



MercyWorks

SISTERS OF MERCY
IN AUSTRALIA & PAPUA NEW GUINEA

INAPPROPRIATE WORKPLACE BEHAVIOUR POLICY

Policy Number:	30	Version:	2
Updated by:	Martin Binoj, Paul Taylor and Vanessa Burke	Approved by Board on:	19 May 2021
Reason of Review:	ACFID CSA/ACNC regulatory requirements and SafeWork NSW Guidelines	Scheduled review date:	As per schedule

INTRODUCTION

Mercy Works Limited (MWL) promotes social justice through local and overseas relief and development activities that are part of the mission and vision of the Sisters of Mercy in Australia and Papua New Guinea.

The programs engage in partnerships with communities to promote justice, self-reliance and to support peoples and communities who are displaced or denied access to basic resources such as education, health and social welfare.

1. CONTENT

The Policy contains the MercyWorks Limited (MWL) Inappropriate Workplace Behaviour Policy. Any exemption to this Policy must be applied for in writing, for approval by the Executive Director. Any exemption granted by the Executive Director must be in writing.

2. SCOPE

This Policy provides guidance to MWL Board Directors, committee members, employees, contractors and volunteers (defined as Workers) in relation to their workplace behaviour with/for MWL.

MWL, as an equal opportunity employer does not discriminate against anyone and is committed to providing a work environment that is free from harassment based upon an individual's sex, race, ethnicity, national origin, age, religion or any other legally protected characteristics.

To meet the regulatory requirements, MWL has reasonable processes in place to ensure the procedures and tools for seeking informed consent meet ethical guidelines. These are made available in the local languages of PNG (Tok Pisin) and Timor Leste (Tetum).

3. PURPOSE

The purpose of this Policy is to make Workers aware of their obligations and responsibilities in respect of their behaviour and the behaviour of others in the workplace consistent with the standards of conduct, professional and personal behaviour that MWL requires of its Workers to uphold and achieve a safe, supportive, productive and harmonious workplace.

These standards are informed by the core values and principles of MWL, including the principles of freedom, mutual respect, participation, sustainability, and protection of the rights and responsibilities of all.

MWL have aligned this Policy to the Australian Council for International Development (ACFID Code of Conduct Quality Principle 9:

- Commitment 9.1 We have the human resource capacity and capability to deliver our work.
- Commitment 9.2 We protect, value and support our people.
- Commitment 9.3 We manage our people effectively and fairly.
- Commitment 9.4 We enable our people to conduct themselves professionally and according to our stated values.

4. DEFINITIONS:

Workers refers to all Board Directors, committee members, employees, contractors and volunteers.

Workplace refers to all programs which Mercy Works Ltd operate in cooperation with communities in Australia, Papua New Guinea and Timor Leste.

5. APPLICATION:

5.1 What is Workplace Discrimination?

Workplace discrimination occurs when someone is subject to unfair treatment in employment because they belong to a particular group of people or have a particular personal characteristic that has been specified in law as a ground for discrimination. Some grounds of discrimination recognised by law include:

- sex or gender;
- marital status, pregnancy, potential pregnancy, parental status and family responsibility;
- sexual preference, sexuality or gender identity;
- disability, impairment or handicap;
- race, colour, national or ethno-religious origin, nationality, ethnicity, descent or ancestry;
- age;
- religious or political belief or activity;
- trade union activity;
- victimisation; and
- personal association with or related to any person who is identified on the basis of any of the above attributes.

There are two kinds of discrimination, direct and indirect:

- Direct discrimination occurs if a person treats or proposes to treat someone unfavourably due to that person's personal characteristics.
- Indirect discrimination can occur when there is a rule or condition that is the same for everyone but in effect disadvantages people from a particular group more than people from other groups. The rule may seem equitable and unbiased at face value. A rule or condition is not discriminatory if it is reasonable in the circumstances.

5.1.1 Examples of direct and indirect unlawful workplace discrimination

Direct Discrimination	Indirect Discrimination
Refusing to employ someone solely because of their age despite them being able to undertake the requirements of the position.	Prescribing an inflexible working hours policy where such rigidity in hours is not required.

Terminating someone's employment <u>solely</u> because of their family responsibilities.	Scheduling meetings or training sessions at times that would disadvantage people with carer's responsibilities, e.g., very early or very late in the day.
Not promoting someone <u>solely</u> because of their disability despite them being able to undertake the duties of the position.	A requirement that all staff speak fluent English regardless of their role when this is not an inherent requirement for all roles within the organisation.

5.1.2 Examples of lawful workplace discrimination

Treating someone differently is not necessarily unlawful discrimination, and in many circumstances, workplace discrimination will not be considered unlawful. Discrimination on the ground of religion may be exempt in relation to employment of people by religious institutions where such discrimination is required by the tenets and doctrines of the religion, is not arbitrary and is consistently applied or where religion is an inherent requirement of a particular job.

Examples of where discrimination is lawful are:

- where there are genuine occupational requirements for a person of a particular sex, race or age to be appointed to a role;
- where a person is being performance managed because their daily duties have been changed while they are undertaking a performance management program to improve their performance; and
- where a person has a disability, and the discrimination occurred because the person is unable to perform the inherent requirements of a role because of their disability, and no reasonable adjustments could have been made by the employer to allow them to perform the inherent requirements of the role.

5.2 What is Workplace Harassment?

Workplace harassment generally consists of a pattern of unwelcome behaviour; however, it can consist of just one act where this is of a serious nature. It can include workplace behaviour that is:

- unwelcome, uninvited or unreciprocated;
- verbal or nonverbal;
- physical or nonphysical;
- offensive, humiliating or intimidating; and/or
- based on a ground of unlawful discrimination.

It is irrelevant whether the harasser intends to offend or harm for their behaviour to constitute harassment. It is also irrelevant that the recipient failed to indicate, at the time, that they objected to the behaviour.

Sexual harassment is a form of harassment on the ground of sex or conduct of a sexual nature, such as unwanted sexual advances, unwelcome requests for sexual favours or physical contact, derogatory sexual comments, taunts, intrusive questions and rumours.

It can include verbal comments or abuse, physical contact, threats, displaying inappropriate and offensive images or documents, stalking, offensive communication, jokes and ridicule, propositions, and inappropriate initiation rites.

5.2.1 Examples of workplace harassment

Verbal	Non-Verbal
Sexist or racist jokes	Suggestive looks or stares
Comments of a sexual nature	Offensive hand or body gestures
Repeated unwelcome invitations	Sexually explicit emails or posters
Imitating someone's accent	Invading someone's personal space

5.2.2 What is not workplace harassment?

Workplace harassment, including sexual harassment, does not include behaviour that is consensual, welcome and reciprocated by the recipient.

5.3 What is Workplace Bullying?

A worker is bullied at work if:

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

Unreasonable behaviour includes victimisation, humiliation, intimidation or threats. Whether the behaviour is unreasonable is objective and not subjective. This means deciding whether the behaviour is unreasonable depends on whether a reasonable person (a third party) might see the behaviour as unreasonable in the circumstances and not how the worker sees the behaviour.

Bullying can occur at all levels in the workplace i.e., upwards, downwards or laterally. This means that bullying behaviour can not only be toward a worker by their supervisor but also by a worker toward their supervisor and between fellow workers or peers.

5.3.1 Examples of workplace bullying

Physical	Psychological
Repeated loud, abusive, threatening language.	Repeated silent treatment.
Repeated subjection to practical jokes.	Repeatedly assigning unpleasant or meaningless tasks unrelated to the position.
Physical	Psychological
Offensive phone messages, texts or emails.	Repeated and deliberate withholding of information that is vital to effective work performance.
Repeated ridicule or put-downs in front of others.	Repeated exclusion or isolation.

5.3.2 What is not workplace bullying?

Workplace bullying does not include:

- occasional differences of opinion or problems in working relationships;
- reasonable management action carried out in a reasonable manner; or
- reasonable disciplinary procedures.

It is important to understand that a manager can make decisions about poor performance, speak to an employee about their performance, take disciplinary action and, direct and control the way work is carried out. These management actions, carried out reasonably, do not constitute bullying.

5.3.3 How is bullying different to discrimination?

Discrimination happens when there is an adverse action such as terminating employment or demotion because of a person's characteristics that come within defined grounds for discrimination. Bullying happens when someone in the workplace repeatedly behaves unreasonably towards another person or group of people and causes a risk to health and safety in the workplace. This behaviour doesn't have to be related to the person or group's characteristics, and adverse action doesn't have to have happened.

5.3.4 Who is covered by anti-bullying laws?

The National anti-bullying laws cover all national system employees as well as:

- outworkers;
- students gaining work experience;
- contractors or subcontractors; and
- volunteers.

5.4 Reporting Inappropriate Workplace Behaviours

Individuals wishing to raise a concern about inappropriate workplace behaviour should do so by following the procedure outlined in the *MWL Management of Concerns, Complaints and Commendations Policy*.

6. BREACH

A breach of this Policy may result in disciplinary action that may involve severance from the organisation.

7. AUTHORITY

This Policy is approved and reviewed by the Board.

8. REFERENCE

- *Fair Work Act 2009* (Cth)
- *Age Discrimination Act 2004* (Cth)
- *Disability Discrimination Act 1992* (Cth)
- *Racial Discrimination Act 1975* (Cth)
- *Sex Discrimination Act 1984* (Cth)
- *Anti-Discrimination Act 1977* (NSW)
- *Work Health and Safety Act NSW 2011*
- *SafeWork NSW*

9. RELATED FORMS

There are no forms related to this Policy

10. RELATED POLICIES

- Employee Services Manual
- Code of Conduct Policy
- Management of Concerns, Complaints and Commendations Policy
- Social Network Policy
- Acceptance Use of Communication Systems and Devices Policy
- Work Health and Safety Policy
- Whistleblowing Policy
- Prevention of Sexual Exploitation and Abuse Policy

11 CONTACTS

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12 POLICY REVIEW

Review of this Policy, related forms and resources will be undertaken every three years by the Executive Director and approved by the MWL Board.

13 REVISION/ MODIFICATION HISTORY

Date	Version	Current Title	Summary of Changes	Approval Date	Commencement Date
1 April 2015	1	Workplace Discrimination, Harassment and Bullying Policy	New	01 April 2015	2 April 2015
19 May 2021	2	Inappropriate Workplace Behaviour Policy	Change of Name, Updated the Policy	19 May 2021	20 May 2021

14 APPROVAL DATE/REVISION SCHEDULE

Approved By: Board, Mercy Works Limited
Date: 19 May 2021
To be Revised: 19 May 2024

Board Chair Signature	
Date	28.06.21