



Safe Workplace Behaviours Procedure

1. Procedure Statement

This procedure is designed to enable a workplace that:

- Is free from harassment, bullying, occupational violence and discrimination, vilification and victimisation;
- Ensures equal opportunity and alignment with public sector employment and practice principles;
- Aligns behaviour and conduct with RCH values, policies and procedures, and relevant and Legislation.

2. Scope

It is unlawful for a person or group of people to engage in behaviour which amounts to discrimination, harassment, bullying, victimisation, vilification or occupational violence. This also includes not requesting, instructing, assisting, authorising or encouraging others to behave in ways that reflect such behaviour. This Procedure therefore applies to all board members, employees, prospective employees, contractors, honorary employees and volunteers. This policy applies to behaviour in the workplace, and at offsite and out-of-hours work related functions.

3. Definition of Terms

"Complaint" means a complaint made by a person as identified within the scope of this procedure

An **attribute or personal characteristic** as defined by the federal and state law is;

- age
- breastfeeding
- employment activity
- disability or impairment
- industrial activity, trade union activity
- lawful sexual activity
- sexual orientation, gender identity, intersex status, marital or relationship status
- family responsibilities
- parental status or status as a carer
- physical features
- political belief or activity
- pregnancy, or potential pregnancy
- race, colour, national extraction or social origin
- religious belief or activity
- sex
- personal association with a person who is identified by reference to any of the above attributes.

What is Discrimination?

Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic or attribute that is protected by law.

There are 2 different kinds of discrimination:

- **Direct Discrimination** – this may occur if a person treats, or proposes to treat, a person with an attribute unfavourably because of that attribute.
 - For example, refusing to train an employee to work on new machinery because you believe they are too old to learn new skills
- **Indirect Discrimination** – this may occur when an unreasonable requirement, condition or practice that purports to treat everyone the same, ends up either actually or potentially disadvantaging someone with a protected personal characteristic because of that characteristic.
 - For example, imposing a minimum height requirement as part of a job application, for no apparent reason

***Note** – direct discrimination may also occur if you do not make or do not propose to make reasonable adjustments to accommodate a person with a disability or impairment - see the Disability and Reasonable Adjustment and Accommodation Procedure.

What is Harassment?

Harassment is behaviour which could reasonably result in a person or group of people feeling offended, humiliated or intimidated as a result of a protected attribute/s or characteristic/s. Harassment does not need to be repeated and can be a single event.

What is Sexual Harassment?

Sexual harassment is unlawful and occurs when a person/s;

- Make an unwelcome sexual advance, or an unwelcome request for sexual favours, to another person or persons;
- Engages in any other unwelcome conduct of a sexual nature in relation to another person or persons -

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.

Conduct of a sexual nature may include;

- Subjecting a person to any act of physical intimacy,
- Making, orally or in writing, any remark or statement with sexual connotations to a person, or persons, or about a person in his or her presence;
- Displaying, sharing or forwarding material which is sexually explicit, vulgar or otherwise offensive.
- Making a gesture, action or comment of a sexual nature in a person's presence.

What is Bullying?

Bullying is repeated, unreasonable behaviour directed towards a person(s), which creates a risk to their mental or physical health and safety.

Examples of overt forms of bullying may include:

- Use of abusive, insulting or offensive language;
- Behaviour or language that frightens, humiliates, belittles or degrades;
- Criticism that is delivered with yelling and screaming;
- Teasing or regularly making someone the brunt of practical jokes;
- Spreading gossip, rumours and innuendo.

Examples of more subtle forms of bullying may include:

- Excluding, isolating or marginalising a person from normal workplace activities;
- Denying access to information, consultation or resources;
- Intruding on a person's space by pestering, spying or tampering with their personal effects or work equipment;
- Intimidating a person through inappropriate personal comments, belittling opinions or unjustified criticism;
- Setting tasks that are unreasonably beyond a person's ability.

Bullying does not include reasonable action taken in a reasonable manner by an employer to;

- Provide constructive feedback or counselling on employee performance;
- Issue lawful and reasonable directions;
- Conduct performance management or disciplinary action;
- Instruct people on safe work practices required to ensure a healthy and safe workplace.

Managers are equally encouraged to raise concerns regarding bullying behaviour should they believe upward bullying is occurring as a result of undertaking their role and responsibility for the management of staff.

What is Occupational Violence?

- Occupational Violence is a physical attack or threat to an employee or group of employees that creates a risk to health and safety. It includes aggression and challenging behaviours and can be categorised as client-initiated and external or intrusive occupational violence.
- This procedure deals with Occupational violence as perpetrated by employees, contractors or volunteers (whether individually or in groups) against other employees, contractors, or volunteers.
- Please refer to the Occupational Violence procedure relating to the management of clinical related aggression issues.

What is Victimisation?

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

What is Vilification?

Vilification is behaviour that incites hatred, serious contempt for, or revulsion or severe ridicule of a person or group of people because of their race or religion

Behaviour that could be seen as vilification includes;

- Speaking about a person's race or religion in a way that could make other people hate or ridicule them;
- Publishing claims that a racial or religious group is involved in serious crimes without any proof;
- Encouraging people to hate a racial or religious group using flyers, stickers, posters, a speech or publication, or using websites or email.

Behaviour that is not likely to be seen as vilification includes;

- Comments, jokes or other acts related to the race or religion of a person may not be seen as vilification, but they could still form the basis for a complaint of discrimination;
- Being critical of a religion or debating racial or religious ideas in a way that does not encourage others to hate racial or religious groups;
- Actions that offend people of a particular race or religion, but do not encourage others to hate, disrespect or abuse racial or religious group.

Procedure Details

The RCH encourages all persons to raise any concerns in respect of behaviour that may constitute discrimination, harassment, bullying, occupational violence, victimisation or vilification.

A person who has a concern regarding behaviours may choose to work through their concerns and/issues in a number of ways. This choice will be dependent on a number of factors which may include the working environment, people involved, confidence in managing the situation, seriousness of the behaviours, safety, etc.

The RCH encourages people to attempt to manage and/or resolve issues at the local level in the first instance where this is safe and reasonable to do so.

Option 1 – Self Management

A person who has a concern about the behaviour of another person may choose to raise the issue/s directly with that person.

This option may be pursued if the behaviour is not serious and they consider that bringing the behaviour to the attention of the other person could reasonably resolve the issue/s. The person should raise the issue/s with the other person explaining what the behaviour was, how the behaviour made them feel and request that the behaviour cease. If the behaviour continues, a person can consider pursuing one of the options set out below.

It is important to note that a person choosing to self-manage their issue must behave appropriately in line with the stated expectations of this procedure. A person seeking to pursue this option is encouraged to seek guidance from their manager or HR Partner.

Option 2 – Informal Resolution

A person may wish to consider an informal resolution to their concern. This option can be considered where the person would like to pursue the matter without a formal process, but does not feel comfortable approaching the other person directly. Informal resolution typically involves a third party speaking to the person whose behaviour is causing concern. A third party may be a manager, the manager's manager or a HR representative and may include mediation as part of the informal resolution process. A person seeking to pursue this option should seek guidance from a HR Partner or their line manager.

*Note: There may be circumstances where a Manager or HR Partner may determine that **self-management or informal resolution** is not appropriate and more formal resolution/action is required. This may occur where the behaviour complained of constitutes a risk to the health and safety of any person or where the behaviour is reflective of a broader issue or repeated course of behaviour.*

Option 3 – Formal Resolution

A person may choose to make a formal complaint if they have not been successful in trying to resolve the issue through self-management and/or informal resolution options or where they believe the behaviour should be dealt with in a formal manner. If a person chooses formal resolution, they may make a complaint, either verbally or in writing, to their Manager, or any representative of the Human Resources team.

If an investigation is deemed necessary as part of the formal resolution process, the following actions may be followed;

1. A written/verbal complaint is provided to the appointed investigator to confirm/identify specific allegations;
2. The respondent/s will be provided with a letter notifying them of a complaint, the specific allegations, possible outcomes to allegations if substantiated, requirement to maintain confidentiality and opportunity, including process and support person options, to respond to the allegations;
3. Employee Assistance Support Referral for both the complainant and respondent;
4. Interview the respondent and any witnesses to the incident/s;
5. Investigation outcome to be provided to the Executive Director People & Culture and relevant Manager as appropriate;

6. Outcome notified to the complainant and respondent e.g. allegations are substantiated or unsubstantiated.

Note;

- *Any investigation will take place considering the principles of natural justice and procedural fairness.*
- *The above process is indicative only. The Executive Director People & Culture, in consultation with the Executive Director Legal & Information Services as may be necessary, will determine the investigation process in each instance in its sole and absolute discretion based upon the complaint, circumstances and information available.*

A substantiated allegation of behaviour that amounts to discrimination, harassment, bullying, victimisation, vilification or occupational violence may constitute misconduct or serious misconduct under the Performance Management and Disciplinary Procedure. Formal disciplinary action in accordance with clause 4.2.2 of the Performance Management and Disciplinary Procedure may be undertaken based on an investigation conducted in accordance with the above procedure without the need for RCH to undertake any further investigation in relation to the alleged conduct.

Option 4 – External Resolution

While people are encouraged to use the RCH internal complaints procedure, they have a right to seek advice from and/or lodge a complaint with external bodies such as the Victorian WorkCover Authority, the Fair Work Commission or a state or federal discrimination body.

People are not permitted to obstruct, hinder or take any other action which may interfere with the proceedings of the above mentioned bodies or people acting on their behalf. People are required to comply with any requests for information or orders from an external body under the guidance of HR or the Legal Services department. The information provided must not be false or misleading to the independent body.

Support and Guidance

Support, guidance and advice in relation to the management of safe workplace issues that have arisen is available through;

- An employee's line manager or another manager;
- HR Partner or HR team member;
- A member of the Workplace Health and Safety Team.

The RCH Employee Assistance Program is available through Davidson Trahaire Corpsych by contacting 1300 360 364. The EAP is a confidential counselling program and is available on a self-referral basis, free of charge to all paid employees.

Other Information**Confidentiality**

Information about another person cannot be requested, supplied or utilised to engage in the behaviours listed above. A person may request or require another person to supply information that could be used by the first person to form the basis of discrimination against the other person if the information is reasonably required for a purpose that does not involve prohibited discrimination.

Detrimental Action Procedure

All people covered by this procedure are expected to know that it is an offence for a person to take, incite, or to threaten detrimental action against any person because of, or because of a substantial belief that:

- the other person or anyone else has made, or intends to make, a protected disclosure; or
- the other person or anyone else has cooperated, or intends to cooperate, with an investigation of a protected disclosure.

Detrimental action includes:

- action causing injury, loss or damage;
- intimidation or harassment; and
- discrimination, disadvantage or adverse treatment in relation to a person's employment, career, profession, trade or business, including the taking of disciplinary action.

The penalties for taking or threatening to take detrimental action include fines and imprisonment for up to 2 years. Civil action may also be taken in which case compensation may be ordered.

A person who reports actual or threatened detrimental action taken in reprisal for the making of a protected disclosure or for cooperating with the investigation into a protected disclosure must be instructed to report the matter directly to the Independent Broad-based Anti-corruption Commission (IBAC). The RCH Chief Executive Officer must also be informed immediately if a report of actual or threatened detrimental action is received.

If a person suspects detrimental action may have been taken or has been threatened, they must raise their concerns with the RCH Chief Executive Officer immediately.

Any disciplinary action taken against a person who is known to have made a protected disclosure must be in accordance with the Performance Management and Disciplinary Procedure.

False or Vexatious Complaints

Any complaints made against another person in relation to this procedure which are found to be manifestly false or vexatious may result in disciplinary action taken in accordance with the Performance Management and Disciplinary Procedure.

References

Age Discrimination Act 2004 (Comm.)

Australian Human Rights Commission Act 1986 (Comm.)

Disability Discrimination Act 1992 (Comm.)

Equal Opportunity Act 2010 (Vic.)

Fair Work Act 2009 (Comm.)

Sex Discrimination Act 1984 (Comm.)

Racial Discrimination Act 1975 (Comm.)

Racial and Religious Tolerance Act 2001 (Vic.)

Protected Disclosure Act 2012 (Vic.)

Occupational Health and Safety Act 2004 (Vic)

Related Policy/Procedures

Human Resources

RCH Code of Conduct

Performance Management and Disciplinary Procedure

Recruitment and Selection Procedure

Occupational Violence Procedure

Social Media Procedure

Contact

4/13/2015

Policies and Procedures : Safe Workplace Behaviours Procedure

Director, Human Resources

Director, Workplace Health and Safety

HR Partners

Health & Wellbeing Co-ordinator

Workplace Health and Safety Advisor

Injury Management Co-ordinator

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