

The purpose of this policy is to outline Bulleen Art & Garden's Equal Opportunity – Anti Discrimination, Anti-Harassment and Bullying Policy. Bulleen Art & Garden is committed to taking reasonable steps to ensure a workplace free of all forms of discrimination and harassment, including sexual harassment and bullying. It aims for equality of opportunity for all employees.

This policy is intended to ensure that there is a shared understanding amongst all Bulleen Art & Garden employees, temporary staff, independent contractors, volunteers and work experience personnel of Bulleen Art & Garden's expectations in regards to acceptable and appropriate behaviour within the workplace.

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

It is the primary responsibility of management to take reasonable measures to provide a working environment free from discrimination, harassment and bullying. It is the responsibility of every employee to not participate in discriminatory or harassing behaviour within the workplace. Bulleen Art & Garden aims to take practicable steps to ensure our contractors provide a similar working environment.

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

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

Outlined within this policy is an internal dispute resolution process to assist our employees raise issues of concern. Appropriate disciplinary action may be taken against anyone found to have breached this policy.

No employee will be penalised or disadvantaged as a result of raising legitimate concerns or disputes relating to discrimination, harassment or bullying.

## **Discrimination**

The Equal Opportunity Act 2010 (Vic) prohibits unlawful discrimination in the form of direct and indirect discrimination. Discrimination is also unlawful under federal legislation, including the Age Discrimination Act 2004 (Cth), Sex Discrimination Act 1984 (Cth); Racial Discrimination Act 1975 (Cth); Disability Discrimination Act 1992 (Cth); Human Rights and Equal Opportunity Commission Act 1986 (Cth); and the Fair Work Act 2009 (Cth) which may change from time to time.

Direct discrimination is treating or proposing to treat a person with a protected attribute unfavourably because of that attribute (listed below). The new test is whether or not certain

treatment was less favourable to the person claiming discrimination, placing emphasis on the consequences of the treatment on the person claiming direct discrimination because of a protected attribute.

Indirect discrimination can occur when there is a requirement or condition or practice that is the same for everyone but disadvantages a person or is likely to disadvantage a person because they have one or more of the following protected attributes and which is not reasonable.

**Protected attributes in Victoria include:**

- age
- colour
- descent or national or ethnic origin
- disability/impairment
- industrial activity/inactivity
- lawful sexual activity/sexual orientation or preference
- gender identity
- marital status, including de facto
- physical features
- political belief or activity
- pregnancy/breastfeeding
- race
- religious belief or activity
- sex
- status as a parent or carer
- personal association with someone of the above attributes
- irrelevant criminal conviction (under the Australian Human Rights Commission Act 1986 (Cth)).

**Workplace discrimination can occur in:**

- recruiting and selecting staff
- terms, conditions and benefits offered as part of employment
- who receives training and what sort of training is offered
- who is considered and selected for transfer, promotion, retrenchment or dismissal
- any other unfavourable treatment including harassment.

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

**Harassment**

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

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

**Unlawful harassment may have occurred if the behaviour makes the victim feel:**

- offended and humiliated;
- intimidated or frightened; and/or
- uncomfortable at work.

**Unlawful harassment can include behaviour such as:**

- telling insulting jokes about particular racial groups
- sending explicit or sexually suggestive emails
- displaying offensive or pornographic posters or screen savers
- making derogatory comments or taunts about someone's race or religion
- asking intrusive questions about someone's personal life, including their sex life.

## **Sexual Harassment**

Sexual harassment is unlawful under the Victorian Equal Opportunity Act 2010 and under federal legislation (Sex Discrimination Act 1984 (Cth)). Sexual harassment occurs when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to another person, or engages in any other unwelcome conduct of a sexual nature in relation to another person, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated. It has nothing to do with mutual attraction or consenting friendships, whether sexual or otherwise.

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

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

**Some examples of sexual harassment include:**

- persistent, unwelcome demands or even subtle pressures for sexual favours or outings
- staring or leering at a person or at parts of their body
- unwelcome patting, pinching, touching or unnecessary familiarity, such as unnecessarily brushing up against a person
- offensive comments or questions about a person's physical appearance, dress or private life
- sexually explicit pictures or posters or screen savers (words and images)
- sexually explicit telephone calls, letters, faxes, emails or voice mail messages
- humour such as smutty or suggestive jokes or comments
- innuendo, including sexually provocative remarks, suggestive or derogatory comments about a person's physical appearance, inferences of sexual morality, or tales of sexual performance
- requests for sex
- insults or taunts based on sex
- sexually explicit physical contact.

**Some types of sexual harassment can also be offences under the criminal law, such as:**

- physical molestation or assault
- indecent exposure
- sexual assault
- stalking
- obscene communications (by way of telephone calls, letters, emails etc.).

## **Bullying**

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

Bullying may also be unlawful under federal and state anti-discrimination legislation where the bullying is linked to, or based on, one of the attributes covered by the various pieces of legislation (for example, age, sex, race, disability, etc.).

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

Workplace bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.

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

“Behaviour” includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining, punishing or threatening.

“Risk to health and safety” includes risk to the mental or physical health of the employee.

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

- physical or verbal abuse
- intimidation
- yelling, screaming or offensive language
- excluding or isolating employees
- psychological harassment
- assigning meaningless tasks unrelated to the job
- giving employees impossible jobs
- deliberately changed work rosters to inconvenience particular employees

- undermining work performance by deliberately withholding information vital for effective work performance.

Other types of behaviour may also constitute bullying.

**Workplace bullying can occur between a worker and a manager or supervisor, or between co-workers. Bullying does not cover situations where an employee has a grievance about legitimate and reasonable:**

- performance management processes
- disciplinary action
- allocation of work in compliance with systems.

### **Victimisation**

Victimisation is unlawful under the Victorian Equal Opportunity Act 2010 (Vic). It is unlawful for a person to subject or to threaten to subject another person to any detriment because the other person, or someone associated with the other person, has made an allegation or complaint of discrimination, harassment or bullying on the basis of a protected attribute.

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

It is in the interest of any person or group who believe they have been unlawfully discriminated against, sexually harassed, bullied or victimised to take action to prevent the behaviour from recurring. Bulleen Art & Garden believes that all disputes and issues of concern should be resolved quickly, confidentially (where possible) and wherever possible, at the lowest appropriate level. A range of internal issue resolution options are available including:

- i. self-resolution
- ii. informal resolution by immediate manager/team leader/human resources
- iii. local workplace resolution involving mediation and conciliation
- iv. formal investigation/assessment by either HR or external provider.

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

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

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

- inform the offender that the behaviour is offensive and unacceptable and against company policy; or
- seek assistance in having the behaviour stopped. This may include reporting the issue to your manager or HR or speaking to a contact officer

Where these issues may breach occupational health and safety laws the incident should also be

reported immediately in accordance with Bulleen Art & Garden's occupational health and safety policy.

### **Who can assist you in making a report or complaint?**

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

- your manager
- your staff representative has been appointed by Bulleen Art & Garden as Contact Officers specifically because we recognise that in some instances discussing the matter with your manager may not be appropriate.

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

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

### **What will happen if you make a Report or Complaint?**

Any complaints or reports of discrimination, harassment or bullying will be treated quickly, seriously and sympathetically. They will be investigated thoroughly, impartially and where possible, confidentially (when investigating some complaints confidentiality is not always possible). Managers or Human Resources must act immediately on any reports of harassment. Employees will not be disadvantaged in their employment conditions or opportunities as a result of lodging a complaint.

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

Management considers all forms of workplace discrimination, harassment and bullying to be unacceptable behaviour which will not be tolerated. Accordingly, where such complaints have been substantiated, appropriate disciplinary action will be taken. Such action may range, based on severity of the complaint, from a formal warning (see Bulleen Art & Garden's disciplinary procedures) to termination of employment for serious breaches of this policy. Similarly, where necessary, action will be taken against anyone including employees or independent contractors, who have been found to have discriminated against, harassed or bullied a co-worker, or any other person during the course of his/her employment or contract for services with Bulleen Art & Garden.

### **Natural Justice**

A complaint of discrimination, harassment and/or bullying is a serious allegation to bring against someone. For this reason, while advisers may have feelings of sympathy for the complainant,

and quite possibly negative feelings towards the respondent when dealing with a complaint, it is crucial to continually bear in mind the rights of the respondent as determined by the principles of natural justice. The adviser must approach the problem with neutrality.

### **Defamation**

Defamation is unlawful under the Victorian Defamation Act 2005 and the Victorian common law. A person should not be deterred from making a complaint of harassment by concerns about defamation laws. Generally if a complainant only discusses the complaint with appropriate people in the workplace (managers/human resources/contact officers) and is acting in good faith (i.e. is not making the complaint out of spite or malice or without basis), then the person will not be liable for defamation. Bulleen Art & Garden is committed to providing an environment which is safe and free of discrimination, harassment and bullying for our employees and others with whom we associate at work. This policy has the full support and commitment of management. Please ensure you give your support in monitoring and avoiding practices, attitudes and traditions which lead to harassment.

Bulleen Art & Garden may amend and vary this policy from time to time.

### **Consequences for Breaching this Equal Opportunity – Anti-Discrimination, Anti-Harassment and Bullying Policy**

Any breach of Bulleen Art & Garden Policy may result in disciplinary action up to and including termination of employment. Disciplinary procedures that can be actioned by Bulleen Art & Garden will be in line with the Bulleen Art & Garden Disciplinary Policy. Independent contractors and other non-employees who are found to have breached this policy may result in the termination of their contract with Bulleen Art & Garden.

If an individual's conduct results in a breach under law they may also be personally liable.