Sexual Harassment*
- 4.7.1 Sexual harassment occurs where the conduct is unwanted, unwelcome or is uninvited. Unwanted sexual advances, and invitations on dates, can constitute harassment even if you do not intend to cause offence, hurt or humiliation by the advance or invitation. You must, therefore, always ensure that you do not engage in any form of conduct which:
- creates a hostile or distressing environment;
 - damages a person's prospects for promotion or other employment benefits;
 - undermines morale or causes stress; or
 - reflects adversely on your personal integrity or the integrity of our organisation.
- 4.7.2 Sexual Harassment is unlawful under the Federal Sex Discrimination Act 1984 and the Victorian Equal Opportunity Act 2010. Individuals who engage in behaviour which constitutes sexual harassment not only put us at risk of liability, but also expose themselves to possible legal action.
- 4.7.3 As an employer and community leader, we are strongly committed to removing sexual harassment in employment and recognises the right of all staff to:
- be treated fairly and with respect at all times, and
 - work and attend all our sponsored or related functions in an environment free from harassment and discrimination.
- 4.7.4 Sexual harassment can take many different forms and may include (but not limited to):
- sexual jokes, offensive telephone calls and email messages, displays of obscene or pornographic photographs, pictures, posters, screen savers and internet sites, reading matter or objects;
 - sexual propositions or persistent requests for dates;
 - making promises or threats in return for sexual favours;
 - physical contact such as patting, pinching, fiddling with a person's clothing or touching in a sexual way, familiarity such as brushing against a person or putting an arm around another person's body;
 - unwelcome or improper remarks or insinuations about a person's sex life or private life;
 - suggestive comments about a person's appearance or body;
 - leering, wolf whistles, catcalls, obscene gesture;
 - indecent exposure;
 - requests for sex;
 - sexually explicit conversation, insults, taunting or comments.
- 4.7.5 Stalking, sexual assault and rape are all criminal offences and staff and students are encouraged to report such offences to the police. In exercising its duty of care, we will investigate any such allegations under the provisions of the appropriate policies and procedures.
- 4.8 If you feel that you have been harassed, or have witnessed harassment taking place, we strongly encourages you to take action by making it clear that such behaviour is unwelcome and offensive; and/or by reporting the incident to an Equal Opportunity Contact Officer, Manager or Human Resources.

- 4.9 Any reports of harassment will be treated seriously, with sensitivity and confidentiality, except insofar as notifying parties directly involved in the incident and appropriate senior management.
- 4.10 No person should be treated unfairly as a result of complaining of harassment. Disciplinary action may be taken against anyone who victimises or retaliates against a person who has complained of harassment, or against any staff member who has been alleged to be harassing another.
- 4.11 Any staff member who is the subject of workplace harassment should follow the Complaint Resolution Procedure set out below.

5 Bullying

- 5.1 Workplace bullying takes place where:
- an individual or a group of individuals;
 - repeatedly behave unreasonably towards a worker, or a group of workers of which the worker is a member; and
 - that behaviour creates a risk to health and safety.
- 5.2 Examples of behaviour that may constitute (but not limited to) bullying include:
- continually making jokes or remarks about a person, or making more remarks about one member of a team compared to other team members;
 - verbal abuse, swearing or name calling;
 - excluding or isolating staff;
 - intimidation;
 - assigning meaningless tasks unrelated to a person's job;
 - deliberately changing work rosters to inconvenience particular staff;
 - deliberately withholding information that is vital for effective work performance;
 - initiation pranks;
 - constant criticism or insults;
 - spreading misinformation or malicious rumours; or
 - displaying written or pictorial material which may degrade or offend certain team members
- 5.3 Bullying does not include reasonable management action carried out in a reasonable manner. These may include:
- reasonable management decisions, discussions or actions (including performance counselling and managing underperformance);
 - setting reasonable work goals and standards;
 - reasonable supervision and performance of other genuine work-based responsibilities;
 - disciplinary action;
 - management instruction, directions and requirements that control the way work is done (for example, allocating work);
 - differences of opinion;
 - reasonable behaviour that does not break any law; and
 - legitimate restructuring or re-organising of a business or work.
- 5.4 *Prohibition on bullying*
- 5.4.1 All forms of workplace bullying are prohibited. If you engage in bullying you may be subject to disciplinary action.
- 5.4.2 Workplace bullying is a risk to health and safety. Engaging in bullying could also constitute a breach of your obligations under occupational health and safety legislation.

- 5.5 If you feel that you have been bullied, or have witnessed bullying taking place, we strongly encourage you to take action by making it clear that such behaviour is unwelcome and offensive; and/or by reporting the incident to your Line Manager, a member of the Executive Team or Human Resources.
- 5.6 Any reports of bullying will be treated seriously with sensitivity and confidentiality, except insofar as notifying parties directly involved in the incident and appropriate senior personnel.
- 5.7 Line Managers who fail to take appropriate corrective action when aware of bullying of a person will be subject to disciplinary action.
- 5.8 Any staff member who is the subject of workplace bullying should follow the Complaint Resolution Procedure set out below.

6 Complaints Resolution Procedure

6.1 Objectives

- 6.1.1 The objectives of the complaint resolution procedure are to provide a mechanism for you to raise a complaint without fear of retribution, and to enable corrective action to be taken where necessary.
- 6.1.2 The complaint resolution procedure is intended to give you the ability to say “no”, and to tell a person who is subjecting you to bullying, discrimination or harassment to stop, regardless of who that person is.
- 6.1.3 The complaint resolution procedure is also intended to assist us to determine whether any inappropriate conduct has occurred, and, if so, to take appropriate disciplinary action and implement measures to prevent any further inappropriate conduct from occurring.
- 6.1.4 The resolution procedure focuses on an informal process and a formal process. Both processes are listed below.
- 6.1.5 Alternatively, staff can contact the Employee Assistance Program (EAP). The EAP is a confidential counselling service for staff and their eligible family members. This service is provided by an independent, professional organisation called Davidson Trahaire Corpsych (DTC). All DTC counsellors are qualified, experienced professionals who have extensive training and experience in counselling, coaching and workplace consulting. For confidential information and appointments call 1300 360 364.
- 6.1.6 Initiating a discussion with a Line Manager, Head of your Group or Human Resources may help you determine whether the behaviour you have experienced constitutes unacceptable conduct and will help you to understand the process, and develop options for resolving your concerns in the future. For example, they can help you to:
- Formulate a strategy to facilitate a dialogue between yourself and the other person about your concerns;
 - Develop skills to address the alleged behaviour;
 - Clearly understand the further options available to you if the matter cannot be resolved by direct discussion.

6.2 Informal Process (Self-Management)

- 6.2.1 In many cases, simply telling the person concerned that their behaviour is causing distress, explaining why it is unwelcome and asking for it to stop will be sufficient. Often, the person is not aware that their behaviour is causing distress, and they will stop immediately once told.

6.2.2 You may decide to:

- personally approach the person or people involved to resolve your concerns by notifying them that their behaviour is unwelcome or unacceptable and that it should stop immediately and not occur again;
- speak to your Line Manager or Human Resources to discuss your concerns; or
- write a letter to the alleged offender, telling them that their behaviour is unwelcome or unacceptable and that it should be stopped immediately and not occur again.

6.3 *Formal Process*

6.3.1 If a complaint cannot be resolved by direct discussion, or you do not feel comfortable addressing the issue face to face, a formal complaint must be made in writing to Human Resources.

6.3.2 Stage 1 – Investigation

6.3.2.1 Following the written complaint, we may investigate any allegations.

6.3.2.2 As part of the investigation, you, the person against whom the allegations have been made (the respondent to the complaint), and any witnesses, will be interviewed separately. The respondent to the complaint will be provided with a summary of the allegations made.

6.3.2.3 Depending on the circumstances of the complaint, the respondent to the complaint and other staff involved in the investigation, may be stood down from their duties and sent home on full pay during the period when the investigation is being carried out.

6.3.3 Stage 2 - Resolution

6.3.3.1 If a complaint is found to be unsubstantiated, no further action will be taken against the respondent to the complaint. If no further action is to be taken, the reason for this decision should be explained to both parties.

6.3.3.2 If a complaint is substantiated, the possible outcomes include:

- mediation – this is a process where parties are brought together to try and reach agreement as to how the complaint should be resolved. Mediation provides the opportunity for a good working relationship to be re-established between the parties;
- an apology from the respondent to the complaint;
- agreed forms of future behaviour;
- action to redress the behaviour the subject of the complaint;
- transferring either of the parties to a different work location;
- counselling;
- taking disciplinary action against the respondent to the complaint.

6.3.3.3 Disciplinary action may include:

- issuing a verbal or written warning;
- downgrading the person's position, status or responsibility; or
- terminating the employment or engagement of the respondent, either with notice or summarily without notice.

6.3.3.4 When an outcome has been arrived at, the decision and action to be taken will be communicated in writing to the respective parties. The overall process should not normally exceed 30 working days.

6.4 *Withdrawing a Complaint*

- 6.4.1 Complaints may be withdrawn at any time.
- 6.4.2 In most cases, if you withdraw a complaint then no further action will be taken. Where, however, we suspect that a breach of this policy has occurred we reserve the right to investigate any such breach.

6.5 *False Accusations, Vexatious Complaints and Defamation*

- 6.5.1 If a person intentionally makes false allegations that another person has engaged in discrimination, harassment, sexual harassment, bullying or victimisation, then that person may be defaming the other person. It is therefore very important that all complaints of unacceptable conduct are based on truth and fact.
- 6.5.2 Intentionally false accusations, or allegations that are found to be unsubstantiated because they are of a frivolous or vexatious nature will be viewed seriously and, where found to be intentional or malicious, may result in us taking disciplinary action.

7 Victimization

- 7.1 This policy prohibits victimisation of a complainant, a respondent, or any person who is a witness to a complaint. Victimization means to subject a person to detriment because they made, or are a witness to, or are otherwise involved with the complaint. If a complaint of victimisation is made, it will be dealt with according to the complaints procedure set out above.
- 7.2 We will ensure, as far as is practicable, that persons covered by the scope of this policy are not victimised or penalised for reporting alleged unreasonable behaviour. Any person who is found to have victimised a person will be subject to the consequences of breaching this policy.
- 7.3 Some examples of victimisation include (but not limited to):
- suggesting to a would be complainant that it would be better for them (or the team) if they did not make a formal complaint;
 - threatening behaviour;
 - disciplinary action that is not otherwise warranted and would not have been taken if a complaint had not been made;
 - unreasonable change in duties or relocation;
 - exclusion or isolation;
 - failure to promote a person or downgrading a performance rating because they are regarded as a 'trouble maker' due to the complaint;
 - allocating work/tasks which are not usually part of a person's normal duties because they have made a complaint.

8 Confidentiality

- 8.1 In instances of any alleged breach of this policy, discretion is important to protect all people concerned. If you are involved in an investigation, either as a witness or as an investigator, then you must keep it confidential and not discuss it with anyone. Disclosing information about the investigation could result in disciplinary action being taken against you.
- 8.2 We will endeavour to keep a complaint and the details of any investigation as confidential as is reasonably possible, having regard to the rights of all involved in the investigation. However, there may be circumstances where full confidentiality cannot be maintained if the complaint is to be fully investigated in a procedurally fair manner or if disciplinary or corrective action is required.

- 8.3 The obligation of confidentiality does not prevent us from disclosing any material necessary to instigate or defend any legal proceedings, or make submissions in relation to any enquiry or complaint or to refer a matter to the police.

9 Breach of this Policy

- 9.1 We will treat all allegations seriously and impartially. The consequences will depend on the seriousness of the case. Outcomes may include, but are not restricted to the following:
- action to redress the discriminatory treatment or harassment;
 - requiring an apology to the affected person or persons;
 - providing mediation between the parties, if both parties agree to mediation process and to the mediator;
 - providing targeted training regarding prevention of unacceptable workplace behaviours;
 - offering support to the person making the complaint;
 - offering support to the person against whom the complaint is made;
 - disciplinary action, up to and including dismissal against the person found responsible for discrimination; and
 - disciplinary action, up to and including dismissal against the person making a complaint of discrimination if, after investigation, the complaint is found to have been malicious or vexatious.
- 9.2 Disciplinary action may be taken against anyone who retaliates against a person who has made a complaint.

10 External Complaint Options

- 10.1 If a complainant is not satisfied with the resolution of the complaint under this policy they can make a complaint to the following organisations:

Victorian Equal Opportunity and Human Rights Commission

Phone: (03) 9281 7100 or 1800 134 142 (toll free for country callers) or (03) 9280 1995 (interpreters)

Website: www.humanrightscommission.vic.gov.au

Email: information@veohrc.vic.gov.au

Details: Helps to resolve complaints of discrimination, sexual harassment, and racial and religious vilification in Victoria.

The Fair Work Commission

Phone: 1300 799 675

Website: www.fwc.gov.au

Email: inquiries@fwc.gov.au

Details: The Fair Work Commission is the national workplace relations tribunal. It is an independent body with power to carry out a range of functions such as dealing with complaints of unfair dismissal, resolving individual workplace disputes and ensuring compliance with workplace laws about pregnancy and work.

Worksafe Victoria

Phone: (03) 9641 1444 or 1800 136 089 (toll free)

Website: <http://www.worksafe.vic.gov.au/home>

Email: info@worksafe.vic.gov.au

Details: Victorian WorkCover Authority can assist with complaints about health and safety issues, unsafe working conditions and compensation enquiries.