

Australian Live Performance Industry Code of Practice to Prevent Workplace Discrimination, Harassment, Sexual Harassment, Bullying and Victimisation

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KEY POINTS

- All workers have the legal right not to be discriminated against, harassed, sexually harassed, bullied or victimised in the workplace. Workplaces should be respectful, safe, non-threatening, and free from all forms of harassment.
- This code of practice is a best practice guide for employers in the live performance industry. It is a voluntary industry code of practice. However, compliance is mandatory for Live Performance Australia (LPA) Members.
- In addition to the obligations contained in legislation addressing discrimination, harassment, sexual harassment, bullying and victimisation under Work Health and Safety (WHS) laws, all employers have a duty to protect the health (both physical and psychological), safety and welfare of all workers at work and of other people who might be affected by the work. WHS laws require a proactive and preventative approach to managing health and safety risks in the workplace.
- Employers, no matter how big or small, can be held legally responsible (i.e. vicariously liable) for acts of discrimination, harassment, sexual harassment, bullying or victimisation that occur in the workplace or in connection with a person's employment.
- To minimise the risk of liability, employers need to demonstrate that they have:
 - taken all reasonable steps to prevent discrimination, harassment, sexual harassment, bullying and victimisation from occurring in their workplaces; and
 - responded appropriately to address incidents of discrimination, harassment, sexual harassment, bullying and victimisation.
- What constitutes reasonable steps will be different for each organisation, with factors such as the size and resources of an organisation, the work performed and the culture of the workplace being taken into account.
- Reasonable steps to effectively prevent and respond to workplace discrimination, harassment, sexual harassment, bullying and victimisation may include, but are not limited to:
 - developing and implementing clear workplace policies and procedures on discrimination, harassment, sexual harassment, bullying and victimisation, including a complaint handling and investigation procedure;
 - providing training and/or information to workers at induction and annually thereafter to make workers aware of:
 - acceptable and unacceptable behaviours in connection with work;
 - their rights and responsibilities in relation to discrimination, harassment, sexual harassment, bullying and victimisation;
 - their potential liability, including personal liability for sexual harassment;
 - policies and procedures on discrimination, harassment, sexual harassment, bullying, victimisation and complaint handling; and
 - how to report a concern;
 - regularly promoting, communicating and reviewing relevant workplace policies and procedures, with regular reviews (generally every two years or after laws are updated); and

- taking a proactive approach to creating and maintaining a positive, inclusive and respectful workplace culture that does not tolerate any form of discrimination, harassment, sexual harassment, bullying or victimisation.

PART A: CODE OF PRACTICE FOR THE LIVE PERFORMANCE INDUSTRY

1. ABOUT THIS CODE OF PRACTICE

1.1 What is the purpose of this code of practice?

This code of practice has been prepared to support the live performance industry to prevent workplace discrimination, harassment, sexual harassment, bullying and victimisation. It affirms our industry's commitment to providing safe, respectful, inclusive and flexible workplaces.

This code of practice provides:

- an overview of the relevant legal framework and obligations (with a focus on laws that apply across Australia);
- best practice guidance on steps your organisation can take to effectively prevent and respond to discrimination, harassment, sexual harassment, bullying and victimisation in connection with work;
- checklists to assess the currency and adequacy of your organisation's policies and procedures on discrimination, harassment, sexual harassment, bullying and victimisation;
- templates to assist your organisation develop the following policies and procedures:
 - Workplace discrimination, harassment, sexual harassment, bullying and victimisation policy;
 - Complaint handling and investigation procedure;
 - Complaint form; and
 - Code of conduct, which outlines acceptable and unacceptable behaviours, including in relation to workplace discrimination, harassment, sexual harassment, bullying and victimisation;
- additional resources:
 - high level talking points that can be used to communicate to workers at induction about acceptable and unacceptable workplace behaviours;
 - guidance for managers and first responders to deal with reports and disclosures (with a focus on sexual harassment); and
 - A summary of external support services.

1.2 What is the legal status of this code of practice?

This code of practice is not a binding legal document. This code of practice is not incorporated as a term of any contract and creates no rights enforceable by a worker against an employer. Nothing in this code of practice negates your obligations as an employer under any relevant federal or state/territory laws.

It provides general information only and is not intended to be legal advice. You should confirm the legal requirements that apply to your organisation and seek legal advice about your specific situation as required.

1.3 Who does this code of practice apply to?

It is in the best interests of all industry participants to abide by this code. This code of practice can be used by employers operating in Australia that employ or engage workers in the live performance industry.

The live performance industry includes:

- commercial and independent producers;
- promoters (music, comedy, etc.);
- performing arts companies;
- venues – such as performing arts centres, metropolitan and regional venues, commercial theatres, stadiums, arenas and cinemas;
- arts festivals;
- music festivals; and
- service providers such as ticketing companies, technical suppliers and exhibition companies.

These can range from small to medium and not-for-profit organisations to large commercial entities.

For the purposes of this code of practice, any reference to ‘employ’ or ‘employment’ includes the employment or engagement of a worker under a contract of service or contract for services, such as an independent contractor.

This code is intended to cover workers in the live performance industry which include:

- company owners and board members;
- leadership and management personnel (e.g. producers, promoters, CEOs, executive directors, artistic directors, general managers, company managers, heads of department, human resources managers, managers, supervisors);
- performing, production and support personnel (e.g. actors, dancers, directors, choreographers, writers, stage management, chaperones, technical crew, front of house, administration and office employees);
- full-time, part-time, seasonal and casual employees; temporary or permanent staff;
- job candidates, including people auditioning for roles;
- student placements, apprentices, work experience students/interns;
- contractors, sub-contractors and secondees; and
- volunteers or anyone undertaking unpaid work.

While casting, talent and freelance agents are not bound to follow this code unless they have been contracted or sub-contracted for a specific purpose by an employer, LPA expects that all casting, talent and freelance agents will abide by this code to assist in promoting an industry that is free from discrimination, harassment, sexual harassment, bullying and victimisation.

1.4 Is it mandatory for LPA Members to abide by this code of practice?

Yes. As a condition of LPA membership, all Members must abide by all LPA codes and guidelines. To meet this obligation in respect of this code, LPA Members are to develop and implement workplace policies and procedures addressing discrimination, harassment, sexual harassment, bullying and victimisation which are tailored to the organisation.

This code of practice is presented in general terms so that it can be applied across a diverse range of organisations. LPA Members should tailor their workplace policies and procedures to minimise the risk of discrimination, harassment, sexual harassment, bullying and victimisation, and suit their individual circumstances.

1.5 Application of this code to children

Employers may have additional obligations in relation to children which are not covered by this code of practice, including in relation to child employment and child safety, and reporting concerns of child abuse or reportable conduct by a worker to a child. Employers should consider their obligations under relevant child employment and child safety laws, which will apply to the extent of any inconsistency with this code of practice.

Please refer to LPA's [Guide to child safety in the live performance industry](#) and [Code of Practice for child employment in live entertainment](#) for more information.

2. LEGAL FRAMEWORK AND OBLIGATIONS

2.1 What is the law on discrimination, harassment, sexual harassment, bullying and victimisation?

There are specific laws relating to discrimination, harassment, sexual harassment, bullying and victimisation. These laws intersect with WHS laws, which cover both physical and psychological health.

Unless an exception applies, employers and workers must comply with both federal and relevant state/territory laws that prohibit discrimination, harassment, sexual harassment, bullying and victimisation in the workplace.

Federal laws	State/Territory laws
<ul style="list-style-type: none">• Sex Discrimination Act 1984 (Cth)• Racial Discrimination Act 1975 (Cth)• Fair Work Act 2009 (Cth)• Disability Discrimination Act 1992 (Cth)• Age Discrimination Act 2004 (Cth)• Australian Human Rights Commission Act 1986 (Cth)• Work Health and Safety Act 2011 (Cth)	<ul style="list-style-type: none">• Anti-Discrimination Act 1977 (NSW)• Equal Opportunity Act 2010 (VIC)• Anti-Discrimination Act 1991 (QLD)• Equal Opportunity Act 1984 (SA)• Equal Opportunity Act 1984 (WA)• Discrimination Act 1991 (ACT)• Anti-Discrimination Act 1992 (NT)• Anti-Discrimination Act 1998 (TAS)• Racial and Religious Tolerance Act 2001 (VIC)• Work Health and Safety Act 2011 (NSW)• Occupational Health and Safety Act 2004 (VIC)• Work Health and Safety Act 2011 (QLD)• Occupational Safety and Health Act 2020 (WA)• Work Health and Safety Act 2012 (SA)• Work Health and Safety Act 2012 (TAS)• Work Health and Safety Act 2011 (ACT)• Work Health and Safety (National Uniform Legislation) Act 2011 (NT)

Employers may also have obligations under other relevant laws, such as privacy, defamation, industrial and criminal laws.

2.2 What are an employer's legal obligations?

The obligations imposed on employers are set out in the relevant legislation. However, in summary, anti-discrimination and fair work legislation makes it unlawful for an employer to discriminate against a worker in their employment on the basis of a protected attribute. The attributes protected by law differ slightly from state to state, but are broadly set out in the table below.

Protected attributes	
<ul style="list-style-type: none"> • Age • Breastfeeding • Colour • Descent • Disability • Employment activity* • Experiencing (or have experienced) family and domestic violence • Expunged homosexual conviction* • Family or carer's responsibilities • Gender identity • Intersex status • Industrial activity* • Lawful sexual activity* • Marital status or relationship status 	<ul style="list-style-type: none"> • National or ethnic origin • National extraction Parental status or status as a carer* • Physical features* • Pregnancy or potential pregnancy • Profession, trade or occupation* • Political opinion • Race • Religion or religious belief or activity • Sex • Sex characteristics* • Sexual orientation • Social origin • Spent conviction* • Personal association with a person with an attribute above*

* These attributes are protected under anti-discrimination laws in some states and territories.

In addition, WHS laws impose a duty on an employer to protect the health (both physical and psychological), safety and welfare of all workers at work and of other people who might be affected by the work. WHS laws require a proactive and preventative approach to managing health and safety risks in the workplace.

Employers also have a positive duty to take reasonable and proportionate measures to prevent sexual harassment, sex discrimination, victimisation, and hostile workplace environments.

Employers, no matter how big or small, can be held legally responsible for acts of discrimination, harassment, sexual harassment, bullying or victimisation that occur in the workplace or in connection with a person's engagement or employment as a worker. This is known as **vicarious liability**.

The conduct for which an employer can be held vicariously liable includes but is not limited to:

- incidents that occur:
 - at work – such as in rehearsals, performances, on production tours;
 - while travelling for work;
 - at work-related functions – such as opening nights, after parties, Christmas parties, conferences, industry events; and
 - outside of work where there is a connection to the workplace; and
- incidents involving the use of digital communication, for example:
 - text messages;
 - social media posts; and
 - emails that have a connection to the workplace.

An employer can be held vicariously liable for conduct which occurs in the workplace that it did not expressly authorise. However, where the employer can demonstrate that they have responded appropriately to resolve incidents and have taken 'all reasonable steps' to prevent discrimination, harassment, sexual harassment, bullying or victimisation from occurring, the employer may not be held vicariously liable.

As to what constitutes taking 'all reasonable steps' will vary from organisation to organisation, there is no defined set of steps to take. However, as a guideline, it is expected that an employer would:

- have appropriate workplace discrimination, harassment, sexual harassment, bullying and victimisation policies and procedures in place, which are effectively implemented, monitored and communicated to all workers;
- provide workers with training / information at induction and at the commencement of a show (with refresher training and information every one to two years thereafter). This should:
 - explain their rights and responsibilities in relation to discrimination, harassment, sexual harassment, bullying and victimisation;
 - explain that discrimination, harassment, sexual harassment, bullying and victimisation is unlawful, a breach of organisational policy, and will not be tolerated;
 - refer to the workplace policies, procedures and codes that apply and prohibit that conduct;
 - provide examples of acceptable and unacceptable behaviours;
 - state that the employer may be vicariously liable for the actions of a worker;
 - state that individuals may be directly and personally liable for unlawful conduct, including sexual harassment and victimisation;
 - encourage people to be an upstander and report concerns; and
 - explain where people can go for help if they see or experience behaviour of concern;
- where possible, require workers to sign and date an acknowledgment that they have read, understood and agree to comply with those policies and procedures, and that they have attended training/induction on their rights and responsibilities;
- take appropriate action to eliminate or minimise, as far as is reasonably practicable, risks to health and safety before they occur; and
- take appropriate remedial action if discrimination, harassment, sexual harassment, bullying or victimisation occurs.

For further information on how to take reasonable steps to effectively prevent and respond to discrimination, harassment, sexual harassment, bullying and victimisation, refer to Section 4.

If an employer cannot demonstrate that they have taken 'all reasonable steps' to prevent the discrimination, harassment or victimisation from occurring, then both the individual and the employer could be jointly liable for the behaviour.

An individual who engages in discrimination, harassment, sexual harassment, or victimisation may be directly liable for:

- their own actions; and/or

- authorising or assisting unlawful discrimination, harassment, sexual harassment, victimisation or bullying.

BOX 1: HOW WILL 'ALL REASONABLE STEPS' BE DETERMINED?

Anti-discrimination laws do not define 'all reasonable steps' because what may be 'reasonable' for one organisation may not be 'reasonable' for another organisation. Instead, it is considered on a case-by-case basis.

The key point is that employers **must take active steps** to minimise the risk of discrimination, harassment, sexual harassment, bullying or victimisation in their workplace.

When deciding what level of preventative action is reasonable, an employer should consider:

- the size, structure and available resources of the employer;
- the type and nature of the work undertaken by the employer;
- the mix of workers, including women, young and older workers, people with disabilities, First Nations people and people from culturally and linguistically diverse backgrounds;
- the culture of the workplace;
- business and operation priorities;
- previous incidents of workplace discrimination, harassment, sexual harassment, bullying or victimisation;
- levels of worker supervision;
- practicability and costs of measures;
- relevant provisions in industrial awards or agreements; and
- any other relevant factors, such as working hours, geographic isolation, live-in arrangements, touring or duties which require working in close physical proximity with others.

Employers may be required to report serious incidents to the regulator or police. This is most likely to arise where a person has concerns of a substantial risk of harm to a child, and there may be civil or criminal offences for failing to do so. Please refer to the LPA's [Guide to child safety in the live performance industry](#) for further information.

WHS laws can also require employers to notify the regulator as soon as they become aware of a death, serious injury or illness, or dangerous incident in connection with the workplace. In NSW, it is an offence for an adult who knows that a serious criminal offence has been committed by another person, or who believes that they have information that might be of material assistance in securing the apprehension of an offender or the prosecution or conviction of an offender, to fail to report that to police unless they have a reasonable excuse. This could extend to reporting allegations of rape and sexual assault.

If a worker reports conduct which may constitute a criminal offence, and there is no mandatory requirement for the employer to refer the matter to the police or another regulator, an employer should:

1. enquire whether the worker would like access to counselling or other supports;
2. ask the worker if they wish to report the matter to the police or a regulator, and support the worker to make that report if appropriate;

3. if appropriate, consider whether it is necessary to implement any changes to the workplace to provide the worker with a safe work environment while the report is being investigated. This may include suspending the alleged respondent/perpetrator or putting other safeguards in place to support the worker and prevent ongoing contact between the worker and alleged respondent;
4. seek details of the alleged conduct, so that the report can be investigated in accordance with the usual process for investigating a report of unacceptable workplace behaviour; and
5. deal with the matter as promptly and confidentially as possible.

Please also refer to section 2.4 for further information on dealing with criminal offences.

Beyond the legal ramifications, failing to effectively deal with discrimination, harassment, sexual harassment, bullying and victimisation in the workplace can result in significant negative impacts for employers, including increased absenteeism, poor performance and lack of motivation, negative workplace culture and relationships, and reputational damage.

A worker who has been discriminated against, harassed or sexually harassed may be able to pursue a claim and obtain an order for compensation against:

- the person who has engaged in the unwelcome behaviour;
- the person who has caused, instructed, induced, aided or permitted another person to discriminate, harass, sexually harass or bully another person; and
- the employer, unless it can establish that it took all reasonable steps to prevent the unlawful conduct from occurring.

It is important to note that a worker may also apply to the Fair Work Commission to issue an order for bullying or sexual harassment to stop within a workplace, but cannot make an order for compensation in respect of a report of bullying or sexual harassment.

BOX 2: A NUMBER OF LESSONS CAN BE LEARNED FROM CASE LAW

Lulham v Shanahan & Ors [2003] QADT 11

- Mr Lulham, a young male apprentice boiler maker, was subject to continual teasing over a period of six years including simulated sexual acts and accusations of paedophilia and homosexuality.
- The employer had no formal policies or procedures in place – simply an ‘open door’ policy, where employees were encouraged to raise grievances with management. This was held to be insufficient and the employer was held to be vicariously liable for the sexual harassment by the two perpetrators – \$26,000 compensation was ordered.

Lesson: Policies and procedures on bullying and harassment are essential. It is insufficient for a workplace simply to informally deal with complaints as they arise.

Sammut v Distinctive Options Ltd [2010] VCAT 1375

- Distinctive Options (DO), a small not-for-profit organisation, employed Mr Sammut as a disability case manager. Mr Sammut claimed sexual harassment in relation to a colleague's persistent attempts to hug him. Although Mr Sammut did not lodge a formal complaint with DO, it was made clear to the colleague on a number of occasions that this physical contact was unwelcome. It was well known within DO that the complainant did not like to be touched, because he felt that this would jeopardise his relationship with his wife. The colleague persisted with this behaviour and was not deterred until Mr Sammut told her to stop in front of another employee.
- Whilst the employer had sexual harassment policies and procedures in place and employees were aware of them, VCAT found this was not sufficient because DO's management did not understand the policy properly, did not act in accordance with the policy and did not take complaints related to the policy seriously.
- The Tribunal's adjudicator said: 'My view is that it was not enough that DO had policies in place. It was reasonable to ensure that management understood them, acted in accordance with them, and took seriously complaints made about matters covered by the policies. Reasonable precautions would probably also include ensuring employees had a sufficient understanding, of what those policies meant in practice to recognise issues with their own conduct. Even in a small organisation, this is not too much to ask.'
- It was held that the employer had not taken reasonable steps and was vicariously liable for the sexual harassment committed by its employee – \$2,000 compensation was ordered.

Lesson: It is inadequate simply to possess workplace policies. All employees and particularly managers must fully understand and adhere to them, even in small organisations.

Richardson v Oracle Corporation Australia Pty Ltd [2013] FCA 102

- A senior male employee of Oracle Corporation (Oracle) was found to have sexually harassed a female colleague over a period of several months.
- Comments included:
 - 'Gosh, Rebecca, you and I fight so much ... I think we must have been married in our last life';
 - 'So, Rebecca, how do you think our marriage was? I bet the sex was hot'; and
 - 'We should go away for a dirty weekend sometime'.
- The comments resulted in the complainant withdrawing from a project she was working on at the time in order to distance herself from the perpetrator.
- Ultimately, the complainant was unsatisfied with HR's resolution of the complaint and resigned.
- Oracle was found vicariously liable for the sexual harassment. While it had policies and procedures relating to sexual harassment and even provided training, there was no reference to the relevant legislation prohibiting sexual harassment, nor even a clear statement that sexual harassment was against the law.
- \$18,000 compensation was ordered, which was increased to \$130,000 on appeal. This increase was partly to reflect changing community expectations of the hurt and humiliation caused by sexual harassment.

Lesson: Workplace policies must clearly state that all forms of discrimination, harassment, sexual harassment and bullying are against the law, outlining the relevant legal standards.

2.3 Shared responsibilities

The live performance industry is highly collaborative, and it is common for workers from one organisation to work alongside workers from another organisation in the same workplace (e.g. production staff working with venue staff). In this context, there may be several people/employers who have the same responsibility to ensure the health and safety of workers.

WHS laws require those people/employers with shared responsibilities to work together to meet their responsibilities and obligations. For example, this may require employers with shared responsibility to:

- consult and cooperate with each other to agree on the standards of behaviour expected in the workplace; and
- develop an agreed approach for reporting and conducting investigations, if unacceptable or unlawful workplace conduct occurs between two (or more) workers from different organisations.

Additionally, employers have an obligation to take 'reasonable and proportionate' measures to eliminate sex discrimination, sexual harassment and victimisation as far as possible, including conduct by third parties such as customers, clients and other collaborating organisations.

Employers must therefore address any risks to health and safety, including sex discrimination, sexual harassment and victimisation, which arise from their workers interacting with workers from collaborating organisations.

2.4 Criminal offences

Unacceptable or unlawful workplace conduct may also constitute a criminal offence

What constitutes a criminal offence may vary from state to state. However, some examples of conduct which will usually be considered a criminal offence include, but are not limited to: physical assault, sexual assault, stalking, image-based abuse, or cybercrime, which is where a carriage service is used to menace, harass or cause offence. This can include conduct that occurs over the phone, in text messages or online (e.g. through an app).

If you require specific information about whether unacceptable workplace conduct constitutes a criminal offence in a particular state, we recommend that you seek legal advice on this issue.

Employer obligations where a report is made which may involve a criminal offence

- Subject to comments at 2.2 above, there is no mandatory requirement to refer a matter to the police when a person makes an allegation of workplace conduct that may also constitute a criminal offence. However, there are reporting requirements in most jurisdictions when a criminal offence is committed against a child or young person.
- Where a worker reports unlawful conduct and the behaviour could be considered to be a serious offence, you should enquire whether the worker wishes to refer the matter to the police, as well as have it dealt with internally.

- A worker should not in any way be discouraged from making a report to the police, as concealing a serious indictable offence can be a criminal offence. If a worker wishes to report a matter to the police, the worker should be provided with appropriate support to do so.
- If the matter is referred to police, an employer should seek confirmation from police before commencing any internal investigation.
- Although there may be no requirement to inform the police where a worker reports conduct which may involve criminal conduct, there is still an obligation to protect the health and safety of the worker at work and deal with the worker's report.

Investigating a report if the conduct has been reported to the police or involves a potential criminal offence

- While a report may have been made to the police about the behaviour, this does not mean that the employer no longer has responsibility to address the alleged conduct.
- A criminal investigation is separate and independent to any investigation conducted by the employer.
- The standard of proof for a criminal investigation is beyond reasonable doubt, which reflects the high standard of proof required for finding a person guilty of a criminal offence. Whereas a workplace investigation will consider whether the alleged conduct breaches law, policies, procedures, contract or a code of conduct on the balance of probabilities, which is a lower standard of proof and requires proving, based on the available evidence, that the breach is more likely to have occurred than it did not.
- If a report is made to the police and the police decide not to investigate or prosecute the person for an offence, this does not mean that the employer should not proceed with their own workplace investigation. There are many reasons why the police may decline to investigate or prosecute person for a criminal offence.
- Where conduct is reported to the police and a workplace investigation is required, an employer should ask the police to confirm that a workplace investigation can commence. This is because the police may want to gather evidence and speak with potential witnesses before the workplace investigation commences.
- Where an employer is made aware of unacceptable workplace conduct, the employer should take steps to investigate the alleged conduct and, where appropriate, take action to address the conduct or put in place measures to reduce the risk of further conduct. This is consistent with an employer's obligation under WHS laws to, as far as reasonably practicable, provide a safe workplace and prevent risks to the health and safety of its workers.

2.5 Historical information

There may be instances when an employer receives information that a worker has previously engaged in inappropriate behaviour.

An employer may be required to report allegations of previous behaviour if it relates to inappropriate conduct towards or in the presence of a child. Please refer to LPA's [Guide to child safety in the live performance industry](#) for further information. Additionally, if a worker has provided information about Working with Children's Check Clearance, police record or previous conduct with children that is incorrect or misleading, this may be grounds for an employer to take disciplinary action.

Outside of these circumstances and in the absence of a report about the worker's conduct or a display of inappropriate behaviour during the course of their current employment, an employer is not required to take any action in relation to the information and should not do so. Taking any action to investigate or speak with a worker, based on information the employer has received about a worker's previous employment, may result in the worker lodging a claim against the employer.

Where an employer has in place proper policies and procedures, has provided all its workers with training and information on appropriate workplace behaviour and how to address any inappropriate behaviour and continues to monitor the workplace for risks to health and safety, this will assist in identifying and addressing any issues as they arise.

3. DEFINITIONS

3.1 Discrimination

It is unlawful to engage in direct or indirect discrimination in employment, education and the provision of goods, services and facilities on the basis of a protected attribute. Motive and intention are irrelevant to determining whether discrimination has occurred.

Discrimination can be either direct or indirect:

- **Direct discrimination** occurs when a person or group of people with a particular protected attribute (actual or assumed) are treated unfavourably because of that attribute, or less favourably than they would treat a person or group without the protected attribute in circumstances that are not materially different.
- **Indirect discrimination** occurs where a person imposes, or proposes to impose, an unreasonable requirement, condition or practice that has or is likely to have the effect of disadvantaging persons with a protected attribute. It occurs when a rule, policy or practice appears neutral, yet has a disproportionate impact on a particular group of people with a particular protected attribute.

BOX 3: EXAMPLES OF DIRECT AND INDIRECT DISCRIMINATION

Direct

- An employer refuses to hire someone based on their age or disability.
- A worker harasses another because of their race.

Indirect

- A policy of only offering bonuses to full time workers risks indirect discrimination on the basis of sex, as a greater proportion of part time workers are female.

Personal attributes protected under federal discrimination law include, but are not limited to:

- a disability, disease or injury, including work-related injury;
- parental status or status as a carer;
- race, colour, descent, national origin or ethnic background;
- age;
- gender, gender identity;
- intersex status;
- sexual orientation;
- industrial activity;
- religion;
- pregnancy, potential pregnancy, and breastfeeding;

- marital status and relationship status;
- experiencing (or have experienced) family and domestic violence;
- political opinion;
- social origin;
- medical record; and
- associating with someone who has, or is assumed to have, one of these attributes, such as being the parent of a child with a disability.

The anti-discrimination laws in each state and territory may protect additional protected attributes, including:

- employment activity;
- expunged homosexual conviction;
- industrial activity;
- lawful sexual activity;
- parental status or status as a carer;
- physical features;
- profession, trade or occupation;
- sex characteristics; and
- spent conviction.

It is also against the law to treat someone unfavourably because you assume they have a protected attribute or may have it at some time in the future.

What are reasonable adjustments and reasonable accommodations?

Employers have an obligation to provide reasonable adjustments to a current or prospective worker with a disability, and an obligation to reasonably accommodate a worker's responsibilities as a parent or carer.

What is not discrimination?

In certain circumstances, it will not be unlawful discrimination to treat workers differently because of a protected personal attribute. The main exceptions are where the discriminatory act or practice:

- is necessary to comply with other legislation;
- is taken because the person cannot perform the inherent (essential) requirements of their job, even if reasonable adjustments were made;
- is a genuine occupational requirement (an exemption may be required, depending on the law in the relevant state or territory);
- is necessary to protect health and safety; or

- is permitted because an exemption applies.

Discriminatory conduct may also be lawful if it is a 'special measure' (e.g. affirmative action recruitment programmes open only to Aboriginal and Torres Strait Islander peoples).

Employers should seek specific advice relevant to their state or territory if they intend to rely on an exception or believe the conduct may be a special measure.

3.2 Harassment

Harassment is **unwelcome and unsolicited behaviour** that a **reasonable person would consider to be offensive, intimidating, humiliating or threatening**.

Harassment is prohibited by anti-discrimination legislation where the behaviour targets an individual or group because of a protected attribute (such as age, sex or race, as outlined above). Harassment that is not related to a protected attribute is still inappropriate in the workplace and should be dealt with accordingly.

Harassment can be physical, spoken or written. It can include, but is 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;
- ridiculing someone because of their accent or English-speaking ability;
- telling offensive jokes or making practical jokes based on a protected attribute;
- belittling or teasing someone based on a protected attribute; and
- isolating, segregating or humiliating someone because of a protected attribute.

3.3 Sexual harassment

What is sexual harassment?

Whilst the definition varies slightly between jurisdictions, generally sexual harassment occurs where a person:

- makes an **unwelcome sexual advance**, or an **unwelcome request for sexual favours**, to the person harassed; or
- engages in other **unwelcome conduct of a sexual nature** in relation to the person harassed;

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

The circumstances taken into account include:

- the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, disability, race, colour, or national or ethnic origin, of the person harassed;
- the relationship between the person harassed and the person who made the advance or request or engaged in the conduct.
- any disability of the person harassed;
- any other relevant circumstance.

Sexual harassment is unlawful. It can include, but is not limited to:

- sexual suggestive gestures or non-verbal behaviour, such as staring or leering at a person or parts of their body;
- unnecessary, excessive or unwelcome familiarity or physical contact, such as touching, hugging, kissing, pinching, massaging and brushing up against someone;
- suggestive comments, jokes, conversations or innuendo;
- insults or taunts of a sexual nature or obscene gestures;
- intrusive questions or comments about someone's private life, body or the way they look;
- displaying or disseminating material such as posters, magazines or screen savers of a sexual nature;
- making or sending sexually explicit phone calls, emails or text messages;
- creating, storing, distributing or displaying intimate videos or intimate images of a person without their consent;
- inappropriate advances on social networking sites;
- communicating content of a sexual nature on social networking sites/social media or through text messages;
- accessing sexually explicit internet sites in the presence of others;
- unwelcome flirting, requests for sex or repeated requests to go out on dates;
- making promises or threats in return for sexual favours;
- creating a hostile work environment;
- inappropriate or unwanted gifts; and
- behaviour that may also be considered to be an offence under criminal law, such as physical assault, sexual harm, image-based harm, indecent exposure, stalking or obscene communications.

If someone does not object to inappropriate behaviour in the workplace at the time, it does not mean that they are consenting to the behaviour.

Behaviour can constitute sexual harassment even if:

- it is a one-off incident;
- the person engaging in the behaviour does not intend for the other person to be offended, humiliated or intimidated;
- some people in the workplace are not offended by the behaviour;
- the behaviour was previously an accepted practice in the workplace; or
- the conduct is not directed at a specific person, but arises in the context of a hostile workplace environment.

What is a hostile workplace environment?

A hostile workplace environment is created by the cumulative impact of discriminatory or harassing behaviours and incidents in the workplace. In those environments, while some of the conduct viewed in isolation would not amount to sexual harassment, it is the cumulative effect of those behaviours that amount to harassment.

It is unlawful to subject another person to a workplace environment that is hostile on the ground of sex.

Criminal offences

Some forms of sexual harassment may be considered criminal conduct, such as sexual assault (including rape, unwanted oral sex and stealthing), stalking, drink spiking and image-based harm.

What is image-based harm?

Image-based harm involves creating, distributing and/or threatening to distribute intimate images or videos of others, including:

- upskirting (taking images or videos up a person's skirt without their consent);
- downblousing (taking images or videos down a person's top in order to capture an image or video of their breasts or cleavage);
- creepshots (taking sexually suggestive images of a person's clothed body without their consent);
- digitally created or digitally altered images;
- images or videos depicting a person without religious or cultural clothing that they would normally wear in public;
- revenge porn (the sharing of intimate images or video without consent); and
- sextortion (a form of blackmail where a person threatens to share intimate images or videos unless the person the subject of those images or videos gives in to their demands).

Image-based harm can be a civil offence in Australia and can also be a criminal offence in some states and territories.

What is not sexual harassment?

Where workers engage in consensual, welcome and reciprocated behaviour, this is not sexual harassment. However, appropriate professionalism is expected of all workers at all times, including in relation to workers engaging in consensual behaviour.

Stop Sexual Harassment Orders

Workers can apply to the Fair Work Commission for an order that a person stop sexually harassing them at work. Those orders can impose obligations on employers, such as implementing training or managing the interaction between staff members.

Sexual harassment complaints to Fair Work Commission or Tribunal

Additionally, workers can lodge a complaint of sexual harassment with the Fair Work Commission or state or territory anti-discrimination commission or tribunal. Complaints may be dealt with via conciliation or mediation in the first instance.

3.4 Workplace bullying

Workplace bullying is where an individual or group of individuals repeatedly behaves unreasonably towards another person or group of persons at a workplace, which creates a risk to health and safety.

Bullying can take many forms. It can be physical, spoken, written, overt or covert. Behaviours that may constitute bullying include, but are not limited to:

- physical intimidation or abuse;
- aggressive or intimidating conduct or threatening gestures;
- manipulation, intimidation or coercion;
- threats, abuse, offensive language, shouting or belittling;
- innuendo, sarcasm and other forms of demeaning language;
- ganging up;
- public humiliation or belittling;
- image-based harm;
- cyberbullying;
- initiation activities;
- practical jokes, teasing, or ridicule;
- isolation, exclusion or ignoring people;
- inappropriate blaming;
- inappropriate emails/pictures/text messages;
- unreasonable accusations or undue unconstructive criticism;
- allocating unpleasant, meaningless or impossible tasks;

- placing unreasonably high work demands on selected workers;
- deliberately withholding information, resources, support, supervision or consultation that a person needs to do their job or access their entitlements;
- unreasonable refusal of requests for leave, training or other workplace benefits;
- withholding access to opportunities;
- deliberately changing hours of work for a person or group to inconvenience them; and
- unreasonable timelines or constantly changing deadlines targeted at a specific person or group.

Bullying may also constitute unlawful harassment or discrimination, if it is connected to a protected attribute, such as a person's sex, age or race.

The live performance industry is creative and continually strives for artistic excellence. Achieving such artistic outcomes often involves 'pushing the boundaries'. All workers in this process should behave in a manner that is professional and respectful, without engaging in harassment or bullying.

What is not bullying?

Bullying is not:

- single incidents of inappropriate behaviour (although it may still constitute harassment, sexual harassment, or worker misconduct);
- reasonable management action undertaken in a reasonable manner, such as:
 - employer directions (e.g. providing instructions on the way work is to be carried out);
 - performance management processes (e.g. providing feedback on a worker's performance);
 - implementing organisational change;
 - allocation of work in compliance with systems;
 - disciplinary action;
 - maintaining reasonable workplace standards; or
- differences of opinion or disagreements (e.g. differences of opinion on the artistic interpretation or direction of a production). People can have differences or disagreements in the workplace without engaging in repeated, unreasonable behaviour that creates a risk to health and safety.

Stop Bullying Orders

Workers can apply to the Fair Work Commission for an order that a person stop bullying them at work. Those orders can impose obligations on employers, such as implementing training or managing the interaction between staff members.

3.5 Vilification

Generally speaking, vilification is offensive, intimidating or humiliating behaviour towards a person or group of people on the basis of particular protected attribute.

Under federal anti-discrimination legislation, it is unlawful for a person to do an act, other than in private, if:

- the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or group of people; and
- the act is done because of the race, colour, national/ethnic origin of the other person or of some or all of the people in the group.

Under state and territory anti-discrimination laws, vilification is generally defined as any **public act that incites hatred, serious contempt, or severe ridicule** against another person or group of people due to particular protected attributes (such as disability, HIV/AIDS status, gender identity, intersex status, race, including ethno-religious origin, religion or religious belief, and sexual orientation).

Examples of vilification include:

- publishing claims that a racial or religious group is involved in serious crimes without any proof;
- repeated and serious verbal or physical abuse about the race or religion of another person; or
- encouraging people to hate a racial or religious group using flyers, stickers, posters, speech or publication, or using websites or email.

Vilification is unlawful under federal anti-discrimination legislation. The protections under state legislation vary.

There is an **exception** for anything said or done in the performance, exhibition or distribution of an artistic work, provided it is said or done reasonably and in good faith.

3.6 Victimisation

Victimisation is **subjecting or threatening to subject someone to a detriment** because they have exercised their rights or made a report about discrimination, harassment or sexual harassment, it is believed they intend to make a report, or they have helped someone else make a report. It is also victimisation to threaten someone (such as a witness) who may be involved in an investigation or a report.

Examples of victimisation include:

- being denied an opportunity (such as a promotion) or being demoted after helping a colleague make a report about discrimination;
- terminating a worker's employment after they made a report about sexual harassment;
- giving a warning to a worker because they reported an incident of discrimination they observed.

Victimisation is unlawful in all states and territories. Any form of retaliation taken against a worker who has made a report should be reported and investigated immediately, with appropriate disciplinary action taken where the conduct is proven.

4. PREVENTING AND RESPONDING TO DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT, BULLYING AND VICTIMISATION

4.1 Develop a discrimination, harassment, sexual harassment, bullying and victimisation policy

All employers, whatever their size, need to develop a written policy that:

1. states their commitment to providing a safe, respectful, inclusive workplace free from discrimination, harassment, sexual harassment, bullying and victimisation;
2. makes it clear that any form of discrimination, harassment, sexual harassment, bullying and victimisation is unlawful in the workplace;
3. encourages active upstander intervention (when it is safe to do so);
4. states that the employer can be held vicariously liable for actions of its workers, and that workers may be personally and directly liable for their conduct (e.g. for sexual harassment); and
5. clearly outlines their procedure for dealing with reports in a fair, timely, confidential and responsive manner.

Tips and resources

If you already have a policy in place, the checklist in Part B may be a useful tool to assess whether it meets current best practice standards.

If you don't have a policy in place, a template is available in the Best Practice Templates and Resources in Part B.

4.2 Develop a complaint handling and investigation procedure

A complaint handling and investigation procedure should outline a process for dealing with reports that is:

- **Fair** – This means that both the person reporting (the reporter), subject of harm and the person the report is about (the respondent) have the opportunity to present their version of events, provide supporting information and respond to any potential negative decisions.
- **Impartial** – The person investigating and/or making decisions about the report should not favour the reporter or the respondent or prejudge the report in any way. The process should be unhindered by the status, power or influence of the parties involved.
- **Confidential** – This means that information about a report that is the subject of a current report or investigation is strictly confidential. Confidentiality and requests for anonymity should be protected to the greatest extent possible.
- **Transparent** – The report process and the possible outcomes of the report should be clearly explained and those involved should be kept informed of the progress of the report and the reasons for any decisions.

- **Accessible** – The report process should be easy to access and understand, and everyone should be able to participate equally.
- **Efficient** – The report process should be conducted without undue delay. As time passes, information relevant to the report may deteriorate or be lost, which will impact on the fairness of the process. In addition, unresolved reports can have a negative and ongoing impact on a workplace.
- **Supported** – If the complainant/victim survivor, reporter or respondent request the assistance of a support person during the report process, such a request should be carefully considered by the employer and only refused if the employer considers the request to be unreasonable (for example, the support person is a witness to the report).
- **Trauma-informed** – Prioritises the safety and wellbeing of people who have reported the conduct by providing a trauma-informed approach which supports, listens to and validates their experiences. Wherever possible, the reporter or victim survivor should not be required to tell their story multiple times throughout the process.
- **Culturally sensitive** – The process should be considerate of cultural differences in a manner which recognises and addresses cultural and linguistic barriers, including in relation to intersectionality.

The complaint process should have the following attributes:

- protects workers from being victimised because they have made a report;
- takes a trauma-informed approach when handling reports of a sensitive nature;
- protects workers from vexatious and malicious reports;
- offers both informal and formal pathways to address the alleged conduct;
- provides clear guidance on internal investigation procedures and confidential record keeping;
- informs the reporter or the subject of harm of the outcome of their report (as appropriate);
- advises a reporter that they can pursue the matter externally with the Fair Work Commission (bullying and sexual harassment), Australian Human Rights Commission, a state or territory anti-discrimination body or, if it appears to be a criminal matter, the police; and
- is subject to regular review for effectiveness and considers feedback received from workers (which should take place every two years).

Tips and resources

If you already have a complaint handling and investigation procedure in place, the checklist in Part B may be a useful tool to assess whether it meets current best practice standards.

If you don't have a procedure in place, a template is available in the Best Practice Templates and Resources in Part B.

In addition, there are guidelines to support first responders and managers deal with reports/disclosures they receive.

4.3 Implement discrimination, harassment, sexual harassment, bullying and victimisation policies

Written policies on their own are not enough. A policy that is not implemented through communication, education and enforcement will be of little or no use in minimising risk and avoiding liability.

Meaningful implementation of workplace policies could be achieved by taking a combination of the following actions:

1. explain policies and procedures that apply at worker inductions, tool box meetings, on the first day of rehearsals and prior to touring or travel or other appropriate occasions;
2. email copies of the policies to all workers or make copies of the policies available for all workers in the workplace, and ask workers to verify that they have read, understood and will comply with the policies and procedures;
3. provide appropriate training and/or information to workers, including workers (such as managers) responsible for implementing and enforcing the policy;
4. 'check in' with workers to provide a refresher training/information every one to two years after induction/the commencement of a new show, which should include a reminder of who the Contact Person is, workers' rights and obligations, standards of expected behaviour, potential liability, and how reports will be handled under the policy;
5. display policies and posters on notice boards, in green rooms, dressing rooms, and rehearsal spaces;
6. make workers aware that senior management support the policies and that all workers are required to comply with them;
7. keep clear and accurate records relating to safety, including worker training, workers' signed acknowledgement of receiving training and the implementation of policies and procedures; and
8. review policies regularly (generally every two years or after laws are updated) to ensure they are operating effectively and contain up to date information.

Tips and resources

Practical tips on how to implement policies are available in the Best Practice Templates and Resources in Part B. This includes talking points that can be used at staff induction.

4.4 Create and maintain a positive workplace environment

To provide for the safety and wellbeing of workers, it is imperative for employers to proactively create, lead and maintain a positive, inclusive and respectful workplace culture that does not accept any form of discrimination, harassment, sexual harassment, bullying or victimisation. It is also imperative that employers take actions, as far as reasonably practicable, to eliminate or mitigate risks.

Creating a safe, respectful and inclusive workplace culture takes commitment, leadership and clear strategies.

Tips and resources

Ideas on how to create a safe, respectful and inclusive workplace are available in the Best Practice Templates and Resources in Part B.

5. SOURCES

Australian Human Rights Commission

- Effectively preventing and responding to sexual harassment: A Code of Practice for Employers (2008 edition)
- Good practice guidelines for internal complaint processes

Safe Work Australia

- Guide for preventing and responding to workplace bullying (May 2016)
- How to manage work health and safety risks: Code of practice (December 2011)
- Work health and safety consultation, co-operation and co-ordination: Code of practice (February 2022)

Screen Producers Australia (in partnership with Media, Entertainment & Arts Alliance)

- Australian Screen Industry Code of Practice: Discrimination, Harassment, Sexual Harassment and Bullying

Screen Australia

- Code of conduct to prevent sexual harassment

6. USEFUL LINKS AND RESOURCES

6.1 Factsheets

Australian Human Rights Commission

- A quick guide to workplace discrimination laws
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/quick-guide-australian-discrimination-laws>
- Vicarious liability
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/vicarious-liability>
- Good practice guidelines for internal complaint processes
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/good-practice-guidelines-internal-complaint>
- A step-by-step guide for preventing discrimination in recruitment
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/step-step-guide-preventing-discrimination>
- Racial discrimination
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/racial-discrimination>
- The positive duty under the Sex Discrimination Act
<https://humanrights.gov.au/our-work/sex-discrimination/projects/positive-duty-under-sex-discrimination-act>
- Sexual orientation, gender identity and intersex status discrimination
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/sexual-orientation-gender-identity-and-intersex>
- Age discrimination
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/age-discrimination>
- Disability discrimination
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/disability-discrimination>
- Other areas of workplace discrimination
<https://www.humanrights.gov.au/employers/good-practice-good-business-factsheets/other-areas-workplace-discrimination>

Fair Work Ombudsman

- Workplace discrimination
<https://www.fairwork.gov.au/tools-and-resources/fact-sheets/rights-and-obligations/workplace-discrimination>
- Sexual harassment in the workplace
<https://www.fairwork.gov.au/employment-conditions/bullying-sexual-harassment-and-discrimination-at-work/sexual-harassment-in-the-workplace>
- Bullying and harassment
<https://www.fairwork.gov.au/employee-entitlements/bullying-and-harassment>

6.2 Guides

Australian Human Rights Commission

- Effectively preventing and responding to sexual harassment: a code of practice for employers
www.humanrights.gov.au/publications/effectively-preventing-and-responding-sexual-harassment-code-practice-employers-2008
- Supporting workplaces to end workplace sexual harassment: A Guide for Small Businesses in Australia
<https://www.humanrights.gov.au/our-work/sex-discrimination/publications/supporting-workplaces-end-workplace-sexual-harassment-guide>

Australian Institute of Company Directors

- A director's guide to preventing and responding to sexual harassment at work
<https://www.aicd.com.au/organisational-culture/business-ethics/change/a-directors-guide-to-the-positive-duty-to-prevent-workplace-sexual-harassment.html>

Safe Work Australia

- Guide for preventing and responding to workplace bullying
<https://www.safeworkaustralia.gov.au/doc/guide-preventing-and-responding-workplace-bullying>
- Model Code of Practice: Sexual and gender-based harassment
<https://www.safeworkaustralia.gov.au/doc/model-code-practice-sexual-and-gender-based-harassment>
- Model Code of Practice: Managing psychosocial hazards at work
<https://www.safeworkaustralia.gov.au/doc/model-code-practice-managing-psychosocial-hazards-work>

Victorian Human Rights Commission

- Guideline: Preventing and responding to workplace sexual harassment
<https://www.humanrights.vic.gov.au/resources/sexual-harassment-guideline/>
- Sexual harassment prevention plan guide and template
<https://www.humanrights.vic.gov.au/resources/sexual-harassment-prevention-plan-guide-template/>

PART B: BEST PRACTICE TEMPLATES AND RESOURCES

TEMPLATES

1. **Workplace discrimination, harassment, sexual harassment, bullying and victimisation policy**
2. **Complaint handling and investigation procedure**
3. **Complaint form**
4. **Code of conduct**

OTHER RESOURCES

5. **Check-lists to assess your current policies and procedures**
6. **Briefing for workers**
7. **Guidance for managers and first responders to deal with reports and disclosures**
8. **List of external support services**

This example policy has been developed by Live Performance Australia. It is a tool that organisations can use to assist them in their business. Organisations may tailor or alter this template to suit their individual circumstances. However, if organisations make significant changes to the template, we recommend you seek legal advice. It is not compulsory for organisations to use this template.

<Insert company name>

Workplace Discrimination, Harassment, Sexual Harassment, Bullying and Victimisation Policy

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1. Purpose

[Guidance note (delete this later): You could also directly quote from relevant parts of your business's vision, mission or values in this section.]

<Insert company name> recognises the diversity of its workforce and understands that for the business to function in the best way, all workers must be respected and valued. As such, <Insert company name> is committed to providing workers with a safe, respectful, inclusive and flexible work environment free from all forms of discrimination, harassment, sexual harassment, bullying and victimisation.

By implementing this policy, <Insert company name> affirms that discrimination, harassment, sexual harassment, bullying, vilification and victimisation are harmful, will not be tolerated, and will be unlawful unless an exception applies.

2. Who this policy applies to

This policy applies to all workers engaged by <Insert company name>, which includes, but is not limited to:

- company owners and board members;
- leadership and management personnel (e.g. producers, promoters, CEOs, executive directors, artistic directors, general managers, company managers, heads of department, human resources managers, managers, supervisors);
- performing, production and support personnel (e.g. actors, dancers, directors, choreographers, writers, stage management, chaperones, technical crew, front of house, administration and office employees);
- full-time, part-time, seasonal and casual employees; temporary or permanent staff;
- job candidates, including people auditioning for roles;
- student placements, apprentices, work experience students/interns;
- contractors, sub-contractors and secondees (e.g. casting, talent and freelance agents who have been contracted or sub-contracted for a specific purpose); and
- volunteers and anyone working in an unpaid capacity.

All workers must comply with this policy, as amended from time to time. While every worker is required to comply with this policy, this policy is not incorporated as a term of any employment contract or contract for services and does not create any rights enforceable by a worker against <Insert company name>. To the extent that there is an inconsistency between the law and this policy, the law will prevail.

This policy extends to every associated entity of <Insert company name> within the meaning of Section 50AAA of the *Corporations Act 2001* (Cth).

3. When this policy applies

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

- the way in which <Insert company name> provides services to clients and interacts with members of the public;

- all aspects of employment; recruitment and selection; conditions and benefits; training and promotion; task allocation; shifts; hours; leave arrangements; workload; equipment and transport;
- on-site, off-site or after-hours work; work-related social functions (such as opening nights, after parties, award nights and industry events); rehearsals, tours, work-related travel, client functions, promotional activities, conferences, seminars or training sessions – wherever and whenever workers may be as a result of their <Insert company name> duties;
- use of social media and other electronic communication (e.g. emails); and
- workers' treatment of other workers, clients, visitors and members of the public encountered in the course of undertaking their duties for <Insert company name>.

Where the alleged conduct relates to a child, the <Insert name of your Child Safety Policy and Child Safety Procedure> will override this Policy and Procedure to the extent of any inconsistency.

4. Definition and examples of discrimination, harassment, sexual harassment, bullying and victimisation

4.1 Discrimination

It is unlawful for a worker to engage in direct or indirect discrimination in employment, education and the provision of goods and services on the basis of a protected attribute. Discrimination will not be tolerated at <Insert company name>. Motive and intention are irrelevant to determining whether discrimination has occurred.

Discrimination can be either direct or indirect:

- **Direct discrimination** occurs when a person or group of people with a particular protected attribute (actual or assumed) are treated unfavourably because of that attribute, or less favourably than they would treat a person or group without the protected attribute in circumstances that are not materially different.
- **Indirect discrimination** occurs where a person imposes, or proposes to impose, an unreasonable requirement, condition or practice that has or is likely to have, the effect of disadvantaging persons with a protected attribute. It often occurs when a rule, policy or practice appears neutral, yet has a disproportionate impact on a particular group of people with a particular protected attribute.

EXAMPLES OF DIRECT AND INDIRECT DISCRIMINATION

Direct

- An employer refuses to hire someone based on their age or disability.
- A worker harasses another because of their race.

Indirect

- A policy of only offering bonuses to full time workers risks indirect discrimination on the basis of sex, as a greater proportion of part time workers are female.

The attributes protected by law differ slightly from state to state, but are broadly set out below.

Protected attributes	
<ul style="list-style-type: none"> • Age • Breastfeeding • Colour • Descent • Disability • Employment activity* • Experiencing (or have experienced) family and domestic violence • Expunged homosexual conviction* • Family or carer's responsibilities • Gender identity • Intersex status • Industrial activity* • Lawful sexual activity* • Marital status or relationship status 	<ul style="list-style-type: none"> • National or ethnic origin • National extraction Parental status or status as a carer* • Physical features* • Pregnancy or potential pregnancy • Profession, trade or occupation* • Political opinion • Race • Religion or religious belief or activity • Sex • Sex characteristics* • Sexual orientation • Social origin • Spent conviction* • Personal association with a person with an attribute above*

[Guidance note (delete this later): *These attributes are protected under anti-discrimination laws in some states and territories. Please check the laws that apply in your state or territory to see if they are relevant.]

It is also unlawful to discriminate against a person because you assume they have a protected attribute or may have it at some time in the future.

What is not discrimination?

In certain circumstances, it will not be unlawful discrimination to treat workers differently because of a protected attribute. The main exceptions are where the discriminatory act or practice:

- is necessary to comply with other laws;
- is taken because the worker cannot perform the inherent (essential) requirements of their job, even where reasonable adjustments are made;
- is a genuine occupational requirement (an exemption may be required, depending on the law in the relevant state or territory);
- is necessary to protect health and safety; or
- is permitted because an exemption applies.

Discriminatory conduct may also be lawful if it is permitted as a 'special measure' (e.g. affirmative action recruitment programmes open only to Aboriginal and Torres Strait Islander peoples).

4.2 Harassment

It is unlawful to harass an individual or group because of a protected attribute (such as age, sex or race, outlined above). Harassment of any kind will not be tolerated at <Insert company name>.

<Insert company name>

Harassment that is not related to a protected attribute is still inappropriate in the workplace and **<Insert company name>** will deal with such incidents accordingly.

Harassment includes but is not limited to:

- intimidation, verbal abuse, repeated threats or ridicule;
- sending offensive messages by text, email or other means;
- derogatory comments;
- displaying offensive materials, pictures, comments or objects;
- ridiculing someone because of their accent or English-speaking ability;
- telling offensive jokes or making practical jokes based on a protected attribute;
- belittling or teasing someone based on a protected attribute; and
- isolating, segregating or humiliating someone based on a protected attribute.

Harassment may be physical, spoken or written, and may also constitute sexual harassment, discrimination or bullying.

4.3 Sexual harassment

Sexual harassment occurs when a person:

- makes an **unwelcome sexual advance** or makes an **unwelcome request for sexual favours**, to the person harassed; or
- engages in other **unwelcome conduct of a sexual nature** in relation to the person harassed,

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

The circumstances taken into account include:

- the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed;
- the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct;
- any disability of the person harassed; and
- any other relevant circumstance.

It is unlawful for a worker to engage in sexual harassment in their employment, in a common workplace, in the provision of goods or services or in education, or encourage or allow another worker to do so. Sexual harassment will not be tolerated at **<Insert company name>**.

Sexual harassment can be physical, spoken or written (including electronic communication). Sexual harassment includes, but is not limited to:

- sexually suggestive gestures or non-verbal behaviour, such as staring or leering at a person or parts of their body;

- unnecessary, excessive or unwelcome familiarity or physical contact, such as touching, hugging, kissing, pinching, massaging and brushing up against someone;
- suggestive comments, jokes, conversations or innuendo;
- insults or taunts of a sexual nature or obscene gestures;
- intrusive questions or comments about someone's private life, body or the way they look;
- displaying or disseminating material such as posters, magazines or screen savers of a sexual nature;
- making or sending sexually explicit phone calls, emails or text messages;
- creating, storing, distributing or displaying intimate videos or intimate images of a person without their consent;
- inappropriate advances on social networking sites;
- communicating content of a sexual nature, on social networking sites/social media or through text messages;
- accessing sexually explicit internet sites in the presence of others;
- unwelcome flirting, requests for sex or repeated unwanted requests to go out on dates;
- making promises or threats, in return for sexual favours;
- creating a hostile work environment;
- inappropriate or unwanted gifts; and
- behaviour that may also be considered to be an offence under criminal law, such as physical or sexual assault, sexual harm, image-based harm, indecent exposure, stalking or obscene communications.

Just because someone does not object to inappropriate behaviour in the workplace at the time, does not mean that they consent to the behaviour.

Behaviour can still be considered sexual harassment even if:

- it is a one-off incident;
- the person engaging in the behaviour did not intend to humiliate, intimidate or offend;
- other people in the workplace are not offended by the behaviour;
- the behaviour was previously an accepted practice in the workplace; or
- the conduct is not directed at a specific person, but arises in the context of a hostile workplace environment.

Sexual harassment may be considered work-related even if it occurs outside of the workplace or outside of normal working hours, such as on tour, during work-related travel, or at an opening night, after party, industry event, promotional activity or conference.

All workers have the same rights and responsibilities in relation to sexual harassment.

What is a hostile workplace environment?

It is unlawful to subject another person to a workplace environment that is hostile on the ground of sex.

<Insert company name>

A hostile workplace environment is created by the cumulative impact of discriminatory or harassing behaviours and incidents in the workplace. In those environments, while some of the conduct viewed in isolation may not amount to sexual harassment, it is the cumulative effect of those behaviours that amount to harassment on the ground of sex. A worker can complain about such conduct even if the conduct in question was not specifically targeted at them.

An example of hostile working environment may be where sexual conversations, innuendo or jokes are part of the workplace culture.

All incidents of sexual harassment – no matter how big or small or who is involved – should be reported to the appointed Complaints Person (refer to the Complaints Handling and Investigation Procedure) or relevant leadership or management position so that support can be provided and action can be taken to prevent and respond to the sexual harassment or hostile workplace environment.

Criminal offences

Some forms of sexual harassment may be considered criminal conduct, such as sexual assault (including rape, unwanted oral sex and stealthing), stalking, drink spiking and image-based harm.

What is image-based harm?

Image-based harm involves creating, distributing and/or threatening to distribute intimate images or videos of others, including:

- upskirting (taking images or videos up a person's skirt without their consent);
- downblousing (taking images or videos down a person's top in order to capture an image or video of their breasts or cleavage);
- creepshots (taking sexually suggestive images of a person's clothed body without their consent);
- digitally created or digitally altered images;
- images or videos depicting a person without religious or cultural clothing that they would normally wear in public;
- revenge porn (the sharing of intimate images or video without consent); and
- sextortion (a form of blackmail where a person threatens to share intimate images or videos unless the person the subject of those images or videos gives in to their demands).

Image-based harm may be a civil offence in Australia and can also be a criminal offence in some States and Territories.

What is not sexual harassment?

Where workers engage in consensual, welcome and reciprocated behaviour, this is not sexual harassment. However, appropriate professionalism is expected of all workers at all times, including in relation to workers engaging in consensual behaviour.

Stop Sexual Harassment Orders

Workers can apply to the Fair Work Commission for an order that a person stop sexually harassing them at work. Those orders can impose obligations on employers, such as implementing training or managing the interaction between workers.

<Insert company name>

Sexual harassment complaints to Fair Work Commission or Tribunal

Additionally, workers can lodge a complaint of sexual harassment with the Fair Work Commission or State or Territory Anti-discrimination commission or Tribunal. Complaints may be dealt with via conciliation or mediation.

4.4 Workplace Bullying

Workplace bullying ('bullying') is where an individual or group of individuals **repeatedly behaves unreasonably** towards another person or group of persons at a workplace, which creates a **risk to health and safety**.

It is unlawful for a worker to engage in bullying, or encourage or allow another worker to do so. Bullying will not be tolerated at <Insert company name>.

Whether conduct creates a risk to health and safety is assessed objectively.

Bullying can take many forms. It can be physical, spoken, written, overt or covert. Behaviours that may constitute bullying include, but are not limited to:

- physical intimidation or abuse;
- aggressive or intimidating conduct or threatening gestures;
- manipulation, intimidation or coercion;
- threats, abuse, offensive language, shouting or belittling;
- innuendo, sarcasm and other forms of demeaning language;
- ganging up;
- public humiliation or belittling;
- image-based harm;
- cyberbullying;
- initiation activities;
- practical jokes, teasing, or ridicule;
- isolation, exclusion or ignoring people;
- inappropriate blaming;
- inappropriate emails/pictures/text messages;
- unreasonable accusations or undue unconstructive criticism;
- allocating unpleasant, meaningless or impossible tasks;
- placing unreasonably high work demands on selected workers;
- deliberately withholding information, resources, support, supervision or consultation or equipment that a person needs to do their job or access their entitlements;
- unreasonable refusal of requests for leave, training or other workplace benefits;
- withholding access to opportunities;
- deliberately changing hours of work for a person or group to inconvenience them; and

- unreasonable timelines or constantly changing deadlines targeted at a specific person or group.

Bullying may also constitute sexual harassment, or unlawful harassment or discrimination if it is connected to a protected attribute, such as a person's sex, age or race.

The live performance industry is creative and continually strives for artistic excellence. Achieving such artistic outcomes often involves 'pushing the boundaries'. All workers in this process should behave in a manner that is professional and respectful without engaging in harassment or bullying.

What is not bullying?

A single incident of inappropriate behaviour is not bullying (although it may still constitute harassment, sexual harassment, or worker misconduct).

Further, bullying does not include reasonable management action carried out in a reasonable manner, such as:

- an employer's lawful and reasonable requests and directions (e.g. providing instructions on the way work is to be carried out);
- performance management processes (e.g. it is reasonable for managers and supervisors to allocate work to a worker and give fair and reasonable feedback on its workers' performance);
- maintaining reasonable workplace standards;
- 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 based on lawful grounds.

Differences of opinion and disagreements in the workplace (e.g. differences of opinion on artistic interpretation or direction) are not bullying; they 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 or safety, and it is common within a workplace that people will have differences of opinion. Low level, task-based differences of opinion can benefit the organisation and workers, as it may generate debate leading to new ideas and innovation, provided all workers behave in an appropriate manner.

Stop Bullying Orders

Workers may be able apply to the Fair Work Commission for an order that a person stop bullying them at work. Those orders can impose obligations on employers, such as implementing training or managing the interaction between workers.

4.5 Victimisation

Victimisation is subjecting or threatening to subject someone to a detriment because:

- they have exercised their rights or made a report about discrimination, harassment or sexual harassment;
- it is believed they intend to make a report; or
- they have helped someone else make a report.

It is also victimisation to threaten someone (such as a witness) who may be involved in an investigation of a report.

Examples of victimisation include:

- being denied an opportunity (such as a promotion) or being demoted after helping a colleague report discrimination;
- terminating a worker's employment after they made a report about sexual harassment;
- giving a warning to an employee because they reported an incident of discrimination they observed.

It is unlawful to victimise another person. Victimisation will not be tolerated at **<Insert company name>**.

Victimisation is a very serious breach of this policy and is likely (depending on the severity and circumstances) to result in formal disciplinary action against the perpetrator.

4.6 Vilification

Generally speaking, vilification is offensive, intimidating or humiliating behaviour towards a person or group of people on the basis of particular protected attribute.

Under federal anti-discrimination legislation, it is unlawful for a person to do an act, other than in private, if:

- the act is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or group of people; and
- the act is done because of the race, colour, national/ethnic origin of the other person or of some or all of the people in the group.

Under state and territory anti-discrimination laws, vilification is generally defined as any public act that incites hatred, serious contempt, or severe ridicule against another person or group of people due to particular protected attributes (such as disability, HIV/AIDS status, gender identity, intersex status, race, including ethno-religious origin, religion or religious belief, and sexual orientation).

Examples of vilification include:

- publishing claims that a racial or religious group is involved in serious crimes without any proof;
- repeated and serious verbal or physical abuse about the race or religion of another person; or

<Insert company name>

- encouraging people to hate a racial group using flyers, stickers, posters, speech or publication, or using websites or email.

Vilification is unlawful and will not be tolerated at <Insert company name>.

There is an exception for anything said or done in the performance, exhibition or distribution of an artistic work, provided it is said or done reasonably and in good faith.

4.7 Confidentiality

When a report is raised, <Insert company name> will maintain confidentiality to the greatest extent possible, taking into account its obligation to provide a safe work environment and to afford procedural fairness to those against whom a report is made (respondent).

Workers who are directly involved in a report or an accompanying investigation (whether as a reporter, respondent, witness or support person) must maintain confidentiality consistent with the policy and any directions or requests by <Insert company name>. This is important to ensure that witnesses have not had the chance to collaborate or influence each other, minimise the potential for victimisation, and protect the privacy and reputation of the parties. A failure to maintain confidentiality may result in disciplinary action.

All workers should avoid discussing historical matters involving current or former workers or any allegations of inappropriate workplace behaviour occurring at <Insert company name>. Where a worker considers a person's behaviour to be inappropriate, the worker should raise this with the Complaints Person so that appropriate action can be taken.

Any report of discrimination, harassment, sexual harassment, bullying, victimisation or vilification that is the subject of a current report or investigation is strictly confidential. [Optional] Affected individuals may disclose concerns to the leadership of the employer, seek confidential professional advice (e.g. from a union representative, lawyer or psychologist), or report their concerns to the police or a relevant court, commission or tribunal.

Breaching the confidentiality of a current report or investigation or inappropriately disclosing personal information obtained in the course of a report or investigation (for example, as a manager) is a serious breach of this policy and may lead to formal disciplinary action.

Those directly involved in a report (i.e. reporter and respondent) are entitled to seek personal and professional support on a confidential basis, and such support (for example, from someone who has knowledge of the report) is not considered a breach of confidentiality.

5. Worker rights and responsibilities

All workers are entitled to:

- a workplace free from discrimination, harassment, sexual harassment, bullying, victimisation and vilification;
- raise issues or to make an enquiry or report about discrimination, harassment, sexual harassment, bullying, victimisation or vilification without being victimised;
- request to have a support person (e.g. a co-worker, friend, family member or union representative) present during the complaints process (provided they are not a witness);

- reasonable flexibility in working arrangements, especially where needed to accommodate family responsibilities, disability, religious beliefs or culture; and
- have recruitment and selection decisions based on merit and not affected by protected attributes (unless permitted by law).

All workers must:

- treat everyone with dignity, courtesy and respect at all times;
- comply with the standards of behaviour outlined in this policy, the Code of Conduct and other related policies, and not engage in any form of discrimination, harassment, sexual harassment, bullying, victimisation, or vilification;
- where appropriate, offer support to people who experience discrimination, harassment, sexual harassment, bullying, victimisation or vilification, such as providing information about how to make a report;
- maintain confidentiality of reports and investigations, and not inappropriately disclose personal information obtained in the course of a report or investigation (for example, as a manager);
- comply with all lawful and reasonable requests and directions of <Insert company name>;
- respect the confidentiality of reports;
- where applicable, assist and cooperate in the investigation of reports made under this policy;
- participate in training provided by <Insert company name> around workplace discrimination, harassment, sexual harassment, bullying and victimisation;
- protect the health, safety and wellbeing and privacy of others in connection with their work with <Insert company name>; and
- take safe upstander action if they see or hear about discrimination, harassment, sexual harassment, bullying, victimisation or vilification in the workplace.

Workers must not:

- engage in, attempt to engage in, or threaten to engage in any form of discrimination, harassment, sexual harassment, bullying, victimisation or vilification;
- request, instruct, induce, encourage, authorise or assist other persons to engage in discrimination, harassment, sexual harassment, bullying, victimisation or vilification; or
- engage in behaviour that causes any person to fear for their personal safety or well-being, or could reasonably be perceived to be threatening or intimidating.

6. Roles and responsibilities of leadership and management positions

In addition to the responsibilities of workers, personnel in leadership and management positions (e.g. producers, promoters, CEOs, executive directors, artistic directors, general managers, company managers, stage managers, heads of department, supervisors, human resource managers, board members) must also:

- model appropriate standards of behaviour;
- take steps to educate and inform workers of their obligations under this policy, the Code of Conduct, other related policies, and the law;

<Insert company name>

- treat all workplace incidents seriously and take swift action when a report is made;
- inform a reporter that they can raise the matter with police if the allegations are of a criminal nature, and offer the reporter support to make a police report if they wish to do so;
- act fairly to resolve issues and enforce workplace behavioural standards, making sure relevant parties are heard;
- where appropriate, help workers resolve reports informally;
- refer formal reports about breaches of this policy to the appropriate Complaints Person for investigation;
- use their best endeavours to prevent workers who raise an issue or make a report from being victimised and taking steps to address the issue where it occurs;
- provide workers (including upstanders) with information about the support available to them;
- make recruitment and job selection decisions regardless of protected attributes, other than where it is lawful to do so;
- not ask discriminatory questions or request information during a recruitment process, unless it is directly relevant to a genuine requirement of the position; and
- reasonably consider requests for flexible working arrangements and make a genuine attempt to reach an agreement that accommodates the worker's circumstances.

Furthermore, personnel in senior leadership positions (e.g. producers, promoters, CEOs, executive directors, artistic directors, general managers, company managers, human resource managers, board members), including owners must also:

- monitor compliance with this policy, the Code of Conduct and other related policies;
- review and update the information within this policy, procedure, the Code of Conduct and other related policies from time-to-time so that it remains relevant;
- provide training and/or information to workers at induction, and every one to two years thereafter, to make workers aware of their obligations in relation to discrimination, harassment, sexual harassment, bullying and victimisation and how to make a report or take upstander action;
- provide periodic training or guidance to managers on this policy, the Code of Conduct, the complaints process and other related policies and mechanisms to support workers to make a report or take upstander action; and
- promote this policy, the Code of Conduct and other related policies throughout **<Insert company name>**.

6.1 Contact Person(s)

Contact Persons are available to support workers who have experienced or witnessed inappropriate conduct, such as discrimination, harassment, sexual harassment, bullying or victimisation, or who want support to take upstander action.

Contact Persons are workers who have been trained to provide confidential and impartial information and support to help workers make an informed decision about how to report or resolve an issue.

Contact Persons cannot provide legal advice or resolve complaints; however, they can act as a support person to someone who has experienced or witnessed discrimination, harassment, sexual harassment, bullying and/or victimisation, and can provide information relating to external support services and organisational policies and procedures. In certain circumstances, if requested to do so, it may be appropriate for a Contact Person to attend mediation sessions or other meetings as a support person.

Refer to the Complaints Handling and Investigation Procedure for further details.

6.2 Complaints Person(s)

Complaints Persons are responsible for investigating reports of workplace discrimination, harassment, sexual harassment, bullying, victimisation and vilification, including by conducting or organising interviews with workers and providing advice to the relevant leadership and management personnel (e.g. producers, promoters, human resources team, managers/supervisors) on the findings or outcome of the report, and making recommendations or a decision about appropriate disciplinary action. **Refer to the Complaints Handling and Investigation Procedure for further details.**

Complaints Persons are expected to remain impartial and should not have any direct relationship with the workers involved in the report, either as a manager or otherwise. There may be instances where an external Complaints Person or investigator will need to be engaged.

7. Supporting upstander action

In order to promote a safe, equitable and respectful workplace, **<Insert company name>** encourages all workers to take action (in accordance with this policy) if they witness or hear about workplace discrimination, harassment, sexual harassment, bullying, victimisation or vilification.

- **See:** Know where the line is. If you see or hear something that makes you feel uncomfortable or may breach this policy, don't ignore it.
- **Talk:** It takes courage to speak up. If you feel comfortable, talk with the person who has engaged in the conduct, share your observations, and ask them to stop. We also encourage you to talk with your supervisor or Contact Person.
- **Support:** Don't underestimate the power of support. It can help a colleague if you stand up and take action. You could tell them that you observed what happened, ask if they need support, and offer to help them report what happened.

Victimisation of someone taking upstander action is unlawful and will not be tolerated.

8. Consequences of breaching this policy

All workers must comply with this policy and the Code of Conduct. A breach of this policy or the Code of Conduct may lead to disciplinary action outlined below.

<Insert company name> may dismiss a worker with notice for engaging in misconduct, and without notice for engaging in serious misconduct. Serious misconduct includes (but is not limited to):

- wilful or deliberate behaviour that is inconsistent with the continuation of the contract;
- sexual harassment;

- conduct that causes serious and imminent risk to the health or safety of a person, or the reputation, viability or profitability of <Insert company name>; and
- the worker refusing to carry out a lawful and reasonable instruction that is consistent with the worker's engagement.

Workers may also be held personally liable for their own behaviour or conduct. This means that when a worker engages in discrimination, harassment, sexual harassment, bullying, vilification or victimisation, the worker may be liable for a criminal offence and/or subject to a penalty or an order, including an order to refrain from the conduct, pay compensation and apologise.

9. Possible outcomes

<Insert company name> is committed to taking action (whether disciplinary or non-disciplinary) for breaches of this policy. However, it is not possible to guarantee a particular outcome in relation to a breach of this policy for the following reasons:

- although <Insert company name> treats all possible breaches of this policy seriously, the alleged conduct may be regarded on a scale from minor to extremely serious; and
- <Insert company name> may consider the views of the person who experienced the alleged conduct on the proposed outcome before making a decision.

Possible outcomes include, but are not limited to:

- disciplinary action against the respondent (including the termination of their employment or engagement with or without notice);
- formal warnings (including final warnings) that are noted on the respondent's file;
- restrictions on the respondent's participation in <Insert company name> activities and/or attendance at work;
- suspending or relocating the respondent;
- informal counselling or education;
- requirement to undertake formal training or development;
- a formal apology by the respondent and/or witnesses;
- written undertakings that the behaviour will cease;
- conciliation/mediation conducted by an independent third party (where requested by the person who experienced the alleged conduct and both parties agree to participate);
- reports to external authorities (e.g. police where there is an immediate or ongoing risk to the health, safety or wellbeing of any person);
- reports to the eSafety Commissioner in response to adult cyberbullying, image-based harm, or other relevant online conduct;
- removal from positions of responsibility; and
- preventing further contact with workers, including the reporter.

10. Record keeping

<Insert company name> will ensure that reports are collected and stored confidentially in line with this policy, including:

- details of the incident/report;
- steps taken to respond to the incident/report;
- support or assistance required or provided, i.e. whether the person received counselling, whether they reported to police, whether they received support from an external provider;
- <Insert company name>'s response to the report (including referrals to external bodies and support services); and
- any feedback provided by the reporter/respondent in relation to the process.

On request, <Insert company name> will provide the reporter with information on their report.

11. How to make a report

<Insert company name> strongly encourages any worker who has observed or experienced discrimination, harassment, sexual harassment, bullying, victimisation or vilification to report this behaviour to the appointed Complaints Person, as outlined in the [\[insert name of your Complaints Handling and Investigation Procedure\]](#).

Managers must report such conduct to the [\[insert senior leadership role – e.g. CEO, Executive Produce, HR Manager\]](#) or Complaints Person.

A report can be dealt with formally or informally depending on the circumstances. Whether a matter is dealt with informally or formally will depend on the nature of the incident.

Where a report is made, <Insert company name> may have an obligation to deal with the report even if the person making the report decides that they do not wish to pursue it or does not want to deal with the matter formally. In some situations, it may be appropriate to address a report without identifying a particular individual, such as by providing training to all workers.

12. False, misleading or malicious reports

<Insert company name> encourages workers to report conduct that they genuinely believe may constitute discrimination, harassment, sexual harassment, bullying, vilification or victimisation.

However, deliberately making a false, misleading or malicious report under this policy is a serious matter and is unacceptable.

Examples of false, misleading, or malicious reports include, but are not limited to:

- fabricating a report;
- making a report for the malicious purpose of deliberately harming someone;
- seeking to re-agitate issues that have already been addressed or determined; and
- making a report that the reporter does not genuinely believe to be true.

Where <Insert company name> is satisfied, based on reasonable evidence, that a report is false, misleading or malicious, the reporter may face disciplinary action up to and including termination of employment.

A reporter will not be sanctioned just because an investigation is inconclusive and the allegations cannot be substantiated.

13. Additional information, support and advice

If you have a query about this policy or need more information, please contact [Guidance note (delete this later): list contacts].

[Guidance note (delete this later): keep the below section on employee assistance programs if relevant]

<Insert company name>'s workers are entitled to a certain amount of free, professional counselling from our employee assistance program. To access the employee assistance program, contact [Guidance note (delete this later): provide contact details to access this service.]

Employee assistance program counselling is confidential and nothing discussed with a counsellor will be communicated back to <Insert company name>. Employee assistance program counselling is available free to <Insert company name> workers regardless of whether the issue is related to a workplace problem or some other issue for the workers. Please speak to <Insert company name> for further information about the employee assistance program.

14. Related documents

Workers, especially managers and supervisors, must read this policy and should consider their rights and responsibilities in conjunction with other relevant policies, procedures, documents and agreements of <Insert company name>, including, but not limited to: [Guidance note (delete this later): list relevant policies.]

- Complaint handling and investigation procedure: workplace discrimination, harassment, sexual harassment and bullying
- Code of conduct, which outlines acceptable and unacceptable behaviours, including in relation to workplace discrimination, harassment, sexual harassment, bullying and victimisation
- Flexible work arrangements policy
- Parental leave policy
- Work health and safety policy
- Discipline procedure
- Mission, vision and values statements
- Enterprise bargaining agreements and Awards [Guidance note (delete this later): list relevant agreements.]
- Service agreement [Guidance note (delete this later): any document that outlines the rights of clients and customers to complain about the service they are receiving.]

15. Anti-discrimination and workplace bullying laws

Discrimination, harassment, sexual harassment and bullying are unlawful under state/territory and federal legislation. These include:

- Sex Discrimination Act 1984 (Cth);
- Racial Discrimination Act 1975 (Cth);
- Disability Discrimination Act 1992 (Cth);
- Age Discrimination Act 2004 (Cth);
- Australian Human Rights Commission Act 1986 (Cth);
- Fair Work Act 2009 (Cth);
- Work Health and Safety Act 2011 (Cth)
- Anti-Discrimination Act 1977 (NSW);
- Anti-Discrimination Act 1991 (Qld);
- Anti-Discrimination Act 1992 (NT);
- Anti-Discrimination Act 1998 (Tas);
- Equal Opportunity Act 1984 (SA);
- Equal Opportunity Act 1984 (WA);
- Equal Opportunity Act 2010 (Vic);
- Racial and Religious Tolerance Act 2001 (Vic);
- Discrimination Act 1991 (ACT);
- Work Health and Safety Act 2011 (NSW);
- Occupational Health and Safety Act 2004 (Vic);
- Work Health and Safety Act 2011 (Qld);
- Occupational Safety and Health Act 2020 (WA);
- Work Health and Safety Act 2012 (SA);
- Work Health and Safety Act 2012 (Tas);
- Work Health and Safety Act 2011 (ACT); and
- Work Health and Safety (National Uniform Legislation) Act 2011 (NT).
- [Guidance note (delete this later): include relevant state/territory legislation]

16. Dissemination and review

This policy will be disseminated to all workers at induction and through [insert means of dissemination e.g. posters, induction, intranet etc].

This policy was approved by <Insert name of board or individual responsible for approving the policy>, and adopted by <Insert company name> on [insert date]. This policy will be reviewed every two years.

Policy number		Version	[1.0]
Drafted by		Approved by [Board] on	[insert]
Responsible person	[e.g. CEO]	Scheduled review date	2 Years

This example procedure has been developed by Live Performance Australia. It is a tool that organisations can use to assist them in their business. Organisations may tailor or alter this template to suit their individual circumstances. However, if organisations make significant changes to the template, we recommend you seek legal advice. It is not compulsory for organisations to use this template.

<Insert company name>

Complaint Handling and Investigation Procedure – Workplace Discrimination, Harassment, Sexual Harassment, Bullying and Victimisation

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1. Purpose

This procedure outlines how workers can raise concerns and report discrimination, harassment, sexual harassment, bullying, vilification and victimisation, and how <Insert company name> will respond.

<Insert company name> encourages any worker who has experienced or witnessed behaviour that may constitute discrimination, harassment, sexual harassment, bullying, victimisation or vilification to report the behaviour to the <Insert relevant manager or Contact Person here> (e.g. company manager/ stage manager/ general manager/ tour manager/ director/ producer/ human resources manager/ head of department or the Complaints Person).

<Insert company name> aims to respond to reports and concerns as quickly as possible.

<Insert company name> recognises that the conduct of a worker may be regarded on a scale from minor to extremely serious. <Insert company name> will usually deal with a report in accordance with this procedure. However, where it is considered appropriate to do so, <Insert company name> may deal with the report in an alternative way, in order to resolve it in a confidential, efficient and sensitive manner. The processes to be applied in determining whether a breach has occurred, and the consequences of a breach, are at the discretion of <Insert company name>.

2. Who this procedure applies to

This procedure applies to all workers engaged by <Insert company name>, which includes, but is not limited to:

- company owners and board members;
- leadership and management personnel (e.g. producers, promoters, CEOs, executive directors, artistic director, general managers, company managers, heads of department, human resources managers, managers, supervisors);
- performing, production and support personnel (e.g. actors, dancers, directors, choreographers, writers, stage management, chaperones, technical crew, front of house, administration and office employees);
- full-time, part-time, seasonal and casual employees; temporary or permanent staff;
- job candidates, including people auditioning for roles;
- student placements, apprentices, work experience students/interns;
- contractors, sub-contractors and secondees (e.g. casting, talent and freelance agents who have been contracted or sub-contracted for a specific purpose); and
- volunteers and anyone working in an unpaid capacity.

All workers must comply with the procedures set out in this document, which may be amended from time to time.

This procedure extends to every associated entity of <Insert company name> within the meaning of section 50AAA of the *Corporations Act 2001* (Cth).

3. Making a report

3.1. Who can raise a concern or make a report?

Any worker can raise a concern or make a report if they believe they have witnessed or experienced discrimination, harassment, sexual harassment, bullying, vilification or victimisation, or believe that there may have been a breach of <Insert company name>'s Workplace Discrimination, Harassment, Sexual Harassment, Bullying and Victimisation Policy.

<Insert company name>

This Complaints Handling and Investigation Procedure only applies to reports about potential breaches of <Insert company name>'s Workplace Discrimination, Harassment, Sexual Harassment, Victimisation and Bullying Policy.

3.2. How to raise a concern or make a report

Reports can be made to <Insert company name> or an external body. Reporters may make a report or complaint through whichever channel they choose.

Workers are encouraged to raise any concerns or report with <Insert relevant manager or Contact Person here> so that <Insert company name> can provide the worker with support, and consider whether it is appropriate to take steps to address the conduct and prevent risks to the health, safety and wellbeing of any person. Where <Insert relevant manager or Contact Person here> is unavailable or it is not appropriate for them to be involved in the process, the reporter should contact <Insert alternative manager or Contact Person here>.

Before making a report, a worker may wish to seek guidance from <Insert relevant manager, Contact Person or Complaints Person here>, who can provide them with general information about their options and the supports available.

There is no time limit for a person to report discrimination, harassment, sexual harassment, bullying, vilification or victimisation to <Insert company name>. However, workers are encouraged to report concerns promptly as <Insert company name>'s ability to effectively respond to and prevent the alleged conduct will diminish over time.

If a worker does not feel comfortable raising a report with <Insert relevant manager, Contact Person or Complaints Person here>, they may wish to seek independent guidance from and/or report the alleged conduct to one of the following organisations:

- Australian Human Rights Commission;
- Anti-Discrimination New South Wales;
- Victorian Equal Opportunity and Human Rights Commission;
- Anti-discrimination Commission Queensland;
- Equal Opportunity Commission Western Australia;
- South Australian Equal Opportunity Commission;
- Equal Opportunity Tasmania;
- ACT Human Rights Commission;
- Northern Territory Anti-Discrimination Commission;
- Fair Work Commission (for reports related to discrimination, bullying and sexual harassment);
- Relevant union (e.g. Media, Entertainment and Arts Alliance); or
- The police (if the allegations are of a criminal nature such as physical or sexual assault).

While workers may choose to raise a concern or report with one of the organisations listed above, it is <Insert company name>'s preference that any concern or report is raised internally with the

appropriate person in the first instance, so that <Insert company name> can take prompt steps to support the reporter, prevent and address the conduct.

Workers may raise concerns or make reports verbally or in writing. Depending on the nature of the report, <Insert relevant manager or Contact Person here> may ask the reporter to document the report in writing (e.g. in an email or using <Insert company name>'s complaint form), or provide them with a summary of what was reported.

If a worker makes a complaint or report to an external body, it may be appropriate for <Insert company name> to suspend this procedure while that process is ongoing (e.g. if the matter involves criminal allegations, the <Insert company name> should seek approval from Police before proceeding with its response to the report). However, the <Insert company name> may still take steps to address and prevent the alleged conduct.

4. Precautionary measures

<Insert company name> may put in place temporary or permanent precautionary measures in response to an alleged or anticipated incident of discrimination, harassment, sexual harassment, bullying, vilification or victimisation to protect the health, wellbeing and safety of all workers.

The <Insert relevant manager, Complaints Person or Contact Person here> may consult with the <Insert relevant manager> or their delegate about precautionary measures. Precautionary measures may include (but are not limited to):

- restricting the respondent's access to the premises or property;
- suspending a person from the work; and/or
- relocating the respondent (or the person who experienced the alleged conduct, on their request) to minimise interactions between the respondent and the person who experienced the alleged conduct.

Precautionary measures are not a penalty or sanction.

5. Immediate steps to support the parties

<Insert company name> may take immediate steps to support and protect the reporter and other relevant parties in relation to alleged conduct. This may include:

- providing referrals to medical, counselling or support services;
- supporting the person affected to report the matter to the police where there is a serious or ongoing risk to the health, safety or wellbeing of any person; and/or
- temporary changes to work arrangements, including to supervision and reporting.

6. Key considerations when dealing with reports

6.1. General considerations

In considering how to respond to a report, <Insert company name or title> may consider any factors it considers are relevant in the circumstances, including:

<Insert company name>

- the needs and wishes of the person who has experienced the alleged conduct;
- the seriousness of the alleged conduct, and <Insert company name> obligations, including in relation to occupational health and safety, its duty of care, and to workers under the *Fair Work Act 2009* (Cth);
- whether there is a risk to the health or safety of the person who experienced the alleged conduct, or any other person;
- whether the report relates to a person under the age of 18;
- what investigative or other actions, if any, are available to <Insert company name>;
- whether two or more people name the same respondent in separate reports or <Insert company name> is concerned the report may suggest a pattern of behaviour by the respondent;
- any relevant obligations and processes or sanctions that are available to <Insert company name> under the terms of any contract between the respondent and <Insert company name>; and/or
- procedural fairness to the respondent.

None of these factors are determinative.

6.2. Confidentiality

When a report is raised, <Insert company name> will maintain confidentiality to the greatest extent possible, taking into account its obligation to provide a safe work environment.

Workers who are directly involved in a complaint or an accompanying investigation (whether as a complainant, respondent, witness, or support person) must maintain confidentiality consistent with this procedure and any directions or requests by <Insert company name>. This is important to ensure that witnesses have not had the chance to collaborate or influence each other, minimise the potential for victimisation, and protect the privacy and reputation of the parties.

[Optional] Affected individuals may disclose concerns to the leadership of the employer, seek confidential professional advice (e.g. from a union representative, lawyer or psychologist), or report their concerns to the police or a relevant court, commission or tribunal.

A failure to maintain confidentiality may result in disciplinary action.

6.3. Procedural fairness

Where an allegation is made against another person, that person is entitled to procedural fairness. This generally means that <Insert company name> will not make a decision that could adversely affect a respondent unless it has given that person an opportunity to respond.

6.4. Support person

A participant in the investigation may wish to have a support person present during the complaint handling process, such as another worker, a friend, family member or union representative. The support person should not be a party to the report or a witness to the behaviour that is the subject of the report.

A support person's role is to provide emotional support; they should not act as an advocate or speak for the participant. A support person is required to keep all details of the report and investigation confidential.

The participant should notify the Complaints Person, as soon as practicable, if they would like to have a support person present during an investigation. The participant should provide the Complaints Person with the details of the support person, so that the request can be considered. A request for a support person to be present will not be unreasonably refused. Reasonable efforts will be made to accommodate the availability of a participant's support person. However, if the support person's availability unreasonably delays the process, the participant will be advised to nominate another support person.

If a participant does not request to have a support person present during meetings, this should be recorded, as well as whether the participant was offered a support person.

7. Dealing with reports

7.1. Deciding the most appropriate course of action

If a worker believes they have witnessed or experienced discrimination, harassment, sexual harassment, bullying, vilification or victimisation, and they feel comfortable doing so, they may wish to deal with the situation themselves – that is, raise the issue directly with the person(s) concerned, explain why the behaviour is unwelcome, and ask for it to stop. This may be effective particularly if the person(s) was/were unaware of the impact of their behaviour but will rarely be appropriate where there is a power imbalance or the conduct is serious (e.g. sexual harassment).

If a worker's concerns remain unresolved or the worker is not comfortable dealing with the situation themselves, the concern or report can be raised with **<Insert relevant manager or Contact Person here>**.

Once a concern has been raised or a report has been made, **<Insert relevant manager or Contact Person here>** will outline to the reporter the options available for dealing with the concern or report.

Options include following: **<Insert company name>**'s internal informal or formal procedure, or raising the report with an external agency such as the Australian Human Rights Commission, Fair Work Commission, or with the police if the allegations are of a criminal nature.

Informal procedures emphasise resolution rather than factual proof or substantiating a report.

Formal procedures focus on proving whether a report is substantiated. A formal complaint procedure will be more appropriate where the alleged behaviour is of a serious nature and, if substantiated, could lead to disciplinary action (e.g. termination of employment).

It will not always be appropriate for the reporter to decide whether the matter should be addressed formally or informally, although **<Insert company name>** will consider their preference.

In some circumstances, the seriousness of the allegations may mean that it is necessary for **<Insert company name>** to investigate the allegations (e.g. to prevent serious or imminent risks to health, safety or wellbeing). For this reason, **<Insert company name>** may initiate or progress an investigation without the involvement of the reporter or the person who experienced harm. This may involve de-identifying details of the people involved with the report where it is possible to do so.

7.1.1. Reporters wishing to remain anonymous

Where the reporter advises they wish to remain anonymous, <insert company name> will use its best endeavours to manage the reporter's concerns, while ensuring there is an appropriate balance in fairness to all parties concerned.

This may include:

- recording the report in a de-identified way;
- removing references of the reporter and subject of the harm from allegations provided to the respondent (where necessary or appropriate);
- reiterating to all workers <Insert company name>'s Discrimination, Harassment, Sexual Harassment, Bullying and Victimisation Policy, complaints procedure and available supports, and inviting workers to make reports;
- speaking with other members of the alleged respondent's team to identify whether there is a cultural issue or pattern of conduct, or surveying workers more broadly;
- closely monitoring the workplace for inappropriate conduct or victimisation;
- implementing new work systems that reduce the likelihood or opportunity for further harm; or
- if the report raises broader cultural or systemic problems in the workplace, investigating those issues.

In some cases, it may not be possible to investigate a report if the reporter wishes to remain anonymous, due to the right of the respondent to procedural fairness.

In some circumstances, the seriousness of the allegations may mean that it is necessary for <Insert company name> to investigate the allegations raised by a reporter wishing to remain anonymous (e.g. to prevent serious or imminent risks to health, safety or wellbeing). This may involve de-identifying details of the reporter wishing to remain anonymous, where it is possible to do so.

7.1.2. Dealing with reports which may constitute a criminal offence

Some conduct can also give rise to criminal offences, including physical assault, sexual assault, stalking or cybercrime, which is where a carriage service is used to menace, harass or cause offence. This can include conduct that occurs over the phone, in text messages or online.

Where a worker considers that the alleged conduct may be a criminal offence, <Insert company name> will offer support to the worker, which may include supporting them to report the matter to the police. In situations where <Insert company name> becomes aware of or has reasonable grounds to believe that a criminal offence has been committed against a child or young person, an adult worker of <Insert company name> may be required to report the matter to the police or relevant authority, and will do so consistent with the <Child Safety Policy and Child Safety Procedure>.

[Guidance note (delete this later): Under Work Health and Safety laws, <insert company name> also has an obligation to notify the relevant regulator of certain types of workplace incidents.]

If the person who has reported or experienced the alleged conduct and does not wish to report the matter to the police, <Insert company name> will:

- make and retain a secure incident report of the conduct reported and the steps taken to minimise further risk of harm (consistent with 7.2 below);
- consider whether any workers at <Insert company name> are required to report the incident;
- consider whether a de-identified report should be made to police;
- offer the reporter or person affected access to counselling or other support;
- if appropriate, consider whether it is necessary to implement any changes to the workplace to provide the worker with a safe work environment, while the report is being investigated; and
- deal with the report consistent with the policy and this procedure.

7.2. Incident report

Where a worker raises a concern or makes a report, <Insert relevant manager or Contact Person here> should record details of the alleged incident and the steps taken to address the alleged conduct, including:

- time, date, location of the alleged incident;
- nature of the alleged incident;
- the people involved;
- what action was taken to resolve the alleged incident;
- why no further action was considered necessary; and
- that the matter was not investigated and no findings were made in relation to the alleged conduct.

If <Insert company name> becomes aware of a concern (e.g. unusual tension in the rehearsal room) and believes it is necessary, <Insert relevant manager or Contact Person here> should prepare an incident report and outline the steps taken to minimise any risks.

7.3. Informal complaint procedure

There is no one-size-fits-all response to deal with reports informally. The most appropriate response for dealing with reports informally will depend on each individual circumstance and the nature of the report.

7.3.1. When will a report be dealt with informally?

<Insert company name> may decide to deal with a report informally if:

- the report is of a less serious nature and can be most effectively dealt with informally;
- <Insert relevant manager or Contact Person here> considers the report can be most effectively dealt with informally and the reporter agrees;
- the reporter requests that the matter be dealt with informally and <Insert relevant manager or Contact Person here> considers this appropriate; and
- the report has arisen from a misunderstanding or lack of, or unclear, communication.

<Insert company name>

7.3.2. How will a report be dealt with informally?

Informal ways of dealing with reports and concerns will focus on addressing and resolving the concern rather than considering whether the allegations are substantiated. Informal resolution may include, but are not limited to, the following:

- the reporter may decide to deal with the situation themselves but may seek advice on possible strategies from **<Insert relevant manager or Contact Person here>**;
- **<Insert relevant manager or Contact Person here>** may facilitate a direct private discussion or mediation between the reporter and the respondent (where the parties agree to participate);
- an impartial third person may convey information between those concerned;
- an impartial third person may help those involved to talk to each other and find a resolution;
- where the respondent admits the behaviour and an investigation is not required, the report may be resolved through conciliation or counselling;
- the reporter may ask **<Insert relevant manager or Contact Person here>** to speak to the respondent on their behalf, and privately convey the reporter's concerns and reiterate **<insert company name>**'s policy to the respondent without assessing the merits of the case; or
- a supervisor or manager that observes unacceptable conduct may take action even though no formal report has been made.

An informal report may also be dealt with without individually identifying a respondent. Informal ways of dealing with the report can also include collective actions such as:

- providing a refresher training and information to all workers about acceptable and unacceptable behaviours under **<Insert company name>**'s policy;
- redistributing and again explaining the policies;
- requiring workers to complete training;
- making alterations to working arrangements to reduce the risk;
- speaking with other members of the alleged respondent's team to identify whether there is a cultural issue or pattern of conduct, or surveying workers more broadly; and
- closely monitoring the workplace to ensure victimisation does not occur and intervening where issues arise.

In some instances, **<Insert company name>** may engage an independent mediator.

<Insert relevant manager or Contact Person here> will document steps taken to address and resolve a report using an informal process.

An informal process may be formalised at any point where **<Insert relevant manager or Contact Person here>** considers it appropriate, particularly where an informal process has been ineffective or additional concerns are raised.

7.4. Formal complaint procedure

7.4.1. Steps involved in a formal complaint and investigation

The usual process for dealing with formal complaints is set out below. However, where it is considered appropriate to do so, <Insert company name> may alter the process and advise the reporter of the new complaint handling and investigation process.

As part of a formal complaint process, <Insert company name> will appoint an impartial or independent person to investigate the complaint (Complaints Person). This may be a person employed by <Insert company name> or an external investigator.

Please note that <Insert company name> will use its best endeavours to adhere to the timeframes outlined in this procedure. If the proposed timeframes are not workable, <Insert company name> will endeavour to update the reporter and respondent.

Step 1: Obtain information from the reporter

The Complaints Person will contact the reporter to better understand the report and obtain any additional information as soon as possible. At this time, the Complaints Person may seek or provide further information that the Complaints Person considers relevant, including, for example, to:

- confirm whether the reporter has received a copy of <Insert company name>'s Workplace Discrimination, Harassment, Sexual Harassment, Bullying and Victimisation Policy and Complaint Handling and Investigation Procedure, and provide a copy where appropriate;
- provide information about the complaint process, options, potential outcomes, options for assistance/support and protections from victimisation;
- ensure the allegations are documented in writing, either by the reporter or the Complaints Person, and securely stored and retained;
- explain that the process is confidential, what this means and why it is important;
- explain what records of the report will be kept, for how long and where;
- ask the reporter to provide relevant documents or details of witnesses that may support the allegations;
- clarify the extent to which they are willing to be identified; and
- seek the reporter's input on how they would like <Insert company name> to respond (without committing to their preferred approach).

Where there is a concern about supporting information being destroyed or compromised, the Complaints Person may, if considered appropriate in the circumstances, try to obtain and protect this information before taking any further action (i.e. saving and securely storing IT records and/or CCTV footage).

Step 2: Advise the respondent about the report

As soon as practicable after receiving all necessary information from the reporter and understanding the scope of the report, the Complaints Person will inform the respondent that it has received a report about their alleged conduct. The Complaints Person may provide the respondent with details of the allegations (where sufficient particulars are known), and if the Complaints Person considers it appropriate and necessary to do so, supporting information (where doing so will not breach privacy).

<Insert company name>

Where possible in the circumstances, the allegations should be provided to the respondent verbally and in writing at the earliest opportunity.

When the Complaints Person informs the respondent that it has received a report or provides the respondent with the allegations, the Complaints Person may seek or provide further information that the Complaints Person considers relevant, including, for example, to:

- provide or confirm that the respondent has received a copy of <Insert company name>'s Workplace Discrimination, Harassment, Sexual Harassment, Bullying and Victimisation Policy and Complaint Handling and Investigation Procedure;
- confirm that the respondent will be given the opportunity to respond to the allegations;
- provide information about the process, potential outcomes and options for assistance/support;
- explain that the process is confidential, what this means and why it is important;
- explain what records of the report will be kept, for how long and where; and
- explain that it is unacceptable to victimise someone who has made a report.

If it is considered appropriate or necessary to the investigation, <Insert company name> may suspend the respondent or direct them to remain away from the workplace and not be involved in <Insert company name>'s business.

Where <Insert company name> does not direct the parties to remain away from work, <Insert company name> may implement safeguards (see sections 4 and 5 above) to ensure that no further harm is caused to the reporter and/or person who experienced the alleged conduct.

Step 3: Provide the respondent with the opportunity to respond to the allegation(s)

The respondent will be provided with an opportunity to respond to the allegation(s). This will occur as soon as practicable (normally within three (3) working days) after the respondent has been notified of the allegation(s).

The Complaints Person will document the information obtained from the respondent, if it is not provided in writing, and the respondent should be provided with at least 24 hours to review and confirm the accuracy of the information.

Step 4: Interview any relevant witnesses

If the Complaints Person considers it necessary or appropriate, they will interview any relevant witnesses to the alleged conduct. To maintain confidentiality, witnesses should only be advised of the nature of the investigation insofar as it relates to them providing evidence about the alleged conduct.

Step 5: Clarify contradictory or new evidence

If new or contradictory evidence comes to light that could affect the findings of the investigation, the Complaints Person will may provide the parties with the opportunity to clarify information.

If either the respondent or reporter disputes any of the new or contradictory evidence, the Complaints Person may:

- seek further information from the respondent and/or reporter;
- seek further statements/information from any witnesses; and
- gather any other relevant evidence.

The Complaints Person may continue to seek additional information or clarification from the respondent, reporter or witnesses on any outstanding matters until they are satisfied that there is no additional evidence to be collected or no further clarification is required.

Step 6: Assess the evidence and make a determination

The Complaints Person will assess the information and evidence gathered and form an opinion about whether the allegations are factually proven, and whether the substantiated factual allegations constitute a breach of the worker's obligations (e.g. under the policy, Code of Conduct or law). In respect of each allegation, the Complaints Person may find:

- the allegation is substantiated;
- the allegation is not substantiated; or
- it is not possible to make a conclusive finding about whether discrimination, harassment, sexual harassment and/or bullying occurred.

The findings and the standard of proof in the investigation are based on 'the balance of probabilities' – which means it is more likely than not that the conduct occurred.

If the allegations are substantiated or the respondent confirms the alleged conduct occurred, the Complaints Person may recommend disciplinary action. Where this occurs, the Complaints Person should provide the respondent with the opportunity to comment on any proposed disciplinary action before a final decision is made.

If the Complaints Person identifies an area that could be improved to reduce or avoid such reports in the future, the Complaints Person may recommend that <Insert company name> consider implementing those improvements.

Step 7: Notify the reporter and respondent of the outcome

As soon as practicable (normally within one week of being notified of the Complaints Person's findings and recommendation(s), the decision-maker will notify the reporter and the respondent of the outcome of the report. A copy of the decision will be placed on the respondent's employment file.

7.4.2. Variation to the timeframe

There may be occasions, when having regard to the complexity of the facts and the seriousness of the allegations, that 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, <Insert company name> will endeavour to inform the reporter and the respondent of this in a timely manner. However, <Insert company name> will take reasonable steps to ensure that investigations are undertaken in a timely way.

7.4.3. Work arrangements

When a report is lodged, <Insert company name> will determine whether the reporter, respondent and person who experienced the alleged conduct are able to continue to work together without risks to health and safety, and whether safeguards need to be implemented. For example, either the reporter, affected person or the respondent may be asked to take leave without loss of pay or be transferred to another part of the business or a different location, so that a fair and efficient investigation can occur. In the event that it is safe for the reporter, person affected and respondent to work together during the reports process, a representative of the organisation will work closely and actively amongst them to monitor their relationship and ensure that safety, wellbeing and respect are maintained.

The reporter and respondent 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 make vexatious false, misleading, or malicious reports; and
- maintain confidentiality as described above.

7.4.4. Outcomes from the investigation

Substantiated reports

Where the report is substantiated, the decision-maker will make a decision on the appropriate action to take, based on the findings of an investigation.

Outcomes of a formal investigation can include (but are not limited to) any combination of the following:

- counselling, coaching or mentoring;
- formal written warning;
- termination of employment (including without notice or pay in lieu of notice);
- <insert company name> facilitating a meeting between the reporter and the respondent to attempt to resolve the matter by mediation;
- developing a process for 'moving forward';
- regular monitoring of behaviour;
- further training and education;
- a commitment by the respondent to change the behaviour or conduct that was the subject of the report;
- a change in working arrangements; and
- an apology.

The most appropriate outcome in each case will depend upon factors such as:

- the severity and frequency of the conduct;
- the weight of the evidence against the respondent;

- the wishes of the reporter or person who experienced the conduct (however, this will not be determinative of the matter);
- whether the respondent has been given any prior warnings for the same or similar conduct; and
- training previously provided to the respondent, specifically related to the subject matter of the report.

<Insert company name> will aim to ensure that disciplinary action is consistent, fair and proportionate.

Unsubstantiated reports

Where allegations have not been admitted or substantiated, <Insert company name> may decide to take some action as a result of the report. For example, <Insert company name> may:

- provide refresher training for workers regarding appropriate workplace behaviour; or
- re-issue the workplace discrimination, harassment, sexual harassment, bullying and victimisation policy, the code of conduct and other related policies to all workers.

7.5. Dealing with reports that involve workers from another organisation

Workers should be encouraged to raise concerns or make reports about workers from other organisations while working at the same workplace.

<Insert relevant manager or Contact Person here> will explain the options available to deal with the report.

If <Insert relevant manager or Contact Person here> deems that the matter requires further action, <Insert company name> will raise the matter with an appropriate representative from the other organisation. <Insert company name> will work with the other organisation and determine an appropriate response to the deal with the report – either informally or formally, and consistent with the complaint handling policies and procedures of both organisations to the extent possible.

8. False, misleading or malicious reports

<Insert company name> encourages workers to report genuine concerns about discrimination, harassment, sexual harassment, bullying, victimisation and vilification.

However, if a report is found to be false, misleading, or malicious, then <Insert company name> may take disciplinary action against the reporter up to dismissal. A person will not be sanctioned just because an investigation is inconclusive and the allegations cannot be substantiated. Disciplinary action will only be taken if <Insert company name> is satisfied that the report was malicious, false or misleading.

Examples of false, misleading, or malicious reports include, but are not limited to:

- fabricating a report;
- making a report for the malicious purpose of deliberately harming another person;
- seeking to re-agitate issues that have already been addressed or determined; and

<Insert company name>

- making a report that the reporter does not genuinely believe to be true.

9. Additional information, support and advice

If you have a query about this procedure or would like to raise a concern or report, please contact [Guidance note (delete this later): list contacts] <Insert relevant person>.

10. Related documents

All workers are required to read this procedure in conjunction with <Insert company name>'s other relevant policies, procedures, documents and agreements, including: [Guidance note (delete this later): list relevant policies and procedures]

- Workplace Discrimination, Harassment, Sexual Harassment, Bullying and Victimisation Policy.
- Code of conduct: workplace discrimination, harassment, sexual harassment, bullying and victimisation
- Flexible work arrangements policy
- Parental leave policy
- Work health and safety policy
- Discipline procedure
- Mission, vision and values statements
- Enterprise bargaining agreements and Awards [Guidance note (delete this later): list relevant agreements.]
- Service agreement [Guidance note (delete this later): any document that outlines the rights of clients and customers to complain about the service they are receiving.]

11. Review details

This procedure was adopted by <Insert company name> on [insert date].

This procedure was last updated on [insert date].

Policy number		Version	[1.0]
Drafted by		Approved by [Board] on	[insert]
Responsible person	[e.g. CEO]	Scheduled review date	2 Years

This template has been developed by Live Performance Australia. It is a tool that organisations can use to assist them in their business. Organisations may tailor or alter this template to suit their individual circumstances. However, if organisations make significant changes to the template, we recommend you seek legal advice. It is not compulsory for organisations to use this template.

WORKPLACE DISCRIMINATION, HARASSMENT, SEXUAL HARASSMENT, BULLYING AND VICTIMISATION COMPLAINT FORM

<Insert Company Name>

Please ensure you have read our *Complaint Handling and Investigation Procedure* before making a report.

1. Details of the reporter

Title	
First name	
Last name	
Email address	
Contact number	
Position	

Please tick the option that applies.

- ☐ I am reporting conduct that I have experienced
- ☐ I am reporting conduct that I observed against somebody else.
Please provide their name _____
- ☐ I am making a report on behalf of somebody else.
Please provide their name _____

2. Who is this report against?

Full name	
Relationship to <Insert company name> (e.g. employee position, contractor, volunteer)	

3. What happened? Please describe the incident/s in detail.

Please describe the incident/s or behaviour in detail. If you need more space please provide these details on a separate page attached to this form.

Where did the incident/s occur?	
When did the conduct occur? (Please include rough dates and times if known. If there have been multiple incidents, how often has or does the offending behaviour occur? (e.g. daily, weekly, monthly)	
Is the conduct ongoing?	
Are you aware of any witnesses to the described incident/s? (If so, please name)	
Any other relevant information.	

4. Please indicate any other steps you have already taken

☐ Raised the problem with a colleague and/or my manager (please name and detail outcome)

☐ Lodged a report with a third party, such as a government entity or union (please provide details of where the report was made and the status of the report)

☐ Other (please provide details)

5. Supporting evidence

If you have any evidence of the alleged conduct that may help <Insert company Name> address the concerns in your report (e.g. screenshots of communications, texts, emails etc), please provide copies or advise where this information may be obtained.

6. Confidentiality

Only those directly involved in making or investigating a report will have access to information about the report (except in circumstances required 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 report, except to the extent necessary to make your report and seek support in accordance with the Workplace Discrimination, Harassment, Sexual Harassment, Bullying and Victimisation Policy and the Complaint Handling and Investigation Procedure [guidance note: amend with names of your policies and procedures, if different].

7. Sign and date your report

Signature

Full name

Date

Office use

Date complaint received

Staff member managing complaint
(name and position)

[GUIDANCE NOTE: Delete later] This example code of conduct has been developed by Live Performance Australia. It is a tool that organisations can use to assist them in their business. Organisations may tailor or alter this template to suit their individual circumstances. However, if organisations make significant changes to the template, we recommend you seek legal advice. It is not compulsory for organisations to use this template]

[insert company name]

Code of Conduct

1. SCOPE

- 1.1 This Code of Conduct aims to ensure that all Workers understand their responsibilities as representatives of **[insert company name] (Company)** and the rules regarding the way we are required to behave in the workplace, including attending Company and industry events and when dealing with Company's patrons, visitors, and audience.
- 1.2 All Workers must comply with this Code of Conduct.
- 1.3 For the purpose of this Code of Conduct, Workers include but are not limited to:
- (a) company owners and board members;
 - (b) leadership and management personnel (e.g. producers, promoters, CEOs, executive directors, artistic directors, general managers, company managers, heads of department, human resources managers, managers, supervisors);
 - (c) performing, and production and support personnel (e.g. actors, performers, dancers, musicians, directors, choreographers, writers, stage management, chaperones, technical crew, front of house staff, administration and office employees);
 - (d) full-time, part-time, seasonal and casual employees; temporary or permanent staff;
 - (e) job candidates, including people auditioning for roles;
 - (f) student placements, apprentices, work experience students/interns;
 - (g) contractors and their employees, sub-contractors and secondees (e.g. artists, composers, guest speakers, musicians, directors, choreographers, writers, casting, talent and freelance agents who have been contracted or sub-contracted for a specific purpose); and
 - (h) volunteers and anyone working in an unpaid capacity.
- 1.4 This Code of Conduct applies to all Workers while:
- (a) at work – including but not limited to in the office, at rehearsals, during performances, learning and engagement activities on production tours, while travelling for work;

- (b) at work-related functions – such as opening nights, after parties, Christmas parties, conferences, industry events, development events; and
- (c) outside of work where there is an identified or publicly known connection between you and the Company – such as on the internet through social media and public communications such as on podcasts and the news.

2. STANDARDS OF BEHAVIOUR

- 2.1 The Company has expected standards for the conduct of its Workers and is committed to providing a safe, respectful, inclusive and flexible workplace environment that is free from discrimination, harassment, sexual harassment, bullying, vilification and victimisation.
- 2.2 Workers must act with integrity, respect and honesty both at work and when representing the Company outside of working hours.

2.3 All Workers must:

- (a) complete your duties to the best of your abilities, following relevant policies and procedures.
- (b) complete any training relevant to your role and seek advice from the Company when the appropriate action is unclear.
- (c) treat all Workers and audience members/patrons/customers/stakeholders with dignity, courtesy and respect.
- (d) respect all differences in culture, ethnicity, religion, gender, sexual orientation, age, preferences, opinion and experience.
- (e) behave in a professional, fair and courteous manner at all times.
- (f) promptly raise or report any issues or suspected Code of Conduct or Policy breaches, whether it is against you or another person, to the **[insert relevant manager or Contact Person – e.g. company manager/stage manager/general manager/tour manager/director/producer/promoter/ human resources manager or Complaints Person];**
- (g) comply with the Company policies and procedures, instructions and lawful directions that relate to your employment, engagement, duties and/or services.
- (h) maintain confidentiality when reports are made and/or under investigation.
- (i) abide by all applicable laws and regulations.
- (j) declare any conflicts of interest that might adversely affect the Company, our workplace, Workers, patrons, audience members, stakeholders, clients or suppliers.

2.4 All Workers must not in any way:

- (a) engage in any conduct that may, will, or is likely to:
 - i. negatively impact, damage or be inconsistent with the Company's reputation or financial interests constitute a conflict of interest with the business or interests of the Company; or
 - ii. create a disruption in the workplace,

- iii. be harmful or offensive including to Workers, customers, patrons, audience members, visitors, board members, stakeholders, clients or suppliers.
 - (b) abuse or threaten to abuse (in anyway, including verbally, physically or in writing) another person.
 - (c) sexually harass another person.
 - (d) physically or sexually assault another person.
 - (e) discriminate against, including because of their race, ethnicity, religion, gender, sex, age, sexual orientation, disability or other personal attribute.
 - (f) intimidate threaten or harass another person.
 - (g) bully, isolate or humiliate another person.
 - (h) victimise, unjustly treat or threaten someone, including because they have raised a complaint or are a witness in an investigation.
 - (i) Utilise the Company stage and/or other Company produced events for any unauthorised purpose.
 - (j) behave improperly or unethically.
 - (k) request, instruct, induce, encourage, authorise or assist another person to engage in the above behaviours.
- 2.5 Any Worker who fails to adhere to the Standards of Behaviour may be subject to disciplinary action up to and including summary dismissal from employment, or termination of their contract.

3. ABSENTEEISM/TARDINESS [AMEND OR DELETE AS REQUIRED]

- 3.1. Workers must report and be prepared to work at set times, as outlined in their contract of employment or as otherwise agreed. Where a Worker arrives late or needs to leave early, this should be discussed with [insert relevant manager or Contact Person – e.g. company manager/stage manager/general manager/tour manager/director/producer/promoter/ human resources manager].
- 3.2. Regardless of the reason, repeated absenteeism (failing to report for work without prior approval) or tardiness (arriving late for work, returning late from breaks/meals, or leaving work early without prior approval) may be subject to disciplinary action up to and including summary dismissal from employment, or termination of your contract.

4. DRESS CODE [AMEND OR DELETE AS REQUIRED]

All Workers

- 4.1. The Company requires that its Workers are dressed appropriately, professionally and in accordance with relevant work, health and safety (WHS) policies and laws.

- 4.2. Workers must be suitably attired and groomed during working hours or when representing the Company.
- 4.3. While at work a Worker must not wear any item of clothing, badge, slogan or ribbon which may:
- (a) Damage, or be inconsistent with the public image and reputation of the Company;
 - (b) Damage or negatively impact the economic interests of the Company;
 - (c) Constitute a conflict of interest with the primary business of the Company; or
 - (d) Create disruption or disharmony in the workplace, including being offensive to colleagues, Workers, customers, patrons, audience members, visitors, board members, clients or suppliers.

Front of House and Crew

- 4.4. In the course of their work, Front of house staff and crew must wear [select appropriate option, or amend accordingly] black / the Company provided uniform that consists of:
- (a) A plain black t-shirt or shirt (tank tops, singlets, patterns, stripes or logos or not permitted);
 - (b) Pants or skirt (dark black jeans are permitted as long as they are not faded or ripped);
 - (c) Closed black footwear (white or coloured soles or shoelaces are not permitted); and
 - (d) A name badge.
- 4.5. Without the express permission of the [insert position of relevant person e.g. Executive Director/CEO], an employee must not wear:
- (a) Large or statement piece jewellery;
 - (b) Badges, ribbons, logos, slogans; or
 - (c) Hats, beanies, scarves or sunglasses when inside a building.

Performers, Musicians, Dancers

- 4.6. While on stage a performer, musician or dancer must wear the dress, costume or uniform as directed by the Company.
- 4.7. While on stage either during a performance or during the curtain call a performer, musician or dancer must not alter or add any item to the costume without the express permission of the [insert position of relevant person e.g. Executive Director/CEO].

5. BREACH OF THIS CODE OF CONDUCT

- 5.1. A breach of this Code of Conduct may result in disciplinary action up to and including the termination of employment, or termination of your contract.

6. CHANGES TO THE CODE OF CONDUCT

- 6.1. The Company maintains its right to amend this Code of Conduct at any time. Workers will be notified of any Code of Conduct updates. The updated Code of Conduct will be available [electronically on our server] and will be sent to you by email.
- 6.2. Workers are responsible for ensuring that they have read and understood the most recent version of the Code of Conduct. Workers will be provided with the most recent version of the Code of Conduct on commencement of their engagement/employment.
- 6.3. If further information or clarification is required regarding the content of the Code of Conduct, please contact [insert name of contact, insert position of contact] at [insert email address] or [insert telephone number].

7. RELATED POLICIES

- 7.1. This Code of Conduct should be read in conjunction with:
- (a) The Company's Discrimination, Harassment, Sexual Harassment, Bullying and Victimisation Policy; and
 - (b) The Company's Social Media and Communications Policy.

8. REVIEW

- 8.1. This Code of Conduct was adopted by the Company on [insert date].

CHECKLIST

Developing a workplace discrimination, harassment, sexual harassment, bullying and victimisation policy

What needs to be included in a policy?

- ☐ A strong opening statement on the employer's commitment to prohibiting all forms of unlawful discrimination, harassment, sexual harassment, bullying, vilification and victimisation in the workplace.
- ☐ An outline of the employer's objectives regarding discrimination, harassment, sexual harassment, bullying and victimisation.
- ☐ A clearly defined scope of who the policy applies to and when the policy applies (i.e. outside of set work hours and working environments).
- ☐ A clearly worded definition of discrimination, harassment, sexual harassment, bullying, vilification and victimisation.
- ☐ A statement that discrimination, harassment, sexual harassment, bullying, vilification and victimisation is against the law (listing the relevant legislation and who is liable).
- ☐ Specific examples that may be relevant to the particular live performance working environment.
- ☐ A statement of what is not discrimination, harassment, sexual harassment, bullying, vilification and victimisation.
- ☐ Examples of places and times where unlawful discrimination, harassment, sexual harassment, bullying, vilification and victimisation may happen e.g. on tours, social media, during rehearsals, at opening nights, industry events, Christmas and after parties, conferences, etc.
- ☐ Clearly defined acceptable and unacceptable standards of behaviour (this could be presented in an accompanying Code of Conduct).
- ☐ The process for making a report.
- ☐ The consequences for workers if the policy is breached.
- ☐ Responsibilities of workers, including leadership and management positions.
- ☐ Information on where individuals can get help, advice or make a report.
- ☐ A brief summary of the options available for dealing with discrimination, harassment, sexual harassment, bullying, vilification and victimisation.

CHECKLIST

Developing a complaint handling and investigation procedure

What needs to be included in a complaint handling and investigation procedure?

Principle #1: Fair

- ☐ Do both the reporter and respondent have the opportunity to:
 - present their version of events?
 - provide supporting information?
 - respond to any potential adverse decisions?
- ☐ Does the procedure state that the investigator will be independent or impartial?

Tip: Identify an appropriate person within and outside your organisation who can investigate reports

Principle #2: Impartial

- ☐ Does the investigator have particular connections with any party involved?
- ☐ Does the investigator know and understand their obligations?

Principle #3: Confidential

- ☐ Does the procedure specify the need to maintain confidentiality?
- ☐ How will confidential information be treated?
- ☐ How will the reporter and respondent be informed about confidentiality requirements?
- ☐ Where will confidential information about the report be kept?
- ☐ How will workers be protected from victimisation?

Tip: Only provide information to those who need to know about the report so that they can properly take action

Principle #4: Transparent

- ☐ Does the process offer both informal and formal options?
- ☐ Is the process clearly explained?
- ☐ Does the procedure advise the reporter that they can pursue the matter externally with the Fair Work Commission (bullying and sexual harassment), Australian Human Rights Commission, a state or territory anti-discrimination body or, if it appears to be a criminal matter, the police?
- ☐ Are the possible outcomes of the report clearly explained?
- ☐ Does the process include keeping the reporter and respondent informed of the:
 - progress of the report?
 - reasons for any decisions?
- ☐ Is the procedure regularly reviewed?

Principle #5: Accessible

- ☐ Is the report process easy to access and understand?

Tip: Make sure the process doesn't prevent anyone being able to raise a report and participate equally

Principle #6: Efficient

- ☐ Is the report process conducted in a timely manner and without undue delay?

Principle #7: Supported

- ☐ Are the reporter, person affected and respondent able to request the assistance of a support person?

Principle #8: Trauma-informed

- ☐ Is the reporter or person affected being adequately supported, listened to and their experience validated?
- ☐ Is the reporter or person affected not required to tell their story multiple times through the process?

Principle #9: Culturally sensitive

- ☐ Have cultural differences or barriers been considered in the process, including in relation to intersectionality?

TIPS

Creating and maintaining a safe, respectful and inclusive workplace culture

Leadership

- Secure high-level support from company owners and leadership positions for developing and implementing a comprehensive strategy to create and maintain a safe, respectful and inclusive workplace culture and prevent unlawful and harmful workplace behaviours. Regularly review, evaluate and improve this strategy.
- Ensure those in leadership positions lead by example and model best practice standards of behaviour.

Accountability

- Include accountability mechanisms in position descriptions for relevant leadership positions, particularly positions that are responsible for enforcing standards of expected behaviour.
- Ensure that selection criteria for relevant leadership positions include the requirement that managers have up-to-date knowledge and a demonstrated understanding of and ability to deal with discrimination, harassment, sexual harassment, bullying, vilification and victimisation matters.
- Check that those in leadership positions are fulfilling their responsibilities through performance appraisal plans.
- Periodically conduct workplace audits to monitor reports of discrimination, harassment, sexual harassment, bullying and victimisation, and regularly address the reports and any identified workplace risks.
- Ensure reports of discrimination, harassment, sexual harassment, bullying, vilification and victimisation are addressed consistently and confidentially to hold respondents to account and put the reporter and person affected at the centre.

Strategy

- Develop a policy prohibiting inappropriate use of computer technology, such as e-mail, screen savers and the internet.
- Set clear employer values that reflect commitment to the safety and wellbeing of all workers, and implement strategies to ensure the workplace culture reflects these values.
- Set clear and specific standards of expected behaviour for all workers involved in creative work that may include provocative, sensitive or controversial themes or actions.

Empower

- Encourage and empower workers to voice and raise any concerns or objections, particularly with regard to creative work that may include provocative, sensitive or controversial themes or actions.
- Encourage and empower workers to report if they think they may be experiencing or witnessing workplace discrimination, harassment, sexual harassment, bullying, vilification and/or victimisation.
- Ensure that policies and procedures are promoted and easily accessible to workers.



Displays and communications

- Remove offensive, explicit or pornographic calendars, literature, posters and other materials from the workplace.
- Display posters that promote awareness of discrimination, harassment, sexual harassment, bullying, vilification and victimisation on notice boards in common work areas and distribute relevant brochures.

IMPLEMENTING WORKPLACE POLICIES & COMPLAINTS PROCEDURES

What you need to do

1. Distribute & promote policies & complaints procedures

2. Educate, communicate & discuss policies & complaints procedures

3. Review policies & complaints procedures

How you could do it

- ✓ Promote at staff meetings, seminars, on the first day of rehearsals, prior to touring or other group meetings
- ✓ Email copies of the policy to all workers
- ✓ Display policies on notice boards, in green rooms, dressing rooms, rehearsal spaces and include in induction manuals/materials
- ✓ Place an automatic shortcut on staff desktops
- ✓ Make workers aware that senior management endorse the policies and that they are required to comply with them
- ✓ Ask workers to sign a copy of the policy acknowledging they have received and understood it
- ✓ Ensure policies are accessible to workers with disability
- ✓ Consider translating policies into relevant community languages where required so it is accessible to employees from non-English speaking backgrounds
- ✓ Conduct or provide opportunities for regular training sessions for all workers on discrimination, harassment, sexual harassment, bullying, vilification and victimisation
- ✓ Assign responsibility for the circulation and review of the policy to a specific position or area to ensure that it is widely promoted and regularly updated
- ✓ Put a copy online in a way that is accessible to workers
- ✓ Provide policies and other relevant information to new workers as a standard part of induction
- ✓ Ensure that managers and supervisors discuss and reinforce policies at staff meetings
- ✓ Ensure all workers are made aware of the policies and where they can be located
- ✓ Train all relevant managers and supervisors on their role and provide effective tools for ensuring that the workplace is free from discrimination, harassment, sexual harassment, bullying, vilification and victimisation
- ✓ Ensure workers responsible for handling and investigating reports receive training and/or information on how to deal with reports
- ✓ Keep clear and accurate records of each worker's education and training (e.g. copy of signed policies, records of training undertaken, record of discussions with management)
- ✓ When a report is received, use this as an opportunity to evaluate the effectiveness of policies and identify areas that could be improved to minimise the risk of further incidents occurring

VERBAL OR WRITTEN BRIEFING FOR WORKERS

The following briefing has been prepared for managers to provide to workers when a worker is inducted, at the commencement of a show, and on an annual basis thereafter. This briefing can be provided orally and/or in writing, and supplemented by other training and information on discrimination, harassment, sexual harassment, bullying, victimisation or vilification. Workers should be provided with the code of conduct and relevant policies and procedures, and asked to confirm in writing that they have understood and agree to comply with the obligations in those documents.

<Insert company name> is committed to providing a safe and inclusive workplace where every worker can thrive. We know that workers in safe and inclusive teams are more likely to be effective, innovative and satisfied, which has a positive impact on a workplace culture.

In order to build and maintain this positive workplace culture, and retain good people, it's important that you understand:

- your rights and responsibilities
- what we expect of you in terms of acceptable, unacceptable and upstander behaviour
- what you can do if you see or experience discrimination, harassment, sexual harassment, bullying, victimisation or vilification
- the supports that are available, and
- the potential consequences of breaching your obligations.

Every worker at <Insert company name> - whether they are an employee, contractor or volunteer - is required to act with courtesy, dignity and respect.

Every worker has a right to a safe work environment that is free from discrimination, harassment, sexual harassment, bullying, victimisation or vilification. We know that these behaviours are harmful and can have a significant and long-term impact on people, on their health, safety, wellbeing and relationships. They are also unlawful, and will not be tolerated by <Insert company name>.

Our approach to preventing and responding to this behaviour is set out in our <insert policies, procedures and code of conduct>. You are required to read and comply with them. These documents set out your rights and responsibilities, acceptable and unacceptable behaviours, and the potential consequences of engaging in that behaviour. They also set out where you can go for help if you see or experience this behaviour, the support that is available, and how <Insert company name> will respond to reports and concerns about that conduct.

We want to create a culture where people feel safe and supported to call out harmful behaviour. We encourage you to be an upstander to prevent harmful behaviour where you feel safe to do so.

If you observe or experience behaviour that could constitute discrimination, harassment, sexual harassment, bullying, victimisation or vilification, I encourage you to raise it with <insert people and positions>, who can provide you with guidance and support. We encourage you to look out for each other. You don't have to be the person affected to raise a concern, because it shouldn't always be on the person who has experienced the harm to raise the issue.

Workers who engage in discrimination, harassment, sexual harassment, bullying, victimisation or vilification can be personally liable for their conduct, and may face disciplinary action up to the termination of their employment or engagement.

It's our hope that this discussion sets the scene for a safe and inclusive work environment. Please contact <insert people and positions> if you have any questions or would like to discuss this further.

GUIDANCE FOR MANAGERS WHEN RECEIVING REPORTS/DISCLOSURES

It takes an incredible amount of courage for a person to disclose their experience of sexual harm and harassment. Managers hold a key position to influence how a person feels about an organisation's response to their experience.

As a manager, your role is to:

- be empathetic and sensitive;
- provide a safe space for staff to share their experiences;
- let staff know that they have your support and you are available to discuss their options;
- be familiar with guidance and resources, including from LPA;
- know where to go for advice, support and information if required;
- engage genuinely with staff, including acknowledging when you don't have all of the answers;
- foster a positive organisational culture; and
- promptly identify and respond to concerns as they arise.

Your response matters and is critical in maintaining your staff members' trust and confidence in your organisation.

KEY PRINCIPLES

To adopt a best practice approach to support staff members who have disclosed their experience of sexual harm and harassment, managers should act consistently with the following principles:

- **Respect victim-survivors** by taking a trauma-informed approach which supports, listens to and validates their experience. Your role is to inform victim-survivors with options and facilitate their chosen pathway with timely responses and by practising good record keeping.
- **Believe victim-survivors** who disclose that they have experienced sexual harm and harassment. Believing a person's account of their experience is not the same thing as making findings or decisions about their complaint.
- **Take a safe, considered, sensitive and timely process** when responding to sexual harm and harassment.
- **Provide ongoing support** by facilitating access to support services, informing a person of their options to take leave, and nominating an appropriate person to check in with victim-survivors and persons who have received disclosures of harm.
- **Embody accountable leadership** to empower your staff to be informed, active upstanders by upholding and championing these principles through your own considered actions, words and decisions.
- **Foster positive community knowledge and understanding** by taking proactive steps to educate and inform your staff and reinforce your organisation's position that sexual harm and harassment will not be tolerated.

- **Practice sound decision-making** unhindered by the status, power or influence of the parties involved and protect those who come forward from victimisation.
- **Support cultural sensitivity and safety** for all staff by being aware of cultural differences and by recognising and addressing cultural and linguistic barriers, including through engagement with community elders and interpreters as a means to ensure culturally sensitive support.
- **Respect intersectionality** to understand, respect, and embrace the many aspects of a person's identity in preventing and responding to sexual harm and harassment. These may include Indigeneity, race, ethnicity, socio-economic background, migration status, age, disability, religion, sex, gender, gender identity and sexuality as well as a range of individual unique characteristics and experiences.

GUIDANCE FOR FIRST RESPONDERS

The first priority for a first responder is to consider whether there is any serious or imminent risk to health or safety. If so, please call police or an ambulance on 000.

After you have taken steps to minimise any serious or imminent risk to health or safety, the role of a first responder is to listen, provide information, and facilitate access to services if the person requests it.

First responders are encouraged to use the **HEARTS response** when receiving disclosures of harm (which may include sexual harassment, discrimination, bullying or victimisation).

Hear

- Let the person use their own words to articulate what happened.
- Avoid asking too many questions. You're not there to investigate or judge the accuracy of their statements.
- People who have experienced traumatic events can have disjointed or fragmented recollections, appear confused, and can react highly emotionally or appear detached or unemotional.

Empathise

- Speak to the person with empathy and compassion.
- Tell them you're sorry this has happened to them.
- Focus on their physical and emotional wellbeing.

Affirm

- That you believe them.
- That it is not their fault.
- They did the right thing by telling you.

Record

- Be observant; remember what is being said.
- Make a written record to help the person later, including the who/what/when/where of what they told you.
- Keep any notes confidential and secure.

Tell someone

- Inform the person they can make a report to authorities, an appropriate person in your organisation and/or access support services.
- You can provide them with a print out of relevant services.
- Inform the person that the opportunity to collect forensic evidence after a sexual assault is time limited and that if they seek medical assistance to have the evidence collected they can decide later if they want to proceed with speaking to police.
- Helping the person to understand their options empowers them to regain a sense of control over the situation.
- It's not your role to decide what they do next. Your role is to provide them with information so they can decide.
- Don't make any promises you can't keep.

Self-care

- Debrief and seek support for yourself.
- Support services are available to people who have received disclosures.

SUPPORT SERVICES & RESOURCES

Crisis support services	
Support Act Support Act provides financial relief for music workers in crisis, mental health counselling through the Wellbeing Helpline, assistance with funeral expenses and financial guidance.	Ph: 1800 959 500 Website: https://supportact.org.au/
13YARN Lifeline's 24 hour national crisis support line for mob who are feeling overwhelmed or having difficulty coping.	Ph: 13 92 76 Website: https://www.13yarn.org.au/
1800 Respect 24 hour counselling and information regarding sexual assault and sexual harassment. Online chat function.	Ph: 1800 737 732 Website: https://www.1800respect.org.au/
BeyondBlue Mental health support and resources.	Ph: 1300 224 636 Website: https://www.beyondblue.org.au/
BlueKnot National Counselling and referral service for people with a disability who have experienced or witnessed someone being hurt or treated badly.	Ph: 1800 421 468 Website: https://blueknot.org.au/national-counselling-referral-service-disability/
Bravehearts Supports people seeking advice or help related to child sexual abuse including responding to disclosures of child sexual abuse.	Ph: 1800 272 831 Website: www.bravehearts.org.au
eSafety Commissioner Investigates reports of cyberbullying of children, adult cyber abuse, image-based abuse (sharing, or threatening to share, intimate images without the consent of the person shown) and illegal and restricted content.	Website: https://www.esafety.gov.au/report
eSafety Women Resources aim to help women manage technology risks and abuse by giving women the tools they need to be confident when online.	Website: https://www.esafety.gov.au/women

Headspace Supports young people aged between 12 and 25 years of age.	Ph: 1800 650890 Website: https://headspace.org.au/
Lifeline 24 hour crisis support and suicide prevention.	Ph: 13 11 14 Website: https://www.lifeline.org.au/
Mensline 24 hour national support line for men who are dealing with family and relationship difficulties.	Ph: 1300 78 99 78 Website: https://mensline.org.au/
Sexual assault support services	
Sexual Assault Crisis Line Victoria A statewide confidential, telephone crisis counselling service for people who have experienced both past and recent sexual assault.	Ph: 1800 806 292 Website: https://www.sacl.com.au/
Canberra Rape Crisis Centre (CRSS) Sexual assault counselling and crisis support and advocacy.	Ph: 02 6247 2525 Website: http://www.crc.org.au/
Service Assisting Male Survivors of Sexual Assault (ACT and surrounding region) Provides support, information and referrals for men who have experienced sexual assault.	Ph: 02 6247 2525 Website: https://crcc.org.au/service-assisting-male-survivors-of-sexual-assault-samssa/
Sexual Assault Support Service (SASS) Tasmania 24 hour crisis support line, counselling and resources	Ph: 1800 697 877 Website: https://www.sass.org.au/
NSW Sexual Violence Helpline 24 hour telephone and online counselling for anyone who is or has experienced sexual violence and their supporters.	Ph: 1800 424 017 Website: https://fullstop.org.au/
Ruby Gaea Darwin Centre Against Sexual Violence Sexual assault counselling service	Ph: 08 8945 0155 Website: https://rubygaea.net.au/
DVConnect Sexual Assault Helpline (Queensland) Safety planning, crisis counselling, intervention, information and referrals.	Ph: 1800 010 120 Website: https://www.dvconnect.org/

Yarrow Place Rape and Sexual Assault Services (SA) Free and confidential service for people aged 16 years and over at the time of the sexual assault.	Ph: 1800 817 421 and 08 8226 8787 (AH) Website: https://www.wchn.sa.gov.au/our-network/yarrow-place
Sexual Assault Resource Centre (SARC) Western Australia Statewide service providing emergency services and counselling for people who have experienced both past and recent sexual assault.	Ph: 1800 199 888 Website: https://www.kemh.health.wa.gov.au/other-services/sarc
Human Rights Commissions	
Australian Human Rights Commission	Ph: 1300 656 419 (Option 2) Email: infoservice@humanrights.gov.au Website: https://humanrights.gov.au/
Victorian Equal Opportunity and Human Rights Commission	Ph: 1300 292 153 Email: enquiries@veohrc.vic.edu.au Website: https://www.humanrights.vic.gov.au/get-help/
Anti-Discrimination New South Wales	Ph: 1800 670 812 Email: complaintsadb@justice.nsw.gov.au Website: https://antidiscrimination.nsw.gov.au/
ACT Human Rights Commission	Ph: 02 6205 2222 Email: human.rights@act.gov.au Website: https://hrc.act.gov.au/contact-us/
Queensland Human Rights Commission	Ph: 1300 130 670 Email: enquiries@qhrc.qld.gov.au Website: https://www.qhrc.qld.gov.au/contactus
Northern Territory Anti-Discrimination Commission	Ph: 1800 813 846 Email: antidiscrimination@nt.gov.au Website: https://adc.nt.gov.au/contacts

WA Equal Opportunity Commission	Ph: 1800 198 149 Email: eoc@eoc.wa.gov.au Website: https://www.wa.gov.au/organisation/equal-opportunity-commission
Equal Opportunity SA	Ph: 08 7322 7070 Email: equal@sa.gov.au Website: https://www.equalopportunity.sa.gov.au/
Equal Opportunity Tasmania	Ph: 1300 305 062 Email: office@equalopportunity.tas.gov.au Website: https://equalopportunity.tas.gov.au/
Respect@Work Information Service	Ph: 1300 656 419 (Option 1) Email: respect@humanrights.gov.au Website: https://www.respectatwork.gov.au/