

Australian Live Performance Industry Code of Practice to Prevent Workplace Discrimination, Harassment, Sexual Harassment and Bullying

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Contents

Key points	3
Part A: Code of Practice for the Live Performance Industry	4
1. About this code of practice	4
1.1 What is the purpose of this code of practice?	4
1.2 What is the legal status of this code of practice?	4
1.3 Who does this code of practice apply to?.....	4
1.4 Is it mandatory for LPA members to abide by this code of practice?.....	5
2. Legal framework and obligations.....	6
2.1 What is the law on discrimination, harassment, sexual harassment and bullying?	6
2.2 What are employers' legal obligations?.....	6
2.3 Shared responsibilities	10
2.4 Criminal offences	11
2.5 Historical information	12
3. Definitions	13
3.1 Discrimination	13
3.2 Harassment.....	14
3.3 Sexual harassment	15
3.4 Workplace bullying	16
3.5 Vilification	17
3.6 Victimization	17
4. Preventing and responding to discrimination, harassment, sexual harassment and bullying....	18
4.1 Develop a discrimination, harassment, sexual harassment and bullying policy.....	18
4.2 Develop a complaint handling investigation procedure	18
4.3 Implement discrimination, harassment, sexual harassment and bullying policies	19
4.4 Create and maintain a positive workplace environment.....	20
5. Sources	21
6. Useful links and resources.....	22
6.1 Factsheets	22
6.2 Guides	23
6.3 Other resources	23
Part B: Best Practice Templates and Resources	24
Templates.....	24
1. Workplace discrimination, harassment, sexual harassment and bullying policy	24
2. Complaint handling and investigation procedure.....	24
3. Complaint form	24
4. Code of conduct: workplace discrimination, harassment, sexual harassment and bullying	24
Other resources	24
5. Check-lists to assess your current policies and procedures.....	24

KEY POINTS

- All workers have the legal right not to be discriminated against, harassed, sexually harassed or bullied in the workplace. Workplaces should be non-threatening, respectful, safe and free from all forms of harassment.
- This code of practice is a best practice guide for employers in the live performance industry. It is a voluntary industry code of practice. However, compliance is mandatory for Live Performance Australia (LPA) Members.
- In addition to the obligations contained in legislation addressing discrimination, harassment, sexual harassment and bullying, under Work Health and Safety (WHS) laws, all employers have a duty to protect the health (both physical and psychological), safety and welfare of all workers at work and of other people who might be affected by the work. WHS laws require a proactive and preventative approach to managing health and safety risks in the workplace.
- Employers, no matter how big or small, can be held legally responsible (i.e. vicariously liable) for acts of discrimination, harassment, sexual harassment or bullying that occur in the workplace or in connection with a person's employment.
- To minimise the risk of liability, employers need to demonstrate that they have:
 - Taken **all reasonable steps to prevent** discrimination, harassment, sexual harassment and bullying from occurring in their workplaces; and
 - **Responded appropriately to resolve incidents** of discrimination, harassment, sexual harassment and bullying.
- What constitutes reasonable steps will be different for each organisation, with factors such as the size and resources of an organisation, the work performed and the culture of the workplace being taken into account.
- Reasonable steps to effectively prevent and respond to workplace discrimination, harassment, sexual harassment and bullying may include, but are not limited to:
 - Developing clear workplace policies and procedures on discrimination, harassment, sexual harassment and bullying, including a complaint handling and investigation procedure and making workers aware of these policies and procedures;
 - Regularly promoting, communicating and reviewing relevant workplace policies; and
 - Taking a proactive approach to creating and maintaining a positive, inclusive and respectful workplace culture that does not accept any form of discrimination, harassment, sexual harassment or bullying.

PART A: CODE OF PRACTICE FOR THE LIVE PERFORMANCE INDUSTRY

1. ABOUT THIS CODE OF PRACTICE

1.1 What is the purpose of this code of practice?

This code of practice has been prepared to support the live performance industry to prevent workplace discrimination, harassment, sexual harassment and bullying. It affirms our industry's commitment to providing safe, respectful, inclusive and flexible workplaces.

This code of practice provides:

- An overview of the relevant legislative framework and obligations;
- Best practice guidance on steps your organisation can take to effectively prevent and respond to discrimination, harassment, sexual harassment and bullying in the workplace;
- Check-lists to assess your organisation's current policies and procedures; and
- Templates to assist your organisation develop the following policies and procedures:
 - Workplace discrimination, harassment, sexual harassment and bullying policy;
 - Complaint handling and investigation procedure;
 - Complaint form; and
 - Code of conduct: workplace discrimination, harassment, sexual harassment and bullying.

1.2 What is the legal status of this code of practice?

This code of practice is not and does not seek to be a binding legal document. This code of practice is not incorporated as a term of any contract and creates no rights enforceable by a worker against an employer. Nothing in this code of practice negates your obligations as an employer under any relevant federal or state/territory laws.

It provides general information only and is not intended to be legal advice. You should confirm the legal requirements that apply to your organisation and seek legal advice about your specific situation as required.

1.3 Who does this code of practice apply to?

It is in the best interests of all industry participants to abide by this code. This code of practice can be used by employers operating in Australia that employ or engage workers in the live performance industry.

The live performance industry includes:

- Commercial and independent producers;
- Promoters (music, comedy, etc.);
- Performing arts companies;

- Venues – such as performing arts centres, metropolitan and regional venues, commercial theatres, stadiums, arenas and cinemas;
- Arts festivals;
- Music festivals; and
- Service providers such as ticketing companies, technical suppliers and exhibition companies.

These can range from small to medium and not-for-profit organisations to large commercial entities.

This code is intended to cover workers in the live performance industry which include:

- Company owners and board members;
- Leadership and management personnel (e.g. producers, promoters, CEOs, executive directors, artistic directors, general managers, company managers, heads of department, human resources managers, managers, supervisors);
- Production and venue personnel (e.g. actors, dancers, directors, choreographers, writers, stage management, chaperones, technical crew, front of house);
- Full-time, part-time, seasonal and casual employees;
- Job candidates, including people auditioning for roles;
- Student placements, apprentices, work experience students/interns;
- Contractors, sub-contractors and secondees; and
- Volunteers or anyone undertaking unpaid work.

While casting, talent and freelance agents are not bound to follow this code unless they have been contracted or sub-contracted for a specific purpose by an employer, LPA expects that all casting, talent and freelance agents will abide by this code to assist in promoting an industry that is free from discrimination, harassment, sexual harassment and bullying.

1.4 Is it mandatory for LPA members to abide by this code of practice?

Yes. As a condition of LPA membership, all members must abide by all LPA codes and guidelines. To meet this obligation in respect of this code, LPA members are to develop and implement workplace policies and procedures addressing discrimination, harassment, sexual harassment and bullying which are appropriate to their organisation.

This code of practice is presented in general terms so that it can be applied across a diverse range of organisations. LPA members should tailor their workplace policies and procedures to suit their individual circumstances.

2. LEGAL FRAMEWORK AND OBLIGATIONS

2.1 What is the law on discrimination, harassment, sexual harassment and bullying?

There are specific laws relating to discrimination, harassment, sexual harassment and bullying. These laws intersect with WHS laws, which cover both physical and psychological health.

Unless an exception applies, employers and workers must comply with both federal and relevant state/territory laws that prohibit discrimination, harassment, sexual harassment and bullying in the workplace.

Federal laws	State/Territory laws
<ul style="list-style-type: none"> Sex Discrimination Act 1984 (Cth) Racial Discrimination Act 1975 (Cth) Fair Work Act 2009 (Cth) Disability Discrimination Act 1992 (Cth) Age Discrimination Act 2004 (Cth) Australian Human Rights Commission Act 1986 (Cth) 	<ul style="list-style-type: none"> Anti-Discrimination Act 1977 (NSW) Equal Opportunity Act 2010 (VIC) Anti-Discrimination Act 1991 (QLD) Equal Opportunity Act 1984 (SA) Equal Opportunity Act 1984 (WA) Discrimination Act 1991 (ACT) Anti-Discrimination Act 1992 (NT) Anti-Discrimination Act 1998 (TAS) Racial and Religious Tolerance Act 2001 (VIC) Work Health and Safety Act 2011 (NSW) Occupational Health and Safety Act 2004 (VIC) Work Health and Safety Act 2011 (QLD) Occupational Safety and Health Act 1984 (WA) Work Health and Safety Act 2011 (SA) Work Health and Safety Act 2011 (TAS) Work Health and Safety Act 2011 (ACT) Work Health and Safety (National Uniform Legislation) Act 2011 (NT)

Employers may also have obligations under other relevant laws, such as privacy, defamation, industrial and criminal laws.

2.2 What are an employer's legal obligations?

The obligations imposed on employers are set out in the relevant legislation. However, in summary, the anti-discrimination legislation makes it unlawful for an employer to discriminate against a worker in their employment on the basis of their age, disability, race, gender, marital status and responsibilities as a carer. It is also unlawful for an employer to subject a worker to sexual harassment. There are also laws that deal with preventing bullying in the workplace.

In addition, the WHS laws impose a duty on an employer to protect the health (both physical and psychological), safety and welfare of all workers at work and of other people who might be affected by

the work. WHS laws require a proactive and preventative approach to managing health and safety risks in the workplace.

Employers, no matter how big or small, can be held legally responsible for acts of discrimination, harassment, sexual harassment or bullying that occur in the workplace or in connection with a person's employment. This is known as **vicarious liability**.

The conduct for which an employer can be held vicariously liable includes but is not limited to:

- Incidents that occur:
 - at work – such as in rehearsals, performances, on production tours;
 - while travelling for work;
 - at work-related functions – such as opening nights, after parties, Christmas parties, conferences, industry events; and
 - outside of work where there is a connection to the workplace; and
- Incidents involving the use of digital communication, for example:
 - Text messages;
 - Social media posts; and
 - Emails that have a connection to the workplace.

For an employer to be vicariously liable for the actions of a worker, the actions will usually need to have been authorised (whether expressly or implied) by the employer or be so closely linked to an authorised act that it is considered part of the act. However, where the employer can demonstrate that they have taken 'all reasonable steps' to prevent the discrimination, harassment, sexual harassment or bullying from occurring, the employer may not be held vicariously liable.

An individual who discriminates against, harasses, sexually harasses or bullies others in the workplace will remain directly liable for their own actions.

As to what constitutes taking 'all reasonable steps' will vary from organisation to organisation, there is no defined set of steps to take. However, as a guideline, it is expected that an employer would:

- Have appropriate workplace discrimination, harassment, sexual harassment and bullying policies, which are effectively implemented, monitored and communicated to all workers;
- Take appropriate action to eliminate or minimise, as far as is reasonably practicable, risks to health and safety before they occur; and
- Take appropriate remedial action if discrimination, harassment, sexual harassment or bullying does occur.

For further information on how to take reasonable steps to effectively prevent and respond to discrimination, harassment, sexual harassment and bullying refer to Section 4.

BOX 1: HOW WILL 'ALL REASONABLE STEPS' BE DETERMINED?

Anti-discrimination laws do not define 'all reasonable steps' because what may be 'reasonable' for one organisation may not be 'reasonable' for another organisation. Instead, it is considered on a case-by-case basis.

The key point is that employers **must take active steps** to minimise the risk of discrimination, harassment, sexual harassment or bullying in their workplace.

When deciding what level of preventative action is reasonable, an employer should consider:

- The size, structure and available resources of the employer;
- The type and nature of the work undertaken by the employer;
- The mix of workers, including women, young and older workers, people with disabilities, First Nations people and people from culturally and linguistically diverse backgrounds;
- The culture of the workplace;
- Previous incidents of workplace discrimination, harassment, sexual harassment or bullying;
- Levels of worker supervision;
- Relevant provisions in industrial awards or agreements; and
- Any other relevant factors, such as working hours, geographic isolation, live-in arrangements, touring or duties which require working in close physical proximity with others.

Under certain laws, an employer must report serious incidents to the regulator or police. In some jurisdictions, there are mandatory reporting requirements if a criminal offence is committed against a child or young person¹ and WHS laws require employers to notify the regulator as soon as they become aware of a death, serious injury or illness, or dangerous incident.

If a worker makes a complaint which may constitute a criminal offence, and there is no mandatory requirement for the employer to refer the matter to the police, an employer should:

- a. ask the worker if they wish to report the matter to the police;
- b. enquire whether the worker would like access to counselling or other supports;
- c. if appropriate, consider whether it is necessary to implement any changes to the workplace to provide the worker with a safe work environment while the complaint is being investigated;
- d. seek details of the complaint from the worker, so that the complaint can be investigated in accordance with the usual process for investigating a complaint of unacceptable workplace behaviour; and
- e. deal with the matter as promptly and confidentially as possible.

Please also refer to section 2.4 for further information on dealing with criminal offences.

¹ In Victoria, mandatory reporting applies when an adult has a reasonable belief that a sexual offence has been committed against a person under 16 years of age. In the Northern Territory, mandatory reporting applies when anyone has reasonable grounds to believe that a child has suffered or is likely to suffer sexual, physical or psychological abuse.

Beyond the legal ramifications, failing to effectively deal with discrimination, harassment, or sexual harassment in the workplace can result in significant negative impacts for employers including increased absenteeism, poor performance and lack of motivation, negative workplace culture and relationships, and reputational damage.

A worker who has been discriminated against, harassed or sexually harassed may be able to obtain an order for compensation against:

- The person who has engaged in the unwelcome behaviour;
- The person who has caused, instructed, induced, aided or permitted another person to discriminate, harass, sexually harass or bully another person; and
- The employer, unless it can establish that it took all reasonable steps to prevent the harassment from occurring.

It is important to note that the Fair Work Commission can issue an order for bullying to stop within a workplace, but cannot make an order for compensation in respect of a complaint of bullying.

BOX 2: A NUMBER OF LESSONS CAN BE LEARNED FROM CASE LAW

Lulham v Shanahan & Ors [2003] QADT 11

- Mr Lulham, a young male apprentice boiler maker, was subject to continual teasing over a period of six years including simulated sexual acts and accusations of paedophilia and homosexuality.
- The employer had no formal policies or procedures in place— simply an ‘open door’ policy, where employees were encouraged to raise grievances with management. This was held to be insufficient and the employer was held to be vicariously liable for the sexual harassment by the two perpetrators — \$26,000 compensation was ordered.

Lesson: Policies and procedures on bullying and harassment are essential. It is insufficient for a workplace simply to informally deal with complaints as they arise.

Sammut v Distinctive Options Ltd [2010] VCAT 1375

- Distinctive Options (DO), a small not-for-profit organisation, employed Mr Sammut as a disability case manager. Mr Sammut claimed sexual harassment in relation to a colleague’s persistent attempts to hug him. Although Mr Sammut did not lodge a formal complaint with DO, it was made clear to the colleague on a number of occasions that this physical contact was unwelcome. It was well known within DO that the complainant did not like to be touched, because he felt that this would jeopardise his relationship with his wife. The colleague persisted with this behaviour and was not deterred until Mr Sammut told her to stop in front of another employee.
- Whilst the employer had sexual harassment policies and procedures in place and employees were aware of them, VCAT found this was not sufficient because DO’s management did not understand the policy properly, did not act in accordance with the policy and did not take complaints related to the policy seriously.
- The Tribunal’s adjudicator said: ‘My view is that it was not enough that DO had policies in place. It was reasonable to ensure that management understood them, acted in accordance with them, and took seriously complaints made about matters covered by the policies. Reasonable precautions would probably also include ensuring employees had a sufficient understanding, of what those

policies meant in practice to recognise issues with their own conduct. Even in a small organisation, this is not too much to ask.'

- It was held that the employer had not taken reasonable steps and was vicariously liable for the sexual harassment committed by its employee – \$2,000 compensation was ordered.

Lesson: It is inadequate simply to possess workplace policies. All employees and particularly managers must fully understand and adhere to them, even in small organisations.

Richardson v Oracle Corporation Australia Pty Ltd [2013] FCA 102

- A senior male employee of Oracle Corporation (Oracle) was found to have sexually harassed a female colleague over a period of several months.
- Comments included:
 - 'Gosh, Rebecca, you and I fight so much ... I think we must have been married in our last life';
 - 'So, Rebecca, how do you think our marriage was? I bet the sex was hot'; and
 - 'We should go away for a dirty weekend sometime'.
- The comments resulted in the victim withdrawing from a project she was working on at the time in order to distance herself from the perpetrator.
- Ultimately, the victim was unsatisfied with HR's resolution of the complaint and resigned.
- Oracle was found vicariously liable for the sexual harassment. While it had policies and procedures relating to sexual harassment and even provided training, there was no reference to the relevant legislation prohibiting sexual harassment, nor even a clear statement that sexual harassment was against the law.
- \$18,000 compensation was ordered, which was increased to \$130,000 on appeal. This increase was partly to reflect changing community expectations of the hurt and humiliation caused by sexual harassment.

Lesson: Workplace policies must clearly state that all forms of discrimination, harassment, sexual harassment and bullying are against the law, outlining the relevant legal standards.

2.3 Shared responsibilities

The live performance industry is highly collaborative, and it is common for workers from one organisation to work alongside workers from another organisation in the same workplace (e.g. production staff working with venue staff). In this context, there may be several people/employers who have the same responsibility to ensure the health and safety of workers. The WHS laws require those people/employers with shared responsibilities to work together to meet their responsibilities and obligations. For example, this may require employers with shared responsibility to:

- consult and cooperate with each other to agree on the standards of behaviour expected in the workplace; and
- develop an agreed approach for reporting and conducting investigations, if unacceptable or unlawful workplace conduct occurs between two (or more) workers from different organisations.

2.4 Criminal offences

Unacceptable or unlawful workplace conduct may also constitute a criminal offence

What constitutes a criminal offence may vary from state to state, depending on the legislation in effect. However, some examples of conduct which will usually be considered to be a criminal offence include, but are not limited to: physical assault, sexual assault, stalking or cybercrime, which is where a carriage service is used to menace, harass or cause offence. This can include conduct that occurs over the phone, in text messages or online.

If you require specific information about whether unacceptable workplace conduct constitutes a criminal offence in a particular state, we recommend that you seek legal advice on this issue.

Employer obligations where a complaint is made which may involve a criminal offence

- There is no mandatory requirement to refer a matter to the police when a person makes an allegation of workplace conduct that may also constitute a criminal offence. However, there are mandatory reporting requirements in some jurisdictions (i.e. in Victoria and the Northern Territory) when a criminal offence is committed against a child or young person.
- Where a worker makes a complaint and the behaviour could be considered to be a serious offence, you should enquire whether the worker wishes to refer the matter to the police as well as have it dealt with internally.
- A worker should not in any way be discouraged from making a complaint to the police, as concealing a serious indictable offence can be a criminal offence. If a worker wishes to report a matter to the police, the worker should be provided with appropriate support to do so.
- Although there is no requirement to inform the police where a worker makes a complaint which may involve criminal conduct, there is still an obligation to protect the health and safety of the worker at work and deal with the worker's complaint.

Investigating a complaint if the conduct has been reported to the police or involves a potential criminal offence

- While a complaint may have been made to the police about the behaviour, this does not mean that the employer no longer has responsibility to deal with the complaint.
- A criminal investigation is separate and independent to any investigation conducted by the employer.
- A criminal investigation will also have a different standard of proof (i.e. beyond reasonable doubt) for the conduct being investigated.
- If a complaint is made to the police and the police decide not to investigate the matter further, this does not mean that the employer should not proceed with their own investigation as there are many reasons why the police may decline to pursue a complaint.
- Where an employer is made aware of unacceptable workplace conduct, the employer should take steps to investigate the alleged conduct and, where appropriate, take action to address the conduct or put in place measures to reduce the risk of further conduct. This is consistent with an employer's obligation under WHS laws to, as far as reasonably practicable, provide a safe workplace and prevent risks to the health and safety of its workers.

2.5 Historical information

There may be instances when an employer receives information about a worker asserting that the worker has previously engaged in inappropriate behaviour. In the absence of a complaint about the worker's conduct or a display of inappropriate behaviour during the course of their current employment, an employer is not required to take any action in relation to the information and should not do so. Taking any action to investigate or speak with a worker, based on information the employer has received about a worker's previous employment, may result in the worker making a complaint against the employer.

Where an employer has in place proper policies and procedures, has provided all its workers with training on appropriate workplace behaviour and how to address any inappropriate behaviour and continues to monitor the workplace for risks to health and safety, this will assist in identifying and addressing any issues as they arise.

If an employer becomes aware that its workers are gossiping about another person in the workplace, the workers should be advised that gossiping is not acceptable in the workplace and may constitute bullying.

3. DEFINITIONS

3.1 Discrimination

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

Personal characteristics protected under federal discrimination law include, but are not limited to:

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

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

Discrimination can be either direct or indirect:

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

BOX 3: EXAMPLES OF DIRECT AND INDIRECT DISCRIMINATION

Direct

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

Indirect

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

What is not discrimination?

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

- Is necessary to comply with other legislation;
- Is taken because the complainant cannot perform the inherent (essential) requirements of their job, even where reasonable adjustments are made;
- Is a genuine occupational requirement (an exemption may be required, depending on the law in the relevant state or territory);
- Is necessary to protect health and safety; or
- Is permitted because an exemption or 'special measure' applies (e.g. affirmative action recruitment programmes open only to Aboriginal and Torres Strait Islander peoples).

3.2 Harassment

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

Harassment is prohibited by anti-discrimination legislation where the behaviour targets an individual or group because of a protected characteristic (such as age, sex or race, as outlined above). Harassment that is not related to a protected characteristic is still inappropriate in the workplace and should be dealt with accordingly.

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

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

3.3 Sexual harassment

Whilst the definition varies slightly according to the jurisdiction, generally sexual harassment occurs where a person engages in **unwelcome conduct of a sexual nature** in circumstances where a **reasonable person would be offended, humiliated or intimidated**.

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

- Staring or leering at a person or parts of their body;
- Excessive or unwelcome familiarity or physical contact, such as touching, hugging, kissing, pinching, massaging and brushing up against someone;
- Suggestive comments, jokes, conversations or innuendo;
- Insults or taunts of a sexual nature or obscene gestures;
- Intrusive questions or comments about someone's private life;
- Displaying or disseminating material such as posters, magazines or screen savers of a sexual nature;
- Making or sending sexually explicit phone calls, emails or text messages;
- Inappropriate advances on social networking sites;
- Accessing sexually explicit internet sites in the presence of others;
- Unwelcome flirting, requests for sex or repeated unwanted requests to go out on dates;
- Inappropriate or unwanted gifts; and
- Behaviour that may also be considered to be an offence under criminal law, such as physical or sexual assault, indecent exposure, stalking or obscene communications.

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

Behaviour can constitute sexual harassment even if:

- it is a one-off incident;
- the person engaging in the behaviour does not intend for the other person to be offended, humiliated or intimidated;
- some people in the workplace are not offended by the behaviour; or
- the behaviour was previously an accepted practice in the workplace.

What is not sexual harassment?

Sexual interaction, flirtation, attraction or friendship, which is invited, mutual, consensual or reciprocated is not sexual harassment.

3.4 Workplace bullying

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

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

- Physical intimidation or abuse;
- Aggressive or intimidating conduct or threatening gestures;
- Manipulation, intimidation or coercion;
- Threats, abuse, offensive language, shouting or belittling;
- Innuendo, sarcasm and other forms of demeaning language;
- Ganging up;
- Public humiliation or belittling;
- Initiation activities;
- Practical jokes, teasing, or ridicule;
- Isolation, exclusion or ignoring people;
- Inappropriate blaming;
- Inappropriate emails/pictures/text messages;
- Unreasonable accusations or undue unconstructive criticism;
- Allocating unpleasant, meaningless or impossible tasks;
- Placing unreasonably high work demands on selected workers;
- Deliberately withholding information, resources, support, supervision or consultation that a person needs to do their job or access their entitlements;
- Unreasonable refusal of requests for leave, training or other workplace benefits;
- Withholding access to opportunities;
- Deliberately changing hours of work for a person or group to inconvenience them; and
- Unreasonable timelines or constantly changing deadlines targeted at a specific person or group.

Bullying may also constitute unlawful harassment or discrimination, if it is connected to a protected characteristic, such as age or race.

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

What is not bullying?

Bullying is not:

- Single incidents of inappropriate behaviour (although it may still constitute harassment or worker misconduct);
- Reasonable management action undertaken in a reasonable manner, such as:
 - Employer directions (e.g. providing instructions on the way work is to be carried out);
 - Performance management processes (e.g. providing feedback on a worker's performance);
 - Disciplinary action; or
 - Maintaining reasonable workplace standards; or
- Differences of opinion or disagreements (e.g. differences of opinion on the artistic interpretation or direction of a production). People can have differences or disagreements in the workplace without engaging in repeated, unreasonable behaviour that creates a risk to health and safety.

3.5 Vilification

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

Vilification is unlawful in all states and territories other than the Northern Territory.

3.6 Victimisation

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

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

Victimisation is unlawful in all states and territories.

Any form of retaliation taken against a worker who has made a complaint should be reported and investigated immediately, with appropriate disciplinary action taken where the conduct is proven.

4. PREVENTING AND RESPONDING TO DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT AND BULLYING

4.1 Develop a discrimination, harassment, sexual harassment and bullying policy

All employers, whatever their size, need to develop a written policy that:

1. States their commitment to providing a safe, respectful, inclusive workplace free from discrimination, harassment, sexual harassment and bullying;
2. Makes it clear that any form of discrimination, harassment, sexual harassment and bullying is unlawful in the workplace; and
3. Clearly outlines their procedure for dealing with complaints in a fair, timely, confidential and responsive manner.

Tips and resources

If you already have a policy in place, the checklist in the appendix may be a useful tool to assess whether it meets current best practice standards.

If you don't have a policy in place, a template is available in the Best Practice Templates and Resources in Part B.

4.2 Develop a complaint handling investigation procedure

A complaint handling and investigation procedure should outline a process for dealing with complaints that is:

- **Fair** – This means that both the person complaining (the complainant) and the person the complaint is about (the respondent) have the opportunity to present their version of events, provide supporting information and respond to any potential negative decisions. In addition, the person investigating and/or making decisions about the complaint should be impartial – they should not favour the complainant or the respondent or prejudge the complaint in any way.
- **Confidential** – This means that information about a complaint is only provided to those people who need to know about it, in order for the complaint to be actioned properly.
- **Transparent** – The complaint process and the possible outcomes of the complaint should be clearly explained and those involved should be kept informed of the progress of the complaint and the reasons for any decisions.
- **Accessible** – The complaint process should be easy to access and understand, and everyone should be able to participate equally.
- **Efficient** – The complaint process should be conducted without undue delay. As time passes, information relevant to the complaint may deteriorate or be lost, which will impact on the fairness of the process. In addition, unresolved complaints can have a negative and ongoing impact on a workplace.

- **Supported** – if the complainant or respondent request the assistance of a support person during the complaint process, such a request should be carefully considered by the employer and only refused if the employer considers the request to be unreasonable, for example, the support person is a witness to the complaint.

The complaint process should have the following attributes:

- Protects workers from being victimised because they have made a complaint;
- Protects workers from vexatious and malicious complaints;
- Offers both informal and formal options;
- Provides clear guidance on internal investigation procedures and confidential record keeping;
- Advises a complainant that they can pursue the matter externally with the Fair Work Commission (bullying), Australian Human Rights Commission, a state or territory anti-discrimination body or, if it appears to be a criminal matter, the police; and
- Undergoes a regular review for effectiveness.

Tips and resources

If you already have a complaint handling and investigation procedure in place, the checklist in the appendix may be a useful tool to assess whether it meets current best practice standards.

If you don't have a procedure in place, a template is available in the Best Practice Templates and Resources in Part B.

4.3 Implement discrimination, harassment, sexual harassment and bullying policies

Written policies on their own are not enough. A policy that is not implemented through communication, education and enforcement will be of little or no use in minimising risk and avoiding liability.

Meaningful implementation of workplace policies could be achieved by taking a combination of the following actions:

1. Explain the policies at worker inductions, tool box meetings, on the first day of rehearsals and prior to touring or travel or other appropriate occasions;
2. Email copies of the policy to all workers or make copies of the policies available for all workers in the workplace;
3. Provide appropriate training to workers, including workers (such as managers) responsible for implementing and enforcing the policy;
4. Display policies and posters on notice boards, in green rooms, dressing rooms, and rehearsal spaces;
5. Make workers aware that senior management endorse the policies and that all workers are required to comply with them;

6. 'Check in' with workers to provide a refresher or reminder of who the Contact Person is and their rights and obligations, standards of expected behaviour, and how complaints will be handled under the policy;
7. Keep clear and accurate records relating to safety, including worker training and the implementation of policies and procedures; and
8. Review policies regularly to ensure they are operating effectively and contain up to date information.

Tips and resources

Practical tips on how to implement policies are available in the Best Practice Templates and Resources in Part B.

4.4 Create and maintain a positive workplace environment

To provide for the safety and wellbeing of workers, it is imperative for employers to proactively create, lead and maintain a positive, inclusive and respectful workplace culture that does not accept any form of discrimination, harassment, sexual harassment or bullying. It is also imperative that employers take actions, as far as reasonably practicable, to eliminate or mitigate risks.

Creating a safe, respectful and inclusive workplace culture takes commitment, leadership and clear strategies.

Tips and resources

Ideas on how to create a safe, respectful and inclusive workplace are available in the Best Practice Templates and Resources in Part B.

5. SOURCES

Australian Human Rights Commission

- Effectively preventing and responding to sexual harassment: A Code of Practice for Employers (2008 edition)
- Good practice guidelines for internal complaint processes

Safe Work Australia

- Guide for preventing and responding to workplace bullying (May 2016)
- How to manage work health and safety risks: Code of practice (December 2011)
- Work health and safety consultation, co-operation and co-ordination: Code of practice (December 2011)

Screen Producers Australia (in partnership with Media, Entertainment & Arts Alliance)

- Australian Screen Industry Code of Practice: Discrimination, Harassment, Sexual Harassment and Bullying

Screen Australia

- Code of conduct to prevent sexual harassment

6. USEFUL LINKS AND RESOURCES

6.1 Factsheets

Australian Human Rights Commission

- Workplace discrimination, harassment and bullying
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/workplace-discrimination-harassment-and-bullying>
- A quick guide to workplace discrimination laws
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/quick-guide-australian-discrimination-laws>
- Vicarious liability
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/vicarious-liability>
- Good practice guidelines for internal complaint processes
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/good-practice-guidelines-internal-complaint>
- A step-by-step guide for preventing discrimination in recruitment
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/step-step-guide-preventing-discrimination>
- Racial discrimination
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/racial-discrimination>
- Sex discrimination
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/sex-discrimination>
- Sexual orientation, gender identity and intersex status discrimination
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/sexual-orientation-gender-identity-and-intersex>
- Age discrimination
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/age-discrimination>
- Disability discrimination
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/disability-discrimination>
- Other areas of workplace discrimination
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/other-areas-workplace-discrimination>

- Recognising and responding to sexual harassment in the workplace: Information for employees
<https://www.humanrights.gov.au/our-work/sex-discrimination/publications/recognising-and-responding-sexual-harassment-workplace>

Fair Work Ombudsman

- Workplace discrimination
<https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/fact-sheets/rights-and-obligations/workplace-discrimination>
- Bullying and harassment
<https://www.fairwork.gov.au/employee-entitlements/bullying-and-harassment>

6.2 Guides

Australian Human Rights Commission

- Ending workplace sexual harassment: a resource for small, medium and large employers
www.humanrights.gov.au/publications/ending-workplace-sexual-harassment-resource-small-medium-and-large-employers
- Effectively preventing and responding to sexual harassment: a code of practice for employers
www.humanrights.gov.au/publications/effectively-preventing-and-responding-sexual-harassment-code-practice-employers-2008
- Effectively preventing and responding to sexual harassment: A Quick Guide
<https://www.humanrights.gov.au/our-work/sex-discrimination/publications/effectively-preventing-and-responding-sexual-harassment>
- Supporting workplaces to end workplace sexual harassment: A Guide for Small Businesses in Australia
<https://www.humanrights.gov.au/our-work/sex-discrimination/publications/supporting-workplaces-end-workplace-sexual-harassment-guide>

Safe Work Australia

- Guide for preventing and responding to workplace bullying
<https://www.safeworkaustralia.gov.au/doc/guide-preventing-and-responding-workplace-bullying>

6.3 Other resources

Know the Line - www.knowtheline.com.au

Heads up - <https://www.headsup.org.au/supporting-others/workplace-bullying>

PART B: BEST PRACTICE TEMPLATES AND RESOURCES

TEMPLATES

1. **Workplace discrimination, harassment, sexual harassment and bullying policy**
2. **Complaint handling and investigation procedure**
3. **Complaint form**
4. **Code of conduct: workplace discrimination, harassment, sexual harassment and bullying**

OTHER RESOURCES

5. **Check-lists to assess your current policies and procedures**

This example policy has been developed by Live Performance Australia. It is a tool that organisations can use to assist them in their business. Organisations may tailor or alter this template to suit their individual circumstances. However, if organisations make significant changes to the template, we recommend you seek legal advice. It is not compulsory for organisations to use this template.

<Insert company name>

Workplace Discrimination, Harassment, Sexual Harassment and Bullying Policy

1. Purpose	1
2. Who this policy applies to	2
3. When this policy applies	2
4. Related documents	3
5. Anti-discrimination and workplace bullying laws	3
6. Definition and examples of discrimination, harassment, sexual harassment and bullying	4
6.1 Discrimination	4
6.2 Harassment	5
6.3 Sexual harassment	6
6.4 Workplace Bullying	7
6.5 Victimisation	8
6.6 Vilification	9
6.7 Gossip and confidentiality	9
7. Worker rights and responsibilities	9
8. Roles and responsibilities of leadership and management positions	10
8.1 Contact Person(s)	11
8.2 Complaints Person(s)	11
9. Supporting bystander action	12
10. Consequences of breaching this policy	12
11. How to make a complaint	12
12. Frivolous, vexatious or malicious complaints	13
13. Additional Information, support and advice	13
14. Review details	13

1. Purpose

[Guidance note (delete this later): You could also directly quote from relevant parts of your business’s vision, mission or values in this section.]

<Insert company name> recognises the diversity of its workforce and understands that for the business to function in the best way, all workers must be respected and valued. As such, <Insert

<company name> endeavours to provide workers with a safe, respectful, inclusive and flexible work environment free from all forms of discrimination, harassment, sexual harassment and bullying.

All <Insert company name> workers are required to treat others with dignity, courtesy and respect.

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

2. Who this policy applies to

This policy applies to all workers engaged by <Insert company name>, which includes, but is not limited to:

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

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

This policy extends to every associated entity of <Insert company name> within the meaning of Section 50AAA of the *Corporations Act 2001* (Cth).

3. When this policy applies

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

- The way in which <Insert company name> provides services to clients and interacts with members of the public;
- All aspects of employment; recruitment and selection; conditions and benefits; training and promotion; task allocation; shifts; hours; leave arrangements; workload; equipment and transport;

- On-site, off-site or after-hours work; work-related social functions (such as opening nights, after parties, award nights and industry events); rehearsals, tours, work-related travel, client functions, promotional activities, conferences, seminars or training sessions – wherever and whenever workers may be as a result of their <Insert company name> duties;
- Use of social media and other electronic communication (e.g. emails); and
- Workers’ treatment of other workers, clients, visitors and members of the public encountered in the course of undertaking their duties for <Insert company name>.

4. Related documents

Workers, especially managers and supervisors, are encouraged to read this policy in conjunction with other relevant policies, procedures, documents and agreements of <Insert company name>, including, but not limited to: [Guidance note (delete this later): list relevant policies.]

- Complaint handling and investigation procedure: workplace discrimination, harassment, sexual harassment and bullying
- Code of conduct: workplace discrimination, harassment, sexual harassment and bullying
- Flexible work arrangements policy
- Parental leave policy
- Work health and safety policy
- Discipline procedure
- Mission, vision and values statements
- Enterprise bargaining agreements and Awards [Guidance note (delete this later): list relevant agreements.]
- Service agreement [Guidance note (delete this later): any document that outlines the rights of clients and customers to complain about the service they are receiving.]

5. Anti-discrimination and workplace bullying laws

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

- *Sex Discrimination Act 1984* (Cth);
- *Racial Discrimination Act 1975* (Cth);
- *Disability Discrimination Act 1992* (Cth);
- *Age Discrimination Act 2004* (Cth);
- *Australian Human Rights Commission Act 1986* (Cth);
- *Fair Work Act 2009* (Cth);
- *Anti-Discrimination Act 1977* (NSW);
- *Anti-Discrimination Act 1991* (Qld);
- *Anti-Discrimination Act 1992* (NT);
- *Anti-Discrimination Act 1998* (Tas);
- *Equal Opportunity Act 1984* (SA);

<Insert company name>

- *Equal Opportunity Act 1984* (WA);
- *Equal Opportunity Act 2010* (Vic);
- *Racial and Religious Tolerance Act 2001* (Vic);
- *Discrimination Act 1991* (ACT);
- *Work Health and Safety Act 2011* (NSW);
- *Occupational Health and Safety Act 2004* (Vic);
- *Work Health and Safety Act 2011* (Qld);
- *Occupational Safety and Health Act 1984* (WA);
- *Work Health and Safety Act 2011* (SA);
- *Work Health and Safety Act 2011* (Tas);
- *Work Health and Safety Act 2011* (ACT); and
- *Work Health and Safety (National Uniform Legislation) Act 2011* (NT).
- [Guidance note (delete this later): include relevant state/territory legislation]

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

6.1 Discrimination

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

It is unlawful to discriminate against someone because of a protected personal characteristic and this will not be tolerated at **<Insert company name>**. Protected personal characteristics under federal discrimination law include, but are not limited to:

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

<Insert company name>

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

Discrimination can be either direct or indirect:

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

EXAMPLES OF DIRECT AND INDIRECT DISCRIMINATION

Direct

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

Indirect

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

What is not discrimination?

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

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

6.2 Harassment

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

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

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

- Intimidation, verbal abuse, repeated threats or ridicule;
- Sending offensive messages by text, email or other means;

<Insert company name>

Workplace discrimination, harassment, sexual harassment and bullying policy

- Derogatory comments;
- Displaying offensive materials, pictures, comments or objects;
- Ridiculing someone because of their accent or English-speaking ability;
- Telling offensive jokes or making practical jokes based on a protected characteristic;
- Belittling or teasing someone based on a protected characteristic; and
- Isolating, segregating or humiliating someone based on a protected characteristic.

6.3 Sexual harassment

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

It is unlawful for a worker to engage in sexual harassment, or encourage or allow another worker to do so. Sexual harassment will not be tolerated at **<Insert company name>**.

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

- Staring or leering at a person or parts of their body;
- Excessive or unwelcome familiarity or physical contact, such as touching, hugging, kissing, pinching, massaging and brushing up against someone;
- Suggestive comments, jokes, conversations or innuendo;
- Insults or taunts of a sexual nature or obscene gestures;
- Intrusive questions or comments about someone's private life;
- Displaying or disseminating material such as posters, magazines or screen savers of a sexual nature;
- Making or sending sexually explicit phone calls emails or text messages;
- Inappropriate advances on social networking sites;
- Accessing sexually explicit internet sites in the presence of others;
- Unwelcome flirting, requests for sex or repeated unwanted requests to go out on dates;
- Inappropriate or unwanted gifts; and
- Behaviour that may also be considered to be an offence under criminal law, such as physical or sexual assault, indecent exposure, stalking or obscene communications.

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

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

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

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

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

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

What is not sexual harassment?

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

6.4 Workplace Bullying

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

It is unlawful for a worker to engage in bullying, or encourage or allow another worker to do so. Bullying will not be tolerated at **<Insert company name>**.

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

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

- Physical intimidation or abuse;
- Aggressive or intimidating conduct or threatening gestures;
- Manipulation, intimidation or coercion;
- Threats, abuse, offensive language, shouting or belittling;
- Innuendo, sarcasm and other forms of demeaning language;
- Ganging up;
- Public humiliation or belittling;
- Initiation activities;
- Practical jokes, teasing, or ridicule;
- Isolation, exclusion or ignoring people;
- Inappropriate blaming;
- Inappropriate emails/pictures/text messages;
- Unreasonable accusations or undue unconstructive criticism;
- Allocating unpleasant, meaningless or impossible tasks;

<Insert company name>

- Placing unreasonably high work demands on selected workers;
- Deliberately withholding information, resources, support, supervision or consultation or equipment that a person needs to do their job or access their entitlements;
- Unreasonable refusal of requests for leave, training or other workplace benefits;
- Withholding access to opportunities;
- Deliberately changing hours of work for a person or group to inconvenience them; and
- Unreasonable timelines or constantly changing deadlines targeted at a specific person or group.

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

Workplace bullying does not include reasonable management action carried out in a reasonable manner. <Insert company name> has rights and obligations to effectively direct and control the way work is carried out. It is reasonable for managers and supervisors to allocate work to a worker and give fair and reasonable feedback on its workers' performance.

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

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

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

6.5 Victimisation

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

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

<Insert company name>

It is unlawful to victimise another person. Victimisation will not be tolerated at <Insert company name>.

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

6.6 Vilification

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

Vilification will not be tolerated at <Insert company name> and is against the law in all states (except the Northern Territory).

6.7 Gossip and confidentiality

All workers must avoid gossiping about historical matters involving current or former workers or any allegations of inappropriate workplace behaviour occurring at <Insert company name>. Where a worker considers a person's behaviour to be inappropriate, the worker should raise this with the relevant leadership or management person, or report the behaviour to the Complaints Person so that appropriate action can be taken.

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

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

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

7. Worker rights and responsibilities

All workers are entitled to:

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

All workers must:

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

8. Roles and responsibilities of leadership and management positions

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

- Model appropriate standards of behaviour;
- Take steps to educate and make workers aware of their obligations under this policy, the Code of Conduct and other related policies, and the law;
- Treat all workplace incidents seriously and take immediate action where a complaint is made;
- Inform a complainant that they can raise the matter with police, if the allegations are of a criminal nature and that the complainant will be provided with appropriate support to do so;
- Act fairly to resolve issues and enforce workplace behavioural standards, making sure relevant parties are heard;
- Where appropriate, help workers resolve complaints informally;
- Refer formal complaints about breaches of this policy to the appropriate Complaints Person for investigation;
- Use their best endeavours to prevent workers who raise an issue or make a complaint from being victimised and taking steps to address the issue where it occurs;
- Provide workers (including bystanders) with information about the support available to them;
- Make recruitment and job selection decisions based on merit – that is, the skills and abilities of the candidate as measured against the inherent requirements of the position – regardless of personal characteristics, other than where it is lawful to do so;

- Not ask discriminatory questions or request information during a recruitment process, unless it is directly relevant to a genuine requirement of the position; and
- Reasonably consider requests for flexible working arrangements.

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

- Monitor the effectiveness of this policy, the Code of Conduct and other related policies;
- Review and update the information within the policy, the Code of Conduct and other related policies so that it remains relevant;
- Provide training or guidance to workers regarding discrimination, harassment, sexual harassment and bullying and how to make a complaint or take bystander action;
- Provide training or guidance to managers on this policy, the Code of Conduct, the complaints process and other related policies and mechanisms to support workers to make a complaint or take bystander action; and
- Promote this policy, the Code of Conduct and other related policies throughout **<Insert company name>**.

8.1 Contact Person(s)

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

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

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

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

8.2 Complaints Person(s)

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

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

9. Supporting bystander action

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

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

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

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

10. Consequences of breaching this policy

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

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

11. How to make a complaint

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

Any worker who has witnessed unlawful discrimination, harassment, sexual harassment or bullying is encouraged to report the complaint to their <Insert relevant manager or Contact Person> or to the Complaints Person. Managers **must** report such conduct to the producer/promoter or Complaints Person.

A complaint can be dealt with formally or informally depending on the circumstances. Whether a matter is dealt with informally or formally will depend on the nature of the incident.

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

12. Frivolous, vexatious or malicious complaints

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

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

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

13. Additional Information, support and advice

If you have a query about this policy or need more information, please contact [Guidance note (delete this later): list contacts].

[Guidance note (delete this later): keep the below section on employee assistance programs if relevant]

<Insert company name>'s workers are entitled to a certain amount of free, professional counselling from our employee assistance program. To access the employee assistance program, contact [Guidance note (delete this later): provide contact details to access this service.]

Employee assistance program counselling is confidential and nothing discussed with a counsellor will be communicated back to <Insert company name>. Employee assistance program counselling is available free to <Insert company name> workers regardless of whether the issue is related to a workplace problem or some other issue for the workers.

14. Review details

This policy was adopted by <Insert company name> on [insert date].

This policy was last updated on [insert date].

This example procedure has been developed by Live Performance Australia. It is a tool that organisations can use to assist them in their business. Organisations may tailor or alter this template to suit their individual circumstances. However, if organisations make significant changes to the template, we recommend you seek legal advice. It is not compulsory for organisations to use this template.

<Insert company name>

Complaint Handling and Investigation Procedure – Workplace Discrimination, Harassment, Sexual Harassment and Bullying

1. Purpose	1
2. Who this procedure applies to	2
3. Related documents	2
4. Raising a complaint	3
4.1. Who can raise a complaint?	3
4.2. How to raise a complaint	3
5. Key considerations when dealing with complaints	4
5.1. Confidentiality	4
5.2. Natural justice and impartiality	4
5.3. No victimisation	4
5.4. Availability of a support person	5
6. Dealing with complaints	5
6.1. Deciding the most appropriate course of action	5
6.2. Incident report	6
6.3. Informal complaint procedure	7
6.4. Formal complaint procedure	8
6.5. Dealing with complaints that involve workers from another organisation	12
7. Frivolous, vexatious or malicious complaints	12
8. Additional information, support and advice	13
9. Review details	13

1. Purpose

This procedure outlines how <Insert company name> will deal with a complaint regarding discrimination, harassment, sexual harassment, bullying, vilification or victimisation.

<Insert company name> encourages any worker who believes they have been subjected to or have witnessed a worker being subjected to discrimination, harassment, sexual harassment or bullying to report the behaviour to the <Insert relevant manager or Contact Person here> (e.g. company

manager/stage manager/general manager/tour manager/director/ producer/human resources manager/head of department or the Complaints Person).

<Insert company name> will usually deal with a complaint regarding discrimination, harassment, sexual harassment or bullying in accordance with this procedure. However, where it is considered appropriate to do so, <Insert company name> may deal with the complaint in an alternative way, in order to resolve the complaint in a confidential, efficient and sensitive manner. In those circumstances, <Insert company name> will provide details of the process for dealing with the complaint that is fair procedurally.

2. Who this procedure applies to

This procedure applies to all workers engaged by <Insert company name>, which includes, but is not limited to:

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

All workers must comply with the procedures set out in this document, which may be amended from time to time. While all workers are required to comply with these procedures, these procedures are not incorporated as a term of any worker's contract and do not create any rights enforceable by a worker against <Insert company name>.

This procedure extends to every associated entity of <Insert company name> within the meaning of section 50AAA of the *Corporations Act 2001* (Cth).

3. Related documents

All workers are required to read this procedure in conjunction with <Insert company name>'s other relevant policies, procedures, documents and agreements, including: [Guidance note (delete this later): list relevant policies and procedures

- Workplace Discrimination, Harassment, Sexual Harassment and Bullying Policy.
- Code of conduct: workplace discrimination, harassment, sexual harassment and bullying
- Flexible work arrangements policy
- Parental leave policy

<Insert company name>

- Work health and safety policy
- Discipline procedure
- Mission, vision and values statements
- Enterprise bargaining agreements and Awards [Guidance note (delete this later): list relevant agreements.]
- Service agreement [Guidance note (delete this later): any document that outlines the rights of clients and customers to complain about the service they are receiving.]

4. Raising a complaint

4.1. Who can raise a complaint?

Any worker can raise a concern or complaint if they believe there has been a breach of <Insert company name>'s Workplace Discrimination, Harassment, Sexual Harassment and Bullying Policy.

A complaint may be raised by a worker who is experiencing or is a witness to discrimination, harassment, sexual harassment or bullying.

This Complaints Handling and Investigation Procedure only applies to complaints raised concerning a breach of <Insert company name>'s Workplace Discrimination, Harassment, Sexual Harassment and Bullying Policy.

4.2. How to raise a complaint

Workers should raise any concerns or complaints with <Insert relevant manager or Contact Person here>. Where <Insert relevant manager or Contact Person here> is unavailable or it is not appropriate for them to be involved in the process, the complainant should contact <Insert alternative manager or Contact Person here>.

If workers do not feel comfortable raising a complaint with <Insert relevant manager, Contact Person or Complaints Person here>, they could seek independent legal advice or raise the complaint with one of the following organisations:

- Australian Human Rights Commission;
- Anti-Discrimination Board of New South Wales;
- Victorian Equal Opportunity and Human Rights Commission;
- Anti-discrimination Commission Queensland;
- Equal Opportunity Commission Western Australia;
- South Australian Equal Opportunity Commission;
- Equal Opportunity Tasmania;
- ACT Human Rights Commission;
- Northern Territory Anti-Discrimination Commission;
- Fair Work Commission (for complaints related to bullying);
- Relevant union (e.g. Media, Entertainment and Arts Alliance); or

- The police (if the allegations are of a criminal nature such as physical or sexual assault, some instances of sexual harassment).

While workers may choose to raise a concern or complaint with one of the organisations listed above, it is <Insert company name>'s preference that any concern or complaint is raised internally with the appropriate person in the first instance, so that it can be dealt with.

Workers may raise concerns or complaints verbally or in writing. Depending on the nature of the complaint, <Insert relevant manager or Contact Person here> may ask the complainant to document the complaint in writing (e.g. in an email or using <Insert company name>'s complaint form).

5. Key considerations when dealing with complaints

5.1. Confidentiality

When a complaint is raised, <Insert company name> will maintain confidentiality to the maximum extent possible, taking into account its obligation to provide a safe work environment and to afford natural justice to those against whom a complaint is made (respondent).

Workers who are directly involved in a complaint or an accompanying investigation (whether as a complainant, respondent, witnesses or support person) must maintain confidentiality. A failure to do so may result in disciplinary action.

5.2. Natural justice and impartiality

Where an allegation is made against another person, that person is entitled to be afforded natural justice – a right to have their side of the story heard and respond to those allegations.

When a complaint is raised, <Insert company name> will appoint someone (internal or external to the company) to investigate the complaint. This person will collect and consider all relevant evidence before making a determination.

Complaints Persons are to remain impartial, as far as is reasonably practicable.

5.3. No victimisation

Victimisation means adversely treating a worker who has raised a complaint or has assisted someone in raising a complaint.

Victimisation is unlawful and will not be tolerated at <Insert company name>. Any incidents of victimisation should be immediately reported to <Insert relevant manager or Contact Person here>.

A worker who makes a complaint under this procedure will be treated with respect and the matter will be dealt with in the strictest confidence possible. <Insert company name> will take all reasonable steps so that no worker is treated poorly, victimised or disadvantaged as a result of:

- Making or intending to make a complaint;
- Providing information as a witness; or
- Providing support to a person who has made a complaint.

5.4. Availability of a support person

A participant in an investigation may wish to have a support person present during the process, such as another worker, a friend, family member or union representative. The support person should not be a party to the complaint or a witness to the behaviour that is the subject of the complaint.

A support person's role is to provide emotional support; they should not act as an advocate or speak for the participant. A support person is required to keep all details of the complaint and investigation confidential.

The participant should notify the Complaints Person, as soon as practicable, if they would like to have a support person present during an investigation. The participant should provide the Complaints Person with the details of the support person, so that the request can be considered. A request for a support person to be present will not be unreasonably refused. Reasonable efforts will be made to accommodate the availability of a participant's support person. However, if the support person's availability unreasonably delays the formal complaint process, the participant will be advised to nominate another support person.

If a participant does not request to have a support person present during meetings, this should be recorded as well as whether the participant was offered a support person.

6. Dealing with complaints

6.1. Deciding the most appropriate course of action

If a worker believes they are experiencing discrimination, harassment, sexual harassment or bullying, and they feel comfortable doing so, they may wish to deal with the situation themselves – that is, the worker tells the other person(s) that the behaviour is unreasonable or unacceptable, they are offended by the behaviour and want it to stop.

In many cases, while it may be uncomfortable raising the issue directly with the person(s) concerned, explaining why the behaviour is unwelcomed and asking for it to stop will be sufficient, particularly if the person(s) was/were unaware of the impact of their behaviour.

If a worker's concerns remain unresolved or the worker is not comfortable dealing with the situation themselves, the concern or complaint can be raised with **<Insert relevant manager or Contact Person here>**.

Once a concern or a complaint has been raised, **<Insert relevant manager or Contact Person here>** will outline to the complainant the options available for dealing with the concern or complaint. Options include following **<Insert company name>**'s internal informal or formal procedure, or raising the complaint with an external agency such as the Australian Human Rights Commission, Fair Work Commission, or the police if the allegations are of a criminal nature.

Informal procedures emphasise resolution rather than factual proof or substantiating a complaint.

Formal procedures focus on proving whether a complaint is substantiated. A formal complaint procedure will be more appropriate where the alleged behaviour is of a serious nature and, if substantiated, would lead to disciplinary action (e.g. termination of employment).

It will not always be appropriate for the complainant to determine whether to use the informal or formal complaint procedure. For example, **<Insert company name>** may determine that the nature of the complaint is serious and warrants a formal investigation.

<Insert company name>

It is important to note that a worker cannot 'own' a complaint. <Insert company name> recognises that sometimes a worker may wish to inform <Insert company name> of an issue or concern but not wish for <Insert company name> to take any action in relation to the issue or concern. However, when <Insert company name> is made aware of an issue, it may have a duty of care to act, regardless of whether or not a worker has made a formal complaint, as other workers may be at risk.

6.1.1. Complainants wishing to remain anonymous

Where the complainant advises they wish to remain anonymous, <Insert company name> will seek to establish why the complainant does not want their identity disclosed. <Insert company name> will use its best endeavours to manage the complainant's concerns, while ensuring there is an appropriate balance in fairness to all parties concerned. In some cases, it will not be possible for the complainant to remain anonymous due to the right of the respondent to natural justice and to know the nature of the allegation(s) being made against them. While the complainant's wishes will be taken into account, they do not determine whether or how the complaint should be investigated. That is the responsibility of <Insert company name>.

6.1.2. Dealing with complaints which may constitute a criminal offence

Some instances of unlawful conduct can also be criminal offences, including physical assault, sexual assault, stalking or cybercrime, which is where a carriage service is used to menace, harass or cause offence. This can include conduct that occurs over the phone, in text messages or online.

Where a worker considers that the conduct involves a criminal offence, <Insert company name> will provide appropriate support to the worker to report the matter to the police. In situations where <Insert company name> becomes aware of or has reasonable grounds to believe that a criminal offence has been committed against a child or young person, <Insert company name> has an obligation to, and will, report the matter to the police or relevant authority.

Under Work Health and Safety laws, <Insert company name> also has an obligation to notify the relevant regulator of certain types of workplace incidents.

If a complainant does not wish to report the matter to the police, <Insert company name> will:

- respect this decision, unless <Insert company name> is required to report the incident;
- enquire whether the complainant would like access to counselling or other support;
- if appropriate, consider whether it is necessary to implement any changes to the workplace to provide the worker with a safe work environment, while the complaint is being investigated; and
- deal with the complaint consistent with the procedures outlined in this section.

6.2. Incident report

Where a worker raises concerns with <Insert company name> and it is determined by <Insert company name> that no action is required, as the situation has already been resolved or adequately dealt with, <Insert company name> may record details of the concerns. <Insert relevant manager or Contact Person here> will record essential information about the incident in a report including:

- time, date, location of the alleged incident;
- nature of the alleged incident;

<Insert company name>

- the people involved;
- what action was taken to resolve the alleged incident;
- why no further action was considered necessary; and
- that the matter was not investigated and no findings were made in relation to the alleged conduct.

If <Insert company name> becomes aware of an incident (e.g. unusual tension in the rehearsal room) and believes it is necessary, an incident report may be prepared.

<Insert company name> will only use this option if the incident is not serious and does not pose an immediate health and safety risk to workers.

6.3. Informal complaint procedure

There is no one-size-fits-all response to deal with complaints informally. The most appropriate response for dealing with complaints informally will depend on each individual circumstance and the nature of the complaint.

6.3.1. When will a complaint be dealt with informally?

<Insert company name> may decide to deal with a complaint informally if:

- the complaint is of a less serious nature and can be most effectively dealt with informally;
- <Insert relevant manager or Contact Person here> considers the complaint can be most effectively dealt with informally and the complainant agrees;
- the complainant requests that the matter be dealt with informally and <Insert relevant manager or Contact Person here> considers this appropriate; and
- the complaint has arisen from a misunderstanding or lack of, or unclear, communication.

6.3.2. How will a complaint be dealt with informally?

Informal ways of dealing with complaints will emphasise resolution rather than factual proof or substantiating of a complaint and can include, but are not limited to the following actions:

- A direct private discussion is held or mediated between the complainant and the respondent (where the parties agree to participate);
- An impartial third person conveys information between those involved;
- An impartial third person helps those involved to talk to each other and find a resolution;
- A complaint is made, the respondent admits the behaviour, investigation is not required, and the complaint can be resolved through conciliation or counselling;
- The complainant wants to deal with the situation themselves but may seek advice on possible strategies from <Insert relevant manager or Contact Person here>;
- The complainant asks <Insert relevant manager or Contact Person here> to speak to the respondent on their behalf – <Insert relevant manager or Contact Person here> privately conveys the complainant’s concerns and reiterates <insert company name>’s policy to the respondent without assessing the merits of the case; or

- A supervisor or manager observes unacceptable conduct and takes action even though no formal complaint has been made.

An informal complaint may also be dealt with without individually identifying a respondent. Informal ways of dealing with the complaint can also include collective actions such as:

- Providing a refresher induction to all workers;
- Redistributing and again explaining the policies;
- Requiring workers to complete appropriate training; and
- Making alterations to working arrangements to reduce the risk.

In some instances, <Insert company name> may engage an independent mediator.

<Insert relevant manager or Contact Person here> will document steps taken to address and resolve a complaint using an informal process.

An informal process may be formalised at any point where <Insert relevant manager or Contact Person here> considers it appropriate, particularly where an informal process has been ineffective or new information is received.

6.4. Formal complaint procedure

6.4.1. Steps involved in a formal complaint and investigation

The usual process for dealing with formal complaints is set out below. However, where it is considered appropriate to do so, <Insert company name> may alter the process and advise the complainant of the new complaint handling and investigation process.

As part of a formal complaint process, <Insert company name> will appoint an impartial person to investigate the complaint (Complaints Person). This may be a person employed by <Insert company name> or an external investigator.

Please note that <Insert company name> will use its best endeavours to adhere to the timeframes outlined in this procedure. If changes to the timeframes need to be made, <Insert company name> will advise the complainant and respondent of these changes.

Step 1: Obtain information from the complainant

As soon as practicable but within one week of receiving the complaint, the Complaints Person will contact the complainant to better understand the complaint and obtain any additional information. At this time, the Complaints Person will also:

- Provide or confirm that the complainant has received a copy of <Insert company name>'s Workplace Discrimination, Harassment, Sexual Harassment and Bullying Policy and Complaint Handling and Investigation Procedure;
- Provide information about the complaint process, potential outcomes, options for assistance/support and protections from victimisation;
- Ensure the allegations are documented in writing, either by the complainant or the Complaints Person;

- Explain that the process is confidential, what this means and why it is important;
- Explain what records of the complaint will be kept, for how long and where;
- Explain the action that may be taken if the complaint is found to be vexatious or malicious; and
- Ask the complainant to provide relevant documents or details of witnesses that may support the allegations.

Where there is a concern about supporting information being destroyed or compromised, the Complaints Person should try to obtain this information before taking any further action.

Step 2: Advise the respondent about the complaint

As soon as practicable but within one week after receiving all necessary information from the complainant and understanding the scope of the complaint, the Complaints Person will inform the respondent that a complaint has been made. The Complaints Person will provide the respondent with details of the allegations, and if the Complaints Person considers it appropriate and necessary to do so, supporting information. The allegations may be provided to the respondent either in writing or verbally.

When the Complaints Person informs the respondent of the complaint, the Complaints Person will also:

- Provide or confirm that the respondent has received a copy of <Insert company name>'s Workplace Discrimination, Harassment, Sexual Harassment and Bullying Policy and Complaint Handling and Investigation Procedure;
- Confirm that the respondent will be given the opportunity to respond to the allegations;
- Provide information about the complaint process, potential outcomes and options for assistance/support;
- Explain that the process is confidential, what this means and why it is important;
- Explain what records of the complaints will be kept, for how long and where; and
- Explain that it is unacceptable to victimise someone who has made a complaint.

If it is considered necessary to the investigation, <Insert company name> may direct either the respondent or the complainant or both to remain away from the workplace and not be involved in <Insert company name>'s business. Where <Insert company name> does not direct the parties to remain away from work, <Insert company name> may monitor the interactions between the complainant and the respondent to identify whether there are any issues that need to be addressed.

Step 3: Provide the respondent with the opportunity to respond to the allegation(s)

The respondent will be provided with an opportunity to respond to the allegation(s). This will normally occur within three (3) working days of the respondent being notified of the allegation(s).

The Complaints Person will document the information obtained from the respondent, if it is not provided in writing, and the respondent will be asked to review and confirm the accuracy of the information.

Step 4: Interview any relevant witnesses

If the Complaints Person considers it necessary or appropriate, they will interview any relevant witnesses to the alleged conduct. To maintain confidentiality, witnesses should only be advised of the nature of the investigation insofar as it relates to them providing accurate and truthful evidence.

Step 5: Clarify contradictory or new evidence

If new or contradictory evidence comes to light during the investigation, the Complaints Person will hold further discussions with the respondent and/or complainant to clarify information.

If either the respondent or complainant disputes any of the new or contradictory evidence, the Complaints Person may:

- Seek further information from the respondent and/or complainant;
- Seek further statements/information from any witnesses; and
- Gather any other relevant evidence.

The Complaints Person may continue to seek additional information or clarification from the respondent, complainant or witnesses on any outstanding matters until the Complaints Person is satisfied that there is no additional evidence to be collected or no further clarification is required.

Step 6: Assess the evidence and make a determination

The Complaints Person will assess the information and evidence gathered and form an opinion about the complaint. The Complaints Person may find one of the following:

- The complaint is substantiated;
- The complaint is not substantiated; or
- It is not possible to make a conclusive finding about whether discrimination, harassment, sexual harassment and/or bullying occurred.

The Complaints Person's findings and the standard of proof in the investigation are based on 'the balance of probabilities' – which means it is more likely than not that the conduct occurred.

If the respondent confirms the alleged conduct occurred, the Complaints Person should provide the respondent with the opportunity to comment on any proposed decision and outcome before a final decision is made.

Where the complaint is substantiated, the Complaints Person may recommend disciplinary action. If the Complaints Person identifies an area that could be improved to reduce or avoid such complaints in the future, the Complaints Person may recommend that <Insert company name> consider implementing those improvements.

Step 7: Notify the complainant and respondent of the outcome

As soon as practicable and within one week of being notified of the Complaints Officer's determination, the decision-maker will notify the complainant and the respondent of the outcome of the complaint. A copy of the decision will be placed on the respondent's employment file.

6.4.2. Variation to the timeframe

There may be occasions, when having regard to the complexity of the facts and the seriousness of the allegations, that the process takes longer or there is a departure from the process.

If the timeframes for the investigation are likely to differ greatly from those outlined above, the complainant and the respondent will be informed of this during the course of the investigation. However, <insert company name> will take all practicable steps to undertake and conclude investigations in a timely way.

6.4.3. Work arrangements

When a complaint is lodged, <insert company name> will determine whether the complainant and respondent are required to continue work as normal, or alternative arrangements need to be put in place. For example, either the complainant or the respondent may be asked to take leave without loss of pay or be transferred to another part of the business or a different location, so that a fair and efficient investigation can occur. In the event that it is safe for the complainant and respondent to work together during the complaints process, a representative of the organisation will work closely and actively amongst them to monitor their relationship and ensure that safety, wellbeing and respect are maintained.

The complainant and respondent have a responsibility to:

- Participate in the investigation process and the implementation of this policy in good faith;
- Co-operate fully in the investigation process and the implementation of this policy;
- Not make vexatious or malicious complaints; and
- Maintain confidentiality as described above.

6.4.4. Outcomes from the investigation

Substantiated complaints

Where the complaint is substantiated, the decision-maker will make a decision on the appropriate action to take, based on the Complaints Person's findings.

Outcomes of a formal investigation can include any combination of the following:

- Counselling, coaching or mentoring;
- Formal written warning;
- Termination of employment (including without notice or pay in lieu of notice);
- <insert company name> facilitating a meeting between the complainant and the respondent to attempt to resolve the matter by direct discussion;
- Developing a process for 'moving forward';
- Regular monitoring of behaviour;
- Further training and education;
- A commitment by the respondent to change the behaviour or conduct that was the subject of the complaint;

- A change in working arrangements; and
- An apology.

The most appropriate outcome in each case will depend upon factors such as:

- The severity and frequency of the conduct;
- The weight of the evidence against the respondent;
- The wishes of the complainant (however this will not be determinative of the matter);
- Whether the respondent has been given any prior warnings for the same or similar conduct; and
- Training previously provided to the respondent, specifically related to the subject matter of the complaint.

The disciplinary procedure will be applied in a manner that is consistent, clearly explained, fair and proportionate.

Unsubstantiated complaints

Where allegations have not been admitted or substantiated, <Insert company name> may decide to take some action as a result of the complaint. For example, <Insert company name> may:

- Provide refresher training for workers regarding appropriate workplace behaviour; or
- Re-issue the workplace discrimination, harassment, sexual harassment and bullying policy, the code of conduct and other related policies to all workers.

6.5. Dealing with complaints that involve workers from another organisation

Workers should not be deterred from raising complaints with <Insert relevant manager or Contact Person here> that involve a worker from another organisation while working at the same workplace. <Insert relevant manager or Contact Person here> will explain the options available to deal with the complaint.

If <Insert relevant manager or Contact Person here> deems that the matter requires further action, <Insert company name> will raise the matter with an appropriate representative from the other organisation. <Insert company name> will work with the other organisation and determine an appropriate response to the deal with the complaint – either informally or formally, and consistent with the complaints handling policies and procedures of both organisations.

7. Frivolous, vexatious or malicious complaints

<Insert company name> encourages the reporting of behaviour that a worker genuinely believes to be discrimination, harassment, sexual harassment or bullying. Further, any such worker must not be disadvantaged or treated unfairly for making a complaint.

However, if a complaint is found to be frivolous, vexatious or malicious, then appropriate disciplinary action up to dismissal may be taken against the complainant. The purpose of this is not to prevent a worker from making a legitimate complaint, where they consider they have been subjected to

discrimination, harassment, sexual harassment or bullying behaviour, but rather to prevent a worker from making a complaint in order to create difficulties for another person.

Examples of frivolous, vexatious or malicious complaints include, but are not limited to:

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

8. Additional information, support and advice

If you have a query about this procedure or would like to raise a concern or complaint, please contact [\[Guidance note \(delete this later\): list contacts\]](#) <Insert relevant person>.

9. Review details

This procedure was adopted by <Insert company name> on [\[insert date\]](#).

This procedure was last updated on [\[insert date\]](#).

This template has been developed by Live Performance Australia. It is a tool that organisations can use to assist them in their business. Organisations may tailor or alter this template to suit their individual circumstances. However, if organisations make significant changes to the template, we recommend you seek legal advice. It is not compulsory for organisations to use this template.

WORKPLACE DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT AND BULLYING COMPLAINT FORM

<Insert Company Name>

Please ensure you have read our *Complaint Handling and Investigation Procedure* before lodging a complaint.

1. Personal details of the complainant

Title

First name

Last name

Email address

Contact number

Position

Are you complaining on behalf of someone else?

If yes, what is their name/s?

2. When did the incident/s happen?

It began on (date)

It finished on (date)

Is it still going on?

3. Who is this complaint against?

First name

Last name

Relationship to <Insert company name>

(e.g. employee position, contractor, volunteer)

4. What happened? Please describe the incident/s in detail.

Please describe the incident/s or behaviour in detail. If you need more space please provide these details on a separate page attached to this form.

Please describe the incident/s or behaviour in detail. If you need more space please provide these details on a separate page attached to this form.	
Where did the incident/s occur?	
When did the incident/s occur? (if there have been multiple incidents, how often has or does the offending behaviour occur? (e.g. daily, weekly, monthly)	
Have there been any witnesses to the described incident/s? (If so, please name)	
Any other relevant information.	

5. Please indicate any other steps you have already taken

Raised the problem with a colleague and/or my manager (please name and detail outcome)

Lodged a complaint with a third party, such as a government entity or union (please provide details of where the complaint was made and the status of the complaint)

Other (please provide details)

6. Supporting evidence

If there are any documents that may help <Insert company Name> investigate your complaint, please provide copies or advise where this information may be obtained.

7. Confidentiality

Only those directly involved in making or investigating a complaint will have access to information about the complaint (except in circumstances necessitated by law where the alleged conduct is serious and/or may amount to criminal conduct). Please ensure that you maintain confidentiality and do not disclose details of your complaint except to the extent necessary to make your complaint in accordance with the Complaint Handling and Investigation Procedure.

8. Sign and date your complaint

Signature

Full name

Date

Office use

Date complaint received

Staff member managing complaint
(name and position)

This example code of conduct has been developed by Live Performance Australia. It is a tool that organisations can use to assist them in their business. Organisations may tailor or alter this template to suit their individual circumstances. However, if organisations make significant changes to the template, we recommend you seek legal advice. It is not compulsory for organisations to use this template.

Code of Conduct – Discrimination, Harassment, Sexual Harassment and Bullying

<Insert company name> is committed to providing a safe, respectful, inclusive and flexible workplace environment that is free from discrimination, harassment, sexual harassment and bullying. We do not tolerate or condone any form of discrimination, harassment, sexual harassment or bullying in this workplace.

This Code of Conduct outlines expected standards of behaviour by all workers at <Insert company name>. A breach of this Code of Conduct may lead to disciplinary action, including the termination of your contract with <Insert company name>. If <Insert company name> considers the breach to be of a criminal nature, <Insert company name> may report the matter to the police.

Scope

All workers must comply with this Code of Conduct. Workers include but are not limited to:

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

This Code of Conduct applies to all workers while:

- at work – such as at rehearsals, during performances, on production tours, while travelling for work;
- at work-related functions – such as opening nights, after parties, Christmas parties, conferences, industry events; and
- outside of work where there is a connection to the workplace – such as on social media.

Standards of behaviour

<Insert company name>'s workers are responsible for promoting a safe, respectful, inclusive and flexible workplace environment by:

- ✓ Treating all workers and audience members/patrons/customers with dignity, courtesy and respect;
- ✓ Respecting cultural, ethnic, religious, gender and sexual orientation differences;
- ✓ Behaving in a professional, fair and courteous manner at all times;
- ✓ Promptly reporting any breaches of this Code of Conduct, whether it is against you or another person, to the **[insert relevant manager or Contact Person – e.g. company manager/stage manager/general manager/tour manager/director/producer/promoter/human resources manager or Complaints Person]**;
- ✓ Maintaining confidentiality when complaints are made and/or under investigation; and
- ✓ Abiding by all applicable laws and regulations.

Unacceptable behaviours

<Insert company name>'s workers must not:

- ✗ Abuse or threaten to abuse (verbally, physically or in writing) another person;
- ✗ Physically or sexually assault another person;
- ✗ Discriminate against or treat someone less favourably because of their race, sex, age, sexual orientation, disability or other personal characteristics;
- ✗ Intimidate, threaten or harass another person;
- ✗ Sexually harass another person with unwanted, unwelcome or uninvited behaviour;
- ✗ Bully, isolate or humiliate another person;
- ✗ Victimise, unjustly treat or threaten someone because they have raised a complaint or are a witness in an investigation; or
- ✗ Behave improperly or unethically.

Related policies

This Code of Conduct should be read in conjunction with:

- **<Insert company name>'s Discrimination, Harassment, Sexual Harassment and Bullying Policy;** and
- **<Insert company name>'s Complaint Handling and Investigation Procedure – Discrimination, Harassment, Sexual Harassment and Bullying.**

Worker acknowledgment

I have read and understood this Code of Conduct and agree to abide by it at all times during the course of my employment.

Name:

Signature:

Date:

Name of manager/witness:

Signature:
Date:

CHECKLIST

Developing a workplace discrimination, harassment, sexual harassment and bullying policy

What needs to be included in a policy?

- A strong opening statement on the employer's commitment to prohibiting all forms of unlawful discrimination, harassment, sexual harassment and bullying in the workplace
- An outline of the employer's objectives regarding discrimination, harassment, sexual harassment and bullying
- A clearly defined scope of who the policy applies to
- A clearly worded definition of discrimination, harassment, sexual harassment and bullying
- A statement that discrimination, harassment, sexual harassment and bullying is against the law (listing the relevant legislation and who is liable)
- Specific examples that may be relevant to the particular live performance working environment
- A statement of what is **not** discrimination, harassment, sexual harassment and bullying
- Examples of places and times where unlawful discrimination, harassment, sexual harassment and bullying may happen e.g. on tours, social media, during rehearsals, at opening nights, industry events, Christmas and after parties, conferences, etc.
- Clearly defined acceptable and unacceptable standards of behaviour (this could be presented in an accompanying Code of Conduct)
- The consequences for workers if the policy is breached
- Responsibilities of workers, including leadership and management positions
- Information on where individuals can get help, advice or make a complaint
- A brief summary of the options available for dealing with discrimination, harassment, sexual harassment and bullying

CHECKLIST

Developing a complaint handling and investigation procedure

What needs to be included in a complaint handling and investigation procedure?

Principle #1: Fair

- Do both the complainant and respondent have the opportunity to:
 - present their version of events?
 - provide supporting information?
 - respond to any potential adverse decisions?
- Does the procedure state that the investigator will be impartial?

Tip: Identify an appropriate person within and outside your organisation who can investigate complaints

Principle #2: Confidential

- Does the procedure specify the need to maintain confidentiality?
- How will confidential information be treated?
- Where will confidential information about the complaint be kept?
- How will workers be protected from victimisation?
- How will workers be protected from vexatious and malicious complaints?

Tip: Only provide information to those who need to know about the complaint so that they can properly action the complaint

Principle #3: Transparent

- Does the complaint process offer both informal and formal options?
- Is the complaint process clearly explained?
- Does the procedure advise the complainant that they can pursue the matter externally with the Fair Work Commission (bullying), Australian Human Rights Commission, a state or territory anti-discrimination body or, if it appears to be a criminal matter, the police?
- Are the possible outcomes of the complaint clearly explained?
- Does the process include keeping the complainant and respondent informed of the:
 - progress of the complaint?
 - reasons for any decisions?
- Is the procedure regularly reviewed?

Principle #4: Accessible

- Is the complaint process easy to access and understand?

Tip: Make sure the process doesn't discriminate against anyone being able to raise a complaint

Principle #5: Efficient

- Is the complaint process conducted in a timely manner and without undue delay?

Principle #6: Supported

- Are the complainant and respondent able to request the assistance of a support person?

TIPS

Creating and maintaining a safe, respectful and inclusive workplace culture

Leadership

- Secure high-level support from company owners and leadership positions for implementing a comprehensive strategy
- Ensure those in leadership positions lead by example and model best practice standards of behaviour

Accountability

- Include accountability mechanisms in position descriptions for relevant leadership positions, particularly positions that are responsible for enforcing standards of expected behaviour
- Ensure that selection criteria for relevant leadership positions include the requirement that managers have a demonstrated understanding of and ability to deal with discrimination, harassment, sexual harassment and bullying matters
- Check that those in leadership positions are fulfilling their responsibilities through performance appraisal plans
- Periodically conduct workplace audits to monitor the incidence of discrimination, harassment, sexual harassment and bullying

Strategy

- Develop a policy prohibiting inappropriate use of computer technology, such as e-mail, screen savers and the internet
- Set clear employer values that reflect commitment to the safety and wellbeing of all workers, and implement strategies to ensure the workplace culture reflects these values
- Set clear and specific standards of expected behaviour for all workers involved in creative work that may include provocative, sensitive or controversial themes or actions

Empower

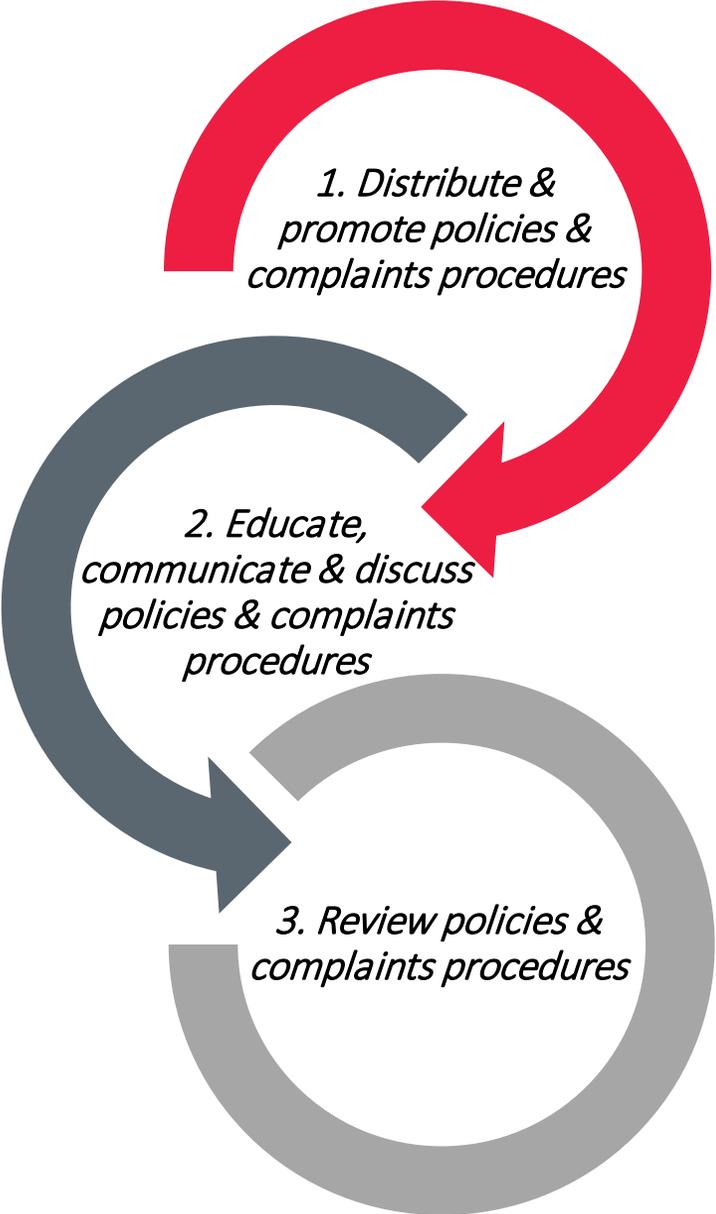
- Encourage and empower workers to voice and raise any concerns or objections, particularly with regard to creative work that may include provocative, sensitive or controversial themes or actions

Displays and communications

- Remove offensive, explicit or pornographic calendars, literature, posters and other materials from the workplace
- Display posters that promote awareness of discrimination, harassment, sexual harassment and bullying on notice boards in common work areas and distribute relevant brochures

IMPLEMENTING WORKPLACE POLICIES & COMPLAINTS PROCEDURES

What you need to do



1. Distribute & promote policies & complaints procedures

2. Educate, communicate & discuss policies & complaints procedures

3. Review policies & complaints procedures

- ✓ Promote at staff meetings, seminars, on the first day of rehearsals, prior to touring or other group meetings
- ✓ Email copies of the policy to all workers
- ✓ Display policies on notice boards, in green rooms, dressing rooms, rehearsal spaces and include in induction manuals/materials
- ✓ Place an automatic shortcut on staff desktops
- ✓ Make workers aware that senior management endorse the policies and that they are required to comply with them
- ✓ Ask workers to sign a copy of the policy acknowledging they have received and understood it
- ✓ Ensure policies are accessible to workers with disability
- ✓ Translate policies into relevant community languages where required so it is accessible to employees from non-English speaking backgrounds
- ✓ Assign responsibility for the circulation and review of the policy to a specific position or area to ensure that it is widely promoted and regularly updated

How you could do it

- ✓ Put a copy on the company intranet
- ✓ Provide policies and other relevant information to new workers as a standard part of induction
- ✓ Ensure that managers and supervisors discuss and reinforce policies at staff meetings
- ✓ Ensure all workers are made aware of the policies and where they can be located
- ✓ Conduct or provide opportunities for regular training sessions for all workers on discrimination, harassment, sexual harassment and bullying
- ✓ Train all relevant managers and supervisors on their role and provide effective tools for ensuring that the workplace is free from discrimination, harassment, sexual harassment and bullying
- ✓ Ensure workers responsible for handling and investigating complaints receive training on how to deal with complaints
- ✓ Keep clear and accurate records of each worker's education and training (e.g. copy of signed policies, records of training undertaken, record of discussions with management)
- ✓ When a complaint is received, use this as an opportunity to evaluate the effectiveness of policies and identify areas that could be improved to minimise the risk of further incidents occurring