

# Policy – Discrimination, Harassment and Bullying

## Purpose & Scope

The Academy of Entrepreneurs is committed to providing a work environment that is free from discrimination, harassment and bullying for all employees, casuals and contractors. All employees are expected to behave in accordance with the Code of Conduct and the Values of the Academy of Entrepreneurs. Employees should treat each other with courtesy, respect and fairness at all times. Discrimination, Harassment and Bullying in the work environment is unacceptable, may be unlawful and can result in legal action against the organisation or individual concerned.

Employees are encouraged to raise any concerns they may have about the behaviour of a third party, in accordance with the process outlined within this policy.

## Definitions

**Accused Individual(s)** – the individual or individuals that have had the complaint made against them. A thorough investigation must be conducted and the behaviour substantiated before any disciplinary action is taken.

**Bullying** – is behaviour towards individuals in the workplace that is inappropriate and often repeated. The behaviour can be direct, indirect, verbal or physical. It could include behaviour that intimidates, offends, degrades or humiliates an employee. It is conducted at the place of work and/or in the course of employment or engagement.

**Complainant** – the individual that raises a complaint, who claims to have been the subject of sexual harassment, bullying or discrimination.

**Discrimination** – any practice which makes a distinction between individuals or groups so as to disadvantage some and advantage others. Discrimination does not have to be conscious or calculated. Discrimination can either be Direct or Indirect.

- **Direct discrimination** – occurs when a person treats or proposes to treat another person less favourably because of a particular characteristic or attribute.
- **Indirect discrimination** – occurs when policies and practices appear to be neutral or non- discriminatory but operate in a way that discriminates against individuals or a group of persons over another.

**Harassment** - is the act of systemic and/or continued annoying actions of one party or a group. Harassment may be an ongoing pattern of behaviour, or it may be just a single act. It is any form of behaviour that:

- is not wanted
- offends, humiliates or intimidates
- creates a hostile environment

**Sexual Harassment** – occurs where an individual is subjected to ‘less favourable treatment’ because of his or her sex. Sexual harassment is unwelcome conduct of a sexual nature. The formal definition of sexual harassment differs between States and Territories however, conduct which amounts to Sexual Harassment is broadly the same across the country.

**Victimisation** – treating a person badly because they have made, intend to make or have helped someone else make a complaint, or who has agreed to be a witness in a complaint of discrimination, sexual harassment or bullying.

**Vilification** – those acts in the public domain that incite others to hate, have serious contempt for or severely ridicule individuals or groups on the grounds of race, religious belief or activity, sexuality, lawful sexual activity, impairment or gender identity or transgender status.

**Witness** – an individual that may be able to provide information or an account of the instance that is directly relevant to the issues under investigation.

## Content

### Discrimination

Discrimination based on a protected attribute is prohibited in the work environment. This type of behaviour is unacceptable and this type of discrimination can either be direct or indirect. An example of discrimination would be asking a female candidate whether she had children and then rejecting her for a position on the basis that she was likely to take excessive leave to care for her children when they were unwell.

### Sexual Harassment

Sexual Harassment is unlawful within any workplace context which also includes social outings outside of the office and work conferences. An individual does not have to say 'no' to the inappropriate conduct for it to constitute sexual harassment and for action to be taken in response to the conduct.

- Activities that may constitute sexual harassment could include:
- gender based insults or taunting
- kissing, touching or pinching
- unwelcome requests for sex or other sexual propositions
- unwelcome remarks or insinuations about a person's sex or private life
- suggestive comments about a person's appearance or body
- persistent declarations of love or proposals of marriage
- sexual comments, jokes or innuendo
- displays of pornographic material such as posters, pin ups, graffiti or calendars
- uninvited physical contact or gestures – such as attempts at sexual intercourse or some overt sexual contact

The list above is not exhaustive and is meant as an indication of the types of behaviour that could give rise to a valid complaint.

A single incident of sexual harassment is sufficient to raise a complaint. The intent and motive of the alleged harasser is generally not in question when ascertaining whether the behaviour was welcomed or not. The focus in sexual harassment complaints is how the behaviour was perceived and experienced by the complainant. Normally it would be expected that there would need to be some indication, through the complainant's behaviour, or the circumstances, that the behaviour was unwelcome. This would help establish that it would be likely that any reasonable person would have been offended, humiliated or intimidated.

## Bullying

Bullying is any type of behaviour that unfairly or unreasonably puts down, belittles, undermines, controls, abuses, scares, intimidates, excludes, embarrasses or offends an individual in the work environment. Types of behaviours that may constitute bullying could include:

- any form of aggressive or frightening behaviour including shouting or swearing at someone, stalking or the subjection to initiation rites that could offend or do harm
- taking credit for someone else's work
- teasing, baiting or practical jokes
- behaviour that is both unwanted and either sexual or based on grounds of discrimination
- making or threatening to make a person's work or home life difficult
- favouritism
- Management by fear
- laughing in a manner designed to cause distress to someone else
- sniggering or gossiping behind someone's back
- constantly interrupting someone who is trying to speak or work
- deliberately setting someone up to fail
- inappropriate or unfair criticism or punishment
- setting impossible deadlines, tasks or targets

Bullying is not considered to be any of the following behaviours:

- fair and appropriate supervisory or management instructions delivered in a fair and appropriate manner
- performance management or counselling and disciplinary proceedings conducted in a fair and reasonable manner

## Victimisation & Vilification

Victimisation & Vilification are both unlawful and are unacceptable and not to be tolerated in the work environment.

Types of behaviour that might constitute victimisation would be dismissing an employee who has made a complaint of sexual harassment in good faith. Vilification might include an instance where an employee verbally and publically abuses another employee in the workplace based on an individual's sexual orientation.

## Managing an instance of Discrimination, Harassment or Bullying

All complaints relating to discrimination, sexual harassment or bullying will be taken very seriously. Where an employee, contractor or casual feels aggrieved, offended or distressed by the actions or conduct of another person they should, in the first instance, tell the person involved that their conduct is causing distress or offence, stating that it is unwelcome and asking them to stop. In many instances the person conducting themselves or behaving in this way may not be aware that they are causing distress and will stop immediately, once they have been made aware.

If the complainant feels uncomfortable directly approaching the individual they should speak to their manager or another senior individual in the organisation. It is important that the complainant knows that there are other options available to them if the matter cannot be resolved by this initial conversation.

If an employee is suspected of a breach of conduct, they may be subject to:

- a formal investigation
- direction to cease work immediately
- direction to leave the work area or premises immediately

## Steps to manage a complaint

- A. **Make a complaint** – if an individual is experiencing unacceptable behaviour within the work environment they should raise the issue with the individual(s) involved, stating that the behaviour is offensive to them and unwelcome and asking them to please stop immediately.

- B. **Make a complaint to a manager if the behaviour has not ceased after raising it with the individual(s)** – if the accused individual does not stop the behaviour after it has been raised or the complainant feels uncomfortable raising it directly with the accused individual, it should be raised with a manager. The manager should take notes of the discussion and provide information to the complainant about this policy and the options available to them, including access to an EAP program. If a manager fails to investigate a complaint, they may be jointly liable with the offender for the conduct.
- C. **Interview with complainant** – the manager should arrange an interview to formally discuss the situation, this should be conducted somewhere where the complainant can talk freely and privately. The manager should seek specifics regarding the situation including names, dates and times and have both parties sign at the conclusion of the meeting. At the end of the interview the manager needs to make a determination as to whether the conduct potentially constitutes an unacceptable conduct and whether the matter requires formal investigation. Not all complaints will warrant further investigation. Thereafter the manager must ensure that the individual is not exposed to further harassment (if the behaviour has been identified as such) and also that the alleged individual(s) has the right to a fair and impartial investigation.
- D. **Complete a formal investigation ensuring procedural fairness** – the accused individual(s) needs to be informed of the allegations and that a formal investigation is to be conducted and what is involved in this process. The accused individual(s) needs to be given an opportunity to respond and have this response considered prior to a determination being made. All decisions need to be unbiased and justified and the accused individual is to be given the opportunity to have a support person present at meetings and interviews. This support person could be an employee representative. The accused employee should be given at least 24 hours written notice of disciplinary meetings, where appropriate and possible, based on the nature and severity of the conduct or behaviour.
- E. **Interview any witnesses nominated by the complainant** - individuals are interviewed separately and a full written record prepared which each interviewee signs.

- F. **Interview the accused individual(s)** – set a time to meet with the accused individual(s) and advise them that they are able to bring a support person to the meeting. Advise the accused individual(s) of the allegations formally and, should they wish to seek legal advice, break whilst legal advice is obtained. Formally document the interview and ensure that the individual(s) sign the document. If an individual refuses to sign, make a note on the document that a signature was sought and refused.
- G. **Interview any witnesses nominated by the accused individual** - individuals are interviewed separately and a full written record prepared which each interviewee signs.
- H. **Determination** – the investigator will need to make a determination, having reviewed all of the interviews, of what has happened, on the balance of probability. Except in the case of serious or criminal conduct, where possible, resolution between the parties should be sort through mediation.

The manager needs to make a determination after reviewing all the information available at the time and may decide that:

- a. the incident did occur
- b. the incident did not occur, or
- c. the manager cannot form a view about whether the incident did or did not occur

If the matter is deemed to have happened on the balance of probability and is serious in nature the individual(s) may be subject to appropriate disciplinary action, which may include warnings, suspension or termination of employment.

#### **False accusations, vexatious complaints and civil action**

Employees should ensure that all complaints are genuine and that they are acting in good faith. Allegations of unacceptable behaviour are serious matters and can potentially damage an individual's reputation and career aspirations. Making vexatious or frivolous complaints may lead to the employee being sued in a civil action (e.g. defamation) and / or disciplinary outcomes.

## Confidentiality

Confidentiality is of the most utmost importance to protect all individuals involved, however, in some circumstances where authorities need to be advised this may not be possible. Only the individuals that are involved formally in the investigation or attempted resolution of a complaint should have access to information and documentation regarding the matter. Consequently only individuals that have a role to play in the investigation should be discussing the complaint with relevant parties. Any employee or managers found to be engaged in gossip or innuendo about a complaint will risk disciplinary action as a result.

## Approvals & Review

Policy review date:	30/12/2017
Policy approved by title:	Academy of Entrepreneurs Pty Ltd
Policy approved by signature:	