

Workplace Discrimination, Harassment, Sexual Harassment and Bullying Policy

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1. Purpose

Auspicious Arts Projects (AAP) recognises the diversity of its workforce and understands that for the organisation to function in the best way, all workers must be respected and valued. As such, AAP endeavours to provide workers with a safe, respectful, inclusive and flexible work environment free from all forms of discrimination, harassment, sexual harassment and bullying.

All AAP workers are required to treat others with dignity, courtesy and respect.

By implementing this policy, AAP sets out that **unlawful** discrimination, harassment, sexual harassment and bullying will **not** be tolerated. Disciplinary action, up to and including termination of employment/cessation of engagement, may be taken against workers who breach this policy.

2. Who this policy applies to

This policy applies to all workers engaged by AAP, which includes, but is not limited to:

- Company owners and board members;
- Leadership and management personnel (e.g. producers, promoters, CEOs, executive directors, artistic directors, general managers, company managers, heads of department, managers, supervisors);
- Production and venue personnel (e.g. actors, dancers, directors, choreographers, writers, stage management, chaperones, technical crew, front of house);
- Full-time, part-time, seasonal and casual employees;
- Job candidates, including people auditioning for roles;
- Student placements, apprentices, work experience students/interns;
- Contractors, sub-contractors and secondees (e.g. casting, talent and freelance agents who have been contracted or sub-contracted for a specific purpose); and
- Volunteers and anyone working in an unpaid capacity.

All workers must comply with this policy as amended from time to time. While every worker is required to comply with this policy, this policy is not incorporated as a term of any employment contract or contract for services and does not create any rights enforceable by a worker against AAP. To the extent that there is an inconsistency between the law and this policy, the law will prevail.

This policy extends to every associated entity of AAP within the meaning of Section 50AAA of the *Corporations Act 2001* (Cth).

3. When this policy applies

This policy applies while the worker is at work. It also extends to work-related functions and to conduct outside of work where there is a sufficient connection to the workplace, including, but not limited to, the following circumstances:

- The way in which AAP provides services to clients and interacts with members of the public;
- All aspects of employment; recruitment and selection; conditions and benefits; training and promotion; task allocation; shifts; hours; leave arrangements; workload; equipment and transport;
- On-site, off-site, remote (work-from-home) or after-hours work; work-related social functions (such as opening nights, after parties, award nights and industry events); rehearsals, tours, work-related travel, client functions, promotional activities, conferences, seminars or training sessions – wherever and whenever workers may be as a result of their AAP duties;
- Use of social media and other electronic communication (e.g. emails); and
- Workers' treatment of other workers, clients, visitors and members of the public encountered in the course of undertaking their duties for AAP.

4. Related documents

Workers, especially managers and supervisors, are encouraged to read this policy in conjunction with other relevant policies, procedures, documents and agreements of AAP, including, but not limited to:

- Complaint handling and investigation procedure: workplace discrimination, harassment, sexual harassment and bullying
- Code of conduct: workplace discrimination, harassment, sexual harassment and bullying
- Work health and safety policy
- Discipline procedure
- Mission, vision and values statements
- Live Performance Award 2010
- Auspice agreement

5. Anti-discrimination and workplace bullying laws

Discrimination, harassment, sexual harassment and bullying are unlawful under state/territory and federal legislation. These include:

- *Sex Discrimination Act 1984* (Cth);
- *Racial Discrimination Act 1975* (Cth);
- *Disability Discrimination Act 1992* (Cth);
- *Age Discrimination Act 2004* (Cth);
- *Australian Human Rights Commission Act 1986* (Cth);
- *Fair Work Act 2009* (Cth);
- *Anti-Discrimination Act 1977* (NSW);
- *Anti-Discrimination Act 1991* (Qld);
- *Anti-Discrimination Act 1992* (NT);
- *Anti-Discrimination Act 1998* (Tas);
- *Equal Opportunity Act 1984* (SA);
- *Equal Opportunity Act 1984* (WA);
- *Equal Opportunity Act 2010* (Vic);
- *Racial and Religious Tolerance Act 2001* (Vic);
- *Discrimination Act 1991* (ACT);
- *Work Health and Safety Act 2011* (NSW);
- *Occupational Health and Safety Act 2004* (Vic);
- *Work Health and Safety Act 2011* (Qld);
- *Occupational Safety and Health Act 1984* (WA);
- *Work Health and Safety Act 2011* (SA);
- *Work Health and Safety Act 2011* (Tas);
- *Work Health and Safety Act 2011* (ACT); and
- *Work Health and Safety (National Uniform Legislation) Act 2011* (NT).

6. Definition and examples of discrimination, harassment, sexual harassment and bullying

6.1 Discrimination

Discrimination is **treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by law**, such as sex, age, race or disability.

It is unlawful to discriminate against someone because of a protected personal characteristic and this will not be tolerated by AAP. Protected personal characteristics under federal discrimination law include, but are not limited to:

- A disability, disease or injury, including work-related injury;
- Parental status or status as a carer;
- Race, colour, descent, national origin or ethnic background;
- Age;
- Gender and gender identity;
- Sexual orientation;
- Industrial activity;
- Religion;
- Pregnancy and breastfeeding;
- Marital status;
- Political opinion;
- Social origin;
- Medical records; and
- Associating with someone who has, or is assumed to have, one of these characteristics, such as being the parent of a child with a disability.

It is also against the law to treat someone unfavourably because you assume they have a protected personal characteristic or may have it at some time in the future.

Discrimination can be either direct or indirect:

- **Direct discrimination** is usually easy to identify and occurs when a person or group of people with a particular protected characteristic (actual or assumed) are treated less favourably because of that characteristic.
- **Indirect discrimination** is less obvious and occurs when a policy or practice appears neutral, yet has the effect of discriminating against those with a particular protected characteristic.

EXAMPLES OF DIRECT AND INDIRECT DISCRIMINATION

Direct

- An employer refusing to hire someone based on their age
- A worker harasses another because of their race

Indirect

- A policy of only offering bonuses to full time workers risks indirect discrimination on the basis of sex, as a greater proportion of part time workers are female

What is not discrimination?

In certain circumstances, it will not be unlawful discrimination to treat workers differently because of a protected personal characteristic. The main exceptions are where the discriminatory act or practice:

- Is necessary to comply with other legislation;
- Is taken because the worker cannot perform the inherent (essential) requirements of their job, even where reasonable adjustments are made;
- Is a genuine occupational requirement (an exemption may be required, depending on the law in the relevant state or territory);
- Is necessary to protect health and safety; or
- Is permitted because an exemption or 'special measure' applies. This is often referred to as 'positive discrimination' or 'affirmative action'.

6.2 Harassment

Harassment is **unwelcome and unsolicited behaviour that a reasonable person would consider to be offensive, intimidating, humiliating or threatening.**

It is unlawful to harass an individual or group because of a protected characteristic (such as age, sex or race, outlined above). Harassment of any kind will not be tolerated by AAP. Harassment that is not related to a protected characteristic is still inappropriate in the workplace and AAP will deal with such incidents accordingly.

Harassment can be physical, spoken or written. It can include, but is not limited to:

- Intimidation, verbal abuse, repeated threats or ridicule;
- Sending offensive messages by text, email or other means;
- Derogatory comments;
- Displaying offensive materials, pictures, comments or objects;
- Ridiculing someone because of their accent or English-speaking ability;
- Telling offensive jokes or making practical jokes based on a protected characteristic;
- Belittling or teasing someone based on a protected characteristic; and
- Isolating, segregating or humiliating someone based on a protected characteristic.

6.3 Sexual harassment

Sexual harassment is **any form of unwelcome behaviour of a sexual nature, which could be expected to make a person feel offended, humiliated or intimidated.**

It is unlawful for a worker to engage in sexual harassment, or encourage or allow another worker to do so. Sexual harassment will not be tolerated by AAP.

Sexual harassment can be physical, spoken or written. It can include, but is not limited to:

- Staring or leering at a person or parts of their body;
- Excessive or unwelcome familiarity or physical contact, such as touching, hugging, kissing, pinching, massaging and brushing up against someone;
- Suggestive comments, jokes, conversations or innuendo;
- Insults or taunts of a sexual nature or obscene gestures;
- Intrusive questions or comments about someone's private life;

- Displaying or disseminating material such as posters, magazines or screen savers of a sexual nature;
- Making or sending sexually explicit phone calls emails or text messages;
- Inappropriate advances on social networking sites;
- Accessing sexually explicit internet sites in the presence of others;
- Unwelcome flirting, requests for sex or repeated unwanted requests to go out on dates;
- Inappropriate or unwanted gifts; and
- Behaviour that may also be considered to be an offence under criminal law, such as physical or sexual assault, indecent exposure, stalking or obscene communications.

Just because someone does not object to inappropriate behaviour in the workplace at the time, does not mean that they are consenting to the behaviour.

Behaviour can still be considered to be sexual harassment even if:

- It is a one-off incident;
- The person engaging in the behaviour did not intend to humiliate, intimidate or offend;
- Other people in the workplace are not offended by the behaviour; or
- The behaviour was previously an accepted practice in the workplace.

Sexual harassment may be considered work-related even if it occurs outside of the workplace or outside of normal working hours, such as on tour, during work-related travel, or at an opening night, after party, industry event, promotional activity or conference.

All workers have the same rights and responsibilities in relation to sexual harassment.

All incidents of sexual harassment – no matter how big or small or who is involved – should be reported to the appointed Complaints Person, (refer to the Complaints Handling and Investigation Procedure) or relevant leadership or management position so that appropriate action can be taken.

What is not sexual harassment?

Where workers engage in consensual, welcome and reciprocated behaviour, this is not sexual harassment. However, appropriate professionalism is expected of all workers at all times, including in relation to workers engaging in consensual behaviour.

6.4 Workplace Bullying

Workplace bullying ('bullying') is where an individual or group of individuals **repeatedly behave unreasonably** to another person or group of persons at a workplace, which creates a **risk to health and safety**.

It is unlawful for a worker to engage in bullying, or encourage or allow another worker to do so. Bullying will not be tolerated by AAP.

Bullying does not need to be intentional to be unlawful. Whilst one-off incidents of unreasonable behaviour may not be considered bullying, they are still inappropriate and may constitute discrimination or harassment.

Bullying can take many forms. It can be physical, spoken, written, overt or covert. Behaviours that may constitute bullying include, but are not limited to:

- Physical intimidation or abuse;
- Aggressive or intimidating conduct or threatening gestures;
- Manipulation, intimidation or coercion;
- Threats, abuse, offensive language, shouting or belittling;
- Innuendo, sarcasm and other forms of demeaning language;
- Ganging up;

- Public humiliation or belittling;
- Initiation activities;
- Practical jokes, teasing, or ridicule;
- Isolation, exclusion or ignoring people;
- Inappropriate blaming;
- Inappropriate emails/pictures/text messages;
- Unreasonable accusations or undue unconstructive criticism;
- Allocating unpleasant, meaningless or impossible tasks;
- Placing unreasonably high work demands on selected workers;
- Deliberately withholding information, resources, support, supervision or consultation or equipment that a person needs to do their job or access their entitlements;
- Unreasonable refusal of requests for leave, training or other workplace benefits;
- Withholding access to opportunities;
- Deliberately changing hours of work for a person or group to inconvenience them; and
- Unreasonable timelines or constantly changing deadlines targeted at a specific person or group.

The live performance industry is creative and continually strives for artistic excellence. Achieving such artistic outcomes often involves 'pushing the boundaries'. All workers in this process should behave in a manner that is professional, appropriate and does not constitute harassment or bullying.

Workplace bullying does not include reasonable management action carried out in a reasonable manner. It is reasonable for project managers and supervisors to allocate work to a worker and give fair and reasonable feedback on its workers' performance.

Examples of reasonable management action include, but are not limited to:

- Setting reasonable performance goals, standards and deadlines;
- Rostering and allocating working hours where the requirements are reasonable;
- Transferring a worker for operational reasons;
- Deciding not to select a worker for promotion where a reasonable process is followed;
- Disciplinary action (including investigations) taken in a reasonable manner;
- Informing a worker about unsatisfactory work performance or inappropriate behaviour in an objective and confidential way;
- Implementing organisational changes or restructuring; and
- Termination of employment.

Workplace conflict is generally not considered workplace bullying. Differences of opinion and disagreements in the workplace (e.g. differences of opinion on artistic interpretation or direction) may arise without engaging in repeated, unreasonable behaviour that creates a risk to health and safety. This is because not all conflicts or disagreements have a negative impact on health or safety, and it is common within a workplace that people will have differences of opinion. Low level, task-based differences of opinion can benefit the organisation and workers, as it may generate debate leading to new ideas and innovation, provided all workers behave in an appropriate manner.

6.5 Victimisation

Victimisation is **subjecting or threatening to subject someone to a detriment** because they have asserted their rights under equal opportunity law, made a complaint, helped someone else make a complaint, or refused to do something because it would be discrimination, harassment, sexual harassment or bullying.

It is also victimisation to threaten someone (such as a witness) who may be involved in an investigation of a complaint.

It is unlawful to victimise another person. Victimisation will not be tolerated by AAP.

Victimisation is a very serious breach of this policy and is likely (depending on the severity and circumstances) to result in formal disciplinary action against the perpetrator. The perpetrator may also be subject to legal proceedings under anti-discrimination or criminal law.

6.6 Vilification

Vilification is **any public act that incites hatred, serious contempt, or severe ridicule** against another person or group of people due to their race (including ethno-religious origin), homosexuality, transgender status and HIV/AIDS status.

Vilification will not be tolerated by AAP and is against the law in all states (except the Northern Territory).

6.7 Gossip and confidentiality

All workers must avoid gossiping about historical matters involving current or former workers or any allegations of inappropriate workplace behaviour. Where a worker considers a person's behaviour to be inappropriate, the worker should raise this with the relevant leadership or management person, or report the behaviour to the Contact Person, i.e. the Client Manager, so that appropriate action can be taken.

It is also unacceptable for workers engaged by AAP to talk with other workers, clients or suppliers, extended family or friends, or the media about any complaint of discrimination, harassment, sexual harassment or bullying that is the subject of a current complaint or investigation other than on a 'need to know' basis.

Breaching the confidentiality of a current complaint or investigation or inappropriately disclosing personal information obtained in the course of a complaint or investigation (for example, as a manager) is a serious breach of this policy and may lead to formal disciplinary action.

Those directly involved in a complaint (i.e. complainant and respondent) are entitled to seek personal and professional support, and seeking of such support (for example, from someone who has knowledge of the complaint) is not considered a breach of confidentiality.

7. Worker rights and responsibilities

All workers are entitled to:

- A workplace free from discrimination, harassment, sexual harassment and bullying;
- The right to raise issues or to make an enquiry or complaint in a reasonable and respectful manner without being victimised;
- Request to have a support person (e.g. a co-worker, friend, family member or union representative) present during the complaints process;
- Reasonable flexibility in working arrangements, especially where needed to accommodate family responsibilities, disability, religious beliefs or culture; and
- Have recruitment and selection decisions based on merit and not affected by irrelevant personal characteristics (unless permitted by law).

All workers must:

- Comply with the standards of behaviour outlined in this policy, the Code of Conduct and other related policies;
- Treat everyone with dignity, courtesy and respect at all times;
- Where appropriate, offer support to people who experience discrimination, harassment, sexual harassment and bullying, such as providing information about how to make a complaint;
- Avoid gossip about historical matters or matters that are subject of a current complaint or investigation;
- Respect the confidentiality of complaint resolution procedures;
- Where applicable, assist and cooperate in the investigation of complaints made under this policy; and
- Take bystander action (if safe to do so) if they see or hear about discrimination, harassment, sexual harassment or bullying in the workplace.

8. Roles and responsibilities of leadership and management positions

In addition to the responsibilities of workers, personnel in leadership and management positions (e.g. producers, promoters, CEOs, executive directors, artistic directors, general managers, company managers, stage managers, heads of department, supervisors, human resource managers, board members) must also:

- Model appropriate standards of behaviour;
- Take steps to educate and make workers aware of their obligations under this policy, the Code of Conduct and other related policies, and the law;
- Treat all workplace incidents seriously and take immediate action where a complaint is made;
- Inform a complainant that they can raise the matter with police, if the allegations are of a criminal nature and that the complainant will be provided with appropriate support to do so;
- Act fairly to resolve issues and enforce workplace behavioural standards, making sure relevant parties are heard;
- Where appropriate, help workers resolve complaints informally;
- Refer formal complaints about breaches of this policy to the appropriate Complaints Person-for investigation;
- Use their best endeavours to prevent workers who raise an issue or make a complaint from being victimised and taking steps to address the issue where it occurs;
- Provide workers (including bystanders) with information about the support available to them;
- Make recruitment and job selection decisions based on merit – that is, the skills and abilities of the candidate as measured against the inherent requirements of the position – regardless of personal characteristics, other than where it is lawful to do so;
- Not ask discriminatory questions or request information during a recruitment process, unless it is directly relevant to a genuine requirement of the position; and
- Reasonably consider requests for flexible working arrangements.

Furthermore, personnel in senior leadership positions (e.g. producers, promoters, CEOs, executive directors, artistic directors, general managers, company managers, human resource managers, board members), including owners must also:

- Monitor the effectiveness of this policy, the Code of Conduct and other related policies;
- Review and update the information within the policy, the Code of Conduct and other related policies so that it remains relevant;
- Provide training or guidance to workers regarding discrimination, harassment, sexual harassment and bullying and how to make a complaint or take bystander action;

- Provide training or guidance to managers on this policy, the Code of Conduct, the complaints process and other related policies and mechanisms to support workers to make a complaint or take bystander action; and
- Promote this policy, the Code of Conduct and other related policies throughout AAP.

8.1 Contact Person(s)

Contact Persons are available to support workers who are experiencing workplace discrimination, harassment, sexual harassment or bullying, or who need support to take bystander action.

Contact Persons are workers who have been trained to provide confidential and impartial information and support to help workers make an informed decision about how to try to resolve an issue.

Contact Persons cannot provide legal advice or resolve complaints; however, they can act as a support person to someone experiencing discrimination, harassment, sexual harassment or bullying, or a bystander, and can provide information relating to external support services and organisational policies and procedures. Contact Persons are also able to attend mediation sessions or complaints meetings as a support person.

Refer to the Complaints Handling and Investigation Procedure for further details.

8.2 Complaints Person(s)

Complaints Persons are responsible for investigating all complaints of workplace discrimination, harassment, sexual harassment, and bullying, including by conducting interviews with workers and providing advice to the relevant leadership and management personnel (e.g. producers, promoters, human resources team, managers/supervisors) on the outcome of the complaint and any disciplinary measures in response to a complaint. **Refer to the Complaints Handling and Investigation Procedure for further details.**

Complaints Persons are impartial and will not have any direct relationship with the workers involved in the complaint, either as a manager or otherwise. There may be instances where an external Complaints Person will need to be engaged.

9. Supporting bystander action

In order to promote a safe, equitable and respectful workplace, AAP encourages all workers to take appropriate action (in accordance with this policy) if they witness or hear about workplace discrimination, harassment, sexual harassment and bullying.

- **See:** Know where the line is. If you see or hear something that makes you feel uncomfortable, don't ignore it.
- **Talk:** It takes courage to speak up. Talk with your boss, your colleagues or with the person who is crossing the line.
- **Support:** Don't underestimate the power of support. It can help a colleague stand up and take action.

For information about the sorts of bystander action workers can take, see www.knowtheline.com.au

Victimisation of someone taking bystander action is unlawful and will not be tolerated.

10. Consequences of breaching this policy

If a worker engages in discrimination, harassment, sexual harassment, bullying, vilification or victimisation, or otherwise breaches this policy, they may be subject to disciplinary action which may lead to the termination of their employment or engagement with AAP.

Workers may also be held personally liable for their own behaviour or conduct. This means that when a worker undertakes discrimination, harassment, sexual harassment, bullying, vilification or victimisation, the worker may be subject to a penalty or an order from the regulator, the Fair Work Commission or another relevant tribunal or court.

11. How to make a complaint and resolving issues

AAP strongly encourages any worker who believes they have been discriminated against, harassed, sexually harassed, bullied, victimised or vilified to report this behaviour to the appointed Complaints Person, as outlined in the Complaints Handling and Investigation Procedure.

Any worker who has witnessed unlawful discrimination, harassment, sexual harassment or bullying is encouraged to report the complaint to their Client Manager. Client Managers **must** report such conduct to the Complaints Person. A complaint can be dealt with formally or informally depending on the circumstances. Whether a matter is dealt with informally or formally will depend on the nature of the incident.

Where a complaint is made, AAP may have an obligation to deal with the complaint even if the person making the complaint decides that they do not wish to pursue the complaint or does not want to deal with the matter formally. In some situations, it may be appropriate to address a complaint without identifying a particular individual, such as by providing training to all workers.

12. Frivolous, vexatious or malicious complaints

AAP encourages the reporting of behaviour that a worker genuinely believes to be discrimination, harassment, sexual harassment, bullying, vilification or victimisation. Further a worker will not be disadvantaged or treated unfairly for dealing with discrimination, harassment, sexual harassment, bullying, vilification or victimisation in accordance with this policy.

However, if a complaint is found to be frivolous, vexatious or malicious, then appropriate disciplinary action (which may lead to dismissal) may occur against the complainant. Examples of frivolous, vexatious or malicious complaints include, but are not limited to:

- Fabricating a complaint;
- Making a complaint for the malicious purpose of deliberately harming someone;
- Seeking to re-agitate issues that have already been addressed or determined; and
- Making a complaint that the complainant does not genuinely believe to be true.

13. Additional Information, support and advice

If you have a query about this policy or need more information, please contact the appropriate Client Manager.

14. Review details

This policy was adopted by Auspicious Arts Projects on 03/09/2018.

This policy was last updated on 29/9/2020