



Human Resources Policy Bullying, Harassment & Equal Opportunity Policy

Stage : **Issued**
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Objective:

Child and Family Services Ballarat Inc. (**CAFS**) is an equal opportunity employer. CAFS believes that all staff members should be able to work in an environment free of discrimination, racial and religious vilification, victimisation, bullying, violence and all forms of workplace harassment (**unacceptable behaviour**). We can only achieve this success if we ensure that all our staff members and clients are treated in a manner consistent with the aims of "equal opportunity" and a "safe working environment." An essential element of "equal opportunity" and a "safe working environment" is working together to eradicate all unacceptable behaviour. These include conduct that is unlawful, as well as conduct that is not the subject of legislation, but is still harmful to our working relationships

Scope:

This policy applies to all employees, contract workers, students, volunteer, Board and committee members of CAFS (collectively referred to as **staff members**). The policy applies to all instances where CAFS staff members' work including CAFS' internal offices and work sites and external work sites where CAFS representatives are attending to do their work. This policy is to be read in conjunction with CAFS Equal Opportunity Procedure.

Responsibilities:

Employees should not ignore a breach of this policy and hope it will go away – silence may give the impression that unacceptable behaviour is tolerated. It is in CAFS and all staff members' best interest that actual or suspected breaches of this policy are reported. CAFS management have an important role in the prevention of unlawful unacceptable behaviour in the workplace. CAFS will use its best endeavours to ensure that all allegations made under this policy will be treated seriously and investigated fairly, impartially, confidentially and thoroughly. CAFS also recognises that it is in the best interests of all parties to resolve the matter raised in a manner that is fair and equitable to all parties. The aim of all parties involved in such a complaint should be to resolve the matter by addressing it in a prompt, sensitive, effective and confidential manner. Issues which arise under this policy are managed through the CAFS Equal Opportunity Procedure. The CAFS Equal Opportunity Procedure is supported by the role of Contact Officers who have been appointed by CAFS to assist staff members and the process of resolving complaints.

Vision:

Wellbeing, respect and safety for all children and families.

Policy Statement:

Unacceptable behaviour will not be tolerated under any circumstances during the normal course of employment.
All complaints of unacceptable behaviour will be treated seriously, sympathetically,

promptly and confidentially.

All complaints of unacceptable behaviour will be dealt with fairly and impartially.

Action will be taken to prevent any continuation of the unacceptable behaviour.

Complainants and witnesses will not be victimised in any way for making a complaint or providing evidence in an investigation.

However, if a complainant or witness makes a false complaint or false statement, that staff member will be subject to disciplinary process which may result in termination.

Complaints will be settled within the workplace whenever possible.

The procedures underpinning this policy exist to protect the rights and reputations of all parties involved in such a complaint.

Mission:

Our mission is to strengthen and empower individuals, families and communities in order to heal from:

- the oppression of disadvantage
- alienation from culture and social connections
- and the trauma of abuse and violence.

Our Values:

The CAFS mission, vision and service charter are underpinned by six core values of which CAFS staff must demonstrate commitment and competency:

Values and Personal Competency	Description
Flexibility	Being adaptable to changing circumstances in the workplace, prioritising work, addressing what is most important and taking advantage of new and emerging opportunities
Resilience	The capacity to recover from setbacks, overcome obstacles and impediments, and the ability to learn from experience and identify areas for self development
Client/Member focused	Prioritising the needs of clients and members, aiming for best outcomes for clients and members, being focussed on the outcome and following through with commitments
Inclusive	Recognising the rights of others, being committed to social justice and social inclusion, making equitable decisions and respecting and valuing difference and diversity in all its forms
Ethical	High standards of personal integrity, being truthful and reflecting expected standards of behaviour consistent with the CAFS Code of Conduct and professional Codes of Ethics
Collaborative	Working with others to achieve common goals, engendering a spirit of teamwork, listening actively, inspiring confidence and demonstrating empathy when confronted with adversity

More Information:

This policy framework is underpinned by the Equal Opportunity Act 201.

Information on the Equal Opportunity Act 2010 is available from www.veohrc.vic.gov.au

Definitions:

The *Equal Opportunity Act 2010* strengthens discrimination laws in Victoria by changing

some key definitions, creating new responsibilities for the Commission and strengthening the Commission's role in helping government, business and the community to identify and eliminate discrimination.

We have an obligation under the Act to undertake the following:

- **A positive duty to eliminate discrimination**, which obliges organisations covered by the law to take proactive, reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation.
- **A duty to provide reasonable adjustments** for people with disabilities in employment, education and provision of goods and services, to help the person with a disability to perform the job or access education and goods and services.
- **Protection of volunteers** and unpaid workers from sexual harassment in employment.

Equal opportunity

Equal opportunity is about giving and getting a fair go. It does not assume everyone is the same and it does not mean treating everyone the same. In some circumstances, treating everyone the same is unfair and against the law (see 'indirect discrimination' below).

Discrimination

Discrimination is *unfavourable treatment* of a person in an *area of public life* (for example, at work) due to one of their *personal characteristics*. The *Equal Opportunity Act 2010* details two types of discrimination:

- direct discrimination
- indirect discrimination

Direct discrimination is when a person treats, or proposes to treat, a person with a protected personal characteristic unfavourably, because of that personal characteristic. Direct discrimination often happens because people make unfair assumptions about what people with certain personal characteristics can and cannot do.

Indirect discrimination is also against the law and refers to situations where treating everyone the same is unfair. This occurs when an unreasonable requirement, condition or practice that purports to treat everyone the same ends up either actually, or potentially, disadvantaging someone with a personal characteristic protected by the law.

Discrimination can also become systemic when entrenched, structural and sometimes institutional patterns of behaviour or actions affect a range of people. These behaviours and actions are often part of organisational culture and are reinforced by policies or procedures. If your organisation receives a lot of complaints about the same or similar issues, it might be a result of systemic discrimination.

Discrimination checklist

Discrimination is against the law when:

1. unfavourable treatment (actual or proposed) of a person or group occurs
2. in an area of public life (eight areas listed below)
3. because that person or group has (or is assumed to have) a personal characteristic protected by the law (18 personal characteristics listed below).

1. Unfavourable treatment

For discrimination to be against the law, there needs to have been (or proposed to be) some unfavourable treatment. In the area of employment, unfavourable treatment may include:

- bullying or harassment
- being denied or refused a benefit that is made available to others
- being provided a benefit on unfavourable terms (for example, less pay or greater inconvenience)

- unfair allocation of tasks (too many tasks or an unfair share of unpleasant tasks)
- unfair rostering (including the allocation of leave and overtime)
- exclusion from essential communications
- being refused essential resources needed to do the job

2. Area of public life

Victorian equal opportunity law applies to eight areas of public life, including:

- employment (and all work-related matters)
- provision of goods and services (whether paid for or free)
- education (pre-school, primary and secondary school, post-secondary, technical and further education)
- accommodation (including rental and hotel accommodation)
- sport
- clubs and club membership (an association of 30 or more people that has a licence to supply liquor under the *Liquor Control Reform Act 1998*)
- disposal of land (selling land by auction or public sale)
- local government.

3. Personal characteristics protected by the law

In the areas of public life listed above, it is against the law in Victoria to treat someone unfavourably because (or substantially because) they have, or are assumed to have, a personal characteristic protected by the law (listed below).

It is also against the law to treat someone unfavourably because they do not have, or are assumed not to have, a personal characteristic protected by the law.

Disability (previously called 'impairment')

- a disability, disease or injury, including work-related injury

Sex

- whether male, female or intersex

Sexual orientation and gender identity

- whether gay, lesbian, bisexual, transsexual, transgender, queer or heterosexual

Lawful sexual activity

- taking part in sexual activity that is not against the law

Pregnancy and breastfeeding

In Victoria it is against the law to discriminate against a woman because she is pregnant or might get pregnant, or because she is breastfeeding a child or expressing milk.

Marital status

- whether married, divorced, unmarried, in a de facto relationship or domestic relationship

Parental status and carer status

- where a person is responsible for caring for children or other dependents

Note: does not cover those who are being paid to provide such care.

Race

- race, colour, descent or ancestry, nationality, ancestry or ethnic background

Religious belief

- includes taking part in religious activity, or not holding a religious belief

Note: to be protected by the Equal Opportunity Act the religion must be recognised by law.

Political belief or activity

- includes taking part in political activity, or not taking part in political activity at all

Industrial activity

- including being a member of an industrial organisation like a trade union or taking part in industrial activity, or deciding not to join a union

Employment activity

- for example, where someone asks a question or raises concerns about their rights or entitlements at work

Age

- whether young or old, or because of age in general

Physical features

- such as height, weight, size, hair or birthmarks

Personal association

- an association with someone who has, or is assumed to have, one of these characteristics, such as being the partner of an industrial activist.

No personal characteristic?

It may still be against your organisation's policies to treat someone unfavourably, even if it is not technically discrimination under the law. Most organisations have an internal complaint process to allow staff and others to raise concerns about the implementation of policies, decisions or actions.

If such treatment is repeated, unreasonable and creates a risk to health and safety (including emotional or psychological health) it may be bullying under the *Occupational Health and Safety Act 2004*.

Note: Some other state and federal laws make discrimination against the law when it happens because of other personal characteristics such as:

- social origin (for example, harassing someone because of their class or status in society)
- irrelevant criminal record (for example, refusing to employ someone as a bus driver because they were once convicted of billposting).

Reasonable adjustments

The *Equal Opportunity Act 2010* includes an explicit duty to address discrimination experienced by people with disabilities by making reasonable adjustments in the areas of employment, education and service provision.

For example, in the area of employment the Act provides a list of factors that help determine when it might be reasonable for adjustments to be made in a workplace.

These factors are:

- the employee's circumstances, including the nature of their disability
- the nature of the role being offered
- the type of adjustment that is needed to accommodate the employee's needs
- the financial circumstances of the employer
- the size and nature of the workplace and the business
- the effect on the workplace and the business of making the adjustments, including the financial impact, the number of people who would be advantaged or disadvantaged by making them, and the impact on efficiency and productivity of staff
- the consequences for the employer if the adjustments are made
- any relevant action plan that has been made under the Commonwealth *Disability*

Discrimination Act 1992

- any relevant disability standards made under the Disability Discrimination Act.

Note: Adjustments do not need to be made where the relevant activity complies with the Disability Discrimination Act.

Making reasonable adjustments requires an employer to balance the need for change with the expense or effort involved in making this change. If an adjustment requires a disproportionately high expenditure or disruption, then it will likely not be reasonable.

The *Equal Opportunity Act 2010* includes a limited exception to the duty to make reasonable adjustments, which allows duty holders to discriminate where adjustments are not reasonable or where the person with the impairment could not participate in the employment, education or service provision even if the adjustments were made.

Under the *Equal Opportunity Act 2010*, it is still against the law to discriminate against a person on the basis of:

"Anti Discrimination" means unlawful subsection to any form of discrimination or

harassment. Unlawful discrimination is treating anyone less favourably because of a factor mentioned above under the definition of "Attribute."

"Attribute" means any of the following:

- Age;
- Breastfeeding;
- Carer status;
- Disability;
- Employment activity;
- Gender identity;
- Industrial activity;
- Lawful sexual activity;
- Marital status;
- Parental status;
- Physical features;
- Political belief or activity;
- Pregnancy;
- Race (including colour, nationality, ethnicity and ethnic origin);
- Religious belief or activity;
- Sex;
- Sexual orientation; and
- Personal association with someone who has, or is assumed to have, any of these personal characteristics;

It is also against the law to sexually harass someone.

"Bullying" means any repeated unreasonable behaviour directed toward a staff member or group of staff members, that creates a risk to health and safety;

"Detriment" includes humiliation and denigration;

"Discrimination" means direct or indirect discrimination on the basis of an attribute;

"Employee" includes:

- a person employed under a contract of service, whether or not under a workplace agreement, employment agreement or award within the meaning of the *Fair Work Act 2009*;
- a person engaged under a contract for services; and
- a person who is engaged to perform any work, the remuneration for which is based wholly or partly on commission, but does not include an unpaid worker or volunteer.

"Harassment" means unwelcome behaviour directed towards another person that is intended to offend, humiliate or intimidate the person, or where a reasonable person would have anticipated the possibility of offence, humiliation or intimidation. Harassment may be on the basis of a particular attribute – for example, a person's race, age, sexual preference. This term when used in this policy, also incorporates racial and religious vilification, and sexual harassment. Workplace harassment includes:

- offensive or coercive behaviour intended to be derogatory or intimidating;
- interference with a person's work space, work materials, equipment or property, apart from that which is necessary for the organisation's ongoing work;
- continual unjustified and unnecessary comments about a person's work or capacity

- for work;
- phone calls, letters, e-mails or messages that are threatening, abusive or offensive; and
- continual exclusion of a person from normal conversation, projects, work related social activities and networks.

“Physical features” means a person's height, weight, size or other bodily characteristics;

“Race” means:

- colour;
- descent or ancestry;
- nationality or national origin; and
- ethnicity or ethnic origin.

“Religious belief or activity” means:

- holding or not holding a lawful religious belief or view; and
- engaging in, not engaging in or refusing to engage in a lawful religious activity.

“Sexual Harassment” means conduct of a sexual nature (including touching, comments, jokes and e-mails) that is unwanted, and would reasonably be understood as unwanted, and which causes offence, intimidation or humiliation. We believe that it is the responsibility of the person undertaking the sexual conduct to ask if it is unwanted, unless he or she is certain that no offence will be taken. Sexual harassment includes:

- indecent exposure;
- comments or gestures of a sexual nature, whether they are directed to a particular person or not;
- emails, screen saver with a sexual content;
- questions or comments regarding a person's personal life and/or sexual orientation
- inappropriate touching

“Racial or Religious Vilification” means where a person, on the grounds of race, religious belief or activity of another person or class of persons, engages in conduct that incites hatred against, serious contempt for, revulsion or severe ridicule of that other person or class of persons.

Racial or religious victimisation occurs where a person victimises another person, if the person threatens to cause the person any detriment because the other person or a person associated with the other person has:

- made a complaint against any person;
- brought any other proceedings against the person under *Racial and Religious Tolerance Act 2001*;
- given evidence or information or produced a document in connection with any proceedings under the legislation;
- attended a compulsory conference at the tribunal;
- otherwise done anything in accordance with the legislation in relation to any person;
- alleged that any person has contravened a provision of the legislation unless the allegation is false and was not made in good faith; and
- refused to do anything that would contravene a provision of this legislation or because the person believes that the other person or associate has done or intends to do any of those things.

“Violence” means any physical violence, which arises out of disputes, or adverse

interpersonal relations between employees, clients and visitors in and around their place of employment.

References to Standards and Legislation:

ABEF Category 4: People

4.3: Health, Safety and Wellbeing

Equal Opportunity Act: Equal Opportunity Legislation

1: Index to Act

FRSP People: FRSP People

9: Safety of Staff

Quality Document References:

Organisational Code of Conduct: Code of Conduct -CAFS Wide

Child Safety : Policy -CAFS Wide

Occupational Health and Safety: Policy -Human Resources

Bullying, Harassment & Equal Opportunity Procedure: Procedure -Human Resources

Staff Disciplinary Procedures: Procedure -Human Resources

External Files/Links:

Complaint Handling Guide

Complaints-Ombudsmans Guide

Internal Files/Links:

Contact Officers Recording Form

Form-CAFS wide

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