

Human Resources

Discrimination, Bullying, Harassment and Sexual and Gender-Based Harassment Policy

Merinda Park Learning and Community Centre Inc. (MPLCC) is committed to providing a workplace that is free from bullying, harassment and unlawful discrimination. MPLCC aims to ensure all those participating in the workplace are treated with respect, dignity and fairness with an aim of creating an inclusive environment that promotes positive working relationships.

Scope

This policy is designed to ensure that all employees, contractors and volunteers, collectively termed as 'Team Members', understand what will be regarded as discrimination, bullying and harassment, how complaints of discrimination, bullying and harassment can be made, and how claims will be treated by MPLCC.

It is not limited to the workplace or working hours and covers all work-related events, which include (but is not limited to) staff lunches, Centre functions, meetings, external events and conferences as well as Christmas parties

This policy also relates to, but is not limited by, the following types of communication:

- verbal communication, either over the telephone or in person in and outside the workplace;
- written communication, including letters, notes, minutes of meetings and all other physical communication; and
- internal and external electronic communication, including:
 - email
 - instant messaging services
 - internal intranet
 - faxes
 - communication via MS Teams, Zoom, FaceTime and other platforms
 - social media and networking forums, including Facebook, LinkedIn, Twitter and other forms of social media; and communications via text message

Purpose

This policy sets out the types of behaviours and conduct that will be taken to constitute discrimination, bullying, harassment and sexual and gender-based harassment and establishes procedures for handling complaints of discrimination, bullying, harassment and sexual and gender-based harassment in the workplace.

Definitions

1. Discrimination:

- **Discrimination** occurs when a person is treated less favourably or harassed in certain areas of public life, including their employment, because of a personal characteristic or prescribed attribute that is protected under law.
- **Direct discrimination** occurs when a person is denied a benefit or an opportunity on the grounds of any of the prescribed attributes.

2. **Indirect discrimination** occurs when a policy, rule or practice has a discriminatory effect against a person or group of people in relation to any of the prescribed attributes.

An '**attribute**' includes another person's:

- race
- colour
- sex
- sexual orientation
- social origin
- religion
- family or carer's responsibilities
- age
- physical or mental disability
- marital status
- political opinion
- pregnancy
- national extraction

- personal association with a person or people identified by reference to any of these attributes

3. Workplace Bullying

- **Bullying** is repeated, unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety and is unlawful. Bullying can occur by direct or indirect means.
- **Repeated behaviour** refers to the persistent nature of the behaviour and can involve a range of behaviours over time.
- **Unreasonable** behaviour means behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating intimidating or threatening.
- **Direct bullying** occurs between the specific people involved.
- **Indirect bullying** involves third parties participating in bullying behaviours, for example, passing on insults or spreading rumours. Indirect bullying mostly inflicts harm by damaging another's social reputation, peer relationships and self-esteem.

4. Harassment occurs when a person engages in uninvited or unwelcome behaviour that a reasonable person would expect would cause another person to be offended, humiliated or intimidated. It does not matter if the person who committed the act intended or did not intend, to upset or cause offence to the other person.
5. Sexual Harassment is defined in the Sex Discrimination Act 1984 (Cth) (SD Act) as: 'any unwelcome conduct of a sexual nature that a reasonable person, having regard to all the circumstances would have anticipated would offend, humiliate or intimidate the other person.' Similar definitions are found in State and Territory anti-discrimination and equal opportunity legislation.

Sexual harassment can be a form of **gender-based harassment**. The term gender-based harassment is used in this policy to describe unwelcome conduct based on a person's gender, sex or sexuality.

6. **Victimisation** occurs when a person subjects another person to detriment (or threatens to do so) because they have made or intend to make a complaint or refused to assist in the contravention of this policy. It also includes acting to a person's detriment because they have agreed to be a witness.

Expected Standards of Behaviour

In line with MPLCC's commitment to creating a workplace that is free from workplace health and safety risks and one that strives to create positive working relationships, all those covered by this policy are expected to observe the following minimum standards of behaviour:

- being polite and courteous to others
- being respectful of the differences between people and their circumstances
- ensuring they do not engage in any discriminatory or bullying behaviour(s) towards others in, or connected with, the workplace which includes customers, clients, suppliers, supervisors, managers and other visitors
- ensuring they 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 type;
- adhering to the complaint procedure in this policy if they experience any discriminatory or bullying behaviour(s) personally;
- reporting any discriminatory or bullying behaviour(s) they see happening to others in the workplace, or connected with the workplace, in line with the complaint procedure outlined in this policy
- keeping 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, MPLCC's Code of Conduct Policy.

Discrimination

Unlawful discrimination will not be tolerated by MPLCC. Team members found engaging in discriminatory conduct will be subject to disciplinary action.

Examples of behaviour that may constitute discrimination (if behaviour is based on the employee's personal attributes as protected by law) 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 behaviours that constitute 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 team members in private or in front of their peers;
- an employee being treated less favourably by another employee or group of team members 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; or
- 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 team members, discipline for misconduct and other work directions in line with MPLCC’s needs does not amount to bullying.

Harassment

- So long as the 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 be found to 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, email, mobile phone text messages, posters or photographs, computer servers or screensavers.

Sexual Harassment

- MPLCC will not tolerate sexual or gender-based harassment and is committed to taking all reasonable steps to prevent an employee from engaging in acts of sexual or gender-based harassment in connection with his or her employment. MPLCC understands it has a legal responsibility to prevent sexual and gender-based harassment in the workplace and unless MPLCC has taken all reasonable steps to prevent an employee from engaging in sexual or gender-based harassment in connection with his or her employment, the Centre may be vicariously liable for such conduct.
- This policy is a proactive step in preventing sexual and gender-based harassment in the workplace. Each employee will receive this policy upon commencement of employment and can access it for the duration of their employment. All team members will receive training on this policy and be notified of any changes.
- Sexual harassment is unwelcome conduct of a sexual nature. It 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; or

- a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.
- Depending on the circumstances, sexual harassment includes (but is not limited to);
 - 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;
 - gender-based insults, gestures, whistling or comments towards a person. These gestures may not need to be obviously crude for the behaviour to be deemed sexual harassment;
 - 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';
 - sexual banter, crude comments or or offensive jokes near or towards a person;
 - repeated sexual invitations when the person invited has refused similar invitations before;
 - an unwanted invitation to go out on dates;
 - intrusive questions or remarks about a person's sexual activities or private life;
 - applying gender-specific double standards or imposing different consequences for the same actions; and
 - intentionally using the wrong gender pronouns for someone or referring to them by a previous name to demean or diminish their identity.
- Sexual and Gender-based Harassment can also be conducted using technology. This includes but is not limited to:
 - indecent phone calls, including someone leaving a sexually explicit message on voicemail or an answering machine;
 - sexually explicit emails, text messages, social media messages; and

- repeated or inappropriate advances on email, social networking websites or internet chat rooms; or
 - sharing or threatening to share intimate images or films of a person without consent.
- Conduct between parties that is the subject of mutual acceptance or consent is not unwelcome and is therefore not sexual or gender-based harassment.
- 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 or gender-based harassment 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 or gender-based harassment.
- Sexual or gender-based harassment doesn't have to be repeated or continuous. It can be a one-off incident. Sexual or gender-based 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 or gender-based 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

Team members 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 or gender-based 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.

Victimisation

- Victimisation of individuals who make, or intend to make, a complaint of discrimination, bullying or harassment will not be tolerated by MPLCC
- Victimisation of individuals who provide evidence or information connected to a complaint of discrimination, bullying or harassment will not be tolerated by MPLCC.
- Team members 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.

Breach of Policy

All individuals covered by this policy are expected to adhere to the standards of behaviour contained herein at all times. Any employee who is found to have breached this policy will be disciplined accordingly, which may lead up to, and include termination of employment. If a contractor of MPLCC is found to have breached this policy, their contract stands to be terminated or may not be renewed in the future.

Complaint Handling Procedure

- All individuals covered by this policy who believe that they have been subject to, directly observed or have information to suggest that a person is experiencing discrimination, bullying or harassment should follow the procedure set out below.
- If you have information to suggest that someone is experiencing discrimination, bullying or harassment in the workplace you must report this information to your immediate supervisor and not spread gossip or rumours. If you make a false report or claim without any genuine belief of the truth in the claims you may be subject to disciplinary action.
- Amicable Resolution
- In the first instance, the complainant / aggrieved employee should, wherever practicable (and if they feel comfortable doing so), attempt to amicably resolve the matter with the employee/s or manager/s (or 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 offence 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 immediate supervisor and it is not practical for them to directly resolve the matter, they shall immediately notify the Centre Manager who will receive the complaint and either personally investigate and resolve the matter in accordance with the procedure set out below, or refer to the Committee of Management (CoM).
- MPLCC will act on concerns raised in relation to discrimination, bullying or harassment where consistent with the Company's commitment (and legal obligation) to taking reasonable and practical steps to prevent such behaviour from occurring – even where the complainant / aggrieved employee does not want the complaint to be investigated. The Company will consult with the complainant / aggrieved employee before taking any such action.

Reporting

All those covered by this policy should report instances of discrimination, bullying and harassment to their immediate supervisor. These complaints will be taken seriously and treated in confidence. The direct supervisor will handle this complaint by using the procedure set out below.

Informal procedure

- The informal complaint procedure includes a range of alternatives that 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.
- Different options for handling informal complaints may include, but are not limited to:
 - The direct supervisor having a conversation with the individual about the unacceptable behaviour; or
 - The direct supervisor having a meeting with the individuals concerned in an attempt to reach a resolution.

Formal investigation

- Where a complaint has been lodged, and it is determined that a formal investigation is the most appropriate course of action, the formal investigation procedure will commence immediately. Formal investigations may be conducted by the Centre Manager or an external person who is appointed by MPLCC e.g. an independent investigator.
- Regardless of whether the investigation is carried out by an MPLCC staff member, or by an independent body/person, broadly speaking, the investigator will aim to follow the procedure set out below:
 - the particulars of the complaint are submitted in writing. This may include a completed Incident/Injury Report Form and any supporting statements or documents

- obtain any required additional information from the complainant / aggrieved employee
- advise the respondent about the complaint
- investigate the complaint in consultation with the relevant persons.
The investigation will follow and apply the principles of procedural fairness
- hold a formal meeting with the respondent
- assess the information and make a finding/findings
- determine the appropriate outcome
- deliver the outcome to the respondent
- deliver the outcome to the complainant / aggrieved employee

Confidentiality

- Whilst the Centre Manager, CoM or external investigator will endeavour to preserve the confidentiality of the complainant / aggrieved employee and the respondent, it will often be necessary to speak with other workers or people involved to determine what happened and to maintain the integrity of the investigation process. During this time, the importance of confidentiality will be stressed to all parties.
- Those people who are involved in the complaint (including the complainant / aggrieved employee, witnesses etc.) are also under a duty to maintain confidentiality and display a commitment to uphold the integrity of the investigation process. If the complainant / aggrieved employee chooses to bring a support person with them to any meetings, they too are bound by confidentiality. Gossiping and/or the spreading of rumours as a result of, or in connection with, a process followed under this policy will not be tolerated under any circumstances and may lead to further disciplinary action for those concerned.

Outcomes

- The outcomes of formal or informal complaint procedures will depend on the nature of the complaint, its severity and what is deemed appropriate in the relevant circumstances.

- Outcomes Part 2 - Where the results of an investigation procedure suggest that an individual is guilty of discrimination, bullying or harassment, appropriate disciplinary procedures will be followed. The disciplinary action will depend on the nature and severity of the behaviour and may include termination of employment, which may be instant dismissal where serious misconduct is deemed to have occurred.
- Where the complaint involves a contractor or agent of MPLCC and an investigation process reveals that a person has engaged in unlawful conduct or other behaviour that is prohibited by this policy, those concerned may face termination of their contracts immediately, or will not be renewed in the future.
- In addition to a formal outcome (as per Outcomes Part 2), other action may be deemed necessary to resolve or remedy the behaviour complained of, including but not limited to:
 - provide training to team members concerned
 - requiring team members who have breached this policy to apologise to the appropriate person(s)
 - adjusting working arrangements where appropriate
 - providing counselling to team members (complainant and the person complained of)
 - placing team members on performance improvement plans to ensure improved behaviour; and/or
 - providing coaching and mentoring
- Note that delivering the outcome to the complainant / aggrieved employee is simply informing them whether each allegation has been substantiated or not substantiated (unsubstantiated may be clarified due to lack of evidence). The complainant / aggrieved employee will not be informed whether the respondent received a formal warning and the details of the actual formal warning.

Appeals procedure (internal)

- If any parties involved are unhappy with the outcome, or the way the complaint handling procedure was managed by MPLCC, they may refer the complaint to the Centre Manager or CoM for review.

- Once notified, the Centre Manager, CoM or external investigator will conduct a review of the procedure followed, the outcome issued and make a final determination on the issue. Once this determination is made, the person who has made the appeal will be notified of the outcome and this determination will be final.

External sources of information and appeal

- Team members can also raise the matter with a state or Commonwealth agency that has the power to resolve sexual harassment or victimisation matters, such as the Australian Human Rights Commission or the Fair Work Commission.
- Where potentially unlawful conduct has occurred, MPLCC will need to alert the appropriate authorities.

Support and counselling

Team members are strongly encouraged to follow the Complaint Handling Procedure contained within this Policy. Furthermore, Merinda Park Learning and Community encourages all team members 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/>

Further information

Australian Human Rights Commission:

website: www.humanrights.gov.au

phone: 1300 656 419

Fair Work Ombudsman:

website: www.fairwork.gov.au

phone: 13 13 94

Variations

MPLCC reserves the right to vary, replace or terminate this policy from time to time.

Document Control

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