

# Australian Screen Industry Code of Conduct Sexual Harassment and Bullying

# Australian Screen Industry Code of Conduct

## Sexual Harassment and Bullying

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### 1. Introduction

The Australian screen industry endeavours to maintain and safe guard a “best practice” environment for all its practitioners so that the screen production industry is a collaborative, creative and positive workplace which is free from sexual harassment, discrimination and bullying.

This Code of Conduct has been prepared as a joint initiative between Screen Producers Australia (**SPA**), as the body representing employers in the screen industry, and the Media Entertainment & Arts Alliance (**MEAA**), as the body representing employees. This Code of Conduct is to highlight and affirm the Australian screen industry’s serious stance against sexual harassment, discrimination and bullying. It outlines clear and effective policies applicable to companies and productions to be followed should any grievance/s arise and internal and external investigation and resolution mechanisms available.

In conjunction with this Code of Conduct, SPA and MEAA have prepared three model workplace policies:

- Workplace Bullying Policy
- Discrimination & Bullying Policy
- Investigation Policy

(collectively the “**Workplace Policies**”)

This Code of Practice and the Workplace Policies are to assist employers to develop and implement policies and procedures which will ensure consistency across the entire Australian Screen Industry and will eliminate and prevent sexual harassment, discrimination and bullying in the workplace

Sexual harassment, discrimination and bullying can occur at any level on the production by men, women and children and can involve co-worker, supervisor, manager or independent contractor. Sexual harassment and bullying can often adversely impact both parties’ health, wellbeing, reputation and future career, but also the timing and efficiency of the production, the workplace environment and the overall reputation of the Australian screen industry. Therefore, it is highly recommended that if an employee or independent contractor believes they are subject to sexual harassment and bullying that they contact their Supervisor or Manager on the production at the earliest convenience or if avenue is not appropriate to lodge a complaint to commence the external investigation and resolution process.

It is critical that the compliant process remains confidential to ensure a thorough, fair and timely investigation is conducted. Depending upon the severity of sexual harassment and/or bullying, disciplinary procedures against the offender may include an apology, counselling, demotion and dismissal from the production. However, sexual assault, indecent exposure and stalking are criminal offences with respective penalties and potential incarceration. Discrimination and bullying can be a civil offence in some states and territories.

### 2. Overview: Code of Conduct – Sexual Harassment and Bullying

SPA and the MEAA firmly advocate for the elimination of sexual harassment, discrimination and bullying within the entire screen industry.

Historically, there has been under-reporting of sexual harassment in many industries due to the fear of not being believed, the reaction of co-workers, the offender’s response of a formal complaint is made, the risk of losing their job and the reaction from their partner, family and friends. According to the Human Rights and Equal Opportunity Commission, offenders are often older and in a position of relative power within the organisation and/or industry. Despite 20 years of legislative provisions making sexual harassment unlawful it still exists within the workplace.

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The SPA / MEAA model Workplace Policies are intended to provide an accessible, transparent and equitable complaints process to review and resolve complaints by any cast and crew members within the Australian screen industry or externally via an independent industry body established jointly between SPA and the MEAA.

Sexual harassment and bullying applies to all employees and independent contractors on film, television and interactive production sets in Australia. It is also relevant to third parties with whom employees and independent contractors deal with in the course of their employment. Sexual harassment and bullying can occur at work-related events such as conferences, training events, work functions, social events and business trips.

### **3. Aims of this Code of Conduct and the Workplace Policies**

This Code of Practice and the Workplace Policies aim to:

- Inform employees and independent contractors what constitutes sexual harassment and bullying;
- Inform employees of their rights and obligations in relation to bullying and sexual harassment grievances and complaints;
- Outline a procedure and process for reviewing and resolving with grievances and complaints regarding bullying and sexual harassment in a timely, objective, fair and sensitive manner;
- Encourage the elimination of incidents of sexual harassment and bullying on film, television and new media productions;
- Protect employees and independent contractors from victimisation or reprisals;
- Informs employees and independent contractors of the detrimental consequences of bullying and sexual harassment i.e. adverse impact upon their career and potential civil and criminal charge

### **4. Maintaining a sexual harassment, discrimination and bullying free workplace**

It is essential for all Producers and employers within the Australian screen industry to both be aware of their legal obligations and have the necessary framework for meeting those obligations, including:

- Ensuring compliance with the *Fair Work Act 2009* (Cth) and relevant state or territory laws
- Creating an environment where employees and independent contractors are treated with dignity, courtesy and respect
- Implementing the Workplace Policies
- Ensuring all employees and independent contractors are aware of this Code of Conduct and the Workplace Policies;
- Implementing a grievance/complaints process where complaints are handled confidentially and serious manner and an appropriate action is taken in response to complaints
- Encouraging an environment where employees and independent contractors feel able to report breaches of Workplace Policies
- Offer support and assistance to employees and independent contractors who have experienced harassment, discrimination and bullying in the workplace i.e. counselling
- Ensure protection from any victimisation or reprisals
- Ensure failure of employees and independent contractors may result in disciplinary action including dismissal

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### 5. Legal framework

It is important for employers to have a clear understanding of their legal obligations and to be aware that they may be vicariously liable (ie: held legally responsible) for acts of discrimination, sexual harassment and bullying committed by employees unless an employer has taken reasonable steps to prevent it from taking place. The minimum requirement would be to effectively implement a sexual harassment, discrimination and bullying policy which is communicated to employees and independent contractors and ensure these policies are enforcement on an ongoing basis, particularly remedial action if any breaches occur.

Moreover, employers need to recognise that sexual harassment is prohibited by commonwealth, state and territory anti-discrimination laws. Unless an exception applies, employers must comply with both the national legislation and the relevant state or territory law. These are:

- *Sex Discrimination Act 1984 (Cth)*
- *Racial Discrimination Act 1975 (Cth)*
- *Fair Work Act 2009 (Cth)*
- *Anti-Discrimination Act 1977 (NSW);*
- *Equal Opportunity Act 1995 (VIC);*
- *Equal Opportunity Act 1984 (SA);*
- *Equal Opportunity Act 1984 (WA);*
- *Discrimination Act 1991 (ACT);*
- *Anti-Discrimination Act 1991 (QLD);*
- *Anti-Discrimination Act 1992 (NT);*
- *Anti-Discrimination Act 1998 (TAS).*

A summary of the relevant sections that apply is set out in the Appendix to this Code of Conduct.

While there is no uniform standard expected of employers in taking all reasonable steps, at a minimum employers would usually be expected to:

- have an appropriate discrimination, sexual harassment and bullying harassment policy which is effectively implemented, monitored and communicated to all workplace participants.
- take appropriate remedial action if sexual harassment does occur.

The model Workplace Policies attached to this Code of Conduct are designed to assist employers with the implementation of procedures for preventing discrimination, sexual harassment and bullying and to assist employers in maintaining positive workplace relationships and can improve employee motivation and performance.

In managing discrimination, sexual harassment and bullying in the workplace, employers may also have obligations under other laws, such as privacy, defamation, occupational health and safety and industrial laws

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### 6. What is Sexual Harassment?

Sexual harassment is defined as any unwanted, unwelcome or uninvited behaviour of a sexual nature where a reasonable person would have anticipated the possibility that the other person would feel humiliated, intimidated or offended. Sexual harassment doesn't have to be repeated or ongoing to be against the law.

Sexual harassment can constitute various forms of conduct and behaviour including:

- Staring, leering or unwelcome physical touching;
- Sexual or suggestive comments, jokes or taunts;
- Sexual material including photos and pinups;
- Making remarks with sexual connotations;
- Unsolicited demands or requests for sexual favors;
- Requests for sex;
- Unwanted invites to go to dates;
- Sexually explicit written communication i.e. letters, faxes, emails or SMS messages;
- Unsolicited acts of physical intimacy;
- Intrusive questions about a person's private life or body;

Behaviour which does not constitute sexual harassment

- Sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual or reciprocated.

However, this behaviour may still be considered inappropriate behaviour and offensive to other employees in the workplace.

Importantly, some sexual harassment such as sexual assault, indecent exposure and stalking will also constitute a criminal offence.

### 7. What is Bullying?

Bullying is repeated behaviour which makes another person feel intimidated, offended, threatened, undermined, or unsafe and may be direct or indirect. Bullying often creates adverse health and safety issues upon the person being bullied. Bullying can occur between workers but also between a worker and their supervisor or vice versa.

Mobbing is bullying carried out by a group which includes collective accusations, humiliation, general harassment or emotional abuse.

Direct bullying constitutes:

- Verbal abuse i.e. yelling, insults, offensive comments and language
- Unjustified criticism or complaints
- Abusive, belittling or intimidating phone calls, emails or notes
- Humiliating someone through sarcasm, criticism or insults
- Threatening an employee or independent contractor's job security

Indirect bullying constitutes:

- Unjustified criticism or complaints
- Deliberately excluding someone from workplace activities
- Deliberately denying access to information or other resources

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- Deliberately changing work arrangements to inconvenience an employee
- Excluding or isolating employees
- Psychological harassment
- Deliberately withholding from an employee information or resources necessary to do their work
- Cyber-bullying includes using emails, text messages, chat rooms or social media to humiliate or cause distress

Behaviour which does not constitute bullying:

- Setting reasonable performance goals, standards and deadlines
- Allocating work to an employee
- Applying a disciplinary process such as informing an employee about inappropriate behaviour
- Performance management process in an honest, constructive and fair manner
- Selection and promotion process in fair and reasonable manner
- Constructive feedback and advice
- Implementing organisational change including restructure and downsizing
- Occasional differences in opinions, conflicts or problems

#### **8. Establishing a Grievance/Complaints Processes**

There are different approaches to address sexual harassment and bullying based upon the extent and seriousness of harm caused and the implications upon the production/work environment:

1. Direct approach: The person identifies the offensive behaviour, explains that the behaviour is unwelcomed and offensive and makes a clear and polite request for the sexual harassment/bullying behaviour to stop.
2. Indirect approach: The person reports the sexual harassment/bullying incidences to their supervisor/manager or a trusted person in the organisation/production. The supervisor/manager /trusted person identifies the offensive behaviour, explains that the behaviour is unwelcomed and offensive and makes a clear and polite request for the sexual harassment/bullying behaviour to stop.
3. Mediation: A neutral and independent person discusses the matter with both parties individually and together discuss the issue/s and offer recommendations to resolve the issue/s amicably.
4. Internal investigation is conducted by an experienced and impartial person to ascertain whether the sexual harassment/bullying is substantiated such as possibly interviewing the respective parties, their supervisors, other eye witnesses on both sides and examining video footage if applicable. All parties involved will be informed about the progress of the investigation. Thereafter an investigator will conclude with findings, recommendations and information regarding a review of the outcome.

The possible outcome of an investigation could be counselling, a disciplinary action against the offender (demotion, transfer, suspension, probation or dismissal), an official warning, a change of working arrangements, a formal apology conciliation/mediation with a third party, a reimbursement of costs and re-crediting any leave taken as a result of harassment. The outcome will depend upon the severity and frequency of behaviour, evidence, desired outcome by parties, history of incidences and the level of remorse regarding behaviour.

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5. External investigation is applicable if the person affected by bullying does feel comfortable raise the issue with their supervisor/manager or independent person in the company or production. SPA and MEAA will establish an independent body that will allow complainants to have their complaints independently assessed. The body will conclude with findings, make recommendations and information regarding a review of the outcome. However, it must be noted that the recommendations from the independent industry body will not be legally binding.
6. Independent legal advice It is recommended to consult independent legal advice before making a claim with the Australian Human Rights Commission, the Anti-Discrimination Board or undertaking litigation to resolve the grievance. Litigation should be a last resort given the cost, time and potential delays involved in this process.

#### **9. Are there any specific guidelines for small business?**

There is no exemption in the Sex Discrimination Act for small business. Employers in all small businesses, whatever the size, may be vicariously liable for acts of discrimination, sexual harassment and bullying committed by employees in connection with their employment unless all reasonable steps were taken to prevent it occurring.

Small businesses are expected to write and implement a discrimination, sexual harassment and bullying policy, and they need to deal with complaints in an appropriate way. SPA and MEAA have developed model Workplace Policies (attached to this Code of Conduct) to provide a guide for employers. However, courts will take into account the size and resources of a business in deciding what is reasonable to expect them to do to prevent sexual harassment.

#### **10. Further assistance**

For further assistance on discrimination, sexual harassment and bullying policy issues, employers can contact:

- Mark Donaldson, Legal and Business Affairs, SPA; or
- the Australian Human Rights Commission; or
- State or territory anti-discrimination agencies.

Employers may also seek assistance from employer organisations, small business or industry associations.

December, 2017



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### APPENDIX – THE LEGAL FRAMEWORK

Sexual harassment and discrimination is unlawful across Federal, State and Territory levels and bullying may be unlawful depending upon the jurisdiction. The tables below summarised the key legislative provisions:

Provisions	<i>Sex Discrimination Act 1984 (Cth)</i>	<i>Anti-Discrimination Act 1977 (NSW)</i>	<i>Equal Opportunity Act 2010 (VIC)</i>	<i>Anti-Discrimination Act 1991 (QLD)</i>	<i>The Equal Opportunity Act 1984 (SA)</i>
Definition of sexual harassment	s 28A(1)	s 22A	s 92	s 118- s 119	s 87(9)
Definition of employment	s 28B	s 22B	s 93-94	*	s 87(1) and s 87(7)
Definition of discrimination in work	s 14	s 8, s 10, s 25, s 27, s 38C, s 38E, s 40, s 42, s 49D, s 49F, s 49V, s 49X, s 49ZH, s 49ZJ, s 49ZB, s 49ZYD	s 7, s 14, s 18, s 21	s7, s 9, s 15, s 114	s 29- s 32 s 51 -s 54 s 66 – s 69 s 85A – s 85D s 85T – s 85X
Vicarious liability	s 106	s 53	s 109-110	s 132- s 133	s 91
<i>Remedies</i>			s 180		s 64 and s 65
Equal Opportunity and Human Rights Commission			s 113-114, s 122-127, s 144		s 93-s 94
Anti-Discrimination Board/Commission		s 87A, s 87B, s 87C, s 89, s 89A, s 90		s 136, s 138, s 146- s 147, s 154A	
Employment Tribunal		s 95, s 113, s114		s 174A- s174B	s 95D- s 96
Conciliation				s 158	

Provisions	<i>Anti-Discrimination Act 1996 (NT)</i>	<i>Equal Opportunity Act 1984 (WA)</i>	<i>Discrimination Act 1991 (ACT)</i>	<i>Anti-Discrimination Act 1998 (TAS)</i>
Definition of sexual harassment	s 22(2)	s 24 – s 26	s 58(1)	s 17
Definition of employment	S 31	s 24(1) and s 24(2)	s 59	
Definition of discrimination in work	s 19- s 21	s 11, s 13, s 35AC, s 35AE, s 35B, s 35D, s 35P, s 35R, s 37, s 39, s 54, s 56, s 66B, s 66D, s 66W, s 66Y	s 8, s 10, s13	s 14- s 16



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Vicarious liability	s 105	s 161		
<i>Remedies</i>				s 60 - Division 1A
Equal Opportunity and Human Rights Commission		s 83 – s 84		
Anti-Discrimination Board/Commission	s 60- s 72			s 6, s 60, s 62- s 63, s 69, s 71, s 78
Civil and Admin Employment Tribunal	s 86 – s 91	s 85, s 90, s 93		S 13
Conciliation	s 78 -s 79	s 91		s 75

\*In QLD, sexual harassment is unlawful in environments outside the scope of employment. Pursuant to s 120 of *Anti-Discrimination Act 1991 (QLD)*, the circumstances that are relevant are whether a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

It must also be noted that sexual harassment and bullying in the workplace can escalate to assault, sexual assault, indecent/aggravated assault and stalking/intimidation where employees and independent contractors could face serious consequences if charged such as financial penalties and/or imprisonment.

Provisions	<i>Crimes Act 1900 (NSW)</i>	<i>Crimes Act 1958 (VIC) *</i>	<i>Criminal Code 1899 (QLD)</i>	<i>Criminal Law Consolidation Act 1935 (SA)</i>	<i>Criminal Code Act 1983 (NT)</i>
Assault	s 59, s 61	s 31 s 23 of the <i>Summary Offences Act 1966 (VIC)</i>	s 245, s 246, s 335	s 20	s 188, s 188A
Sexual Assault	s 61I, s 61J	s 40- s 44	s 352	s 48- s 49	s 192
Indecent and Aggravated Assault	s 61L, s 61O	s 39- s 40 s 24 of the <i>Summary Offences Act 1966 (VIC)</i>	s 339 – s 340	s 56, s 58	s 174G
Stalking/Intimidation /Threats	s 13 of <i>Crimes (Domestic and Personal Violence) Act 2007 (NSW)</i>	s 21A, s 20	s 359B – s 359F	s 19AA, s19	s 189

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Provisions	<i>Criminal Code Act 1983 (NT)</i>	<i>Criminal Code Compilation Act 1913 (WA)</i>	<i>Crimes Act 1900 (ACT)</i>	<i>Criminal Code Act 1924 (TAS)</i>
Assault	s 188, s 188A	s 222	s 26	s 184
Sexual Assault	s 192	s 326	s 51 – s 55A	s 185
Indecent and Aggravated Assault	s 174G	s 313(1)(a)	s 23-25	s 127, s 127A
Stalking/Intimidation /Threats	s 189	s 338E	s 35, s 31	s 192

\*Victoria enacted the *Crimes Amendment (Bullying) Act 2011* (VIC), Victoria's anti-bullying legislation, known as Brodie's Law, which commenced in June 2011. This legislation made bullying a crime punishable by up to 10 years imprisonment. According to s 21A(2)(d), bullying encompasses making threats using abusive or offensive words and performing abusive or offensive acts in the presence of the victim.

All employers have a legal obligation to maintain a safe workplace for the health and wellbeing of all employees, which includes the elimination of bullying. According to *Fair Work Act 2009* (Cth) s 789FF, the Fair Work Commission may make orders to stop bullying in a workplace if a worker has made an application under s 789FC. The Fair Work Commission will take into account any final or interim outcomes arising out of an internal investigation.

# Australian Screen Industry Code of Conduct

## Model Workplace Policies

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### MODEL DISCRIMINATION AND HARASSMENT POLICY

#### INTRODUCTION

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[Insert] Pty Ltd (the **Company**) is committed to providing a workplace free from discrimination and harassment.

The Company aims to ensure that when employment decisions are made, they are based on merit, not on irrelevant attributes or characteristics that an individual may possess. The Company also tries to create an environment which promotes good working relationships.

All workers are responsible for ensuring they do not promote or engage in discrimination or harassment.

Behaviour or conduct by a worker which constitutes discrimination or harassment will not be tolerated and may result in disciplinary action up to and including termination of employment/cessation of engagement.

A **worker** is any person who carries out work for the Company, including an employee, a contractor or subcontractor (and their employees), a labour hire worker, outworker, apprentice or trainee, work experience student or a volunteer.

#### COMMENCEMENT OF POLICY

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This policy commences on [Insert] and replaces all or any other discrimination and/or harassment policy (whether written or not).

#### RELATED POLICIES

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Investigation Policy  
Workplace Bullying Policy

#### ANTI- DISCRIMINATION LAWS

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Under anti-discrimination laws, discrimination, sexual and some other forms of harassment, victimisation and vilification are unlawful.

#### INTENTION NOT RELEVANT

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Whether or not you intend to discriminate against or harass another person is irrelevant. The conduct will be considered objectively having regards to all the facts and circumstances.

#### APPLICATION OF THIS POLICY

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This policy applies to all workers engaged by the Company in Australia. Every worker must comply with this policy as amended from time to time.

This policy does not form part of and is not incorporated into any worker's contract of employment or contract for service with the Company.

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

- work or client functions;
- conferences, seminars or training sessions;
- work Christmas or other parties;
- business trips;
- use of social media; and
- any place defined as a workplace under relevant work health and safety legislation.

Workers must comply with this policy when going to other workplaces in connection with work for the Company, for example, when visiting a customer or supplier.

This policy extends to every associated entity of the Company with the meaning of section 50AAA of the *Corporations Act 2001 (Cth)*.

## **DEFINITION AND EXAMPLES OF DISCRIMINATION, SEXUAL HARASSMENT AND HARASSMENT**

### **Discrimination**

Discrimination at work occurs when a person is treated less favourably because of one or more of the following actual, imputed or appertaining characteristics:

- race (including colour, descent, nationality, ethno-religious origin, social or ethnic origin or extraction);
- sex;
- gender, gender identity, sexual orientation, gender identity, transgender or intersex status;
- marital or relationship status;
- pregnancy (including potential pregnancy and breastfeeding);
- family responsibilities or responsibilities as a carer;
- disability/impairment (including physical, intellectual or psychiatric);
- genetic predisposition to disability;
- religious belief, affiliation or lawful religious activity;
- age;
- irrelevant medical or criminal record;
- homosexuality or sexual preference, including lawful sexual activity;
- trade union record, membership or non-membership or lawful industrial activity;
- political belief, affiliation, activity or conviction;
- compulsory retirement;
- HIV/AIDs vilification;
- physical features; or
- association with or relationship to a person with any of the above characteristics.

It is not discrimination if, a worker has a disability and, subject to reasonable adjustment, the worker cannot perform the inherent requirements of the job.

### **Sexual harassment**

Sexual harassment is any form of unwelcome conduct of a sexual nature that, in the circumstances, a reasonable person would anticipate would offend, humiliate or intimidate the person harassed.

Examples of sexual harassment include (but are not limited to) such things as:

- unwelcome touching or other forms of physical contact;
- unwelcome remarks, comments, explicit conversation or questions of a sexual nature;
- inappropriate jokes or intrusive questioning;
- requests for sex or sexual favours;
- display or dissemination of offensive material with sexual explicit content, messages, pictures, screensavers or objects including by internet or email;
- flashing or indecent exposure;
- sexual banter or crude conversations;
- unwanted or persistent proposals of marriage;
- offensive or nuisance telephone calls, text messages or emails;
- offensive or suggestive body language or behaviour e.g. leering, staring at a person or part of their body, obscene gestures, wolf whistles or unwanted massaging; or
- inappropriate or persistent gifts e.g. flowers or cards.

The person on the receiving end of the sexual harassment does not need to object to the conduct or ask for it to stop to be sexual harassment. You do not need to intend to offend, humiliate or intimidate another person for the conduct to be sexual harassment.

Sexual harassment does not need to be directed at a particular person to be unlawful. For instance, telling an inappropriate joke at the lunch table where another person was present, but not part of the conversation may constitute sexual harassment.

Mutual or consensual interaction, flirtation or friendship is not sexual harassment.

### **Harassment**

Harassment is conduct against a person based on a protected characteristic that is:

1. unwelcome and unsolicited; and
2. a reasonable person would consider to be offensive, intimidating, humiliating or threatening.

Examples of harassment include (but are 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;
- practical jokes based on a protected characteristic; and

- isolation, segregation or humiliation based on a protected characteristic.

### **Vilification**

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

### **Victimisation**

Victimisation is subjecting a person to a detriment because they have done or propose to do any of the following things:

- make a complaint under anti-discrimination legislation or a complaint about conduct that would constitute unlawful discrimination under anti-discrimination legislation;
- provide any information or document in relation to an investigation of such conduct;
- propose to attend a conciliation conference or hearing in relation to a discrimination complaint; or
- support someone else lodging a discrimination complaint.

## **RESPONSIBILITIES**

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It is the responsibility of managers and supervisors to ensure workers are not discriminated or harassed within the workplace or in connection with the workplace.

It is the responsibility of every worker not to participate in discriminatory or harassing behaviour within the workplace or in connection with the workplace.

## **COMPLAINT PROCEDURE**

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If you believe you or another worker are being subject to discrimination, harassment, vilification or victimisation, you should:

1. not ignore the matter thinking it will go away;
2. if you are comfortable to do so, you should ask the person to stop; and
3. if you are not comfortable doing so or, the conduct does not stop you should immediately notify [insert responsible person and their position] by completing the complaint form **attached** to this policy. If you require assistance in completing the attached complaint form, please seek assistance from [insert responsible person and their position].

Once the complaint is received, the matter will be treated seriously and dealt with confidentially, promptly and reasonably in accordance with the Company's Investigation Policy.

A reference in this policy to confidentiality means that, the Company and the worker must, as far as is reasonably practicable, keep the matter of the discrimination, harassment, vilification or victimisation and any complaint or investigation into it on a needs to know basis only. If you are unsure of who you can discuss the matter, complaint or investigation with please contact [insert responsible person and their position].

## FRIVOLOUS OR VEXATIOUS COMPLAINTS

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The Company encourages the reporting of behaviour that a worker genuinely believes to be discrimination, harassment, vilification or victimisation. Further a worker will not be disadvantaged or treated unfairly for dealing with discrimination, harassment, vilification or victimisation in accordance with this policy.

However, if a complaint is found to be frivolous, vexatious or malicious, then disciplinary action up to dismissal may occur against the person making the complaint.

## BREACH OF THIS POLICY

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If a worker engages in discrimination, harassment, vilification or victimisation, or otherwise breaches this policy, they may be subject to disciplinary action up to and including the termination of employment or engagement with the Company.

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

## CONTACT PERSON

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If you have any queries in relation to this policy or discrimination, harassment, vilification or victimisation generally, please contact [insert name and best contact details].



## **[INSERT] PTY LTD**

### **DISCRIMINATION, HARASSMENT, VILIFICATION OR VICTIMISATION COMPLAINT FORM**

#### **PERSONAL DETAILS**

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**Date:**

**Name:**

**Email address:**

**Contact number:**

**Position:**

#### **MAINTAINING CONFIDENTIALITY**

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Only the people 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 this complaint procedure.

#### **YOUR COMPLAINT**

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Please include the nature of the discrimination, harassment, vilification or victimisation you say has occurred or is occurring, the relevant date/s and place/s, the name of the person/s you say is engaging in discrimination, harassment, vilification or victimisation and their position/s and what steps if any that you have taken to try to have the discrimination, harassment, vilification or victimisation stop:

## WITNESSES

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Please provide the names of any witnesses to these events:

## SUPPORTING EVIDENCE

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If there are any documents that may help the Company investigate your complaint, please provide copies or advise where this information may be obtained.

## WHAT OUTCOME ARE YOU SEEKING FROM THIS COMPLAINT?

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E.g. that the discrimination, harassment, vilification or victimisation stop, that you receive an apology, that disciplinary action be taken:

## SIGNED

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**Signature:**

**Full name:**

**Date:**

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## Model Workplace Policies

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### WORKPLACE BULLYING POLICY

#### INTRODUCTION

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[Insert] Pty Ltd (the **Company**) believes that all workers are entitled to work in an environment free from workplace bullying.

A **worker** is any person who carries out work for the Company, including an employee, a contractor or subcontractor (and their employees), a labour hire worker, outworker, apprentice or trainee, work experience student or a volunteer.

Workplace bullying is a psychological hazard, meaning it is a risk to health and safety and it will not be tolerated. A breach of this policy may result in disciplinary action up to and including termination of employment/engagement.

#### COMMENCEMENT OF POLICY

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This policy commences on [Insert]. It replaces all other Workplace Bullying Policies (whether written or not).

#### RELATED POLICIES

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Investigation Policy  
Discrimination and Harassment Policy

#### APPLICATION OF THIS POLICY

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This policy applies to all workers engaged by the Company in Australia. Every worker must comply with this policy as amended from time to time.

This policy extends to every associated entity of the Company with the meaning of section 50AAA of the *Corporations Act 2001 (Cth)*.

This policy does not form part of and is not incorporated into any worker's contract of employment or contract for service with the Company.

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

- work or client functions;
- conferences, seminars or training sessions;
- work Christmas or other parties;
- business trips;
- use of social media; and
- any place defined as a workplace under relevant work health and safety legislation.

Workers must comply with this policy when going to other workplaces in connection with work for the Company, for example, when visiting a customer or supplier.

## WORKPLACE BULLYING LAWS

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Under workplace bullying laws, workplace bullying is unlawful.

## WHAT IS WORKPLACE BULLYING?

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

To constitute workplace bullying, the behaviour must be:

1. repeated;
2. unreasonable; and
3. create a risk to health and safety.

**Repeated** behaviour refers to the persistent nature of the behaviour and not the specific form. It can refer to a range of behaviours over time. Behaviour is **repeated** if it is more than once and an established pattern can be identified. It may involve a series of diverse incidents.

**Unreasonable behaviour** is behaviour that a reasonable person, having regard to all the circumstances, would see as unreasonable. Unreasonable behaviour includes (but is not limited to) behaviour that is victimising, intimidating, humiliating or threatening.

**Behaviour** includes actions of an individual or group.

**Risk to health and safety** means the possibility of danger to health and safety.

## EXAMPLES OF WORKPLACE BULLYING

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Examples of behaviour that may be considered to be workplace bullying if the above three criteria are met include:

- physical or verbal abuse, yelling, screaming or inappropriate use of offensive language;
- deliberately and without just cause, excluding or isolating a worker;
- belittling or humiliating a worker;
- assigning meaningless tasks unrelated to the worker's job;
- deliberately changing the work roster of a particular worker or group of workers to deliberately inconvenience them;
- undermining a worker's work performance by deliberately withholding or denying access to information, resources, supervision or consultation required for effective work performance or to undertake work (including unjustified criticisms or complaints);
- inequitable treatment in the same or similar circumstances;
- setting unreasonable timelines or constantly changing deadlines;

- putdowns, unwarranted criticism, excessive scrutiny or complaints regarding a worker's work;
- initiation ceremonies, threats, name-calling or spreading gossip, misinformation or malicious rumours; or
- interfering with personal property or work equipment.

Bullying may occur in person, or through other means e.g. telephone, text messages, emails, social media etc.

Bullying may occur by workers to fellow workers, managers to workers, workers to managers, workers to clients and clients to workers.

## WHAT IS NOT WORKPLACE BULLYING

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Workplace bullying does not include reasonable management action carried out in a reasonable manner. The Company 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 and to give fair and reasonable feedback on a worker's performance.

Examples of reasonable management action include:

- 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.

Management action has to be reasonable, not perfect, ideal, more reasonable nor more acceptable. Management action may still be reasonable if not all steps are followed, even a significant departure when the departure was reasonable in the circumstance. Reasonable management action is not referable to the worker's perception of the management action but of the actual management action in question.

Whether the management action was carried out in a reasonable manner is an objective question of fact in each case. It depends on all the facts and circumstances in each case.

Discrimination and harassment is not workplace bullying. However, allegations of discrimination and harassment are likewise not tolerated and is governed by the Discrimination and Harassment Policy

Workplace conflict is generally not considered workplace bullying. Differences of opinion and disagreements in the workplace 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. Low level and task based conflict can benefit the Company and the workers as it may generate debate leading to new ideas and innovation.

## RESPONSIBILITIES

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### Company responsibilities

It is the responsibility of the Company to:

- provide, as far as reasonably practicable, a work environment free of workplace bullying;
- proactively take steps to prevent workplace bullying;
- provide a mechanism to deal with complaints regarding workplace bullying in a prompt, professional and confidential manner; and
- not to victimise any person involved in a bullying complaint or investigation.

### Worker responsibilities

It is the responsibility of all workers:

- to take care of their own health and safety including by reporting workplace bullying experienced or observed in the workplace;
- to behave in an appropriate manner and ensure that they do not engage in workplace bullying;
- if they are comfortable doing so, advise any worker or other person engaging in workplace bullying that it is inappropriate and it should cease immediately;
- to encourage other workers who have experienced workplace bullying to request that it stop or to report it;
- to ensure they do not aid, incite, encourage or otherwise assist other workers to engage in workplace bullying;
- to refrain from victimising any person involved in a workplace bullying complaint or investigation; and
- maintain confidentiality in relation to any workplace bullying complaint or investigation.

## COMPLAINT PROCEDURE

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If you believe you or another worker are being subject to workplace bullying, you should:

4. not ignore the matter thinking it will go away;
5. if you are comfortable to do so, you should ask the person undertaking the workplace bullying to stop; and
6. if you are not comfortable doing so or, the workplace bullying does not stop you should immediately notify [insert responsible person and their position] by completing the complaint form **attached** to this policy. If you require assistance in completing the attached complaint form, please seek assistance from [insert responsible person and their position].

Once the complaint is received, the matter will be treated seriously and dealt with confidentially, promptly and reasonably in accordance with the Company's Investigation Policy.

Only the people 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).

A reference in this policy to confidentiality means that, the Company and the worker must, as far as is reasonably practicable, keep the matter of the workplace bullying and any complaint or investigation into it on a need to know basis only. If you are unsure of who you can discuss a workplace bullying matter, complaint or investigation with please contact [insert responsible person and their position].

#### FRIVOLOUS OR VEXATIOUS COMPLAINTS

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The Company encourages the reporting of behaviour that a worker genuinely believes to be workplace bullying. Further a worker will not be disadvantaged or treated unfairly for dealing with workplace bullying in accordance with this policy.

However, if a complaint is found to be frivolous, vexatious or malicious, then disciplinary action up to dismissal may occur against the person making the complaint.

#### BREACH OF THIS POLICY

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If a worker engages in workplace bullying, or otherwise breaches this policy, they may be subject to disciplinary action up to and including the termination of employment or engagement with the Company.

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

#### CONTACT PERSON

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If you have any a query in relation to this policy or workplace bullying generally, please contact [insert name and best contact details].



## WORKPLACE BULLYING COMPLAINT FORM

### PERSONAL DETAILS

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**Date:**

**Name:**

**Email address:**

**Contact number:**

**Position:**

### YOUR COMPLAINT

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Please describe in as much details the behaviour you say gives rise to workplace bullying (**relevant behaviour**) - please attach a separate page with the description of your complaint including all of the following.

In as much detail please include:

- the relevant date/s and place/s when the relevant behaviour occurred (including the date it started and the last time it happened);
- how often it happened - e.g. once, every now and then, monthly, weekly, almost every day;
- the name of the person/s you say is engaging in or otherwise involved in the relevant behaviour and their position/s;
- if you are not the person who is the subject of the relevant behaviour or it includes other persons, the names of the other person/s.

Please also specify what steps, if any, that you have taken to try to have the relevant behaviour stop. This should include detailing who, if anyone else, you have told about the relevant behaviour, including:

- their names and their connection to you;
- which event/s or incident/s of the relevant behaviour did you tell them about;
- when did you tell them;
- what it was that you told them.

### MAINTAINING CONFIDENTIALITY

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Only the people 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 this complaint procedure.

## WITNESSES

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Please provide the names of any witnesses to these events:

## SUPPORTING EVIDENCE

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If there are any documents that may help the Company investigate your complaint, please provide copies or advise where this information may be obtained.

## WHAT OUTCOME ARE YOU SEEKING FROM THIS COMPLAINT?

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E.g. that the workplace bullying stop, that you receive an apology, that disciplinary action be taken:

## SIGNED

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**Signature:**

**Full name:**

**Date:**

# Australian Screen Industry Code of Conduct

## Model Workplace Policies

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### MODEL INVESTIGATION POLICY

#### INTRODUCTION

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The purpose of this policy is to outline a procedure on how investigations into bullying, discrimination, harassment, vilification and victimisation will generally be conducted once a complaint is received.

#### RELATED POLICIES

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Discrimination and Harassment Policy  
Workplace Bullying Policy

#### APPLICATION OF THIS POLICY

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This policy applies to complaints made by workers of the Company with respect bullying, discrimination, harassment, vilification and victimisation within Australia. Every worker must comply with this policy as amended from time to time.

This policy extends to every associated entity of the Company with the meaning of section 50AAA of the *Corporations Act 2001 (Cth)*.

Worker and work have the same meaning as set out in the Workplace Bullying Policy and the Discrimination and Harassment Policy

This policy does not form part of and is not incorporated into any worker's contract of employment or contract for service with the Company.

#### INFORMAL COMPLAINT PROCEDURE

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The informal complaint procedure emphasises resolution rather than factual proof or substantiation of a complaint. It will not always be appropriate for the worker to determine whether to utilise the informal or formal complaint procedure.

In some cases, despite the worker preferring to utilise the informal complaint procedure, the Company may determine that a complaint is serious enough to warrant formal investigation. Formal investigation may be warranted where the conduct that is the subject of the complaint is of a serious enough nature that, if substantiated, would warrant disciplinary action including the dismissal of the worker.

#### Informal ways of dealing with complaints can include the following action:

- the individual who has been subjected to bullying, discrimination, harassment, vilification or victimisation wants to deal with the situation themselves but may seek advice on possible strategies from **[insert responsible person and their position];**

- the individual who has been subjected to bullying, discrimination, harassment, vilification or victimisation asks **[insert responsible person and their position]** to speak to the alleged perpetrator/s on their behalf – **[insert responsible person and their position]** privately conveys the individual's concerns and reiterates the Company's policy to the alleged perpetrator without assessing the merits of the case;
- a complaint is made, the perpetrator admits the behaviour, investigation is not required and the complaint can be resolved through conciliation or counselling; or
- a supervisor or manager observes unacceptable conduct occurring and takes independent action even though no complaint has been made.

## FORMAL COMPLAINT PROCEDURE

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The worker that has been the subject of bullying, discrimination, harassment, vilification or victimisation may request, or the Company may determine, even if not requested by the worker, that a worker's complaint needs to be investigated in a formal manner. The formal complaint procedure will usually involve:

- the appointment of **[insert responsible person and their position]** to investigate the allegation/s;
- application of the principles of procedural fairness - these include confidentiality (needs to know basis only), timeliness, the right to respond to allegation/s and objectivity;
- making a finding as to whether the alleged occurred, or whether it is likely it occurred on the balance of probabilities - this may not always be possible if there is insufficient evidence to substantiate the complaint;
- **[insert responsible person and their position]** submitting a report with a recommended course of action to the appropriate decision-maker (senior management); and
- implementation of an appropriate outcome.

Formal procedures are usually appropriate in one or more of the following circumstances where:

- informal attempts at resolution have failed;
- the complainant alleges vilification or victimisation;
- the complaint involves serious allegations of misconduct arising from contraventions of the Discrimination and Harassment Policy or Workplace Bullying Policy and informal resolution could compromise the rights of the parties;
- the allegations are denied and the person who claims to have been the subject of bullying, discrimination, harassment, vilification or victimisation wishes to proceed and investigation is required to substantiate the complaint; or
- the person alleging, they have been the subject of bullying, discrimination, harassment, vilification or victimisation wishes to make a formal complaint from the outset.

### The steps involved in a formal complaint

To ensure consistency and fairness, a formal investigation into a complaint will usually involve the following steps:

1. The complainant is interviewed and the allegations are particularised in writing - this may require **[insert responsible person and their position]** meeting with the complainant to go through their complaint form and obtain additional information. The complainant is welcome to have a support person present. This will normally occur within a week of receipt of the complaint form from the complainant.
2. The allegations are conveyed to the alleged perpetrator in full in writing. The alleged perpetrator may be stood down without loss of pay or transferred to another division to allow the investigation to occur. This will normally occur within a week of receipt of all necessary particulars from the complainant.
3. The alleged perpetrator is given the opportunity to respond to the allegations at a meeting in the presence of a support person. This will normally occur within 3 days of notice of the allegations being provided to the alleged perpetrator.
4. If the alleged perpetrator disputes any of the facts alleged, a further meeting with the complainant may occur and/or statements from any witnesses and other relevant evidence may be gathered.
5. Once any additional information is gathered, further meetings with the complainant and the alleged perpetrator may occur to clarify any outstanding matters not already put to them for response.
6. A finding is made, on the balance of probabilities, as to whether the allegations complaint has substance. It may not always be possible to substantiate a complaint. This will normally occur within a week of conclusion of the investigation.
7. A report documenting the investigation process, the evidence, the finding and recommended outcome(s) is submitted to the appropriate decision-maker (senior management). This will normally occur within a week of conclusion of the investigation.
8. The decision-maker implements the recommended outcome/s or decides on an alternative course of action. This will include notifying the complainant and the alleged perpetrator of the outcome of the complaint in writing. This will normally occur within a week of receipt of the investigation report.

The complainant, the alleged perpetrator and witnesses are all entitled to have a support person of their choice present for meetings throughout the process. The role of the support person is to offer support but not to act as the person's advocate.

Notes will be taken by the investigator at meetings at either at the end of the meeting or shortly thereafter, the person that was met with will be asked to review and confirm the accuracy of the notes taken.

All parties involved in the investigation process, including support persons, are required to keep all matters pertaining to the complaint including the fact of the investigation confidential which means that disclosure should be on a needs to know basis only. If you are unsure of who you can discuss a complaint or investigation with please contact **[insert responsible person and their position]**.

There may be occasions, when having regard to the complexity of the facts and the seriousness of the allegations, 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 alleged perpetrator will be informed of this during the course of the investigation. However, the Company will take all practicable steps to undertake and conclude investigations in a timely way and ideally, within about a fortnight and less than a month.

## Outcomes

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);
- the Company facilitating a meeting between the complainant and the alleged perpetrator 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 to changing behaviour or conduct;
- a change in working arrangements; or
- an apology.

Which outcome is most appropriate in a particular case may depend upon factors such as:

- the severity and frequency of the inappropriate conduct;
- the weight of the evidence against the alleged perpetrator;
- the wishes of the complainant (however this will not be determinative of the matter);
- if the alleged perpetrator has been given any prior warnings for the same or similar behaviour or conduct;
- training provided to the alleged perpetrator in relation to matters the subject of the Complaint.

## Work arrangements

When a complaint is lodged, workers are required to continue work as normal, unless notified otherwise by the Company. For example, either the complainant or the alleged perpetrator may be stood down without loss of pay or transferred to another part of the business or a different location in order to allow the investigation to proceed fairly.

Workers 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 to make vexatious or malicious complaints; and
- maintain confidentiality as described above.

## FRIVOLOUS OR VEXATIOUS COMPLAINTS

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The Company encourages the reporting of behaviours that a worker genuinely believes to be bullying, discrimination, sexual harassment or harassment. Further any such worker will not be disadvantaged or treated unfairly for making a complaint.

However, if a complaint is found to be frivolous, vexatious or malicious, then disciplinary action up to dismissal may be evoked against the complainant. Examples of frivolous or vexatious complaints include but are not limited to:

- fabricating a complaint;
- making a complaint for the purposes of revenge or to hurt someone;
- making trivial or petty complaints;
- seeking to re-agitate issues that have already been addressed or determined; or
- making a complaint that the complainant does not genuinely believe to be true.