

BULLYING, HARASSMENT AND DISCRIMINATION POLICY

Title	Bullying, Harassment & Discrimination Policy
Jurisdiction	Australian Capital Territory
Relevant Legislation	<p>Commonwealth:</p> <ul style="list-style-type: none"> - <i>Age Discrimination Act 2004</i> - <i>Australian Human Rights Commission Act 1986</i> - <i>Disability Discrimination Act 1992</i> - <i>Fair Work Act 2009</i> - <i>Human Rights (Sexual Conduct) Act 1994</i> - <i>Racial Discrimination Act 1975</i> - <i>Sex Discrimination Act 1984</i> <p>Australian Capital Territory:</p> <ul style="list-style-type: none"> - <i>Discrimination Act 1991</i> - <i>Work Health and Safety Act 2011</i>

A. POLICY PRINCIPLES

1. DEFINITIONS

1.1 In this Policy, words defined in the Relevant Legislation have the meanings given by the legislation, a number of which (as underlined> are set out in broad terms below. All other words have the following meanings:

- a) 'ANCA' means Australian National Capital Artists Incorporated
- b) 'Disability' includes total or partial loss or malfunction of a bodily or mental functions, presence or organisms capable of causing disease or illness, disfigurement of a part of the body, intellectual disability or developmental delay, illness or disease that affects a person's thought process, perceptions, emotions or judgment or that results in disturbed behavior, or being assisted by an assistance animal or some other aid associated with the disability;
- c) 'Policy' means this Bullying, Harassment & Discrimination Policy;
- d) The 'Relevant Legislation' means the legislation defined in the table at the front of this Policy;
- e) 'Worker' or 'you' means a person who has relationship in any capacity with ANCA including:
 - i. A Tenant;
 - ii. A member of ANCA staff;

- iii. A member of ANCA Board;
- iv. A contractor or subcontractor;
- v. An employee of a contractor or subcontractor
- vi. An employee of a labour hire company who has been assigned to work for ANCA;
- vii. An outworker;
- viii. An apprentice or trainee;
- ix. A student gaining work experience;
- x. A volunteer;
- xi. A commission agent, meaning a person who does work for another person as the agent of that person and who is remunerated, whether in whole or in part, by commission; or
- xii. A partner in a partnership.

2. APPLICATIONS AND ENFORCEABILITY

2.1 This Policy applies to ANCA and to the conduct of Workers, clients and visitors that takes place:

- a) on its premises; or
- b) elsewhere in circumstances where the conduct is undertaken in connection with ANCA's operations.

2.2 This Policy:

- a) is informational in terms of what ANCA may do to address allegations of bullying, harassment or unlawful discrimination. ANCA's core obligations are contained in the Relevant Legislation, not this Policy;
- b) is directional where it refers to what Workers must do or not do; and
- c) is not contractually enforceable against ANCA.

3. OUR POLICY

3.1 ANCA is committed to meeting its legislative obligations relating to bullying, harassment and unlawful discrimination, and endeavours to take all reasonable steps to provide and maintain a working environment free from these behaviours.

3.2 ANCA aims to:

- a) investigate and resolve allegations of bullying, harassment or discrimination as efficiently and effectively as is reasonable;
- b) ensure that, unless a complaint is vexatious or malicious, no one will be disadvantaged for making a complaint;
- c) promote this Policy within the organisation, including by:
 - i. making copies of this Policy available to new and existing Workers;
 - ii. holding information sessions with Workers to review their obligations under this Policy; and

- d) so far as is reasonably practical, monitor ANCA's premises with the aim of ensuring that work related illnesses and injuries as a result of bullying, harassment or unlawful discrimination are prevented or minimised.

4. YOUR RESPONSIBILITIES

4.1 ANCA can be held liable for the unlawful actions of its Workers or agents that are done in connection with their tenancy, employment or engagement. Accordingly, ANCA relies on all Workers to comply with this Policy and the Relevant Legislation.

4.2 All Workers must:

- a) not engage in any form of bullying, harassment or unlawful discrimination as prescribed by the Relevant Legislation. Bullying, harassment and unlawful discrimination can include conduct that is physical, verbal, written or delivered by way of electronic devices or social media platforms. Remember that behavior that may be acceptable to you may not be acceptable to others. Always be conscious of other people's feelings and different cultural backgrounds;
- b) report any bullying, harassment or unlawful discrimination of or by a workplace participant that they are aware of (in accordance with clause 9.1(b) of this Policy):
 - i. regardless of whether the conduct directly involves you or another;
 - ii. regardless of whether you witnessed the conduct, the conduct was reported to you or you became aware of the conduct through some other means;
 - iii. regardless of whether you or another Worker:
 - A. engaged in the conduct against another Worker or against a third party such as a client or service provider; or
 - B. were bullied, harassed or unlawfully discriminated against by a third party such as a client or service provider;
 - iv. where the conduct occurred outside ANCA's premises where:
 - A. the conduct could be viewed as a continuation of behavior in the organisation; or
 - B. ANCA exercised some control over either:
 - 1. the person's off duty behavior; or
 - 2. the premises where the conduct occurred; and
 - C. regardless of whether the conduct is a single event or a series of events;
- c) not victimise another person on the grounds that they have made an allegation of bullying, harassment or unlawful discrimination, because they propose to do so, or because they provide information in the course of a complaints process, unless it is proved that the allegations or information provided was false and not made in good faith;
- d) comply with this Policy; and
- e) maintain confidentiality if you provide information during the course of the complaints process.

B. LEGISLATIVE OBLIGATIONS

5. BULLYING

- 5.1 Under the *Fair Work Act 2009* (Cth), a Worker is bullied if an individual or a group of individuals *repeatedly behaves unreasonably* towards the Worker, or a group of Workers of which the Worker is a member, and the behavior *creates a risk to health and safety*.
- 5.2 Reasonable management action carried out in a reasonable manner is not bullying.
- 5.3 Bullying (whether intentional or unintentional) can include:
- a) behavior that is victimizing, humiliating, intimidating or threatening;
 - b) abusive, insulting, aggressive or offensive language, comments or behavior;
 - c) teasing or practical jokes;
 - d) spreading misinformation or malicious rumours;
 - e) pressuring someone to behave inappropriately;
 - f) unreasonable work demands, including setting unreasonable timelines or setting tasks that are unreasonably below or beyond a person's skill level;
 - g) excessive scrutiny at work; and
 - h) unreasonably denying a Worker access to information, supervision, consultation or resources to which the Worker would have had a reasonable expectation of accessing.

6. SEXUAL HARASSMENT

- 6.1 Under either or both of the *Sex Discrimination Act 1984* (Cth) and the *Discrimination Act 1991* (ACT), it is unlawful for:
- a) ANCA or a Worker to sexually harass a fellow Worker or a person seeking to become a Worker;
 - b) ANCA or a Worker to sexually harass another Worker at the workplace of either or both of those persons;
 - c) a person to sexually harass another person in the course of providing, or offering to provide, or in the course of seeking, or receiving, goods, services or facilities (including clients or customers);
 - d) a person who operates or works for an employment agency to sexually harass another person in the course of providing or offering to provide to that other person those services;
 - e) a member of any committee of management to sexually harass a member, or a person seeking to become a member of the club;
 - f) a person to sexually harass another person in the course of performing any function, exercising any power, or carrying out any responsibility for the responsibility for the administration of a Commonwealth law or for the purpose of a Commonwealth program; and
 - g) a person to subject another person to sexual harassment in the course of providing, or offering to provide, the other person with access to premises to which the public or a section of the public are entitled to have access, whether for payment or not.
- 6.2 A person sexually harasses another person (the person harassed) if:

- a) the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- b) engages in other unwelcome conduct of a sexual nature in relation to the person harassed;

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated or intimidated. Section 28A of the *Sex Discrimination Act 1994* (Cth) and section 58(1) of the *Discrimination Act 1991* (ACT).

‘Conduct of a sexual nature’ includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing.

6.3 Sexual harassment may occur as a single incident or a series of incidents.

6.4 Sexual harassment (whether intentional or unintentional behavior) can include:

- a) gestures of a sexual nature including nudity, flashing a private part of your body, staring at a person or at parts of their body;
- b) remarks or statements including sex-based taunts or name-calling, making promises or threats in return for sexual favours, repeated invitations to go out after prior refusal, requests for sex, sexually explicit conversation, persistent questions or insinuations about a person’s private life, discussion details of own private life (of a sexual nature), smutty or sexist jokes, inferences of a person’s sexuality e.g. that they are a prude or tart, suggestive comments or innuendoes about a person’s physical appearance or sexual preference;
- c) acts of physical contact of a sexual nature including uninvited touching of a person or their clothing, deliberately brushing up against a person or actual sexual physical violence; and
- d) conduct of a sexual nature that may be offensive including displays of sexually graphic material including posters, pinups, cartoons, graffiti or messages left on notice boards, desks or common areas, offensive e-mail message or computer screen saves, inappropriate gifts, taking photos of someone or stalking.

6.5 Sexual harassment is not about prohibiting friendship or genuine consenting relationships but relates to a misuse of power and unwelcome acts.

7. DISABILITY AND RACIAL HARASSMENT

7.1 Under the *Disability Discrimination Act 1992* (Cth), it is unlawful to harass (whether intentionally or unintentionally):

- a) a Worker or a person seeking to become a Worker, or
- b) a person seeking to acquire or use goods or services or facilities in relation to their Disability;

in relation to their Disability (whether directly or indirectly). Harassment includes troubling, attacking, harrying, persistently disturbing or tormenting the person (where the conduct is repetitious or occurs on more than one occasion).

7.2 Under the *Racial Discrimination Act 1975* (Cth), it is unlawful to engage in a public act (such as observable conduct, words, sounds, images or writing communicated to the public):

- a) which is likely to offend, insult, humiliate, or intimidate another person or a group of people; and
- b) because of the race, colour or national or ethnic origin of the other person or of some or all of the people in the group.

8. DISCRIMINATION

8.1 It is unlawful to discriminate against another person including by:

- a) treating a person unfavourably because of that person's attribute (that presently exists, previously existed but no longer exists, may exist in the future or is associated with or imputed to a person); or
- b) imposing, or proposing to impose, a condition, requirement or practice that has, or is likely to have, the effect of disadvantaging persons with that person's individual attribute,

8.2 Relevant 'attributes' for the purpose of discrimination legislation include:

- a) sex;
- b) sexual orientation, gender identity or intersex status;
- c) marital or relationship status;
- d) pregnancy or potential pregnancy, breastfeeding or status as a parent or carer;
- e) family responsibilities;
- f) race, colour, descent, nationality or ethnic origin; or
- g) religious or political conviction;
- h) disability;
- i) industrial activity or membership or non-membership of an association or organisation of employers or employees;
- j) age;
- k) profession, trade, occupation or calling;
- l) a spent conviction within the meaning of the *Spent Convictions Act 2000*; and
- m) association (whether as a relative or otherwise) with a person identified by reference to one of these attributes.

8.3 Areas of discrimination include:

- a) in the arrangements made for the purpose of determining who should be offered a benefit or entitlement (e.g. in deciding how to hold the interview process or deciding who to interview);
- b) in deciding who should be offered a benefit or entitlement (e.g. in deciding who should be offered employment, permitted to access, use or purchase goods, facilities, services and land, or granted a membership or a qualification);
- c) in deciding the terms or conditions in which a benefit or entitlement is offered;
- d) by denying or limiting a person's access to a benefit or entitlement (e.g. for promotion, transfer or training);
- e) by dismissing or terminating a person's employment or engagement;

- f) by subjecting the person to any other detriment; or
- g) by inciting hatred towards, serious contempt for or severe ridicule of a person or group of person on the grounds of race, sexuality, gender identity or HIV/AIDS status.

8.4 Exceptions to prohibitions include (but are not limited by):

- a) if there is a genuine occupational qualification for the position to be filled by a person of a particular age, sex, race, with a particular disability or trade, occupation or calling;
- b) if the person would be unable to carry out the inherent requirements of the position without the provision of assistance or facilities that would impose a justifiable hardship on ANCA;
- c) if the discrimination is practiced to comply with reasonable health and safety requirements;
- d) if the conditions or requirement is reasonable in the circumstance taking into consideration the extent of the disadvantage to the person (who cannot comply with the condition), the feasibility of overcoming or mitigating the disadvantage and whether the disadvantage is proportionate to the result sought in imposing the condition; or
- e) if the act is intended to reduce a disadvantage experienced by a relevant class of people with a particular attribute (e.g. giving older workers longer notice of redundancy).

C. COMPLAINTS PROCEDURES AND DISCIPLINARY SANCTIONS

9. COMPLAINTS PROCEDURE

9.1 In the event that you witness or are involved in any bullying, harassment, sexual harassment or discrimination you:

- a) should tell the person engaged in the conduct that their behaviour is not welcome (if you feel comfortable and safe to do so); and
- b) must immediately report any incidents of the conduct to ANCA to either:
 - i. the Arts Administrator; or
 - ii. the Chairperson or other Board member (whomever you feel most comfortable approaching).

9.2 Any tenant or member of staff notified of an incident of bullying, harassment or discrimination under clause 9.1(b) must report the incident to either the Arts Administrator or the Chairperson (whomever is most appropriate in the circumstances) before taking further steps.

9.3 In dealing with a reported complaint, ANCA:

- a) may request and require particulars or details of the conduct complained about;
- b) may adopt a procedure for resolution appropriate to the circumstances that may involve:
 - i. a complainant dealing with the situation themselves but seeking advice on possible strategies from Arts Administrator, Chairperson or a Board member;

- ii. the Arts Administrator, Chairperson or a Board member or manager speaking to the alleged harasser privately on a complainant's behalf, conveying the complainant's concerns and reiterating this Policy;
- iii. conciliation or mediation; and/or
- iv. an investigation by an appropriate person (either internal or external) who;
 - A. will allow the person complained about to bring a support person to any interviews or meetings. Any support person is a support person only and ordinarily will not be permitted to speak on behalf of the person being questioned or interviewed; and
 - B. may be required to notify the person complained about of the particulars of the complaint and allegations against them, to give them a reasonable opportunity to respond and advise them of the potential disciplinary sanctions for proven misconduct.
- c) aims to keep the complaint and investigation process as confidential as possible;
- d) aims to resolve all complaints in a timely and efficient manner, and with minimal escalation;
- e) will not necessarily dismiss a complaint solely on the basis that there are no witnesses to the incident complained of (other than the parties concerned);
- f) may separate the individuals concerned or put other arrangements in place until resolution of the matter;
- g) will not penalize a Worker as a result of having made the complaint in good faith; and
- h) may take disciplinary action against the person who complained, if the complaint was vexatious, malicious or otherwise lacking good faith.

10. DISCIPLINARY SANCTIONS

10.1 Depending on the severity and circumstances of any proven bullying, harassment or discrimination, sanctions may include a range of measures including (but not necessarily limited to):

- a) a requirement to attend counselling or training;
- a) a formal warning noted on the Worker's personnel file;
- b) the requirement to provide a written or verbal apology; and/or
- c) termination of employment.

11. PRIVACY AND RECORDS

11.1 ANCA may maintain records (including on a Worker's tenancy file):

- a) for statistical purposes;
- b) to record particulars of any alleged bullying, harassment or discrimination and how the incident has been resolved;
- c) to exercise its obligations under the Relevant Legislation; and
- d) for the purpose of proceedings in court or tribunal.

11.2 The records referred to at clause 11.1 may include information of a private and sensitive nature of both:

- a) unsubstantiated claims (that may or may not have been put to a Worker); and
- b) substantiated claims.

11.3 ANCA aims to protect the information referred to at clause 11.1 with reasonable security safeguards.