

DISCRIMINATION, BULLYING, HARASSMENT, VILIFICATION AND VICTIMISATION POLICY

1 Policy Statement

The Australian National Memorial Theatre Ltd (The National) is one of Australia's oldest arts and education organisations.

At The National we celebrate the individual, we champion diversity, we value inclusivity and respect and we support empathy, vulnerability and ensemble. As a cultural institution we consider that we have a unique responsibility to do so.

We are determined to provide a respectful, inclusive and safe environment for everyone who works with us. We do not tolerate any form of unlawful discrimination, harassment or bullying.

The National is an equal opportunity employer and does not tolerate unlawful discrimination, bullying, harassment, vilification or victimisation in the Workplace. The National aims to ensure all people are treated with dignity, courtesy and respect.

The National has developed this Policy to provide guidance to all Workers in relation to what is, and what is not acceptable behaviour and conduct in the Workplace.

This Policy contains important information about how Workers should perform their duties and appropriate standards of behaviour and conduct. It also contains important information in relation to how the National may manage complaints made under this Policy, and consequences and disciplinary action.

2 Application

This Policy applies to all Workers and their conduct in respect of the Workplace.

The National requires all Workers to comply with this Policy. For employees and volunteers it constitutes a mandatory direction. For others, it is a condition of continued involvement with or attendance at The National.

However, the terms of this Policy do not form part of the terms of any contract (including any contract of employment) that may exist between a Worker and The National. The National itself is not bound to follow the Policy.

The National reserves the right to modify, withdraw or replace this Policy, in whole or in part, as it sees fit and without notice.

3 Defined terms

Worker includes any person who carries out work for The National or at The National, including but not limited to employees, volunteers, contractors and directors /officers, and employees, volunteers, contractors and directors/officers of third parties conducting work at The National. Without limitation this includes creative, theatre and technical staff visiting The National who work for hirers or third parties.

Workplace includes, but is not limited to, The National's premises or elsewhere,

- (a) at which Workers:
 - (i) carry out work for or at The National;
 - (ii) attend for the purposes of training, or learning and development related to The National;
 - (iii) attend for work related functions or events;
 - (iv) undertake work related travel;
 - (v) interact with other persons employed or engaged by The National; or
- (b) where there is some connection with employment or engagement by The National.

4 Overview

The National prohibits unlawful discrimination, bullying, harassment, vilification and victimisation in the Workplace. Conduct of this type is unlawful and will not be tolerated.

Workers who engage in this type of conduct may be summarily dismissed, have their engagement with The National terminated and/or they may be personally liable in relation to any legal claims resulting from their conduct. The National may also be held vicariously liable for their conduct.

Discrimination and harassment are prohibited under federal and state legislation including the:

- (a) *Racial Discrimination Act 1975 (Cth), Sex Discrimination Act 1984 (Cth), Disability Discrimination Act 1992 (Cth), Age Discrimination Act 2004 (Cth), Workplace Gender Equality Act 2012 (Cth), Fair Work Act 2009 (Cth) and Australian Human Rights Commission Act 1986 (Cth); and*
- (b) *Equal Opportunity Act 2010 (Vic) and Racial and Religious Tolerance Act 2001 (Vic).*

Victimisation is prohibited under federal and state legislation including:

- (a) *Fair Work Act 2009 (Cth);*
- (b) *Sex Discrimination Act 1984 (Cth), Disability Discrimination Act 1992 (Cth), Age Discrimination Act 2004 (Cth) and Australian Human Rights Commission Act 1986 (Cth); and*
- (c) *Equal Opportunity Act 2010 (Vic) and Racial and Religious Tolerance Act 2001 (Vic).*

Some forms of bullying may be unlawful under the *Occupational Health and Safety Act 2004 (Vic)*, and may also constitute a criminal offence.

In addition to The National's duties to take steps to provide a safe workplace that is free from unlawful discrimination, bullying, harassment, victimisation and vilification, Workers also have specific legal duties to:

- (a) take reasonable care for the health and safety of others who may be affected by the Workers' actions and omissions;
- (b) comply with this Policy; and
- (c) not bully anyone.

5 Bullying

5.1 What is bullying?

Bullying is repeated unreasonable behaviour towards a person, or group of people, which creates a risk to physical or psychological health and safety. It can include behaviour that would reasonably be expected to threaten, intimidate, victimise, undermine, offend, degrade or humiliate a person.

The following are examples of conduct that may constitute bullying:

- (a) physical violence or threats of psychological or bodily harm;
- (b) verbal abuse, sarcasm, and other forms of demeaning language;
- (c) spreading rude or inaccurate gossip or rumours;
- (d) constant unconstructive criticism;
- (e) deliberately isolating, ostracising or excluding a person;
- (f) deliberately withholding information, assistance or equipment that a person requires to adequately perform their role;
- (g) sending abusive, intimidating or inappropriate messages (including via text message or email);
- (h) social media usage intended to hurt, intimidate, humiliate or embarrass;
- (i) overloading a person with work or allowing insufficient time for completion and then criticising that person's work as a result;
- (j) making deliberate, false, misleading or vexatious allegations; or
- (k) conducting an investigation in a grossly unfair manner.

5.2 What is not bullying?

Reasonable management action carried out in a reasonable manner will not constitute bullying. Reasonable management action includes a wide range of everyday actions which direct, control and provide feedback on the way work is carried out.

Whether management action is considered reasonable will depend on an objective assessment of the actual action or interaction undertaken, rather than a Worker's perception of the action. Management action does not need to be perfect to be considered reasonable.

The following conduct is unlikely to constitute bullying:

- (a) allocation and monitoring of work;

- (b) organisational and management practices;
- (c) setting performance goals, standards and deadlines;
- (d) expressing differences of opinion;
- (e) constructive feedback, counselling or advice about work related behaviour and performance;
- (f) performance management, disciplinary action, counselling or training;
- (g) decisions regarding transfers, restructuring, promotions, appointments and terminations;
- (h) raising a genuine concern or complaint about the conduct of a person;
- (i) investigating genuine concerns or complaints; and
- (j) managing absences, illness or injuries.

At times, a Worker may feel dissatisfied with their work or aggrieved at how they are being treated or spoken to. However, feeling undervalued or upset does not necessarily mean that a Worker is being bullied.

6 Unlawful Discrimination

Unlawful discrimination means treating a person, or group of people, unfavourably because the person has, or group of people have, a particular attribute or characteristic which is a protected attribute or characteristic. The particular attribute or characteristic need not be the sole reason for the discrimination to be unlawful.

It is unlawful to discriminate against a person or group of people because of the following protected attributes (**Protected Attributes**):

- (a) pregnancy or potential pregnancy, carer or parental status, including breast feeding and family responsibilities;
- (b) disability (including physical and mental disability, impairment, work related injury, and medical conditions, or having a carer, assistant, accredited assistance animal or disability aid);
- (c) gender identity, sex, sexuality, sexual orientation, lawful sexual activity, marital and relationship status;
- (d) industrial activity (including union membership), political opinion, activity or association;
- (e) employment activity (such as requesting information about entitlements or seeking to exercise workplace rights);
- (f) physical features (such as appearance);
- (g) age;
- (h) race, colour, nationality, ethnicity and ethnic origin/descent, national extraction or social origin;
- (i) religious belief, activity or association; or
- (j) personal association with someone who has, or is assumed to have, one of these attributes.

Discrimination can be direct or indirect.

Direct discrimination means treating a person with a particular attribute less favourably than a person who does not have that attribute.

Indirect discrimination means imposing an unreasonable requirement, condition or practice that disadvantages persons with a particular attribute, or with which persons with a particular attribute are unable to comply.

7 Harassment

7.1 Sexual harassment

Sexual harassment is any unwanted or unwelcome conduct of a sexual nature in circumstances in which a reasonable person would anticipate that the recipient would be offended, humiliated, intimidated or threatened. It is irrelevant whether the person committing the acts intends to sexually harass the recipient.

Sexual harassment may include:

- (a) physical acts, such as unwanted touching or sexual gestures;
- (b) verbal acts, such as requests for sexual favours or dates, making promises or threats in return for sexual favours, inappropriate jokes and innuendos, explicit conversations, derogatory comments, insults, taunts, or intrusive questions about a person's private life; or
- (c) visual acts, such as leering or staring at a person, and viewing, displaying or distributing offensive or explicit material including via the internet, social media or text messages.

A person who causes, instructs, induces, aids or permits someone else to engage in sexual harassment can also be found to have also unlawfully engaged in the conduct.

7.2 Other types of harassment

Harassment is conduct that is reasonably likely to offend, insult, humiliate or intimidate another person or group of people, which relates or refers to a *Protected Attribute*. For example, racial harassment or disability harassment.

Harassment may include, among other things:

- (a) derogatory insults, jokes or ridicule;
- (b) unwelcome questions, remarks or innuendo;
- (c) verbal abuse or comments that criticise or stereotype people;
- (d) mimicking someone's habits or accent; or
- (e) the display or circulation of racist or other offensive material.

8 Vilification

Vilification is unlawful conduct and will not be tolerated by The National.

Vilification is any form of communication or conduct that occurs at the Workplace which may provoke hatred, contempt or ridicule towards a person or group of people because of their actual, or perceived:

- (a) race; or

- (b) religion;

Unlawful acts of vilification may be expressed by, but are not limited to, acts such as:

- (a) making statements, wearing symbols or attire which incite hatred or intolerance;
- (b) producing or placing graffiti, posters or stickers;
- (c) verbal or visual abuse;
- (d) certain use of internet sites, including social media, which incite intolerance; and
- (e) destruction of property.

9 **Victimisation**

Victimisation is a very serious breach of this Policy and may also constitute unlawful conduct. The National will not tolerate any conduct which it considers to be a form of victimisation.

Victimisation means to subject, or threaten to subject, another person to any form of detriment, conduct or reprisal because they, or someone associated with them, has made an allegation or complaint of, or raised a grievance in relation to, discrimination, bullying harassment or vilification.

10 **Procedure for complaints**

The National will treat allegations and complaints under this Policy very seriously. A person who believes that they have experienced or witnessed discrimination, harassment, bullying, vilification or victimisation is encouraged to report it to the CEO or a member of The National Board.

A complaint under this Policy may be handled formally or informally.

10.1 **Informal action**

Informal action is aimed at allowing the alleged perpetrator to understand that their conduct is causing offence, acknowledge any behaviour that breaches this Policy, and ensure that the offending behaviour stops.

If the complainant feels able to do so, they may confront the person directly (including in writing), tell the person that they do not like the behaviour, and ask that it stop. The complainant may do this on their own or with a support person present.

Alternatively, the complainant may request help to resolve the situation from the CEO or a member of The National Board.

Informal action may result in acknowledgement and an apology from the alleged perpetrator.

10.2 **Formal action**

Where The National receives a complaint of a serious nature, it may, in its discretion elect to take more formal action.

Formal procedures may be appropriate where:

- (a) the informal approach did not resolve the issue or is considered inappropriate;
- (b) the complaint involves serious allegations of misconduct;

- (c) the allegations are denied and the complainant wishes to proceed with a formal process; or
- (d) the complainant wishes to make a formal complaint and The National considers it is appropriate in the circumstances.

If a complainant wishes to make a formal complaint, they should advise the CEO or a member of The National Board.

By way of general guidance, the following steps may occur as part of formal action:

- (a) the complaint may be investigated, including by an external investigator;
- (b) the complainant may be asked to provide written details of the complaint or may be interviewed, with a support person if required;
- (c) relevant details of the complaint may be conveyed to the alleged perpetrator;
- (d) the alleged perpetrator may be given an opportunity to respond;
- (e) if there is a dispute over facts, other relevant evidence may be gathered and witnesses may be interviewed; and/or
- (f) a finding may be made as to whether the complaint is substantiated.

If the complaint is substantiated, The National will determine the appropriate outcome, which may include disciplinary action up to and including summary dismissal.

10.3 External resolution

The National will treat allegations of discrimination, bullying, harassment, vilification and victimisation seriously. A person who believes that he or she has experienced or witnessed discrimination, bullying, harassment, vilification or victimisation is encouraged to raise it in accordance with The National internal processes.

If a Worker has a complaint, they may elect to take the complaint to an appropriate external body with jurisdiction over the complaint. Workers must immediately notify The National if they do so. Relevant bodies may include:

- (a) the Fair Work Commission;
- (b) the Australian Human Rights Commission or Victorian Human Rights and Equal Opportunity Commission;
- (c) WorkSafe Victoria, as the relevant work health and safety regulator.

11 Consequences and disciplinary action

A breach of this Policy may lead to disciplinary action being taken by The National, which may include:

- (a) counselling;
- (b) requiring a formal apology;
- (c) conciliation/mediation conducted by an impartial third party;
- (d) training on expected standards of behaviour;
- (e) performance management;
- (f) a formal warning;
- (g) demotion;

- (h) suspension; and/or
- (i) termination of employment (up to and including summary dismissal) and/or engagement with The National.

Disciplinary action may also be taken against a complainant if there is evidence that the complaint was malicious or vexatious.

Any failure by The National to enforce this Policy does not prevent it from enforcing it in the future and The National is not bound to apply a similar response to a breach of this Policy in similar circumstances.

Authorisation

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