

Procedure

BULLYING AND HARASSMENT

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Policy:	<p>Homestyle Aged Care Services is committed to providing an environment where all employees, residents/representatives, visitors, volunteers and suppliers are treated with dignity and respect and bullying and harassment is not to be tolerated. Harassment is illegal and unacceptable behavior.</p> <p>Any complaint of workplace bullying or harassment will be investigated promptly, fairly, confidentially, seriously and in accordance with the Homestyle's grievance procedures. Failing to act will be considered condoning the behavior. Appropriate disciplinary action will be taken where it is found that bullying or harassment has occurred.</p> <p>While recognising the legal rights of individuals, Homestyle strongly discourages sexual contact between personnel, volunteers, contractors and residents and will examine any such contact to ensure it is not abusive.</p> <p>No person will be penalised or disadvantaged as a result of raising concerns or complaints relating to bullying or harassment.</p> <p>Any person who believes they have been bullied or harassed will be strongly encouraged to pursue the incident according to this procedure. This does not preclude any subsequent complaints lodged with the Victorian Equal Opportunity and Human Rights Commission. Employees who feel uncomfortable about reporting to their employer or they have reported to their employer and no action has taken place to stop the bullying are able to report incidents of bullying directly to the Fair Work Commission www.fwc.gov.au</p> <p>Personnel believed to be bullying or harassing others may face criminal charges, action before the Victorian Equal Opportunity and Human Rights Commission and/or termination of employment</p> <p>All personnel will be responsible for ensuring the implementation of this policy.</p>
Scope:	All personnel, residents and other stakeholders.
References:	<p>Equal Opportunity Act 2010 Workplace Gender Equality Act 2012 (Cth) Australian Human Rights Commission Act 1986 Disability Discrimination Act 1992 (Cth), Racial discrimination Act 1975 (Cth), Sex Discrimination Act 1984 (Cth) Age Discrimination Act 2004 (Cth) Fair Work Act 2009; Fair Work Regulations 2009 (Cth); AS/NZS ISO 9001 Quality Management Systems Accreditation Standards (Aged Care Act 1997 (Cth) and Quality of Care Principles 2014 (Cth)): 1.2, 1.6, 4.5 Occupational Health and Safety Act, 2004; Occupational Health and Safety Regulations 2007 Health Records Act, 2001 Privacy Act 1988; Privacy Amendment (Private Sector) Act, 2000, Privacy Amendment (Enhancing Privacy Protection) Act, 2012 (Cth) Prevention and management of aggression in health services, A handbook for workplaces, WorkSafe Victoria, Edition No. 1 June 2008 Workplace bullying – prevention and response, WorkSafe Victoria, October 2012 Guide Anti-Bullying, www.fwc.gov.au , 31 March 2014</p>
Definitions	<p>1. Harassment has the purpose or effect of:</p> <ul style="list-style-type: none">– Creating an intimidating, hostile or offensive work environment– Unreasonably interfering with an individual's work practice– Adversely affecting an individual's employment opportunity <p>Is unwelcome, offensive, humiliating or intimidating behaviour; it may be physical, verbal, written:</p> <ul style="list-style-type: none">– An unwelcome sexual advance, request for a sexual favour, attempts at kissing or touching, any act of physical intimacy– Insinuations about a person's private life– Gender related insults– Any gesture, action, comment (verbally or written) of a sexual nature in a person's presence; sexually explicit material– Workplace pranks and bullying– 'Do it or else' behaviour

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Definitions

2. Bullying -

WorkSafe Definition: Workplace bullying is characterised by persistent and repeated negative behaviour directed at an employee that creates a risk to health and safety

Fair Work Act definition: Workplace bullying occurs when:

- an individual or group of individuals repeatedly behaves unreasonably towards a worker or
- a group of workers at work, and
- the behaviour creates a risk to health and safety

It may occur in one-to-one situations, in front of managers or supervisors, directed to co-workers, residents or by written, visual, or electronic communication i.e. letters, drawings, emails or telephone. Whether it is intended or not, bullying is an OHS hazard

A broad range of behaviours can be **bullying**, and these behaviours can be direct or indirect.

Examples of direct forms of bullying include:

- verbal abuse
- derogatory, demeaning or inappropriate comments or jokes about a person's appearance, lifestyle and background
- insults and putting someone down. belittling or humiliating comments
- spreading malicious rumours or innuendo about someone
- interfering with someone's personal property or work equipment.
- aggressive and intimidating conduct
- victimisation
- practical jokes or initiation
- displaying offence material
- pressure to behave in an inappropriate manner

Examples of indirect bullying include:

- unjustified criticism or complaints
- deliberately excluding someone from workplace activities
- deliberately withholding or denying access to information or other resources
- withholding information that is vital for effective work performance
- setting tasks that are unreasonably above or below a worker's ability
- deliberately changing work arrangements, such as rosters and leave, to inconvenience a particular worker or workers
- setting timelines that are very difficult to achieve
- excessive scrutiny at work.

3. **Worker** under the Fair Work Act a worker may include any of the following:

- an employee
- a contractor or subcontractor
- an employee of a contractor or subcontractor
- an employee of a labour hire company who has been assigned to work in the person's business or undertaking
- an outworker
- an apprentice or trainee
- a student gaining work experience
- a volunteer—except a person volunteering with a wholly 'volunteer association' with no
- employees (whether incorporated or not).

4. **Employer** under the Fair Work Act is defined as 'a person conducting a business or undertaking'

5. Reasonable management actions carried out in a fair way are not **bullying**

For the purpose of this procedure, Manager refers to the line manager or the person in the management position to whom bullying or harassment was reported.

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ITEM / WHO	KEY STEPS	CLARIFICATION
1 Manager (with the HR Manager)	Prevention, General Action: Bullying and Harassment Refer: <u>Education and Staff Development</u> and <u>Grievance and Industrial Relation</u>	<ol style="list-style-type: none"> Ensures inclusion in orientation for all employees, contractors and volunteers and ongoing training as required Encourages employees who believe they are being bullied or harassed to tell the person the behaviour is unreasonable/ inappropriate, that they are offended and want it to stop Reports allegations to the HR Manager immediately and takes immediate action to investigate and respond to specific allegations Securely maintains accurate notes of discussions, investigation and associated documents (Grievance Report) Findings of bullying or harassment of a co-worker, resident, contractor, sub-contractor, an agent or service provider of Homestyle will result in disciplinary action and may result in termination with or without disciplinary action dependent on the situation
2 HR Manager	Application to Stop Bullying Received from Fair Work Commission (FWC)	<ol style="list-style-type: none"> Responds to FWC within 7 calendar days following receipt of the F73 – Response for an order to stop bullying accompanied by the worker's application form, and sends a copy to those indicated in FWC correspondence i.e. the worker who made the application, the accused (refer Item 3b), the person/business who employs/engages the accused (if different), and any representatives Investigates allegations in the application immediately (refer Item 3.0) Includes evidence with the F73 as well as the bullying and harassment policy and procedure and staff training records, including those of the alleged bully(ies) The claim can be disputed if it is not supported by the evidence, and: <ol style="list-style-type: none"> the alleged behaviour has not occurred repeatedly the action taken was reasonable management action carried out in a reasonable manner, and/or the application is frivolous, vexatious or has no reasonable prospect of success
3 HR Manager	Action Upon Receipt of a Bullying or Harassment Complaint: Assess the Incident and Interview Complainant	<ol style="list-style-type: none"> Managers report allegations to the HR Manager immediately Advises the complainant of their rights and responsibilities, including having a support person at interviews and meetings (e.g. HSR or union representative or friend), and the support available (e.g. EAP) Informs the complainant of the process, time frame and what they can expect will happen during the process and at the end Seeks confirmation of the facts, (not hearsay), avoiding leading questions, using what, when, where, how, how often and who e.g.: <ol style="list-style-type: none"> Communication of the behaviour as unwelcome, unreasonable, inappropriate to the accused? If so, how, when? What is the effect of the alleged bullying or harassment? Do you have any documentation (written notes) Witnesses: Aware of anyone else being bullied or harassed? Documents exactly what is said (Grievance Report) Finishes with a summary statement Tells the person what to expect next, such as further interviews, types of information sought, how disciplinary action will be determined, expected timeframes and their right to lodge a grievance at any time Follows-up to ensure no further problems (Grievance Report) Monitors the situation, ensuring complainant safety and confidentiality

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Position: CEO

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3.0 Investigation		
3a HR Manager	External Agent	<ol style="list-style-type: none"> Where appropriate/necessary (i.e. unmanageable aggressive behaviour or when management has difficulty dealing with the situation) and depending on the severity or number of complaints of alleged bullying or harassment, it may be deemed necessary to engage the services of an external investigator to interview and take statements from all parties prior to any further action being taken
3b Manager and HR Manager or external agent	Interview Alleged Bully or Harasser (the accused)	<ol style="list-style-type: none"> Arranges a meeting (including an impartial witness) in writing, advising of the purpose (it is an alleged charge and a fair investigation will be conducted) setting out the allegations and advising they may have a support person present at the interviews or meetings (e.g. HSR, union representative or friend), and the support available (e.g. EAP) Reiterates to the alleged bully or harasser their rights and responsibilities, including the ability to have a support person present at interviews or meetings, the support that is available and their right to lodge a grievance at any time Informs the alleged bully or harasser of the process, time frame and what they can expect will happen during the process and at the end Provides the policy and procedure, asks if familiar with it and confirms and documents response If received, advises an application has been received by FWC alleging bullying and Homestyle is required to respond Explains information will be kept as confidential as possible; <u>do not promise complete confidentiality</u> Describes the exact nature of the complaint asks if they did what was alleged (for each allegation separately), enquires about witnesses If guilt is admitted guilt, asks if they knew the behaviour was inappropriate/unwelcome, and inform them it must stop immediately, disciplinary action will occur (harassment is unlawful) and stresses reprisals are illegal with severe consequences Allegation denial, further investigation is necessary Stresses confidentiality—not to be discussed, including with the complainant Documents the interview/meeting (Grievance Report)
3c Manager and HR Manager or external agent	Interview Witnesses	<ol style="list-style-type: none"> Witnesses can be: <ol style="list-style-type: none"> Anyone who knew of the alleged bullying or harassing behaviour Former employees Anyone who was in the area at the time of the behaviour Anyone the accused nominates as being able to confirm that the alleged behaviour did not occur At the interview: <ol style="list-style-type: none"> States the meeting purpose, their role in the process and explains testifying in court might be necessary if the complaint goes that far and stresses confidentiality DOES NOT mention names at first States the circumstances of the situation Seeks ONLY first-hand information Asks about other witnesses Takes notes, documenting interviews/meetings (Grievance Report)

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3d Manager and HR Manager or external agent	Assess Validity of Allegations	<ol style="list-style-type: none"> 1. Correlates stories, noting discrepancies 2. Does not conclude allegations are valid because the accused was hostile, defensive or made jokes about the charges 3. Does not conclude allegations are invalid because: <ol style="list-style-type: none"> a. The complainant waited a long time before complaining b. The accused did not mean to offend or distress the complainant c. Personality problems between parties d. The complainant could not remember details 4. Conducts a risk assessment
4 HR Manager	Report Findings and Implement Actions	<ol style="list-style-type: none"> 1. Informs complainant of findings, outcome and actions: <ol style="list-style-type: none"> a. Apology, undertaking that behaviour will cease, disciplinary action, counseling, redress of losses, reporting of potential criminal behaviour to police or complaint not substantiated (assure that behaviour will be monitored) b. Encourages complainant to report any further incidents immediately 2. Meets with the accused and informs of findings and actions (or not) to be taken (utilising industrial relations advisors as appropriate to the situation such as disciplinary action or termination); reiterates that bullying or harassment will not be tolerated and harassment is unlawful 3. Informs senior management of findings
5 Manager	Action: residents/ clients /representatives /visitors	<ol style="list-style-type: none"> 1. Refer: <u>No Violence, Aggression or Abuse</u>
6 Manager	Monitor Behaviour	<ol style="list-style-type: none"> 1. Take further action if the behaviour has not ceased; follow up and evaluate the outcome
7 Manager	Monitoring	<ol style="list-style-type: none"> 1. This procedure is audited and reviewed at least 3 yearly and according to organisational risk as per Audit and Internal Assessment Schedule, with planned reviews documented on the Master Document Register 2. Data and statistics: Incident Reports, Comments and Complaints System, Management Report, performance management are analysed and plans developed to improve outcomes for residents, the service and personnel

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