

## UNICEF AUSTRALIA

### EQUAL OPPORTUNITY, ANTI DISCRIMINATION, HARASSMENT AND BULLYING POLICY

#### 1 POLICY STATEMENT

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UNICEF Australia is an equal opportunity employer committed to making sure there is no unlawful conduct in its employment practices or in its workplaces whilst Employees and other Workers are at Work.

Discrimination, Harassment and/or bullying is unlawful. UNICEF Australia (UA) will not tolerate harassment and bullying in the workplace and strives to ensure that all complaints of discrimination, harassment and/or bullying are dealt with promptly, confidentially, and fairly.

#### 2 PURPOSE

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This policy sets out UNICEF Australia's (UA) commitment to creating a workplace in which all employees are treated with dignity and respect.

This policy sets out UA's position on:

- Equal Employment Opportunity;
- Unlawful Discrimination;
- Unlawful Harassment; and
- Unlawful Victimisation.

This policy relates to the behaviour of all Employees and Workers.

This policy applies to the way Employees and Workers interact with:

- Job applicants;
- Other Employees and Workers;
- Visitors; and
- Clients, customers and other members of the public.

#### 3 INTERACTION WITH OTHER INSTRUMENTS AND LAWS

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If an Employee's employment is covered by an industrial instrument such as a modern award or National Employment Standards set out in the *Fair Work Act 2009* (Cth) (**Instrument**), this policy must be read in conjunction with the terms of the Instrument. The contents of this policy are not intended to override any rights and obligations under an Instrument or any applicable legislation. Further, UA will not follow this policy if this may result in the breach of an Instrument or legislation.

This policy also refers to legislation. This legislation may change from time to time and may therefore affect the contents of this policy.

This policy does not form a contract or part of UA's contract of employment with any of its employees. UA may vary the contents of this policy from time to time, or decide not to apply it, at its absolute discretion. To the extent that the policy requires employees to do or refrain from doing something, this forms a direction of UA with which employees must comply.

#### 4 APPLICATION - DEFINITIONS

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**Employee** means a person employed by UA.

**Work** means any time at which an Employee or other Worker is:

- (a) carrying out, or acting in the course of his or her duties for, or with respect to, UA;

- (b) at work functions (even if out of hours) such as team dinners, Christmas parties or client functions or any other function that UA has facilitated or that take place in connection directly or indirectly with UA's activities;
- (c) representing UA, for example, at a conference (including after hours behaviour at such conference), or entertaining clients on an informal basis; or
- (d) otherwise acting within the course of his or her employment (Employees) or within the scope of his or her engagement (non-Employees).

For the avoidance of doubt, the above incorporates events outside of working hours.

**Worker** means an individual performing Work in any capacity for UA, including as an Employee, a contractor, a subcontractor, a labour hire worker, a work experience student or a trainee.

## 5 RESPONSIBILITIES

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UA requires all managers and supervisors to ensure that all Employees and Workers are treated fairly and equitably, which includes not being subjected to harassment.

UA encourages all Employees and Workers to report incidents of workplace discrimination, bullying and/or harassment. Managers and supervisors have a responsibility to ensure neither Employees and Workers who make complaints, nor witnesses, are victimised

## 6 IMPLEMENTATION

### EQUAL EMPLOYMENT OPPORTUNITY

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UA may be held vicariously liable for the unlawful conduct of its Employees and for any unlawful discrimination or harassment of its Employees in breach of equal opportunity and anti-discrimination legislation in Australia. Any party (including UA) may also have accessory liability for unlawful conduct where they induce, permit or otherwise authorise unlawful conduct.

UA strives to make decisions based on suitability, experience and merit and to avoid unlawful discrimination in hiring and promotion.

UA's management promotes a positive environment for all Employees which provides encouragement and opportunity to set personal goals within the framework of UA's objectives and achieve satisfaction in what they do while at Work.

All Employees and job applicants will be assessed according to their skill, qualifications, abilities, prior work performance, aptitude and general ability to perform the inherent requirements of a role in question where a decision is to be made about hiring, job allocation or promotion.

### UNLAWFUL DISCRIMINATION

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#### *Unlawful Discrimination*

UA does not condone or authorise practices that are unlawfully discriminatory in the processes of hiring, assignment, performance assessment and promotion.

Discrimination in the area of Work is unlawful and prohibited under Federal, State and Territory legislation. Discrimination can take the form of either direct or indirect discrimination.

**Direct Discrimination** means less favourable treatment in the same or similar circumstances on the basis of one or more of the unlawful grounds described in anti-discrimination legislation (for instance, on the basis of sex, age, race or disability).

**Indirect Discrimination** is in general terms a condition, requirement or practice that:

- (a) is more difficult for one person or a group of persons to comply with because of one of the characteristics or attributes set out in the anti-discrimination legislation in circumstances in which others are able to comply with that condition, requirement or practice; and
- (b) is unreasonable in the circumstances.

An example of indirect discrimination could be a requirement that all Employees be of a certain height, for instance 6 foot tall. Such a requirement could be indirectly discriminatory on the basis of sex and race because certain races and women generally are less likely to be able to comply with this requirement.

**Grounds of Discrimination**

The following grounds of discrimination are unlawful or prohibited under Federal, State or Territory legislation and are prohibited under this policy (Prohibited Grounds):

• sex	• physical features (Victoria only)
• marital status	• carers' responsibilities
• family responsibilities (including parental status)	• pregnancy (including potential pregnancy)
• breastfeeding	• age
• HIV/AIDS	• compulsory retirement
• mental, intellectual or psychiatric disability/ impairment (including imputed disability/ impairment)	• criminal record (to a limited extent)
• sexuality e.g. heterosexuality/ homosexuality	• political beliefs/activities
• transgender and intersex status	• industrial, trade union or employer association activity
• national or ethnic origin or extraction or social origin	• medical record
• race	• religion, religious beliefs or activity
• colour	• immigration
• gender identity	• lawful sexual activity

It is also unlawful to discriminate against another person because they are associated with a person who has attributes relating to one of the Prohibited Grounds.

### **Exceptions to the rule**

Discrimination in the area of employment may not be unlawful where:

- (a) the ground of discrimination constitutes a "genuine occupational qualification"; or
- (b) the Employee cannot perform the inherent requirements of the position in question, or requires services, facilities or other adjustment to do so, but the provision of those will impose an unjustifiable hardship on UA.

There are also other exceptions under relevant state and federal laws.

## **UNLAWFUL HARASSMENT**

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It is unlawful to harass another Employee or other Worker, or a person that an Employee or other Worker comes into contact with as a result of his or her Work, on the basis of a Prohibited Ground.

Unlawful harassment will occur if an Employee or other Worker engages in conduct that:

- (a) is unsolicited or unwelcome; and
- (b) relates to a Prohibited Ground (e.g. race, gender or religion),

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated.

It only takes a single act to constitute unlawful harassment, and it doesn't matter if the remark or conduct isn't intended to hurt, humiliate or offend someone.

Remember, just because an Employee or other Worker thinks something is funny, it doesn't mean that other people will find the remark, image etc. funny: others may be offended by what one person finds funny.

Harassment can occur by way of physical conduct or contact, gestures, jokes, name-calling, impersonations using racial stereotypes, in writing, on emails and comments or other posts on social media. Harassment may occur through other conduct - these examples are not intended to be exhaustive.

### **Sexual Harassment**

Sexual harassment is a discrete form of unlawful harassment. Unlawful sexual harassment will occur if an Employee or other Worker engages in conduct:

- (a) which is of a sexual nature;
- (b) which is unsolicited or unwelcome; and
- (c) which is likely to offend, humiliate, or intimidate the person or persons at whom it is directed.

While it is not possible to list all circumstances that may constitute sexual harassment, the following are some examples of conduct, which, if unwelcome, may constitute unlawful sexual harassment:

- (a) repeated unsolicited requests for dates or declarations of love;
- (b) threats to treat persons unfavourably unless they engage in sexual conduct;
- (c) promises to provide persons with benefits or employment if they engage in sexual conduct;
- (d) unwelcome sexual advances - whether they involve physical touching or not;

- (e) sexual epithets, jokes, written or verbal references to sexual conduct, gossip regarding one's sex life, comment on an individual's body, comment about an individual's sexual activity, deficiencies, or prowess;
- (f) displaying sexually suggestive objects, pictures, cartoons;
- (g) leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments;
- (h) inquiries into one's sexual experiences; and
- (i) discussion of one's sexual activities.

Where the behaviour is invited, consensual or reciprocated, it is not unlawful. Note, also, that simply because a person is in a consensual relationship or maintains a friendship with another person does not mean that sexual behaviour will be consensual. Sexual behaviour which has not been consented to by a friend or partner may still be unlawful.

## VICTIMISATION

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UA will not tolerate any behaviour whereby an Employee or other Worker victimises another person because they are involved in a complaint about alleged unlawful discrimination or harassment.

It is unlawful to victimise another person because:

- (a) s/he has made a complaint about what they believe to be unlawful discrimination or harassment;
- (b) s/he is about to make such a complaint, or
- (c) s/he is otherwise involved in a complaint, for example, as a witness.

Victimisation may include, but is not limited to, the following types of behaviour:

- (a) treating somebody detrimentally;
- (b) creating a hostile working place for the person concerned;
- (c) verbal abuse and derogatory comments.

## WHAT IS WORKPLACE BULLYING?

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Bullying may include, but is not limited to, behaviour which is otherwise unlawful, discriminatory or harassing. Bullying, more generally, may be a breach of applicable work health and safety laws.

Bullying will occur if, while an Employee or other Worker is at Work:

- (a) an individual or group of individuals repeatedly behaves unreasonably towards the Employee or other Worker; and
- (b) that behaviour creates a risk to health and safety.

For the avoidance of doubt, a risk to health and safety may include a risk to physical or mental health and safety.

### Types of workplace bullying

Workplace bullying can include direct and indirect behaviour, and verbal and non-verbal behaviour. Examples of direct workplace bullying include:

- Persistent unwarranted criticism
- Insults
- Belittling comments
- Patronising titles or nicknames
- Offensive or abusive language
- Unwanted physical contact

Examples of indirect workplace bullying

- Undermining work performance
- Setting unrealistic deadlines or objectives
- Withholding information
- Refusing reasonable requests
- Taking credit for someone else’s ideas or work

Bullying can occur between peers, or a supervisor and subordinate (and can include "upwards" bullying of a supervisor by a subordinate or subordinates).

**Accountability**

Managers and Supervisors have a key role in identifying and preventing workplace bullying and/or harassment. They are responsible for:

- taking immediate action to stop workplace bullying if they observe it;
- ensuring Workers and Employees are aware that workplace bullying will not be tolerated;
- responding promptly and fairly to any reported complaints in accordance with UA’s grievance procedures;
- ensuring that complainants are not victimised as a result of making the complaint;
- ensuring that they do not reward or engage in harassing or bullying behaviour themselves; and
- immediately advising the HR Manager of any reports of harassment and/or bullying.

Workers and Employees are responsible for:

- complying with UA’s policy in relation to workplace bullying;
- treating others fairly and with respect at all times;
- not condoning harassment and workplace bullying;
- reporting instances of harassment and workplace bullying; and

offering support to employees who are bullied.

**What is not Workplace bullying?**

Workplace bullying is not:

- (a) reasonable management action carried out in a reasonable manner (for example, performance management or reasonable disciplinary action); and
- (b) one off instances of rudeness, insensitivity or other inappropriate behaviour.

However, even where the conduct of an Employee or other Worker does not amount to bullying under this policy but that conduct is deemed inappropriate by UA, he or she may be subject to disciplinary action up to and including termination of employment or engagement.

**Additional Information on Bullying for Workers**

All Employees and other Workers are encouraged to refer any bullying incident(s) to UA at first instance in accordance with the UA's Internal Grievance Policy.

Version	Date	Comments	Author/s	Approved By	Review Date
V1	October 2011	V1 called Harassment & Workplace Bullying Policy	HR/People & Culture	EMT & Board	

V2	May 2016		Director, People & Culture		
V3	August 2020	Minor terminology updates on advice from Baker McKenzie and change to new format.	Director, People & Culture	GRE – delegated to CEO	August 2023