**Harassment, Bullying and Violence Free Workplace Policy**

**Rationale:**

The Avenue Children Centre is committed to providing a safe, flexible and respectful environment for staff, families and children free from all forms of discrimination, bullying and sexual harassment. The Avenue Children’s Centre and Kindergarten will foster an environment of mutual respect, equality and recognition of educator and staff skills and strengths. This will be facilitated through the centre’s philosophy and by adhering to the Early Childhood Code of Ethics and the Code of Conduct Policy.

**Policy:**

Inappropriate behaviours including harassment, bullying and violence are not accepted and tolerated under any circumstances.

The Avenue Children’s Centre and Kindergarten is committed to the following values:

* Equal employment opportunity encourages a diverse organisation and workforce reflecting the broad diversity of the community.
* Ensure that people are treated as individuals, respected for their unique attributes and not excluded, harassed or bullied through unconscious bias, stereotypes or unlawful actions that may form the basis of discrimination, harassment, vilification or victimisation.
* Everyone in the workplace has rights and responsibilities under equal opportunity and anti-discrimination legislation. This responsibility ensures the working environment is safe, inclusive and promotes respect for others.
* All leadership team members have a responsibility to comply with legislation, monitor the work environment and encourage respect and diversity and to act promptly where concerns arise or complaints are made.

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**Definitions:**

Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by the law, such as sex, age, race or disability. Workplace discrimination can occur in:

* recruiting and selecting staff
* terms, conditions and benefits offered as part of employment
* who receives training and what sort of training is offered
* who is considered and selected for transfer, promotion, retrenchment or dismissal
* any other unfavourable treatment including harassment.

It is important to note that from a legal perspective it is irrelevant whether or not the discrimination was intended. The Equal Opportunity Act 2010 includes a positive duty on employers and persons who have obligations under the Act to eliminate discrimination, sexual harassment and victimisation. This positive duty to eliminate discrimination obliges workplaces to take reasonable and proportionate measures to eliminate discrimination, sexual harassment and victimisation. The Equal Opportunity Act 2010 provisions impose a positive obligation on employers to take action to eliminate prohibited conduct before it occurs or prior to a complaint being made as far as possible. The provisions require employers to think proactively about compliance with the anti-discrimination laws. This means for example, ensuring staff are undertaking training, regularly assessing workplace compliance and taking measures to ensure compliance and achieve improvement. The duty on employers to take action to eliminate discrimination is also present in a different form in Commonwealth legislation such as the Disability Discrimination Act 1992, which also applies to Victorian workplaces.

Occupational bullying is repeated, unreasonable behaviour directed towards an employee, or group of employees that creates risk of health and safety. If someone is being bullied because of a personal characteristic protected by equal opportunity law, it is a form of discrimination.

Bullying is a significant occupational health and safety issue, as it can cause harm to a person’s health and wellbeing, both physical and psychological. Under the Victorian Occupational Health and Safety Act 2004 employers have a primary legal duty to provide a healthy and safe workplace. Employees also have a responsibility to abide by safety standards and to cooperate with their employer’s actions to ensure a healthy and safe workplace is maintained. Bullying may also be unlawful under federal and state anti-discrimination legislation where the bullying is linked to, or based on, one of the attributes covered by the various pieces of legislation (for example, age, sex, race, disability, etc.). Serious cases of bullying may also be illegal under the Crimes Act (Vic) 1958 and can result in imprisonment of up to 10 years.

Workplace Harassment includes occupational bullying and/or discriminatory such as sexual or gender harassment, racial or religious intolerance or other unfair treatment such as not meeting equal opportunity laws. Harassment is unlawful under the Victorian Equal Opportunity Act 2010. A person unlawfully harasses another person if they make that other person (another employee or member of the public) feel offended, humiliated or intimidated because of one of the protected attributes listed above. It may involve inappropriate actions, behaviour, comments or physical contact that is objectionable or causes offence. It is important to note that from a legal perspective it is irrelevant whether or not the harassing behaviour was intended.

Unlawful harassment may have occurred if the behaviour makes the victim feel:

* offended and humiliated.
* intimidated or frightened; and/or
* uncomfortable at work.

Unlawful harassment can include behaviour such as:

* telling insulting jokes about particular racial groups
* sending explicit or sexually suggestive emails
* displaying offensive or pornographic posters or screen savers
* making derogatory comments or taunts about someone's race or religion
* asking intrusive questions about someone's personal life, including their sex life.

Sexual harassment is a specific and serious form of harassment. It is unwelcome sexual behaviour, which makes a person feel offended, humiliated or intimidated. Sexual harassment can be physical, spoken or written. Sexual harassment is unlawful under the Victorian Equal Opportunity Act 2010 and under federal legislation (Sex Discrimination Act 1984 (Cth)). Sexual harassment occurs when a person makes an unwelcome sexual advance, or an unwelcome request for sexual favours to another person, or engages in any other unwelcome conduct of a sexual nature in relation to another person, in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated or intimidated. It has nothing to do with mutual attraction or consenting friendships, whether sexual or otherwise. In Victoria, co-workers can be named sole respondents in cases of alleged sexual harassment.

Some examples of sexual harassment include:

* persistent, unwelcome demands or even subtle pressures for sexual favours or outings
* staring or leering at a person or at parts of their body
* unwelcome patting, pinching, touching or unnecessary familiarity, such as unnecessarily brushing up against a person
* offensive comments or questions about a person’s physical appearance, dress or private life
* sexually explicit pictures or posters or screen savers (words and images)
* sexually explicit telephone calls, letters, faxes, emails or voice mail messages
* humour such as smutty or suggestive jokes or comments
* innuendo, including sexually provocative remarks, suggestive or derogatory comments about a person’s physical appearance, inferences of sexual morality, or tales of sexual performance
* requests for sex
* insults or taunts based on sex
* sexually explicit physical contact.

Occupational violence is any incident in which an employee is physically attacked or threatened.

Equal Opportunity is a requirement under both Victorian and Commonwealth legislation. In Victoria, the main piece of legislation which makes it unlawful to discriminate is the Equal Opportunity Act 2010 (Vic) (EO Act 2010). Protected attributes in Victoria include:

* age
* colour
* descent or national or ethnic origin
* disability/impairment
* industrial activity/inactivity
* lawful sexual activity/sexual orientation or preference
* gender identity
* marital status, including de facto
* physical features
* political belief or activity
* pregnancy/breastfeeding
* race
* religious belief or activity
* sex
* status as a parent or carer
* personal association with someone of the above attributes
* irrelevant criminal conviction (under the Australian Human Rights Commission Act 1986 (Cth)).

Victimisation is unlawful under the Victorian Equal Opportunity Act 2010 (Vic). It is unlawful for a person to subject or to threaten to subject another person to any detriment because the other person, or someone associated with the other person, has made an allegation or complaint of discrimination, harassment or bullying on the basis of a protected attribute.

Direct discrimination is treating or proposing to treat a person with a protected attribute unfavourably because of that attribute The new test is whether or not certain treatment was less favourable to the person claiming discrimination, placing emphasis on the consequences of the treatment on the person claiming direct discrimination because of a protected attribute.

Indirect discrimination can occur when there is a requirement or condition or practice that is the same for everyone but disadvantages a person or is likely to disadvantage a person because they have one or more of the following protected attributes and which is not reasonable.

Unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten the other person. Behaviour includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining, punishing or threatening.

Risk to health and safety includes risk to the mental or physical health of the employee.

Disability: The EO Act 2010 defines disability (also known as impairment) as:

* Partial or total loss of a bodily function or part of the body
* The presence in the body of a disease
* Malfunction of a part of the body, including a mental or psychological disease or disorder, or learning disability
* Malformation or disfigurement of a part of the body, including an impairment that may exist in the future (including because of a genetic predisposition to that impairment) and behaviour that is a symptom or manifestation of an impairment.

**Roles and Responsibilities\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Educators and Management to conduct themselves in a professional manner according to the Early Childhood Code of Ethics, the Code of Conduct and legislative guidelines.

**Management will:**

* Carry out an induction process for new employees at the commencement of employment. At this time, appropriate behaviours will be reinforced and discussed
* Define clear expectations and guidelines for educators and staff through clear job descriptions, policies and procedures
* Create a workplace with vision and meaningful direction regarding goals for children and families and educators/staff
* Our centre will encourage feedback and open communication to create understanding between educators/staff and management
* Familiarise new employees with the Code of Conduct for Staff and Parents and Code of Conduct Policy and the Early Childhood Code of Ethics
* Inform educators that inappropriate behaviours such as harassment and bullying will not be tolerated
* Encourage educators to report inappropriate behaviours
* Address all inappropriate behaviours
* Increase educator/staff awareness of appropriate interactions through professional development and training
* Encourage open discussions through staff meetings, informal conversations and at performance appraisals to clarify each educator/staff’s role within our centre
* Welcome constructive feedback
* Educators and staff will be encouraged to express opinions and work collaboratively with the coordinator and the management of the centre to contribute to the success of the centre and to facilitate continual improvement
* Regularly review communication practices within the centre to ensure all educators/staff are supported, empowered, and acknowledged for their contributions to the team and the centre
* Treat all educators and staff equally and in a fair and impartial manner

**Employees will:**

* Be involved in decision making with a clear understanding of their roles and responsibilities as defined in their job descriptions, duty lists, rosters

and centre’s policies

* Be valued for their contributions to the centre’s program and routines
* Be encouraged to embrace the uniqueness and diversity of their colleagues
* Skills, strengths and opinions of team members will be respected and supported by all educators/staff to create team cohesion based on respect and professionalism
* Ensure that professional standards guide their educational practices
* Ensure that consistent values and ethics will foster a positive and productive work environment free from harassment
* Avoid gossip and respect the confidentiality of complaint resolution procedures
* Treat everyone with dignity, courtesy and respect

**When discrimination bullying or harassment occurs:**

* If a person believes they are being bullied, harassed or discriminated, and if that person feels able to do so, they should speak with the discriminator, bully or harasser regarding the unwanted, unwelcome or inappropriate behaviour.
* If that person feels unable to communicate directly with the bully, discriminator or harasser, the matter should be referred to the coordinator/2IC for assistance.
* Where an employee believes a colleague is being exposed to discrimination, bullying or harassment, that person has a duty to assist the colleague and bring the matter to the coordinator/2IC attention.
* If a staff member needs to ask any questions about any aspect of unacceptable conduct they may contact the coordinator/2IC

**Action by The Avenue Children’s Centre and Kindergarten:**

* Coordinator/2IC ad COM will consider a range of steps in response to a complaint even though the complainant may not want this to occur.
* If coordinator/2IC and COM considers this is necessary, this will be discussed with the complainant who will be advised as to the further steps considered necessary.
* Coordinator/2IC and COM will may also decide to stand aside a staff member on pay or relocate an individual to different duties whilst a complaint is being investigated.

Investigation of complaints

* Coordinator/2IC and COM will investigate all alleged breaches of this policy.
* All issues will be investigated and handled confidentially in line with the Staff Complaints and Grievance Policy and the Privacy and Confidentiality of Record Keeping Policy. The purpose of the investigation is to determine, using the principles of natural justice, whether any unacceptable conduct has occurred.
* Investigations may be conducted internally, and an external investigator may be appointed or arranged for an investigation by a panel of both internal and external investigators.

Intention

In relation to cases of discrimination, bullying or harassment, the fact that the alleged perpetrator may not have intended to discriminate against the other person or bully or harass them, is irrelevant.

Principles of natural justice

* Any allegations of unacceptable conduct should be investigated promptly.
* The person who is alleged to have committed acts constituting unacceptable conduct should be treated as innocent until such time as findings are made that any of the allegations are substantiated and that unacceptable conduct has occurred.
* The person alleged to have committed the unlawful conduct must be given the opportunity to provide his or her response or comment on the allegations.

No victimisation or detrimental action

A complainant will not be disadvantaged in their role at The Avenue Children’s Centre and Kindergarten for making a complaint, being a witness or being

an informant to an investigation of a complaint. Some examples of unlawful victimisation include ostracising, demoting or dismissing the person because they are a complainant, where the complaint has been made in good faith.

Vexatious complaints

The Avenue Children’s Centre and Kindergarten will not tolerate vexatious complaints. If a claim is not initiated in good faith (for example, is initiated without reasonable grounds to do so), disciplinary action may be taken.

Consequences for breach of this policy

If a complaint against The Avenue Children’s Centre and Kindergarten’s staff member is substantiated, they will face appropriate disciplinary action commensurate with the seriousness of the matter.

Appropriate disciplinary action may include provision of an apology, a warning, formal counselling and / or termination of employment (including termination without notice). ‘One-off’ or non-intentional breaches may result in the full range of disciplinary action.

The person may also be subject to complaints under applicable state or federal legislation.

**Links to other policies:**

* Code of Conduct Policy
* Code of Conduct for Staff and Parents/Guardians
* Stress Management for Staff Policy
* Occupational Health and Safety Policy
* Conflict and Grievance Procedure Policy
* Procedure to Resolve Grievances and Disputes-Professional Child Care Standards 2015
* Disciplinary Procedure- Professional Child Care Standards 2015
* Inclusion and Equity Policy
* Cultural Diversity Policy

**Sources and further reading:**

* Community Child Care Co-operative (NSW)
* Early Childhood Australia www.earlychildhoodaustralia.org.au
* Australasian Legal Information Institute www.austlii.edu.au
* Preventing and Managing Bullying at Work:
* A Guide for Employers www.comcare.gov.au
* Australian Government: Comcare – Bullying Risk Management Tool

<https://www.comcare.gov.au>

* Early Childhood Australia’s Code of Ethics
* Human Rights and Equal Opportunity
* Commission Act 1986
* Fair Work Act 2009
* NSW Anti-Discrimination Act 1977
* Guide to the National Quality Standard ACECQA (2011)
* Australian Human Rights Commission
* Work Safe Victoria
* Early Childhood Management Manual (ELAA)
* Relevant legislation and standards include but are not limited to:
* Equal Opportunity Act 2010 (Vic)
* Charter of Human Rights and Responsibilities Act 2006 (Vic)
* Racial and Religious Tolerance Act 2001 (Vic).
* Racial Discrimination Act 1975 (Cth)
* Sex Discrimination Act 1984 (Cth)
* Disability Discrimination Act 1992 (Cth)
* Age Discrimination Act 2004 (Cth).
* Disability Act 2006 (Vic)

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**Approved by:** Committee of Management  **Date:** 21/08/2017