



# **Equal Opportunity, Anti-Discrimination, Anti-Harassment, and Bullying Policy and Procedure**

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## **Purpose**

The purpose of this policy is to outline Royal South Street Society's (RSSS) Equal Opportunity – Anti Discrimination, Anti-Harassment, and Bullying policy.

This policy is intended to ensure that there is a shared understanding amongst all RSSS employees, volunteers, independent contractors, and other visitors of RSSS expectations in regards to acceptable and appropriate behaviour within the workplace.

This policy is designed to ensure that RSSS complies with all of its obligations under the relevant legislation.

## **Policy**

Discrimination, harassment, sexual harassment and bullying is not only unacceptable, it is unlawful pursuant to the relevant legislation.

It is the primary responsibility of management to take reasonable measures to provide a working environment free from discrimination, harassment and bullying. It is the responsibility of every employee and volunteer to not participate in discriminatory or harassing behaviour within the workplace. RSSS aims to take practical steps to ensure other members of RSSS and visitors provide the same working environment.

RSSS is dedicated to implementing a proactive approach by taking reasonable steps such as educating employees' and volunteers as well as continuing to monitor behaviour and endeavouring to prevent any disputes from occurring in the first instance, even in the absence of a formal dispute/grievance.

Management will treat all disputes confidentially, seriously and sympathetically as far as possible. However, it may be necessary to speak with other employees, volunteers or other members of RSSS in order to determine what happened, to allow fairness to those against whom the complaint has been made, and to resolve the complaint.

## **Discrimination**

Discrimination can be defined as consists of threatening an individual with a particular attribute less favourably than an individual without that attribute or with a different attribute under similar circumstance.

The Victorian *Equal Opportunity Act (2010)* prohibits unlawful discrimination in the form of direct and indirect discrimination. Discrimination is also unlawful under federal legislation, including:

- *Age Discrimination Act (2004)*
- *Sex Discrimination Act (1984)*
- *Racial Discrimination Act (1975)*
- *Disability Discrimination Act (1992)*
- *Human Rights and Equal Opportunity Commission Act (1986)*
- *Fair Work Act (2009)*

## **Direct Discrimination**

Direct Discrimination is treating or proposing to treat a person with a protected attribute unfavourably because of that attribute. The new test is whether or not certain treatment was less favourable to the person claiming discrimination, placing emphasis on the consequences of the treatment on the person claiming direct discrimination because of a protected attribute.

## **Indirect Discrimination**

Indirect Discrimination can occur when there is a requirement or condition or practice that is the same for everyone but disadvantages a person or is likely to disadvantage a person because they have one or more of the protected attributes.

## **Protected Attributes**

Protected Attributes under the *Equal Opportunity Act (2010)* include:

- Age
- Breastfeeding
- Employment activity
- Gender Identity
- Disability
- Industrial activity
- Lawful sexual activity
- Marital status
- Parental status or status as a carer
- Physical features
- Political belief or activity
- Pregnancy
- Race (including colour, nationality, ethnicity and ethnic origin)
- Religious beliefs or activity
- Sex
- Sexual orientation
- Personal association with someone who has, or is assumed to have, any of these personal characteristics

## **Workplace Discrimination**

Workplace Discrimination can occur in the following situations;

- Recruiting and selecting staff
- Terms, conditions and benefits offered as part of employment
- Who receives training and what sort of training is offered
- Who is considered and selected for transfer, promotion, retrenchment or dismissal
- Any other unfavourable treatment including harassment

It is important to note that from a legal perspective it is irrelevant whether or not discrimination was intended.

## Harassment

Harassment is unlawful under the *Equal Opportunity Act (2010)*. A person unlawfully harasses another person if he or she makes that other person feel offended, humiliated or intimidated because of the protected attributes. It may involve inappropriate actions, behaviour, comments or physical contact that is objectionable or causes offence.

Unlawful harassment can include behaviour such as

- Telling insulting jokes about particular racial groups
- Sending explicit or sexually suggestive emails, texts, and letters
- Displaying offensive or pornographic posters or screen savers
- Making derogatory comments or taunts about someone's race or religion
- Making intrusive questions about someone's personal life, including their sex life

Unlawful Harassment may have occurred if the behaviour makes the victim feel

- Offended and humiliated
- Intimidated or frightened
- Uncomfortable at work

It is important to note that from a legal perspective it is irrelevant whether or not the harassing behaviour was intended

## Sexual Harassment

Sexual Harassment is unlawful under the *Equal Opportunity Act (2010)* and the *Sex Discrimination Act (1984)*. Sexual Harassment occurs when a person make an unwelcome sexual advance, or an unwelcome request for sexual favours to another person, or engages in any unwelcome conduct of a sexual nature in relation to another person, in circumstance in which a reasonable person would have anticipated that the other person would be offended, humiliated or intimidated.

Sexual Harassment is unlawful in the workplace, which includes any place a person goes for the purpose of carrying out any function in relation to his/her employment. The workplace can also extend to social functions.

In Victoria, co-workers can be named sole respondents in cases of alleged sexual harassment.

Some examples of sexual harassment include

- Persistent, unwelcome demands or even subtle pressures for sexual favours or outings
- Staring or leering at a person or at parts of their body
- Unwelcome patting, pinching, touching or unnecessary familiarity, such as unnecessarily brushing up against a person
- Offensive comments or questions about a person's physical appearance, dress or private life
- Sexually explicit pictures or posters or screen savers (words or images)
- Sexually explicit telephone calls, letters, faxes, emails or voice mail messages
- Humour such as smutty or suggestive jokes or comments

- Innuendo, including sexually provocative remarks, suggestive or derogatory comments about a person's physical appearance, inferences of sexually morality, or tales of sexual performance
- Requests for sex
- Insults or taunts based on sex
- Sexually explicit physical contact

Some types of sexual harassment can also be offences under the criminal law. These include:

- Physical molestation or assault
- Indecent exposure
- Sexual assault
- Stalking
- Obscene communications

## **Bullying**

Bullying is a significant Occupational Health and Safety issue, as it can cause harm to a person's health and wellbeing, both physical and psychological. Under the *Occupational Health and Safety Act (2004)* employers have a primary legal duty to provide a healthy and safe workplace. Employees also have responsibility to abide by safety standards and to cooperate with their employers actions to ensure a healthy and safe workplace is maintained.

Bullying may also be unlawful under federal and state anti-discrimination legislation where the bullying is linked to, or based on, one of the protected attributes. Workplace bullying can occur between a worker and manager or supervisor, or between co-workers and between volunteers.

Serious cases of bullying may also be illegal under the *Crimes Act (1958)* and can result in imprisonment of up to 10 years.

Workplace bullying is repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.

Unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstance, would expect to victimise, humiliate, undermine or threaten the other person.

The following types of behaviour, where repeated or occurring as part of a pattern or behaviour could be considered to be workplace bullying.

- Physical or verbal abuse
- Intimidation
- Yelling, screaming or offensive language
- Excluding or isolating another person
- Psychological harassment
- Assigning meaningless tasks unrelated to the job
- Giving employees impossible jobs
- Deliberately changed work rosters to inconvenience particular employees
- Undermining work performance by deliberately withholding information vital for effective work performance

- Other types of behaviour may also constitute bullying

Bullying does not cover situations where an employee has a grievance about legitimate and reasonable

- Performance management processes
- Disciplinary action
- Allocation of work in compliance with systems

## **Victimisation**

Victimisation is unlawful under the *Equal Opportunity Act (2010)*. Victimisation happens where an employee is treated harshly or subjected to any detriment because they have made a complaint of discrimination or harassment. Victimisation will also happen if a person is subjected to a detriment because they have furnished any information or evidence in connection with a discrimination complaint.

## **Procedure**

RSSS will implement the following procedure.

### **Resolution of Disputes and Issues of Concern**

It is in the interest of any person or group who believe they have been unlawfully discriminated against, sexually harassed, bullied or victimised to take action to prevent the behaviour from recurring.

RSSS believes that all disputes and issues of concern should be resolved quickly and confidentially (where possible). Internal issue resolution options include:

- Self-resolution
- Informal resolution by the CEO
- Local workplace resolution involving mediation and conciliation
- Formal investigation/assessment by either the CEO/Chairman or External provider

### **What can you do if you are being discriminated against**

If you consider you have or are being discriminated against, bullied or harassed it should be dealt with and should not be ignored as ignoring the behaviour could be taken as unspoken consent.

Anybody who experiences or witnesses discrimination, harassment or bullying is encouraged to either:

- Inform the offender that the behaviour is offensive and unacceptable and against company policy
- Seek assistance in having the behaviour stopped. This may include reporting the issue to the CEO or speaking to a contact officer

Where these issues may breach Occupational Health and Safety Laws the incidents should also be reported immediately in accordance with RSSS's Occupational Health and Safety policy and procedures.

### **Who can assist you in making a report of complaint**

If you feel that you are unable to resolve the matter yourself, the following people will be able to assist you

- The CEO
- Board Chairman

Employees who believe they are being bullied in the workplace may apply to the Fair Work Commission (FWC) to have the matter heard via mediation, conference or hearing. Under this provision, FWC must process the application within 14 days and if they are satisfied that bullying has occurred may make an order to stop bullying conduct.

In addition to the above listed, you may approach the Equal Opportunity Commission, Worksafe or the Fair Work Ombudsman for independent advice at any time.

### **What will happen if you make a report of complaint**

Any complaints or reports of discrimination, harassment, or bullying will be treated quickly, seriously, and sympathetically. They will be investigated thoroughly, impartially and where possible, confidentially. Managers must act immediately on any reports of discrimination, harassment or bullying. Employees and volunteers will not be disadvantaged in their employment conditions or opportunities as a result of lodging a complaint.

### **What will happen to the person against whom you have made the complaint**

Management considers all forms of workplace discrimination, harassment, and bullying to be unacceptable behaviour which will not be tolerated. Accordingly, where such complaints have been substantiated, appropriate disciplinary action will be taken. Such action may range, based on the severity of the complaint, from a formal warning to termination of employment for serious breaches of this policy (Refer to RSSS's Disciplinary Policy).

Similarly, where necessary, action will be taken against anyone including employees or independent contractors, who have been found to have discriminated against, harassed or bullied a co-worker, or any other person during the course of his/her employment, contract for services or voluntary with RSSS.

### **Natural Justice**

A complaint of discrimination, harassment and/or bullying is a serious allegation to bring against someone. For this reason, while advisers may have feelings of sympathy for the complainant, and quite possibly negative feelings towards the respondent when dealing with a complaint, it is crucial to continually bear in mind the rights of the respondent as determined by the principles of natural justice. The adviser must approach the problem with neutrality.

### **Defamation**

Defamation is unlawful under the *Defamation Act (2005)* and the Victorian common law. A person should not be deterred from making a complaint of harassment by concerns about

defamation laws. Generally if a complainant only discusses the complaint with appropriate people in the workplace (CEO and Chairman) and is acting in good faith, then the person will not be liable for defamation.

RSSS is committed to providing an environment which is safe and free of discrimination, harassment, and bullying for our employees and others with whom we associate at work.

**Authorisation of Policy  
Signature**

\_\_\_\_\_  
**Name**

\_\_\_\_\_  
**Date**

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