WORKPLACE BULLYING, DISCRIMINATION, AND SEXUAL HARASSMENT POLICY AND PROCEDURE

Version 2.0

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Purpose and Scope

The purpose of this policy and procedure is to:

- define workplace bullying, discrimination, harassment, and sexual harassment, ensuring all workers understand what constitutes inappropriate behaviour
- outline workers' rights and responsibilities in preventing and reporting inappropriate workplace behaviour
- ensure a fair, confidential, and transparent process for addressing complaints and resolving concerns and
- comply with relevant workplace laws, work health and safety laws, and human rights legislation to protect workers and Bilingual Care.

This policy and procedure applies in the context of all work-related activities and events, which may also occur outside of working hours, including:

- the physical workplace
- work-related travel
- offsite work events (e.g. meetings, training, conferences, functions, social gatherings, lunches, Christmas parties) and
- digital communications, including emails, messages, video calls, and social media.

It applies to all Bilingual Care staff, contractors and volunteers and meets relevant legislation, regulations and Standards.

Applicable Strengthened Aged Care Quality Standards

- *Standard 2. The Organisation*

Definitions

Adverse Action - doing, threatening, or organising any of the following:

- an employer dismissing an employee, injuring them in their employment, altering their position to their detriment, or discriminating between them and other employees
- an employer refusing to employ a prospective employee or discriminating against them in the terms and conditions the employer offers
- a principal terminating a contract with an independent contractor, injuring them, or altering their position to their detriment, refusing to use their services or to supply goods and services to them, or discriminating against them in the terms and conditions the principal offers to engage them on
- an employee or independent contractor taking industrial action against their employer or principal
- an industrial association, or an officer or member of an industrial association, organising or taking industrial action against a person, or taking action that is detrimental to an employee or independent contractor and

- an industrial association imposing a penalty of any kind on a member.[1]

Breastfeeding – includes:
- the act of expressing milk
- an act of breastfeeding and
- breastfeeding over a period of time.[2]

Bullying - Bullying happens at work when:
- a person or group of people repeatedly behave unreasonably towards another worker or group of workers and
- the behaviour creates a risk to health and safety.

Examples of bullying include:
- behaving aggressively towards others, including verbal abuse, threats, or humiliation
- teasing or playing practical jokes
- pressuring someone to behave inappropriately
- deliberately excluding someone from work-related events or communication
- excessive scrutiny of an employee's work beyond reasonable management practices and
- unreasonable work demands, such as excessive workloads or deadlines.

What is **NOT** workplace bullying?
- reasonable management action*, such as providing constructive feedback or managing performance
- one-off incidents, unless they are extremely serious and
- disagreements or differences of opinion, provided they are handled professionally

Note that reasonable management action that's carried out in a reasonable way is **not** bullying. An employer or manager can:
- make decisions about poor performance,
- take disciplinary action, and
- direct and control the way work is carried out.

Management action that isn't carried out in a reasonable way may be considered bullying.[3]

Disability -
- total or partial loss of a person's bodily or mental functions
- total or partial loss of a part of the body
- the presence in the body of organisms causing disease or illness
- the presence in the body of organisms capable of causing disease or illness
- the malfunction, malformation, or disfigurement of a part of the person's body
- a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction or
- a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions, or judgment or that results in disturbed behaviour.

It includes a disability that:
- presently exists

[1] *Fair Work Act 2009 (Cth)*
[2] *Fair Work Act 2009 (Cth)*
[3] Fair Work Ombudsman, *Bullying, Sexual Harassment and Discrimination at Work*, Fair Work Ombudsman, Australian Government, accessed 18 July 2023, https://www.fairwork.gov.au/employment-conditions/bullying-sexual-harassment-and-discrimination-at-work.

- previously existed but no longer exists
- may exist in the future (including because of a genetic predisposition to that disability) or
- is imputed to a person.

To avoid doubt, a disability that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.[4]

Disability Discrimination: Direct – where, because of a person's disability, someone treats, or proposes to treat, the person less favourably a person without the disability, in circumstances that are not materially different.

It also includes where:

- someone has not made, or proposes not to make, reasonable adjustments for the person and
- the failure to make the reasonable adjustments has, or would have, the effect that the person is, because of their disability, treated less favourably than a person without the disability would be treated in circumstances that are not materially different.[5]

Disability Discrimination: Indirect – where:

- someone requires, or proposes to require, a person with disability to comply with a requirement or condition
- because of the disability, the person does not or would not comply, or is not able or would not be able to comply and
- the requirement or condition has, or is likely to have, the effect of disadvantaging people with disability.

It also includes where:

- someone requires, or proposes to require, a person with disability to comply with a requirement or condition
- because of the disability, the person would comply, or would be able to comply, with the requirement or condition only if reasonable adjustments were made, but someone does not make the adjustments or proposes not to make the adjustments and
- the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging people with disability. [6]

Discrimination on the Grounds of Age: Direct Discrimination – discrimination based on a person's age, or a characteristic that is generally associated with a person of that age, where the person is treated less favourably than someone of a different age, in circumstances that are the same or are not materially different from the circumstances of people of other ages.[7]

Discrimination on the Grounds of Age: Indirect Discrimination – discrimination based on a person's age where someone imposes, or proposes to impose, a condition, requirement, or practice that is not reasonable in the circumstances and which has, or is likely to have, the effect of disadvantaging people of the same age.[8]

[4] *Disability Discrimination Act 1992 (Cth)*
[5] *Disability Discrimination Act 1992 (Cth)*
[6] *Disability Discrimination Act 1992 (Cth)*
[7] *Age Discrimination Act 2004 (Cth)*
[8] *Age Discrimination Act 2004 (Cth)*

Discrimination on the Grounds of Breastfeeding – discrimination based on a woman's breastfeeding, or a characteristic that is generally associated with women who breastfeed, where:

- the person is treated less favourably than someone who is not breastfeeding, in circumstances that are the same or are not materially different from the circumstances of the other person or
- someone imposes, or proposes to impose, a condition, requirement, or practice that has, or is likely to have, the effect of disadvantaging women who are breastfeeding.[9]

Discrimination on the Grounds of Family Responsibilities - an employer discriminates against an employee on the ground of the employee's family responsibilities if:

- the employer treats the employee less favourably than the employer treats, or would treat, a person without family responsibilities in circumstances that are the same or not materially different and
- the less favourable treatment is by reason of:
    - the family responsibilities of the employee or
    - a characteristic that is generally associated with people with family responsibilities.[10]

Discrimination on the Grounds of Gender Identity - discrimination based on a person's gender identity or a characteristic that is generally associated with the gender identify of a person, where:

- the person is treated less favourably than a person of a different gender identity, in circumstances that are the same or are not materially different from the circumstances of the other person or
- someone imposes, or proposes to impose, a condition, requirement, or practice that has, or is likely to have, the effect of disadvantaging people of a particular gender identity.[11]

Discrimination on the Grounds of Intersex Status - discrimination based on a person's intersex status or a characteristic that is generally associated with people of intersex status, where:

- the person is treated less favourably than a person who is not of intersex status, in circumstances that are the same or are not materially different from the circumstances of the other person or
- someone imposes, or proposes to impose, a condition, requirement, or practice that has, or is likely to have, the effect of disadvantaging people of intersex status.[12]

Discrimination on the Grounds of Marital or Relationship Status - discrimination based on a person's marital or relationship status or a characteristic that is generally associated with a person's marital or relationship status, where:

- the person is treated less favourably than a person with a different marital or relationship status, in circumstances that are the same or are not materially different from the circumstances of the other person or
- someone imposes, or proposes to impose, a condition, requirement, or practice that has, or is likely to have, the effect of disadvantaging people of a particular marital or relationship status.[13]

[9] *Sex Discrimination Act 1984 (Cth)*
[10] *Sex Discrimination Act 1984 (Cth)*
[11] *Sex Discrimination Act 1984 (Cth)*
[12] *Sex Discrimination Act 1984 (Cth)*
[13] *Sex Discrimination Act 1984 (Cth)*

Discrimination on the Grounds of Pregnancy or Potential Pregnancy – discrimination based on a woman's pregnancy or potential pregnancy, or a characteristic that is generally associated with women who are pregnant or potentially pregnant, where:

- the person is treated less favourably than a person who is not pregnant or potentially pregnant, in circumstances that are the same or are not materially different from the circumstances of the other person or
- someone imposes, or proposes to impose, a condition, requirement, or practice that has, or is likely to have, the effect of disadvantaging women who are pregnant or potentially pregnant.[14]

Discrimination on the Grounds of Sexual Orientation – discrimination based on a person's sexual orientation or a characteristic that is generally associated with the sexual orientation of a person, where:

- the person is treated less favourably than a person of a different sexual orientation, in circumstances that are the same or are not materially different from the circumstances of the other person or
- someone imposes, or proposes to impose, a condition, requirement, or practice that has, or is likely to have, the effect of disadvantaging people of a particular sexual orientation.[15]

Family and Domestic Violence - violent, threatening, or other abusive behaviour that seeks to coerce or control a person or causes them harm or to be fearful. The behaviour may be by a close relative of the person, or a member of the person's household, or the person's current or former intimate partner. Family and domestic violence may include, but is not limited to:

- controlling behaviour
- physical violence
- sexual assault
- emotional abuse
- stalking
- technology facilitated abuse and
- financial abuse.

Family Responsibilities - responsibilities of a person to care for or support:

- a dependent child of the person or
- any other immediate family member who needs care and support.[16]

Gender Identity - the gender-related identity, appearance, mannerisms, or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person's designated sex at birth.[17]

Harassment - unwelcome behaviour that offends, humiliates, or intimidates another person. It includes:

- ***Verbal harassment*** (e.g., offensive jokes, derogatory comments)
- ***Physical harassment*** (e.g., unwanted touching, intimidation) and
- ***Online harassment*** (e.g., offensive emails, social media comments)

[14] *Sex Discrimination Act 1984 (Cth)*
[15] *Sex Discrimination Act 1984 (Cth)*
[16] *Sex Discrimination Act 1984 (Cth)*
[17] *Sex Discrimination Act 1984 (Cth)*

Hostile Workplace Environment - a workplace environment that is offensive, intimidating, or humiliating to a person based on their sex, or a characteristic that is generally associated with the person's sex.

Indirect Discrimination: Reasonableness Test – a person is not considered to discriminate against another person by imposing, or proposing to impose, a condition, requirement, or practice that has, or is likely to have, a disadvantaging effect, if the condition, requirement, or practice is reasonable in the circumstances. The matters to be considered when determining reasonableness include:

- the nature and extent of the disadvantage resulting from the imposition, or proposed imposition, of the condition, requirement, or practice
- the feasibility of overcoming or mitigating the disadvantage and
- whether the disadvantage is proportionate to the result sought by the person who imposes, or proposes to impose, the condition, requirement, or practice. [18]

Intersex Status – the status of having physical, hormonal, or genetic features that are:

- neither wholly female nor wholly male
- a combination of female and male or
- neither female nor male.[19]

Marital or Relationship Status – a person's status of being any of the following:

- single
- married
- married, but living separately and apart from his or her spouse
- divorced
- the de facto partner of another person
- the de facto partner of another person, but living separately and apart from that other person
- the former de facto partner of another person or
- the surviving spouse or de facto partner of a person who has died.[20]

Near Relative –

- a parent, child, grandparent, grandchild, brother, or sister of a person or
- the spouse or de facto partner of a first-mentioned person, or of the relatives listed above.[21]

Potential Pregnancy – the fact that a woman:

- is or may be capable of bearing children
- has expressed a desire to become pregnant or
- is likely, or is perceived as being likely, to become pregnant.[22]

Protected Attributes – personal characteristics protected by law. Employers cannot take adverse action against a person who is an employee, or prospective employee, based on a protected attribute. Under the *Fair Work Act 2009 (Cth)*, protected attributes are:

- race
- colour
- sex
- sexual orientation

[18] *Sex Discrimination Act 1984 (Cth)*
[19] *Sex Discrimination Act 1984 (Cth)*
[20] *Sex Discrimination Act 1984 (Cth)*
[21] *Sex Discrimination Act 1984 (Cth)*
[22] *Sex Discrimination Act 1984 (Cth)*

- breastfeeding
- gender identity
- intersex status
- age
- physical or mental disability
- marital status
- family or carer responsibilities
- subjection to family and domestic violence
- pregnancy
- religion
- political opinion
- national extraction and
- social origin.[23]

Racial Discrimination - when a person is treated less favourably, or not given the same opportunities, as others in a similar situation, because of their race, colour, descent, national or ethnic origin, or immigrant status.[24]

Sex-based Discrimination (also known as Sex Discrimination or Discrimination on the Grounds of Sex) – discrimination based on the sex of a person, or a characteristic that is generally associated with the sex of a person, where:

- the person is treated less favourably than a person of a different sex, in circumstances that are the same or are not materially different from the circumstances of the other person or
- someone imposes, or proposes to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging people of a particular sex.[25]

Sex-based discrimination occurs when someone is treated less favourably, or not given the same opportunities as a person of a different sex, because of their sex. This is referred to as direct discrimination. It also occurs when a rule, policy or practice applies to everyone but disadvantages a person based on his or her sex. This is indirect discrimination.

Workplace examples include:

- not hiring a woman based on assumptions that she will not fit into a 'traditionally' male workplace
- not paying a woman and man the same salary for the same work
- not providing the same opportunities to employees for training, mentoring or promotion and
- assigning work tasks based on a person's sex.[26]

Sex-based Harassment (also known as Harassment on the Grounds of Sex) - behaviour that is characterised by verbal abuse or insults as well as behaviours that aim to marginalise, based on sex or gender. Manifestations of sex-based harassment in the workplace can overlap with sexual harassment.[27]

[23] *Fair Work Act 2009 (Cth)*
[24] *Racial Discrimination Act 1975 (Cth)*
[25] *Sex Discrimination Act 1984 (Cth)*
[26] Workplace Gender Equality Agency 2023, *Sex-based Discrimination and Harassment*, WGEA, Australian Government, accessed 18 July 2023, https://www.wgea.gov.au/take-action/sex-based-discrimination-and-harassment.
[27] Workplace Gender Equality Agency 2023, *Sex-based Discrimination and Harassment*, WGEA, Australian Government, accessed 18 July 2023, https://www.wgea.gov.au/take-action/sex-based-discrimination-and-harassment.

Sexual Harassment - an unwelcome sexual advance, request for sexual favours or conduct of a sexual nature that in reasonable circumstances would be offensive, humiliating or intimidating to a person. Examples include:

- unwanted advances, comments, or sexual invitations
- displaying sexually explicit material in the workplace or
- sexually suggestive gestures, staring, or leering

Circumstances to be considered include, but are not limited to:

- the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed
- the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct
- any disability of the person harassed and
- any other relevant circumstance. [28]

Sexual harassment does not need to be repeated to be considered a breach of this policy.

Sexual Orientation - a person's sexual orientation towards:

- persons of the same sex
- persons of a different sex or
- persons of the same sex and persons of a different sex.[29]

Victimisation – when a person is treated unfairly because they:

- make a complaint about workplace bullying, harassment, or discrimination
- act as a witness in an investigation or
- refuse to participate in workplace misconduct.

Policy

Bilingual Care is legally obligated to proactively prevent sex discrimination, harassment, and victimisation in its workplaces and may be found liable should sexual harassment be committed by an employee or other person engaged by Bilingual Care in its workplaces.

Bilingual Care is bound by State and Federal legislation related to equal employment opportunity (EEO), gender equality, discrimination, and sexual harassment. It will not take adverse action against an employee or prospective employee because of the person's race, colour, sex, sexual orientation, breastfeeding, gender identity, intersex status, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, nationality, or social origin.

Bilingual Care is committed to equal opportunity and a workplace free from bullying, sexual harassment, and discrimination. The Leadership Team strives to provide a positive working environment in which all staff are valued and encouraged to contribute, and where no staff member is unlawfully harassed or discriminated against.

Standards of Behaviour

To support Bilingual Care's commitment to creating a workplace which is free from workplace health and safety risks and creating positive working relationships, all those covered by this policy and procedure are expected to meet the following minimum standards of behaviour:

[28] *Sex Discrimination Act 1984 (Cth)*
[29] *Sex Discrimination Act 1984 (Cth)*

- be polite and courteous to others
- be respectful of the differences between people and their circumstances
- do not engage in any discriminatory or bullying behaviour(s) towards others in, or connected with, the workplace, which includes staff, older persons, the older persons' supporters, supervisors, managers and other visitors
- do not assist, or encourage, others in the workplace, or in connection with the workplace, to engage in discriminatory or bullying behaviour(s) of any kind
- follow the complaints procedure in this policy if you experience any discriminatory or bullying behaviour(s) personally
- report any discriminatory or bullying behaviour(s) you see happening to others in the workplace, or connected with the workplace, in line with the complaint procedure outlined in this policy and
- keep information confidential if involved in any investigation of discrimination, bullying or harassment.

These standards of conduct are intended to operate in addition to, and in conjunction with, Bilingual Care's *Staff Code of Conduct.*

Bilingual Care will take all complaints of discrimination, bullying, harassment and sexual harassment seriously, and respond with impartiality and confidentially.

Bilingual Care staff are expected to comply with all relevant legislation, Bilingual Care's *Staff Code of Conduct* and this policy and procedure.

Procedures

General

Bilingual Care's Leadership Team is responsible for fostering and promoting an organisational culture of zero tolerance towards bullying, discrimination, and harassment of any kind, including sexual harassment. It reviews its effectiveness regularly, as per the *Governance Policy and Procedure*.

As per Bilingual Care's *Recruitment and Onboarding Policy and Procedure* and *Training and Development Policy and Procedure*, all staff must undergo Induction and regular ongoing training that covers bullying, discrimination, harassment, and sexual harassment, including:

- obligations under State and Federal workplace, equal opportunity, gender equality, and discrimination legislation
- the attributes that are covered under the *Fair Work Act 2009 (Cth)* and other legislation to protect against bullying, discrimination, and harassment
- Bilingual Care's legal responsibility to prevent and eliminate sexual harassment in its workplaces
- Bilingual Care's liability, should sexual harassment be committed by an employee or other person engaged by Bilingual Care
- what behaviour constitutes discrimination, harassment, sexual harassment, and victimisation
- behaviour that creates a hostile work environment and how organisational culture can lead to a hostile working environment
- the impacts of, and how to identify and respond to, different types of discrimination, harassment, and victimisation and
- processes for reporting and escalating complaints about bullying, discrimination, and harassment.

Staff knowledge and application of this policy and procedure, and Bilingual Care's disputes and grievances system, are monitored on a day-to-day basis and through annual Performance Reviews. Additional formal and on-the-job training is provided to staff where required.

Bilingual Care's Managing Director will regularly review work practices and processes to ensure they comply with EEO and legislative requirements. These work practices include:

- recruitment and selection
- pay and benefits
- training and development
- promotion
- performance appraisals/reviews
- grievance procedures and
- terminations.

Staff understanding of and attitudes towards bullying, sexual harassment, and discrimination, and Bilingual Care's prevention and response strategies, are included in risk assessments of work health and safety risks (see the *Risk Management Policy and Procedure*).

Gender Equality

Bilingual Care works to actively support gender equality in the workplace, and bases its activities on the Workplace Gender Equality Agency's (WGEA) six Gender Equality Indicators:

- gender composition of the workforce
- gender composition of its Leadership Team
- equal remuneration between women and men
- availability and utility of employment terms, flexible working arrangements, and support for family and caring responsibilities
- consultation with employees on gender equality in the workplace and
- sexual harassment, harassment on the grounds of sex, and discrimination.[30]

Bilingual Care's Leadership Team is responsible for working towards gender equality in Bilingual Care's workplaces, and ensuring the organisation actively prevents and responds to sexual harassment, harassment on the ground of sex, or discrimination in the workplace.

Bullying, Discrimination, Sexual Harassment and Victimisation

Bilingual Care staff must neither be bullied, discriminated against, sexually harassed, or victimised, nor bully, discriminate, sexually harass, or victimise another staff member or any other person associated with Bilingual Care. See 'Definitions' for what constitutes bullying, discrimination, sexual harassment, and victimisation.

Discrimination

Bilingual Care is committed to providing a safe, inclusive, and respectful environment where all individuals are treated fairly and equitably. Discrimination on the basis of race, sex, gender identity, age, disability, sexual orientation, religion, political belief, relationship status, or any other characteristic protected under Australian law will not be tolerated under any circumstances. Any staff found to be engaging in discriminatory conduct will be subject to disciplinary action.

[30] Workplace Gender Equality Agency 2023, *WGEA Reforms: A Roadmap to Closing the Gender Pay Gap*, WGEA, Australian Government, accessed 01 July 2025, https://www.wgea.gov.au/about/our-legislation/closing-the-gender-pay-gap-bill-2023.

Examples of behaviour which may constitute discrimination include:

- refusing to employ someone
- denying someone extra shifts
- denying requests for leave
- unfair discipline or criticism
- not promoting someone to a senior role
- allocating an inadequate, inconsistent or unfair workload

Bullying

There is no exhaustive list of behaviour that constitutes bullying. However, examples of conduct that could constitute bullying include:

- a manager or supervisor using a management style that is harsh, involves shouting, constant criticism or humiliation of an employee or group of employees in private or in front of their peers
- an employee being treated less favourably by another employee or group of employees in the workplace, including, but not limited to:
    - bullying or intimidation
    - forcing an employee to participate in an "initiation" process
    - the playing of practical jokes or
    - forcing an employee to undertake demeaning tasks
- sniggering or gossiping behind someone's back
- laughing at someone in the workplace which is intended to make them feel uncomfortable or distressed
- sabotaging another person's work
- a manager setting unreasonable timelines or constantly changing deadlines for an employee to meet, or setting tasks that are unreasonably below or beyond a person's skill level and
- continuously and deliberately excluding someone from workplace activities including ignoring them and keeping them isolated from relevant communications about work issues.

Workplace Behaviour that Does Not Constitute Bullying

Fair and reasonable management action taken in order to counsel an employee for instances of underperformance, investigating complaints made against employees, discipline for misconduct and other work directions in line with business needs does not amount to bullying.

Harassment

If a person's conduct was such that a reasonable person would expect that it would cause another person to be offended, then a breach of this policy will likely have occurred.

Prohibited harassment can take many forms, such as sexual harassment, bullying, disability harassment or racial or religious vilification. It is not limited to these forms of harassment.

Harassment prohibited under this policy may occur by way of:

- an ongoing pattern of behaviour
- a series of incidents
- an isolated incident of harassment.

Harassment can be physical, verbal or written. It can include words, pictures or statements. It may be transmitted by post, phone, fax, video, e-mail, messaging apps, mobile phone text messages, posters or photographs, computer servers or screensavers.

Sexual Harassment

Sexual harassment occurs when:

- a person makes an unwelcome sexual advance or an unwelcome request for sexual favours, to the person harassed
- engages in other unwelcome conduct of a sexual nature in relation to the person harassed.
- a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

Bilingual Care will not tolerate sexual harassment and is committed to taking all reasonable steps to prevent an employee from engaging in acts of sexual harassment in connection with their employment. Bilingual Care understands it has a legal responsibility to prevent sexual harassment in the workplace and has developed a *Sexual Harassment Prevention Plan* in consultation with its workers, to identify potential risks and actions to eliminate or minimise instances of sexual harassment.

Sexual harassment is prohibited within employment relationships involving employers, employees, older persons, contract workers and other work-related stakeholders. Depending on the circumstances, the following kinds of behaviour may be deemed sexual harassment and may be unlawful:

- jokes or cartoons about someone's appearance, body shape, or any other personal matter that may cause embarrassment and make people feel uncomfortable
- sexual or physical contact such as putting your arm around someone, slapping them, kissing, touching or patting them
- staring or leering in a sexual manner (looking someone up and down)
- standing too close to someone or brushing him or her as you walk past
- verbal abuse or comments that put down or stereotype people because of their sex, appearance or sexual preference. These gestures may not need to be obviously crude for the behaviour to be deemed sexual harassment
- offensive gestures and "wolf" whistling
- displaying in the workplace or in personal belongings material that is sexist, sexually explicit or homophobic (anti-gay). This includes offensive e-mails, screensavers or computer 'wallpaper'
- repeated sexual invitations when the person invited has refused similar invitations before
- a sexually explicit email or text message
- an unwanted invitation to go out on dates
- intrusive questions or remarks about a person's sexual activities or private life.

Please note the above list is not exhaustive.

Acts of sexual harassment may also constitute criminal offences, such as:

- physical molestation or assault
- indecent exposure
- sexual assault and rape
- stalking or
- obscene communications (telephone calls, faxes, letters, emails etc.).

Acts of sexual harassment occurring after work or outside of the specific workplace may still be considered 'in connection' with an employee's employment. Therefore, this policy is applicable to any conduct occurring after office hours or outside of the workplace (including but not limited to social engagements that may be in connection with the Company). Further, being under the influence of drugs or alcohol is not considered an excuse for engaging in sexual harassment.

Sexual harassment doesn't have to be repeated or continuous. It can be a one-off incident.

Sexual harassment in connection to employment can be considered serious misconduct and can be a valid reason for dismissal.

Conduct must be 'Unwelcome'

Conduct will only be deemed sexual harassment if it is 'unwelcome'. Consensual conduct will not be 'unwelcome'. Unwelcome conduct is conduct that was not solicited or invited by the person, and the person regarded the conduct as undesirable or offensive. It is a subjective test and relies on how the action was perceived and experienced by the recipient rather than the intention behind it.

Intention is Irrelevant

Employees do not need to intend to offend, humiliate or intimidate, or even to know that this was the effect of their own behaviour for this conduct to be sexual harassment. For example, a practical joke that 'everyone else thinks you are funny' can amount to sexual harassment as long as somebody else finds it offensive and regardless of the intentions of the person saying this.

Employee Responsibilities

All employees have a responsibility to address observed incidents of sexual harassment or if they hear that it has occurred. This can occur in the workplace or during any work-related activity. They must co-operate with any reasonable policy or procedure which relates to the prevention of sexual harassment in the workplace or during a work-related activity.

Responding and addressing incidents of sexual harassment is an important step to the prevention and management of sexual harassment in the workplace. Appropriate ways to address and respond to an incident may be:

- **Report** – say something about the behaviour to the Managing Director
- **Respond** – if you feel safe and comfortable to do so address the behaviour in the moment in a professional and calm manner. This can also be an opportunity to educate the person on the correct behaviour if appropriate. This is not an expectation to intervene physically or restrain a person.
- **Support** – check in on the person who the behaviour was directed at and make sure they are ok and educate them on options to report or respond.

See the sections on *Breaches of this Policy and Procedure* and *Complaints Handling* for further guidance.

Support and Counselling

Employees are strongly encouraged to follow the *Complaints Handling* procedure contained within this policy and procedure. Furthermore, Bilingual Care encourages all employees to contact any of the following providers for mental health support:

Lifeline
24-hour crisis support and suicide prevention.
Ph: 13 11 14
Website: https://www.lifeline.org.au/

Beyondblue
Mental health support.
Ph: 1300 224 636
Website: https://www.beyondblue.org.au/

1800 RESPECT
Ph: 1800 737 732
Website: https://www.respect.gov.au/services/

MensLine Australia
Ph: 1300 789 978
Website: https://mensline.org.au/phone-and-online-counselling/

The Respect@Work website hosts a comprehensive set of resources for employers and workers. It includes best-practice guides, training programs, workplace-assessment tools, information, videos and advice.

Victimisation

Victimisation of individuals who make, or intend to make, a complaint of discrimination, bullying or harassment will not be tolerated by Bilingual Care.

Victimisation of individuals who provide evidence or information connected to a complaint of discrimination, bullying or harassment will not be tolerated by Bilingual Care.

Employees found engaging in any victimising conduct will be subject to disciplinary action.

Examples of victimisation of a person who makes or intends to make a complaint of discrimination or who gives evidence or information in connection with such a complaint include:

- refusing to employ the person
- dismissing, or threatening to dismiss, the person from their employment
- prejudicing, or threatening to prejudice, the person in their employment or
- intimidating, coercing, or imposing any penalty upon the person.

Workplace Delegates

Bilingual Care must not take any adverse action against a staff member on the basis they are exercising their workplace delegate rights. See the *Staff Management and Retention Policy and Procedure* for more information about workplace delegates.

Breaches of this Policy and Procedure

All breaches of this policy and procedure will be taken seriously.

Staff approached by someone to make a complaint must assist that person to make a complaint, including supporting them to contact external support and complaints agencies (see below), where this is required.

People making or impacted by a complaint must also be encouraged to involve a support person of their choosing if they wish.

Complaints will be dealt with promptly and in accordance with relevant State and Federal legislation, as well as Bilingual Care's *Workplace Incident Management Policy and Procedure*. Disciplinary action may be taken against those responsible in accordance with the *Performance Management Policy and Procedure*, which may include termination of employment. Any subcontractor found to be in breach of this policy and procedure may have their contract terminated or will not have their contract renewed.

Complaints Handling

All individuals covered by this policy who believe they are or have been the subject of bullying, discrimination (including with respect to a protected attribute), or harassment should:

- approach their immediate supervisor, a work health and safety representative or the Managing Director to discuss appropriate actions or options or
- lodge a formal complaint or grievance, which will be dealt with by the Managing Director in accordance with Bilingual Care's *Disputes and Grievances Policy and Procedure*.

Amicable Resolution

In the first instance, the aggrieved employee should, wherever practicable and if they feel comfortable doing so, attempt to amicably resolve the matter with the employee/s or persons otherwise who are involved. When confronting the issue, the individual should clearly state:

- the discrimination or offensive behaviour experienced
- explain that the behaviour is unwelcome and offensive and
- ask that the behaviour does not continue.

The person may not be aware that their behaviour or conduct was causing offense or was unwelcome.

This is not a compulsory part of the complaint procedure, and if an employee does not wish to confront the person directly, then this is not encouraged.

Where the alleged discrimination, bullying or harassment involves the employee's direct manager and it is not practical for them to directly resolve the matter, they shall immediately notify the Managing Director (either directly or via a representative) who, with the employee's approval, will endeavour to investigate and resolve the matter on an informal basis in accordance with the procedure set out below.

Reporting

Any instances of alleged discrimination, bullying and harassment should be reported to the Managing Director. The Managing Director will handle this complaint by using the procedure set out below.

Informal Complaint Procedure

An informal complaint procedure includes a range of alternatives which can be applied in a flexible manner to address different complaints in consideration of the relevant circumstances. The informal complaint procedure is intended to be used for less serious allegations of

discrimination, bullying and harassment which generally do not warrant disciplinary action being taken.

An individual who is unsure of whether to make a formal or informal complaint can always make an informal complaint first and decide if they want to escalate the complaint to a formal complaint after speaking with the Managing Director.

Different options for handling informal complaints may include, but are not limited to:

- the Managing Director having a conversation with the individual about the unacceptable behaviour
- the Managing Director having a meeting with the individuals concerned in an attempt to reach a resolution.

Formal Complaint Procedure

At any time, a formal complaint may be raised in accordance with Bilingual Care's *Disputes and Grievances Policy and Procedure*.

Investigation of potential breaches of this policy and procedure will be undertaken by the Managing Director, unless that person has a conflict of interest in the matter. In these cases, the Leadership Teamwill appoint an alternative investigator.

Investigations must:

- keep information about complaints confidential, in accordance with the *Privacy and Confidentiality Policy and Procedure*
- provide all parties with procedural fairness, and any support and information necessary to participate in the process and
- be victim-centred, with the burden of proof to prove that an act does not constitute discrimination lying with the person who did the act (as per Federal discrimination law).

Confidentiality

Whilst the Managing Director will endeavour to preserve the confidentiality of the complainant and the person complained about, it may be necessary to speak with other employees or people involved to determine what happened and to maintain the integrity of the investigation process.

Those people who are involved in the complaint (including the complainant, witnesses etc.) are also under a duty to maintain confidentiality and display a commitment to uphold the integrity of the investigation process.

External Support

Fair Work Commission

Detailed information about bullying, discrimination, and sexual harassment, and how to get support, is provided on the Fair Work Commission's website at www.fairwork.gov.au. The Fair Work Commission can also be contacted by:

- phone on 13 13 94, between 8:00am and 5.30pm Monday to Friday (except public holidays), or
- online enquiry.

The Australian Human Rights Commission

The Australian Human Rights Commission accepts complaints of workplace bullying, harassment, or discrimination under federal laws. The Commission can be contacted by:

- phone on 1300 369 711 between 9:00am and 5:00pm AEST,
- email at infoservice@humanrights.gov.au, or
- online form at www.humanrights.gov.au.

Supporting Documents

Documents relevant to this policy and procedure include:

- *Governance Policy and Procedure*
- *Recruitment and Onboarding Policy and Procedure*
- *Training and Development Policy and Procedure*
- *Risk Management Policy and Procedure*
- *Records and Information Management Policy and Procedure*
- *Privacy and Confidentiality Policy and Procedure*
- *Disputes and Grievances Policy and Procedure*
- *Workplace Incident Management Policy and Procedure*
- *Staff Management and Retention Policy and Procedure*
- *Staff Code of Conduct*
- *Sexual Harassment Prevention Plan*

Monitoring and Review

This policy and procedure will be reviewed at least every two years by the Leadership Team. Reviews will incorporate staff and other stakeholder feedback, where relevant.

Bilingual Care's feedback collection mechanisms, such as staff satisfaction surveys and training reviews will assess:

- whether training and support provided to staff in the workplace is up to date, based on best practice and effective
- organisational culture and staff attitudes towards bullying, discrimination, and sexual harassment and
- the efficacy of Bilingual Care's monitoring, prevention, and response processes.

Bilingual Care's *Continuous Improvement Plan* will be used to record improvements identified and monitor the progress of their implementation. Where relevant, this information will be considered as part of Bilingual Care's service planning and delivery processes.

DOCUMENT CONTROL

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