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Bullying and Harassment Free Workplace

Purpose

This policy is intended to:

- Make employees aware of what “bullying”, “unlawful discrimination” and “unlawful harassment” means.
- Eliminate or minimise the risk of bullying.

Background

State Archives & Records Authority (SARA) and Sydney Living Museums (SLM) does not accept workplace bullying behaviour in any form from any of its staff. All employees have a right to work in a workplace free of bullying, discrimination and harassment.

SARA/SLM takes seriously its obligations under work, health and safety laws and all other laws and regulations, and its obligation to provide good stewardship of public resources by maintaining constructive workplaces.

Key to meeting these commitments is the need to ensure that all SARA/SLM employees and contractors have equal opportunity to contribute to their full potential in the workplace.

This policy is consistent with SARA/SLM’s commitment to create and maintain healthy and safe workplaces. This also supports the principles of equity, diversity and inclusion. A diverse workforce which is free of bullying, discrimination and harassment and reflective of the NSW community is more innovative and productive, and better able to deliver high quality services. This policy contributes positively to these commitments. This policy should be read in conjunction with SARA/SLM’s *Code of Conduct*. This policy stands beside and does not replace the rights and obligations of employees under legislation, regulations and industrial instruments applying to an individual’s employment.

Scope

This policy applies to any activity associated with SARA/SLM, including any out-of-hours activity that has a relevant connection with SARA/SLM business or undertakings.

POLICY

1. What is workplace bullying?

‘Workplace bullying’ is defined as repeated and unreasonable behaviour directed towards an Employee or a group of Employees that creates a risk to health and safety.

‘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 considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Workplace bullying can occur at the place of work or outside work. Depending on the particular circumstances, behaviour which occurs outside of ordinary working hours and work-related activities may still be deemed workplace bullying if it affects workplace relationships.

Examples of behaviour, whether intentional or unintentional, that may be considered to be workplace bullying if it is repeated, unreasonable and creates a risk to health and safety include:

- abusive, insulting or offensive language or comments,
- unjustified criticism or complaints,
- deliberately excluding someone from workplace activities,
- withholding information that is vital for effective work performance,
- setting unreasonable timelines or constantly changing deadlines,
- setting tasks that are unreasonably below or beyond a person's skill level,
- denying access to information, supervision, consultation or resources to the detriment of the Employee,
- spreading misinformation or malicious rumours, and
- changing work arrangements such as rosters and leave to deliberately inconvenience a particular Employee or Employees.

A single incident of unreasonable behaviour is not considered to be workplace bullying, however, it may have the potential to escalate and should not be ignored.

Bullying is not limited to the above and whether a particular set of circumstances or series of incidents constitutes bullying will be determined after taking into consideration all information relevant to the alleged incidents.

Workplace bullying can also be carried out in a variety of ways, including:

- in person,
- through email,
- text messages, and
- social media channels.

Bullying behaviour can be by one or more persons against any other person or persons. Managers and staff at any level can either be responsible for carrying out bullying or be the recipient of bullying conduct.

In considering what is workplace bullying, it is necessary to apply common sense. The above points should not be applied rigidly or without regard to all relevant factors. All bullying complaints must be treated seriously and confidentially and acted on promptly.

This policy is not intended to cover all issues that may arise and as such should be viewed as a set of general principles rather than an exhaustive list of behaviours and actions that may constitute bullying.

Workplace bullying is **not**:

- Legitimate and reasonable managerial actions, to direct and control how work is done in the workplace, which may include:
 - providing appropriate, fair and reasonable feedback on a staff member's work performance (the fact that a staff member may find the feedback upsetting, does not on its own constitute bullying)
 - managing performance or underperformance issues
 - issuing reasonable directions about work allocation and performance, and about attendance at the workplace
 - transferring a staff member or taking action to make a staff member redundant where the process is conducted fairly and equitably
 - making justifiable decisions related to recruitment, selection and other development opportunities
 - ensuring that workplace policies, procedures and reporting are implemented
 - managing allegations of misconduct and utilising disciplinary actions where appropriate
 - overseeing injury and illness processes in accordance with work, health and safety, injury management and workers compensation laws and policies.
- Workplace conflict. Differences of opinion and disagreements are generally not considered to be workplace bullying. People can have differences and disagreements in the workplace without engaging in bullying. However, in some cases, conflict that is not managed may escalate to the point where it meets the definition of workplace bullying.

2. What is unlawful discrimination?

Unlawful discrimination means treating one person or group less favourably than another, or causing them disadvantage, in certain circumstances. This generally occurs because they have a particular characteristic or belong to a particular group of people.

Australia has laws regarding discrimination at the Federal level, such as the *Age Discrimination Act 2004*, *Disability Discrimination Act 1992*, *Racial Discrimination Act 1975*, and the *Sex Discrimination Act 1984*. The *Anti-Discrimination Act 1977 (NSW)* operates at a State level.

These laws make discrimination unlawful on a variety of grounds, including on the basis of a person's:

- Sex, pregnancy or breastfeeding
- Marital or relationship status
- Sexual orientation, gender identity including transgender status, or intersex status
- Race, colour, descent, nationality, national origin, ethnicity or ethno-religious origin
- Family responsibilities or responsibilities as a carer
- Disability or impairment
- Age

2.1 How can unlawful discrimination occur?

Discrimination can occur in the recruitment process, during the course of employment or upon termination of employment. Discrimination can also occur in the provision of goods and services. Employees should not unlawfully discriminate against colleagues or customers. Similarly, suppliers should not unlawfully discriminate against employees.

Discrimination can be direct or indirect.

- **Direct discrimination** occurs where someone is treated less favourably because of their sex, age, race etc. An example of direct discrimination is when an employee misses out on an internal promotion because they are considered too old for the job.
- **Indirect discrimination** occurs where everyone is treated on the same terms according to a rule, policy or directive but which has the effect of being less favourable to people of a particular sex, age, race etc., and which is not reasonable in all the circumstances. An example of indirect discrimination would be a security company that has height and weight requirements for its employees – this may exclude a large proportion of women, and this requirement is not reasonable.

There are exceptions from anti-discrimination law which may apply in some situations – for example, because of the inherent requirements of a particular job.

Discrimination laws also prohibit vilification and racial hatred.

- **Racial hatred** occurs where a person does a public act that is reasonably likely to offend, insult, humiliate or intimidate another person or a group of people, which is done because of that person or group's race, colour or national or ethnic origin. Acts of racial hatred include circulating racially offensive material or making racially offensive and/or abusing comments. Racial hatred is unlawful under the *Racial Discrimination Act 1975 (Cth)*.
- **Vilification** occurs where a person does a public act that incites hatred, serious contempt for or severe ridicule of a person or group of persons because the person/group has a particular attribute. Protected attributes include race, sexuality or gender identity and HIV/AIDS status. Vilification is unlawful under the *Anti-Discrimination Act 1977 (NSW)*.

3. Unlawful harassment

3.1 What is unlawful harassment?

Unlawful harassment is a form of unlawful discrimination. Unlawful harassment includes sexual harassment and other types of harassment which the law does not allow in particular circumstances. In general, unlawful harassment is any form of behaviour that:

- Is unwelcome (not wanted) or uninvited (not asked for)

- A reasonable person would have anticipated would humiliate, offend or intimidate the person exposed to the conduct, and
- Is based on one of the grounds of unlawful discrimination

In some cases a single action or incident can create unlawful harassment. In other cases there may need to be a persistent pattern of behaviour before unlawful harassment has occurred. Harassment will not be unlawful, as such, if it is not based on one of the unlawful grounds, although it may amount to a breach of other laws or policies (including, for example, bullying). In any event, SARA/SLM expects its employees to treat each other and other people whom they come into contact as representatives of SARA/SLM with respect and courtesy in accordance with SARA/SLM's *Code of Conduct*.

3.2 Examples of unlawful harassment?

Unlawful harassment can include:

- Sexual harassment (see below)
- Verbal abuse or comments that degrade or stereotype people because of their race, sexual orientation, pregnancy, disability etc.
- Jokes based on race, sexual orientation, pregnancy, disability, etc
- Mimicking someone's accent, or the habits of someone with a disability
- Offensive gestures based on race, sexual orientation, pregnancy, disability etc
- Ignoring or isolating a person or group because of their race, sexual orientation, pregnancy, disability, etc
- Displaying or circulating racist, pornographic or other offensive material (including electronically)

3.3 What is unlawful sexual harassment?

Unlawful sexual harassment occurs where a person:

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

Unlawful sexual harassment includes:

- Pressure or demands for dates or sexual favours,
- Unnecessary familiarity – for example, deliberately brushing against a person or constantly staring at a person,
- Unwanted physical contact – for example, touching or fondling,
- Sexual jokes or innuendo,
- Offensive telephone calls,
- Offensive sexual gestures,
- Unwelcome comments or questions about a person's sex life,
- Display or circulation of sexual material, including magazines, posters or pictures and email messages (including electronically),
- Sending email or text messages which contain sexual content or tone, or
- Sexual assault.

It is important to understand that some of these forms of sexual harassment are also criminal behaviour and may be treated as a criminal offence. These include:

- Sexual assault,
- Physically molesting a person,
- Indecent exposure, and
- Obscene phone calls or emails/letters.

3.4 What is not unlawful sexual harassment?

Mutual attraction between people is not sexual harassment. Conduct which is welcome or consensual is not unlawful, and friendships (sexual or otherwise) which develop between people who meet at work are a private concern provided they do not adversely impact on the workplace or create a conflict of interest.

However, you should take great care before engaging in conduct you believe to be welcome. Always remember that some people may not feel comfortable telling you that your behaviour is offending them and is not welcome. This may be because of their personality or may be because of the relative status of the people involved (e.g. they are too worried about the possible impact on their employment if they complain).

It is your responsibility to ensure that you do not engage in conduct which is not welcome.

You should also remember that even conduct which is welcome may not be appropriate in the workplace. If you are unsure whether conduct is appropriate, you should speak to your immediate supervisor/manager or People and Culture.

4. What can you do if you are being bullied, unlawfully discriminated against or harassed?

If you feel that you are being bullied, harassed or unlawfully discriminated against, SARA/SLM encourages you to take action to resolve the problem.

- Do not ignore circumstances where you feel you are being bullied, unlawfully discriminated against, harassed or vilified, thinking it will go away. Ignoring the behaviour could be taken by the person responsible as tacit approval of the behaviour.
- Where you feel comfortable, ask the person to stop, or make it clear that you find the behaviour offensive or unwelcome. Maybe the alleged bully/discriminator/harasser is not aware that his/her behaviour is intimidating or unwelcome and will stop once they are told. It may be useful to speak with immediate supervisor/manager or People and Culture in the first instance to seek guidance on how to do this.

Alternatively, you may wish to make a complaint to a senior manager or People and Culture as soon as possible after the incident(s) have occurred.

If you become aware of an incident of bullying, discrimination or harassment, whether by witnessing the incident or being told of it, you should report it to a senior manager or People and Culture.

If you feel that you are being victimised because you have made or propose to make a complaint of bullying, unlawful discrimination or harassment, or because you have provided information in relation to a complaint, you should raise the issue as soon as possible with a senior manager or People and Culture.

If your issue is about a People and Culture employee, you should raise it with the Chief Operating Officer. If your issue is about the Chief Operating Officer, you should raise it with the Chief Executive Officer.

Although you may feel the need to tell a trusted friend or work colleague about the matter, you should be careful. Accusations of bullying, discrimination and harassment can harm the reputation of those involved. Do not allow rumours to spread.

5. What can you do if you are being bullied, unlawfully discriminated against or harassed?

Complaints will generally be managed in accordance with SARA/SLM's *Complaints Handling* policy.

The Policy allows for both informal and formal complaints.

SARA/SLM will take whatever action it considers appropriate if there has been bullying, unlawful discrimination or harassment, including disciplining or dismissing offenders.

6. Employee Assistance Program

If you feel that you are being bullied, discriminated against, harassed or victimised, or if something else at work is distressing you, you may seek confidential counselling and assistance using SARA/SLM's Employee Assistance Program (EAP) on 1300 687 327.

Information about the EAP can be obtained from the intranet and/or People and Culture.

Roles and responsibilities

Under the *Work Health and Safety Act 2011 (NSW)*, SARA/SLM as an employer has a duty of care to ensure, so far as is reasonably practicable, the health and safety of its staff and that this is not put at risk from work carried out. 'Health' means physical and psychological health.

- All Employees (including executives and managers):
 - Uphold the NSW Public Sector values under the *Government Sector Employment Act 2013 (GSE Act)*, including integrity, trust, service and accountability
 - Take reasonable care that they do not adversely affect the health and safety of other persons
 - Ensure that behaviour at all times supports efforts to provide workplaces that are free of bullying, harassment and discrimination
 - Engage in any training provided by SARA/SLM on the subject matter of this policy
 - Report (to a manager, executive or other authorised person in SARA/SLM such as a People and Culture representative) any behaviour by others that they reasonably consider may breach of this policy
- All people managers:
 - Ensure that Employees are familiar with, understand, and attend training on this policy
 - Provide guidance to employees on managing behaviour or conduct that may breach this policy
 - Inform appropriate senior managers and People and Culture if a complaint is received
 - Take prompt action to address any conduct which does not comply with this policy
 - Promote a culture of respect and inclusion
- Senior executives:
 - Ensure effective implementation of this policy within areas of responsibility
 - Ensure behaviour models the standards required
 - Ensure that employees are familiar with, understand, and attend training on the subject matter of this policy
 - Actively promote and support this policy and ongoing strategies for bullying prevention
 - Monitor the workplace and take appropriate action in circumstances where they become aware of behaviour that may constitute bullying, whether or not a complaint has been lodged
 - Deal with allegations in accordance with the *Complaints Handling Policy*
 - Ensure that employees are not victimised or penalised for raising issues or acting as a witness
- People and culture:
 - Provide guidance and assistance
 - Be available to receive complaints
 - Take prompt action to address any conduct which does not comply with this policy

Delegations

- All of SARA/SLM.

Legislation

- *Government Sector Employment Act 2013 (GSE Act)*
- *Work Health and Safety Act 2011 (NSW)*
- *Anti-Discrimination Act 1977 (NSW)*
- *Age Discrimination Act 2004*
- *Disability Discrimination Act 1992*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*

Related policies

- Code of Conduct
- Complaints Handling

Definitions

In this policy:

- Employee: SARA/SLM ongoing, temporary and casual employees. In this policy, employees also include contractors and consultants who carry out work for SARA/SLM.
- Workplace: a place where employees are, or are likely to be, conducting business or undertakings for SARA/SLM in their capacity as employees.

Definitions

This policy summarises some of the rights and obligations which are created by legislation. The Policy is not intended to go beyond the legislation. This policy is not a term of any contract, including any contract of employment, and does not impose any contractual duties, implied or otherwise, on SARA/SLM. This policy may be varied by SARA/SLM from time to time.

Superseded documents

This policy replaces:

- DPC Bullying and Harassment Free Workplace.

Revision history

Version	Date issued	Notes	By
1	01/04/2022	New policy established for SARA/SLM executive agency.	Governance and People & Culture

Review date

20/01/2023

Contact

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SafeWork

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