

<b>Goulburn Ovens Institute of TAFE</b>  <b>Policy no. POHR18</b>	<b>Title: Anti-Discrimination Bullying and Harassment Policy</b> <b>Executive approved: 8/08/2017</b>  <i>Responsible Officer: Executive Manager Human Resources</i> <i>Authorising Officer: CEO</i> <i>Review: Annual (14<sup>th</sup> February 2019)</i>
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## Anti-Discrimination Bullying and Harassment Policy

### 1. PURPOSE

GOTAFE is committed to providing a safe, flexible and respectful environment for our employees and other stakeholders, free from all forms of discrimination, bullying, sexual harassment, or racial and religious vilification. GOTAFE aim to provide equal employment opportunity (EEO) in the workplace, where all employees are treated fairly.

All GOTAFE employees are required to treat others with dignity, courtesy and respect. By effectively implementing this policy GOTAFE will provide a positive environment for attracting and retaining talented employees.

GOTAFE is committed to the [Statement of Adherence to Australian Democratic Principles](#).

Bullying, Harassment (including Sexual Harassment), Vilification and Cyberbullying are all forbidden under this Policy. They are also unlawful under state and federal legislation. Any breach of this policy will be taken seriously and may lead to disciplinary action, up to and including termination of employment or contract.

This policy provides information and advice on the following:

- Employees rights and responsibilities
- Additional responsibilities of Managers and Supervisors
- Merit-based hiring
- Anti-discrimination
- Anti-bullying
- Anti-Cyber Bullying
- Sexual Harassment
- Racial and Religious Vilification
- Victimisation
- Issue resolution (complaints process)
- Employee Assistance Program
- Pregnancy
- Breastfeeding.

### 2. SCOPE

This policy applies to:

- Board members;
- All GOTAFE employees, including permanent, temporary, casual, full-time, part-time, trainees, and contractors;
- How GOTAFE provides services to customers and how it interacts with other 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; conferences – wherever and whenever employees may be as a result of their GOTAFE duties; and
- Employee's interaction with other employees, clients and other members of the public encountered in the course of their duties.

### 3. PRINCIPLES

#### Employees Rights and Responsibilities

All employees are entitled to:

- Recruitment and selection decisions based on merit and not affected by irrelevant personal characteristics.
- Work free from discrimination, bullying, sexual harassment, and racial and religious vilification.
- The right to raise issues or to make an enquiry or complaint in a reasonable and respectful manner, without being victimised.
- Reasonable flexibility in working arrangements, especially where needed to accommodate their family and carer responsibilities, disability, religion.

All employees must:

- Follow the standards of behaviour outlined in this policy.
- Offer support to people who experience discrimination, bullying, sexual harassment or vilification, including providing information about how to raise an issue.
- Avoid gossip and respect the confidentiality requirement of the issue resolution/investigation procedures.
- Treat one another with dignity, courtesy and respect.

#### Additional responsibilities of Managers and Supervisors

Managers and supervisors must also:

- Model appropriate standards of behaviour.
- Take steps to educate and make employees aware of their obligations under this policy and the law.
- Intervene quickly and effectively when they become aware of inappropriate behaviour.
- Act fairly to resolve issues and enforce workplace behavioural standards, making sure relevant parties are heard.
- Help employees resolve complaints informally.
- Conduct formal complaints about breaches of this policy via the issue resolution/investigation procedure.
- Ensure employees who raise an issue or make a complaint are not victimised.
- Ensure that recruitment decisions are based on merit and that no discriminatory requests for information are made.
- Seriously consider requests for flexible work arrangements.

### 4. POLICY

#### Equal Employment Opportunity

Equal Employment Opportunity in the workplace (EEO) means that all employees and prospective employees should be treated fairly in relation to recruitment, promotion, benefits and rewards, regardless of their gender, race, religion, age, marital status, political affiliation, sexual preferences, or disability. GOTAFE is committed to uphold the principles of EEO by providing a workplace that is free of discrimination and our employees are judged on their skills, qualifications and experience, rather than on factors that have no bearing on their work.

#### Merit Based Hiring

All recruitment and job selection decisions at GOTAFE will be based on merit – the skills and abilities of the candidate as measured against the inherent requirements of the position – regardless of personal characteristics.

It is unacceptable and may be against the law to ask job candidates questions, or to in any other way seek information, about their personal characteristics, unless this can be shown to be directly relevant to a genuine requirement of the position.

**Anti-Discrimination**

Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by the law, such as gender, age, race or disability.

Discrimination can occur:

**Directly**, when a person or group is treated unfavourably because of a personal characteristic protected by law (see list below).

**Indirectly**, when an unreasonable requirement, condition or practice is imposed that has, or is likely to have, the effect of disadvantaging people with a personal characteristic protected by law (see list below).

**Protected personal characteristics include:**

- A disability, disease or injury, including work-related injury.
- Parental status or status as a carer, for example because they are responsible for caring for children or other family members.
- Race, colour, descent, nationality, ancestry or ethnic background
- Age, whether young or old, or because of age in general.
- Gender.
- Employment activity, for example because they ask questions or raise concerns about their rights or entitlements at work.
- 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.
- Physical features, such as height, weight, size, hair or birthmarks.
- Religious belief or taking part in religious activity, or not holding a religious belief.
- Pregnancy and breastfeeding.
- Lawful sexual activity.
- Sexual orientation or gender identity, including gay, lesbian, bisexual, transsexual, transgender, and heterosexual.
- Marital status, whether married, divorced, unmarried or in a de facto relationship.
- Political belief or political activity.
- An association with someone who has, or is assumed to have, one of these characteristics, such as being the parent of a child with a disability.

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

**Anti-Bullying**

Workplace bullying is defined as:

*“Repeated and unreasonable behaviour directed towards a worker or a group of employees that creates a risk to health and safety.”*

Repeated behaviour refers to the persistent nature of the behaviour and can refer to a range of behaviours over time.

Unreasonable behaviour means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Single incidents of unreasonable behaviour can also present a risk to health and safety and will not be tolerated.

Some examples of workplace bullying are:

- Aggressive and intimidating conduct
- Belittling or humiliating comments
- Victimisation
- Spreading malicious rumours
- Practical jokes or initiation

- Exclusion from work-related events
- Pressure to behave in an inappropriate manner
- Unreasonable work expectations.

Bullying can be directed downwards (from supervisors/managers to employees), sideways (between employees) or upwards (employees to supervisors/managers).

In assessing whether behaviour is unreasonable, you should consider if an impartial person observing the situation would think it is acceptable to behave that way.

Workplace bullying is **NOT**:

**Reasonable management action** taken by managers or supervisors to direct and control the way work is carried out is not considered to be workplace bullying, if the action is taken in a reasonable and lawful way.

The following are examples of what may constitute management action:

- Performance appraisals.
- Ongoing meetings to address underperformance.
- Counselling or disciplining a worker for misconduct.
- Modifying a worker's duties including by transferring or re-deploying the worker.
- Investigating alleged misconduct.
- Denying a worker a benefit in relation to their employment.
- Refusing an employee permission to return to work due to a medical condition.

"Management Action" can be deemed reasonable if:

- The behaviour is related to the management of the job role.
- It is reasonable for the management action to be taken.
- Is carried out in a manner that is reasonable.

That is, the test is whether the management action was reasonable, not whether it could have been undertaken in a manner that was 'more reasonable' or 'more acceptable'.

In general:

- Management actions do not need to be perfect or ideal to be considered reasonable.
- A course of action may still be 'reasonable action' even if particular steps are not.
- Any 'unreasonableness' must arise from the actual management action in question, rather than the worker's perception of it.
- Consideration may be given as to whether the management action involved a significant departure from established policies or procedures, and if so, whether the departure was reasonable in the circumstances.

At the very least, to be considered reasonable, the action must be lawful and must not be "irrational, absurd or ridiculous".

### **Cyber-bullying**

Cyberbullying, like all other forms of discrimination, bullying and harassment, is not tolerated at GOTAFE.

#### Recommended strategies for individuals to respond to instances of cyberbullying

The following general strategies are recommended to assist those who are victims of cyberbullying activity:

- Report any incidence of cyberbullying or upsetting hostile cyberspace behaviour, including deliberate exclusion; to a Manager or Human Resources.
- Do not respond to further messages / postings from the bully and, if possible, block their mobile phone number or email address.
- Keep evidence of any cyberbullying (including screen captures, the bully's screen name, text and images) to assist in tracking down the bully and as necessary reporting the matter to Police.

- Report any concerns to the administrator of the service used for bullying, whether this be the mobile phone provider if SMS is involved, the website administrator or internet service provider if social networking or chat services are the vehicles for the cyberbullying.
- Seek support from an appropriate and supportive contact such as Human Resources or the GOTAFE Employee Assistance Program or colleague.
- Contact Police immediately in cases of possible serious threats to life or physical well-being or where a child protection offence (e.g. child pornography, grooming) has occurred.

### **Sexual Harassment**

Sexual harassment is a specific and serious form of harassment. It is unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated or intimidated. Sexual harassment can be physical, spoken or written. It can include:

- Comments about a person's private life or the way they look.
- Sexually suggestive behaviour, such as leering or staring.
- Brushing up against someone, touching, fondling or hugging.
- Sexually suggestive comments or jokes.
- Displaying offensive screen savers, photos, calendars or objects.
- Repeated requests to go out.
- Requests for sex.
- Sexually explicit emails, text messages or posts on social networking sites.

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

Sexual harassment is covered in the workplace when it happens at work, at work-related events, between people sharing the same workplace, or between colleagues outside of work.

A single incident is enough to constitute sexual harassment – it doesn't have to be repeated. All employees have the same rights and responsibilities in relation to sexual harassment.

All incidents of sexual harassment – no matter how large or small or who is involved – require employers and managers to respond quickly and appropriately.

GOTAFE recognises that comments and behaviour that do not offend one person can offend another. This policy requires all employees to respect other people's limits.

### **Racial and Religious Vilification**

Vilification is behaviour that encourages others to hate, disrespect, or abuse a person or group of people because of their race or religion.

This includes spoken, written, online or physical behaviour towards a particular race or religious group that encourages others to ridicule them, be hateful or violent towards them, damage their property, or make false claims against them.

It is also against the law to give permission or help someone to vilify others, for example by publishing or distributing information about them.

Some behaviour may not be vilification, if it is reasonable and done in good faith, such as publishing a media report about racist behaviour. Some comments or jokes about a person's race or religion may not be vilification, but they could still be discriminatory if they happen in one of the eight areas of public life covered by the law, such as at work.

### **Victimisation**

Victimisation is against the law. Victimisation is subjecting or threatening to subject someone to a detriment because they have asserted their rights under equal opportunity law, made a complaint, helped someone else make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation.

It is also victimisation to threaten someone (such as a witness) who may be involved in investigating an equal opportunity concern or complaint.

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

Breaching the confidentiality of a formal complaint investigation or inappropriately disclosing personal information obtained in a professional role (for example, as a manager) is a serious breach of this policy and may lead to formal discipline.

GOTAFE has a zero tolerance approach to victimisation. Anyone who believes they have been victimised is required to immediately report the matter to their manager or HR.

### **Pregnancy**

GOTAFE strives to provide a working environment that upholds the principles of equal opportunity in providing a workplace that is free of discrimination, including behaviours that may discriminate against a pregnant job candidate or employee.

Pregnancy discrimination tends to be very complex as it embraces three areas of employment law, that is:

- Equal opportunity.
- Industrial relations.
- Occupational health and safety.

Each situation needs to be viewed on a case by case basis. However, some key points are:

- Any decision relating to the management of the pregnant employee from the time the employee declares her pregnancy through to the time of re-entry to the workplace, must be taken in the light of the industrial relations framework under which the employee works. In most cases this will be the Fair Work Act 2009 (Commonwealth).
- Fair Work Act 2009 has a provision for “transfer to a safe job” in respect to pregnancy. If this is not practical then, the manager or supervisor should seek advice from Human Resources.
- Equal Opportunity legislation protects the pregnant woman from being treated less favourably than others in the same or similar circumstances because of her pregnancy. It is also discriminatory if an employer imposes an unreasonable requirement on an employee that she cannot meet because of her pregnancy.
- Such protection applied to job applicants; employees; women on maternity leave; through to termination of employment.

It is unlawful to:

- Fail to interview or recruit a job applicant because of her pregnancy.
- Dismiss or retrench an employee because of her pregnancy.
- Transfer a pregnant employee to a lower paid job or deny promotion because of her pregnancy.
- In any way treat her less favourable than others because of her pregnancy or denying her a benefit of employment or subjecting her to any detriment because of her pregnancy.
- It is wise for the employer to treat the employee on maternity (and for that matter paternity) leave much the same way as if they were at the workplace. For instance, they would receive copies of newsletters; general correspondence given to all employees; advice of job vacancies; advice of relevant training programs.

The pregnant woman may request a change of duties based on medical advice. There can be clear occupational, health and safety obligations should this occur.

In addition, equal opportunity legislation would make the employer responsible for taking every reasonable care to accommodate the medical needs of the employee by working with the employee and her treating doctor.

**Breast-feeding**

GOTAFE strives to provide a working environment that upholds the principles of equal opportunity in providing a workplace that is free of discrimination, including behaviours that may discriminate against a job candidate or employee that requires consideration due to breast-feeding responsibilities.

The right of women to breastfeed in public without discrimination is enshrined in law. That means breastfeeding is permitted at work, at public venues, in shops and on public transport. Insofar as is reasonably practical, GOTAFE shall do all it can to accommodate an employee's wish to express breast milk, such as:

- Being flexible with when and how long is taken for breaks (e.g. institute a time-in-lieu system for the employee)
- Arrange for a private office where the employee can safely and with privacy express breast milk
- Ensure that other employees do not discriminate against the employee because of pregnancy or breast feeding.

**5. DOCUMENTATION**

- [Issue resolution and investigation procedure PRHR-191](#)
- [Statement of Adherence to Australian Democratic Principles ODSA-17](#)