|  |  |
| --- | --- |
| **Management and Prevention of Workplace Bullying and Harassment** | |
| Procedure code: OP-EP2 | Current version: February 2019 |
| Previous version: November 2015 | Next review date: February 2022 |
| Section: Empowering Our People | Sub-Section: Workforce Culture & Wellbeing |
| Overview The Western Health policy *P-EP2 Employee Support and Workplace Relations* states that Western Health is committed to ensuring all personnel are well supported and that fair and acceptable workplace relations practices are in place.  In support of this policy, this procedure outlines the processes to be followed in regards to all matters related to the management and prevention of workplace bullying and harassment at Western Health including:   * Providing Western Health personnel who believe they may have been bullied, harassed, sexually harassed or victimised with a procedure for addressing the behaviour; and * Outlining Western Health’s commitment to fostering an environment that is free of bullying, harassment, sexual harassment and victimisation consistent with our organisational values and legislative requirement.   Where complaints are made or conduct identified, Western Health is committed to undertake a fair and transparent process of investigation that includes maintaining confidentiality for all parties. | |
| Applicability The procedure applies to all Western Health employees, including members of the Western Health Board, executive and senior management, managers and supervisors, honorary appointees, contractors, volunteers, students and agency staff and these roles will collectively be referred to as Western Health ‘personnel’ in this document. This procedure supersedes all previous related policies or procedures.  Where the provisions of Awards, Agreements, individual Contracts, Federal or State Legislation vary from this procedure, those provisions shall apply. | |
| Responsibility Personnel at Western Health have a responsibility to know and comply with this procedure. Department Managers, Divisional Heads and People and Culture have a responsibility for the ongoing application and compliance with this procedure.  Managers/Supervisors at Western Health have the responsibility to ensure all personnel are informed of and comply with this procedure. | |
| Authority The approval to make changes to this procedure and to coordinate the implementation of this procedure (including responsibility for any required electronic or written forms) rests with the Director of People, Culture and Safety. | |
| Associated Documentation In support of this procedure, the following Manuals, Policies, Instructions, Guidelines, and/or Forms apply:   |  |  | | --- | --- | | Code | Name | | P-EP2 | Code of Conduct | | P-EP2 | Employee Support and Workplace Relations | | OP-EP2 | Disciplinary Procedure | | OP-EP2 | Employee Assistance Program (EAP) | | OP-EP2 | Equal Employment Opportunities | | OP-EP2 | Formal Complaints | | OP-EP2 | Social Media - Access, Utilisation and Obligations | | OP-EP3 | Managing Underperformance | |  | Complaints Form | |  | All relevant Industrial Awards / Agreements / Individual contracts binding on Western Health Services | | |
| Definitions and Abbreviations For purposes of this procedure, unless otherwise stated, the following definitions/abbreviations shall apply:   |  |  | | --- | --- | | Discrimination | Discrimination is treating, or proposing to treat, someone unfavourably because of a [personal characteristic protected by the law](http://www.humanrightscommission.vic.gov.au/index.php/types-of-discrimination). This includes bullying someone because of a protected characteristic. | | Harassment | A particular type of discrimination involving any form of unwelcome or uninvited behaviour that any reasonable person would regard as having the potential to humiliate, offend or intimidate. | | Sexual Harassment | Unwelcome conduct of a sexual nature that any reasonable person would regard as undesirable or offensive. | | Workplace Bullying | Repeated, unreasonable behaviour directed towards an employee, or group of employees, that creates a risk to health and safety (refer to *Section 7.2* of this document). | | Unreasonable Behaviour | Behaviour that one could reasonably experience to be victimising, humiliating, undermining or threatening. | | Repeated Behaviour | A pattern of behaviour/s involving a series of different types of unreasonable behaviour. | | Risk to Health and Safety | Risk to the emotional or physical health of the employee. | | Fair and Transparent Process | Is the procedural principles which must be adhered to throughout complaint investigations. These include providing the individual with the particulars of the claim against them, allowing the individual an opportunity to respond, giving due consideration to their response and offering individuals the option to have a support person present in any interviews. | | Victimisation | Is subjecting, or threatening to subject, someone because they have asserted their rights under equal opportunity law, made a complaint, helped someone else make a complaint, or refused to do something as it may constitute discrimination, sexual harassment or victimisation. | | Vilification | Is unlawful behaviour that incites or encourages hatred of, serious contempt for, revulsion or severe ridicule of another person or group of people because of their faith, beliefs, religion, or race. | | Complainant | The individual who has submitted the complaint | | Respondent | The individual against whom a complaint has been made. | | Personnel | All full-time, part-time, visiting, sessional and casual employees, honorary appointees, agency staff, volunteers, students and contractors. | | EMPOWIR | Employee Positive Workplace Issue Resolution Strategy | | |
| Procedure DetailContents: 7.1 Guiding Principles  7.2 Bullying  7.3 Harassment  7.4 Sexual Harassment  7.5 Reporting Process  7.6 External Complaints Handling Options  7.7 Victimisation - Avenues of Redress  7.8 Responsibilities 7.1 Guiding Principles Western Health recognises the obligation to maintain a safe work environment for all personnel.  Western Health requires all personnel, regardless of their level within the organisation, to behave in a professional manner and to treat each other with dignity, respect and in a manner consistent with organisational values. Compliance with this procedure is an essential part of meeting that expectation. Disciplinary action may result where there is non-compliance (refer to *OP-EP2 Disciplinary Procedure*).  Consistent with Western Health values and in accordance with State and Federal Equal Opportunity and Anti-Discrimination Legislation, Western Health will not tolerate any form of discrimination, bullying, harassment, victimisation or inappropriate conduct that does not reflect the values of Western Health including but not limited to conduct outlined in the Code of Conduct . Personnel are encouraged to report all instances or complaints promptly so that appropriate measures can be taken. All incidents or complaints will be dealt with promptly and in a fair and transparent manner.  Western Health undertakes that all individuals, including those making a complaint and those against whom a complaint has been made, will be treated with respect and courtesy. All complaints and requests for information and advice regarding the complaints process will be dealt with in a sensitive and confidential manner throughout the process.  Western Health is committed to ensuring that an individual is not victimised, or treated unfairly, because he or she has made a complaint, supported another individual to make a complaint or has had a complaint made against them (refer to *Section 7.7* of this document).    Western Health, when requested, will provide all personnel with advice and access to the details of the application and obligations under this procedure.  The informal and formal processes outlined in this procedure are internal processes and do not seek to preclude personnel from pursuing any matter through external processes. Whilst Western Health will maintain strict confidentiality during all investigations into complaints, under some circumstances, depending on the gravity of the incident, Western Health may have an obligation and responsibility to refer matters to external agencies, such as the police. 7.2 Bullying WorkSafe in its publications defines Workplace Bullying as ‘*repeated, unreasonable behaviour directed towards an employee, or group of employees that creates a risk to health and safety’.*  The Fair Work Act 2009 defines bullying as:   * Where an individual or a group of individuals repeatedly behaves unreasonably towards a worker, or a group of workers of which the worker is a member and that behaviour creates risk to health and safety. * To avoid doubt this definition does not apply to reasonable management action carried out in a reasonable manner.   Bullying usually takes place over a period of time and will involve a pattern of repeated behaviour. It may also include different numbers and types of incidents.  **A broad range of behaviours can constitute bullying:**   * Examples of direct bullying include: * Verbal abuse; * Humiliating someone through sarcasm or insults; * Verbal taunts, name calling or unreasonable criticism; * Interfering with someone’s personal property or work equipment; and/or * Threats or actual acts of physical violence. * Examples of indirect bulling may include: * Deliberately excluding someone from workplace activities or interaction; * Giving someone the majority of unpleasant tasks, or allotting meaningless tasks; * Imposing impossible deadlines; * Intimidation; * Deliberately withholding information that is vital for effective work performance; * Deliberately changing work arrangements, such as rosters and leave, with the intent of inconveniencing a particular employee or employees; * Excessive scrutiny at work; and/or * Unjustified criticism or complaints.  This may be delivered via a variety of modalities including but not limited to verbal, written, via e-mail, telephone calls, use of online media such as Facebook and text message communication. **What does NOT constitute workplace bullying?:**   * Examples of behaviour/processes that do not constitute bullying include: * Directing an individual in the performance of his or her work; * Managing individual work performance; * Investigation of alleged misconduct; * Disciplining an individual for misconduct; * Allocating work in accordance with Western Health policies and procedures; and/or * A one-off incident of verbal abuse or harassment, especially if the victim’s performance was not affected.   Note: There is an important distinction to be drawn between bullying behaviour and an employer’s legitimate authority to direct and manage the performance of its personnel. 7.3 Harassment/Discrimination Harassment is a particular type of discrimination involving any form of unwelcome or uninvited behaviour that any reasonable person would regard as having the potential to humiliate, offend or intimidate. This may include but is not limited to verbal, written, via e-mail, telephone calls, use of online media such as Facebook and text message communication.  Harassment on the grounds of, but not limited to, a personal characteristic protected by law (listed below) is unlawful under State and Federal legislation. As legislation is enacted and amended, further additionalprotected grounds may be established.  The following characteristics are protected by law (refer to *OP-EP2 Equal Employment Opportunity* for definitions):   * Age; * Carer status, family responsibilities, parental status ; * Disability or impairment (including physical, sensory and intellectual disability, work related injury, medical conditions, mental, psychological and learning disabilities) ; * Employment activity; * Gender identity, lawful sexual activity, sexual orientation; * Industrial activity; * Marital status; * Physical features; * Political belief or activity; * Pregnancy, breastfeeding; * Race; * Religious belief or activity; * Sex; * Personal association with someone who has, or is assumed to have, one of these personal characteristics.   Harassment on the basis of one of the characteristics protected by law does not have to be intentional to be unlawful. What can be acceptable to one person may not be acceptable to another. **It is the way the individual perceives the behaviour and whether that perception is reasonable under the circumstances that are important in determining harassment**.  Harassment can also be experienced by a person other than at whom the behaviour was directed. For example, if a person overhears a joke they find offensive they may under the provisions of the legislation consider they have been harassed.  Examples of behaviour that may constitute harassment include:   * Imitating someone’s accent; * Offensive jokes, gestures or innuendo; * Asking questions about a person’s sexual preference or activities; * Racially oriented verbal abuse; * Irrelevant reference to a person’s racial, cultural, ethnic or religious background or affiliations; * Display of offensive material, e.g. posters, pictures, screen-savers; * Racial or religious vilification.  7.4 Sexual Harassment Sexual Harassment is unwelcome conduct of a sexual nature that a reasonable person would regard as undesirable, humiliating, intimidating or offensive.  Sexual harassment covers a wide range of unsolicited, unwelcome, non-reciprocated behaviours which can be physical, verbal or written and can include words, statements or visuals that are transmitted by paper, phone, fax, e-mail, office intranets or any other means of communication.  Sexual harassment in the workplace is unlawful under the provisions of State and Federal legislation.  Sexual Harassment might occur as a single incident or a series of incidents and may include:   * Uninvited and unnecessary physical contact (such as patting, touching or fondling through to molestation); * Unnecessary or deliberate physical intimacy such as brushing up against a person; * Offensive hand or body gestures; * Sex-based insults, taunts or teasing; * Sex-based jokes, comments or innuendo; * Unwelcome comments about a person’s sex life or physical appearance; * Sexual propositions or repeated invitations for dates; * Persistent questions or insinuations about a person’s private life; * Displays and / or distribution of sexually graphic material , in electronic or other formats such as photos, posters, calendars and magazine articles; * Suggestive behaviour such as staring or leering at a person or parts of their body; * Offensive email messages; * Offensive computer visual images and/or screen savers; * Where a power relationship is involved and the person in receipt of the behaviour has reasonable grounds for believing that rejecting an advance, refusing a request or taking objection to the conduct would disadvantage them in relation to their employment or work; and/or * Sexual assault or rape.   Examples of behaviour that may not constitute sexual harassment include:   * An expression of comfort or affection between colleagues; and/or * A one-off invitation to dinner, movies etc.   **Note: The definition of sexual harassment does not require intent on the part of the person being accused but is based on a reasonable person’s view that in all the circumstances, the person harassed would feel offended, humiliated or intimidated.**  Certain acts of sexual harassment may constitute a criminal offence. Physical molestation or assault, indecent exposure, obscene communications (including e-mail, telephone calls, use of online media such as Facebook and text messages), sexual assault, rape and stalking may be reported to the police. Action may subsequently be pursued by the police and Western Health will support an individual who has filed a report. 7.5 Reporting Process If an individual believes that they have been bullied, or harassed, or subjected to inappropriate workplace treatment there are informal and/or formal processes to be followed.  In considering which process to pursue employees, Managers and Supervisors should have regard for:   * The seriousness of the alleged behaviour; * The consequences of the behaviour; * Whether informal action has already been taken; and/or * The individual’s confidence and ability to deal with the matter on their own.   **Note:** All serious incidents, for example allegations of occupational violence and sexual assault, must be dealt with via the formal procedure.’ These serious matters cannot be dealt with via EMPOWIR. 7.5.1 Informal Procedure Individuals may adopt one or more of the following informal procedures:   * EMPOWIR (Employee Positive Workplace Issue Resolution) process: * EMPOWIR is an informal, non-disciplinary peer–led process that is available for all personnel to utilise to report or resolve workplace issues, complaints or concerns (please refer to the  [Positive Workplace at Western Health](http://inside.wh.org.au/departmentsandservices/PeopleServices/Pages/A-Positive-Workplace-at-Western-Health.aspx) intranet site for more information). * Inappropriate workplace behaviour can be reported anonymously to [pwic@wh.org.au](mailto:pwic@wh.org.au), or personnel may speak with a Positive Workplace Contact Officer (PWCO) to discuss their options. A list of PWCO’s can be found at the bottom of the [Positive Workplace at Western Health](http://inside.wh.org.au/departmentsandservices/PeopleServices/Pages/A-Positive-Workplace-at-Western-Health.aspx) intranet site. * Self Help: * The individual affected directly approaches the person responsible for the inappropriate behaviour to discuss the matter. * The individual should inform them that their behaviour is offensive and unwelcome and that they should stop the behaviour. * This option is most appropriate when the individual feels comfortable approaching the other party and advising them to stop unwelcome behaviour. * Manager/Supervisor: * Where an individual is not confident to approach the other party, they may raise the issue with their Manager/Supervisor who at the time will make an assessment of the situation and determine whether an informal or formal approach is warranted. * People and Culture may be consulted to assist with this assessment. * In the case that an informal process may be appropriate for the matter, a Manager/Supervisor may consider their involvement as a third party intervention as a possible strategy for dealing with the situation. * Third Party Intervention: * The affected individual may ask their Manager/Supervisor to speak to the alleged offender on their behalf. * The Manager/Supervisor would privately convey to the other party the individuals concerns and reiterate Western Health’s position on workplace bullying and harassment, without assessment of the merits of the case. * This is most appropriate when the individual does not feel comfortable approaching the alleged offender, but would like them to be told their behaviour is unwelcome. * Complaints or concerns may also be resolved through mediation or consultation. * A People and Culture Business Partner or the Manager of Employee Relations & Business Partnership may assist the parties to discuss options, consider alternatives and reach a consensual agreement. * It is important that all parties agree to participate if this method is to be successful in resolving the issue. * Individuals also have the option of contacting other external bodies for information and advice.  7.5.2 Formal Procedure The formal approach will be adopted in such cases where the informal approach has been unsuccessful or the conduct is of a serious nature or where the individual elects not to seek the Informal Procedure.  In such instances, the incident should be reported immediately. It is preferred that the complainant completes a *Complaint Form* and submits it to their Manager/Supervisor or to People and Culture.  Reported incidences of bullying/harassment/sexual harassment and inappropriate workplace conduct will be investigated in a timely manner following the processes as detailed in the procedure: [*OP-EP2 Formal Complaints*](http://inside.wh.org.au/policies-procedures-forms/WHDocuments/Formal%20Complaints.docx)*.*  Reporting and investigation of allegations are to be conducted in a confidential manner and in accordance with the fair and transparent principles outlined above. Any breach of confidentiality by any parties involved during and following the reporting and investigation process may lead to disciplinary action (refer to [*OP-EP2 Disciplinary Procedure*](http://inside.wh.org.au/policies-procedures-forms/WHDocuments/Disciplinary%20Procedure.docx)).  The parties will be advised of the outcome of the investigation upon its completion including any further actions that will be required to be implemented.  **Where a claim is substantiated:**   * If the complainant’s allegations are substantiated, disciplinary action may be determined as appropriate to be taken against the respondent in accordance with the provisions of [*OP-EP2 Disciplinary Procedure*](http://inside.wh.org.au/policies-procedures-forms/WHDocuments/Disciplinary%20Procedure.docx). * Where allegations are found to constitute serious misconduct the relevant Executive Director in consultation with the Divisional Director and Director of People, Culture and Safety will be responsible for determining the outcome/action to be taken, which may include making a recommendation to the Chief Executive regarding termination of employment. * Note: The Employee Assistance Program will be made available to all personnel throughout the complaint investigation process (refer to [*OP-EP2 Employee Assistance Program (EAP) procedure*](http://inside.wh.org.au/policies-procedures-forms/WHDocuments/Employee%20Assistance%20Program%20(EAP).docx)*).*   **Where a claim is not substantiated:**   * In some cases, follow up action may be required if the complaint is not substantiated. Such follow up action could range from a discussed and agreed facilitated discussion between the parties and appropriate alternative actions taken up within the workplace.  7.6 External Complaints Handling Options Should a complainant determine that the outcome of an internal Western Health investigation is not acceptable, they are encouraged to address their concerns with the Director of People, Culture and Safety.  Western Health at all times recognises and respects the rights of any person(s) at any time to:   * Lodge a complaint with an external State or Federal agency in relation to their complaint; * Report the matter to Victoria Police. * Western Health also reserves the right to determine to have a matter investigated by an external party and propose alternate dispute resolution procedures including but not limited to mediation, facilitated discussions and other assessment processes.  7.7 Victimisation - Avenues of Redress If an individual feels that they have been victimised or unfairly dealt with in the process, they should advise their manager assisting them with their complaint, contact their relevant Executive Director in the first instance or the Director of People, Culture and Safety or raise a complaint through the complaint procedure as referred to above.  Victimisation of any party involved in a complaint will not be accepted by Western Health and is unlawful under both State and Federal Legislation. 7.8 Responsibilities **Western Health:**   * Will address the complaint as early as possible. * Will enforce this policy. * Will take all reasonable steps available to promote awareness amongst its workforce on matters of bullying, harassment and sexual harassment. * Will seek to ensure that an individual is not victimised, or treated unfairly, because he or she has made a complaint, supported another individual to make a complaint or has had a complaint made against them. * Will maintain confidentiality at all times. * Will provide EMPOWIR to enable peer resolution.   **Managers/Supervisors/Directors/Executive Directors:**   * Will have the primary responsibility for ensuring that inappropriate and /or unprofessional conduct of personnel does not occur. * Must: * Monitor the working environment to ensure that acceptable standards of conduct and behaviour are observed at all times. * Model appropriate behaviour themselves consistent with the workplace Codes of Conduct, reflecting sound management and the Western Health values. * Promote Western Health’s positive workplace culture within their work area and be aware of the use of EMPOWIR as an option for resolution. * Treat all complaints seriously and take immediate action to investigate and resolve the matter; and * Refer complaints to the next level of management or People and Culture if they do not feel that they are the best person to deal with the matter (for example, if there is a conflict of interest or if the complaint is particularly complex or serious) or they feel compromised. * Maintain confidentiality at all times.   **Personnel:**   * Have a responsibility to ensure that they do not participate in inappropriate or unprofessional behaviour in the workplace, and to work towards reducing any behaviour and conduct that may constitute bullying and harassment either in the workplace or work related external activities. * Must ensure social media and internal communication is not used as a means of bullying and harassment * Are required to: * Comply with this procedure. * Ensure that their conduct and behaviour is consistent with workplace Codes of Conduct and Western Health values. * Report any conduct or behaviour that may constitute bullying or harassment at the first available opportunity, so as to enable Western Health to address the matter. * Offer support to anyone who is subjected to inappropriate conduct or behaviour and advise them where they can obtain help and advice. * Participate in an investigation of a complaint, by providing any information that may be relevant to the complaint. * Maintain complete confidentiality if they provide information during the investigation of a complaint. * Be aware that spreading any confidential information (including via gossip or rumours) may warrant disciplinary action to be taken against them.   Any personnel observing or overhearing unacceptable conduct should advise the relevant Manager of the conduct that they observed or overheard, even if no complaint is made. The relevant Manager can be your direct line Manager, the Manager of the individual exhibiting the inappropriate behaviour or the Manager of the individual subject to the behaviour. This action is most appropriate where the affected individual does not make a complaint, because they may not realise they are being subjected to inappropriate conduct or behaviour or they are concerned that reporting the matter may result in victimisation or further inappropriate conduct or behaviour. | |
| Document History Number of previous revisions: 6  Previous issue dates: October 1999, April 2002, March 2006, January 2009, January 2012 and November 2015  Minor amendment: not applicable this version | |
| References Charter of Human Rights and Responsibilities Act 2006 (Vic)  Racial and Religious Tolerance Act 2001 (Vic)  Equal Opportunity Act 2010( Vic)  Occupational Health and Safety Act 2004(Vic)  Public Sector Management and Employment Act 1998 (Vic)  Code of Conduct for Victorian Public Sector Employees  Workplace Relations Act 1996 (Cwlth)  Human Rights and Equal Opportunity Act 1986 (Cwlth)  Racial Discrimination Act 1975 (Cwlth)  Sex Discrimination Act 1984 (Cwlth)  Disability Discrimination Act 1992 (Cwlth)  Worksafe Victoria website: http://www.worksafe.vic.gov.au/wps/wcm/connect/wsinternet/WorkSafe/Home/Safety+and+Prevention/Health+And+Safety+Topics/Bullying/  Australian Human Rights Commission website: <http://www.hreoc.gov.au/index.htm>  Victorian Equal Opportunity & Human Rights Commission website: <http://www.humanrightscommission.vic.gov.au/>  National Standards for Volunteering – Australia | |
| Sponsor Director of People, Culture and Safety | |
| Authorisation Authority Executive Director of People, Culture and Communications | |