

Rationale

SDN is committed to creating a positive, productive and co-operative work environment which embodies the principle of Equal Employment Opportunity (EEO). As such, it is essential that we treat each other fairly and with respect at all times.

SDN Board members, staff members, trainees, volunteers and students have a shared responsibility of working together to create a healthy, harassment free and safe working environment by modelling good working relationship behaviours and fostering an environment free from discrimination, harassment, victimisation or bullying of any kind.

The purpose of this policy is to encourage inclusiveness and diversity and to define discrimination, harassment, victimisation and bullying and to inform all SDN Board members, staff members, trainees, volunteers, students, contractors and NDIS Participants of their rights and responsibilities.

Scope

This policy applies to all SDN Board members, staff members, trainees, volunteers, students, contractors and NDIS Participants (hereafter referred to as ‘staff’).

Policy

All managers share responsibility for ensuring EEO principles are firmly entrenched in decision making and implementation processes. EEO policies and practices will be adhered to in the areas of recruitment and selection, appointment and engagement of staff, promotion, staff training and development, transfers, remuneration, compensation, conditions of employment and discontinuation of employment. All recruitment and promotion of staff will be based on merit regardless of sex, race, marital status, sexual preference and religion.

SDN will ensure that its workplaces are discrimination and harassment free.

Under this policy, SDN meets its employer obligations through:

- the implementation of the *Equal Employment Opportunity and Good Working Relationships Policy* as well as the *Grievance Policy and Procedure* and *Performance Management Policy and Procedure* for resolving problems
- ensuring that all SDN staff are informed and educated about acceptable workplace behaviours in order to prevent workplace discrimination, harassment, victimisation and bullying in its many forms.

Responsibilities of SDN staff, volunteers, students, contractors and NDIS Participants

- to understand and comply with this SDN policy
- to model good working relationship behaviours

- to dedicate time, diligence, skill, collaboration and cooperation to all work-related activities
- to offer support to anyone who is being harassed and let them know where they can get help
- to refuse to join in with any discriminatory, harassing, victimisation or bullying behaviour
- to report incidents of discrimination, harassment, victimisation, bullying or other inappropriate workplace behaviours.

Responsibilities of managers and supervisors

- to demonstrate and promote this SDN policy
- to understand that harassment in any form is not tolerated
- to treat all concerns seriously and to handle concerns according to established procedures
- to model good working relationship behaviours
- to maintain privacy and confidentiality
- to seek assistance in the management of matters that may be beyond their experience
- to document conversations involving any form of harassment and store them on the personnel file.

What behaviours aid good working relationships?

- clear communication
- positive attitudes
- cooperation
- politeness
- respect
- sensitivity and diplomacy
- trust
- tolerance/acceptance
- acknowledgment and understanding of diversity
- coaching and mentoring.

Discrimination

Discrimination in employment occurs when one person is treated less favourably than another or treated unfairly. Subject to certain exceptions, it is unlawful if based on the following grounds:

- sex or gender (includes pregnancy and breastfeeding)
- marital status
- religion

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- physical and/or intellectual impairment
- sexuality e.g. heterosexual, homosexual
- race
- family/carer’s responsibilities
- age (includes compulsory retirement)
- irrelevant criminal record
- trade union or employer association activity or adverse action against a staff member for seeking general protection under Fair Work Act
- any other ground designated as unlawful discrimination under the relevant legislation.

Discrimination can be **Direct** or **Indirect**:

- **Direct** discrimination is where a person is treated less favourably due to a specific factor such as their age, race, gender or marital status. Exceptions include inherent requirements of the job – difference in wages due to age/seniority
- **Indirect** discrimination occurs where a rule, policy, practice or procedure is the same for everyone, but has an unequal or disproportionate effect on staff members who are a particular race, age, sex, gender or marital status.

If you feel that a policy, procedure, practice or rule could be discriminatory because it may disadvantage you or a group of staff members, please contact your Manager or the Human Resources Team.

Discrimination versus Work Health and Safety

Compliance with statutory work health and safety (WHS) requirements takes precedence over compliance with discrimination e.g. a staff member on restricted duties due to injury is refused permission to work overtime. In this case, the employer is safeguarding the staff member’s health and therefore discrimination is deemed not to have occurred.

Harassment

Harassment may be any form of behaviour that is unwanted, uninvited and unwelcome that:

- humiliates
- offends
- intimidates another person.

Harassment can be sexual or racial. Sexual harassment refers to when a person’s “comfort zone” is not respected. Racial harassment refers to harassment based on the person’s race or religion.

Depending on the circumstances, each of the following types of behaviour may constitute harassment:

- material that is sexist, racist, sexually explicit, homophobic etc., and is displayed in the workplace (including in your workstation), or circulated by hard or soft copy

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- verbal comments or threats
- use of social media or electronic communications to post comments or otherwise target an individual that humiliates, offends or intimidates another person
- offensive gestures
- isolation or alienation of a person or group because of their differences
- staring or leering in a suggestive manner
- sexual or physical contact
- intrusive personal questions
- sexual assault
- repeated advances
- initiation rituals
- jokes about any of the above.

This behaviour can be considered harassment even if no harassment was intended. Consideration will be given to the recipient’s response and whether this should have reasonably been anticipated by the harasser.

What is not harassment?

Behaviour that is freely accepted by everyone involved will not be considered as harassment. If there is any doubt about the impact of your behaviour on others, ask if the particular behaviour is acceptable. If not, then stop immediately and apologise. Please remember that some people find it difficult to tell someone to stop.

Victimisation

Victimisation happens if a person acts, or threatens to act, to the detriment of another person – an act that exploits or victimises someone (treats them unfairly). Victimisation also happens if a person wilfully makes a false complaint against another person with an intention to harm or get that person into trouble.

Situations involving victimisation include:

- a person is dismissed for refusing to follow a direction that, if followed, would discriminate against another person – the person who is dismissed is a victim
- a person makes a false complaint of sexual harassment against another person – the person against whom the complaint was made is the person who is victimised
- any act of bullying, harassment or discrimination.

Bullying

Bullying is a form of workplace harassment. Bullying occurs as an imbalance of power but not necessarily from supervisor to staff member, it can equally affect co-workers, or supervisors who can be bullied by staff members.

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A staff member is bullied at work if:

- a person or group of people repeatedly act unreasonably towards them or a group of staff members
- the behaviour creates a risk to health and safety.

Unreasonable behaviour includes victimising, humiliating, intimidating or threatening. Whether behaviour is unreasonable can depend on whether a reasonable person might see the behaviour as unreasonable in the circumstances.

Bullying is a persistent, offensive, abusive, intimidating or insulting behaviour, abuse of power, or unfair punishment which upsets, threatens and/or humiliates the recipient(s), undermining their self-confidence, reputation and ability to perform. This may include:

- behaving aggressively
- teasing or practical jokes
- insensitive jokes or pranks related to race
- pressuring someone to behave inappropriately
- excluding someone from work-related events
- unreasonable work demands
- ongoing teasing, put downs and insults
- threats, intimidation and violence
- regular, unreasonable criticism of work performance
- ignoring or isolating from activities
- constant nit-picking, fault-finding and criticism of a trivial, regular, and frequent nature
- persistent refusal to acknowledge a person and his or her contributions and achievements or to recognise their existence and value
- constant attempts to undermine a person and his or her position, status, worth, value and potential
- belittling, demeaning and patronising, especially in front of others
- humiliating, shouting at and threatening a person
- overloading with work, or taking work away and replacing with either menial work or with no work at all
- unreasonably refusing annual leave, personal leave, and/or compassionate leave
- denying training necessary to fulfil duties
- setting unrealistic goals which change as they approach
- subjecting the person to gossip which has the effect of damaging their reputation.

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Performance management

Notwithstanding the above, a manager is entitled to make decisions about poor performance, take disciplinary action, and direct and control the way work is carried out. Reasonable management action that is carried out in a reasonable way is not discriminatory, harassing, victimisation or bullying.

What are the consequences of workplace victimisation, discrimination, harassment and bullying?

Discrimination, harassment, victimisation and bullying hurt people and:

- have a direct impact on the way children are treated
- waste valuable time which could be more productively used in pursuit of organisational goals
- compromise our good reputation
- may result in SDN paying out financial compensation
- potentially increase stress for those involved and others in the workplace
- potentially increase absenteeism for those involved
- decrease morale in the workplace
- decrease trust and respect amongst colleagues
- are likely to be unlawful and may have legal consequences for the perpetrator, managers or supervisors and SDN.

What to do if you are being victimised, harassed, bullied or are experiencing discrimination?

If you have any type of concern or complaint related to work or the work environment or if you feel you have been subjected to any form of discrimination, harassment, bullying or victimisation, or if you are uncomfortable, you should request it to stop immediately and where necessary, follow the *Grievances Procedure*. Your complaint will be dealt with by SDN in a serious, objective, confidential and prompt manner.

Where SDN is satisfied that allegations of discrimination, harassment or bullying against a staff member are substantiated (on the balance of probabilities), the staff member may be subject to disciplinary action up to and including dismissal. They may also be stood down on full pay pending the outcome of an investigation. Staff members making false allegations, failing to keep the matter confidential or found to be victimising others may also be subject to disciplinary action.

You could also seek advice from government agencies such as the Australian Human Rights Commission, the Anti-Discrimination Board of New South Wales or Fair Work Australia.

Things to consider

Whether specific behaviour constitutes discrimination, harassment or bullying may depend on the circumstances. However, these are some things to consider:

- Is it harassment if it happens outside work?

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If the harassment occurs at a work-related event such as a Christmas party, then it will still be harassment. If it happens at an event that is unrelated to work but involves another staff member and affects one’s feelings of comfort and safety in the workplace, then it could still be harassment. This could include use of social media or other electronic communications including email, whether during work hours or outside work hours.

- Is it harassment if I touch someone?

Some people prefer not to be touched at all, even standing quite close may feel threatening. Any touching in a sexual way would almost certainly be seen as harassment. As a general rule, don’t touch people anywhere unless it is clear that they regard it as acceptable.

- Does it have to be repeated to be harassment or discrimination?

Often harassment is a series of events or ongoing behaviour. However, there may be circumstances in which a single event could be harassment or discrimination.

- What if there is an allegation of discrimination, harassment or bullying and I haven’t done anything wrong?

When a complaint or grievance is made, both parties will have an opportunity to explain the circumstances. Sometimes, behaviour that was not intended as harassing can be perceived or interpreted as such by the person on the receiving end. Often an apology may be all that is required to correct things. All parties involved in an incident or alleged incident will be treated fairly.

Related SDN Documents

Policies

- GI-HLP-1.10: Code of Conduct
- GI-HLP-1.11: Social Media and Electronic Communications
- GI-OP-1.13: Complaints Management
- GI-OP-1.19: Complainant Conduct
- SD-OP-2.23: Code of Conduct for Service Users
- HR-HLP-3.03: Code of Conduct for Interactions with Children
- HR-OP-3.05: Recruitment and Selection of Staff Members
- HR-OP-3.08: Managing Performance
- HR-OP-3.09: Grievances

Procedures

- GI-PRO-1.13-01: Complaints Management
- GI-PRO-1.19-01: Complainant Conduct
- HR-PRO-3.05-01: Recruitment Selection and Appointment

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- HR-PRO-3.08-01: Managing Performance
- HR-PRO-3.09-01: Grievances

Relevant Legislation/Regulations

- Anti-Discrimination Act 1977 (NSW)
- Age Discrimination Act 2004
- Disability Discrimination Act 1992
- Equal Employment Opportunity (Commonwealth Authorities) Act 1987
- Workplace Gender Equality Act 2012
- Australian Human Rights Commission Act 1986
- Human Rights (Sexual Conduct) Act 1994
- Racial Discrimination Act 1975
- Racial Hatred Act 1995
- Sex Discrimination Act 1984
- Fair Work Act 2009
- National Disability Insurance Scheme Act 2013
- National Standards for Disability Services
- NDIS Practice Standards and Quality Indicators

Other Reference/Related Document

- <http://www.fairwork.gov.au/employee-entitlements/bullying-and-harrassment>

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