

## Anti-Discrimination, Harassment & Bullying Policy

Policy number	PCP002 (Version 6.0)
Approving authority	NIDA Board
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Date of next review	January 2025
Responsible Officer/s	Director, People and Culture
Related policies	PCP006 Code of Conduct PCP001 Grievance Resolution Policy PCP027 WHS Policy PCP026 Whistleblower Policy PCP021 Equity and Diversity Policy

### 1. SCOPE OF POLICY

1.1 This policy applies to any person who carries out work in any capacity for NIDA, including directors, employees, casual staff, contractors, work experience students and volunteers (collectively known as 'Staff') at any workplace of NIDA:

This Policy is designed to support everyone who works at NIDA or is connected to the work we do by setting out:

- what discrimination, harassment and bullying mean;
- everyone's obligations in relation to discrimination, harassment, and bullying, and building a workplace that is safe, respectful and inclusive;
- how Staff can make a report or raise a concern about discrimination, harassment, or bullying; and
- NIDA's procedures to respond to such incidents or reports.

1.2 This Policy is not a term of any contract, including any contract of employment and does not impose any contractual duties, implied or otherwise, on NIDA.

### 2. POLICY

#### 2.1 This policy applies to behaviours that occur:

- In connection with work, even if it occurs outside normal working hours or while working at home;
- During work activities, for example when dealing with stakeholders, sponsors and members;
- At work-related events, for example at conferences and work-related social functions; and
- outside of work hours if that interaction involves Staff, stakeholders, or members, including whether that interaction is on social media.

#### 2.2 Expected Workplace Behaviours

Under work health and safety laws, Staff at NIDA must take reasonable care that they do not adversely affect the health and safety of others. NIDA expects people to:

- Behave in a responsible and professional manner;
- Treat others in the workplace with courtesy and respect;
- Listen and respond appropriately to the views and concerns of others;
- Be fair and honest in their dealings with others; and
- Embrace diversity.

### 2.3 NIDA's Position on Discrimination, Harassment and Bullying

NIDA will:

- take reasonable and proportionate measures to eliminate discriminatory conduct by Staff and protect Staff from discriminatory conduct, as far as possible;
- take steps to eliminate or minimise risks to health and safety, so far as reasonably practicable, including psychosocial risks such as risks associated with discrimination, harassment and bullying;
- not tolerate discrimination, harassment, or bullying. NIDA will take proportionate action in response to this behaviour, depending on the conduct and its impact; put the care and support of those impacted by discrimination, harassment and/or bullying at the centre of how it responds, including by hearing and considering their views about the response. Treat reports of discrimination, harassment and/or bullying seriously and will respond promptly and impartially. An employee found to have either committed or condoned discrimination, harassment and/or bullying in the workplace will be subject to disciplinary action.
- apply the principles of natural justice when dealing with discrimination, harassment, and bullying and keep the details of reports confidential while investigations are underway.
- take disciplinary action if a report of discrimination, harassment or bullying is found to be vexatious or malicious.
- NIDA will not tolerate victimisation of Staff members who make a report.

## 3. DEFINITIONS

For the purposes of this policy, the following definitions apply:

### 3.1 Natural Justice

The principles of natural justice are also referred to as procedural fairness and have been developed to ensure that decision making is fair and reasonable. Simply speaking, natural justice involves giving someone the opportunity to understand and respond to concerns raised against them, facilitating a timely and objective process and ensuring outcomes are proportionate.

### 3.2 Discrimination

Discrimination occurs when someone is treated less favourably than another, or is disadvantaged, in certain circumstances.

Australia has laws regarding discrimination at the Federal level such as the *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth), *Racial Discrimination Act 1975* (Cth) and the *Sex Discrimination Act 1984* (Cth) and in each State or Territory.

Unless there is a proper reason for doing so, such as an inherent requirement in the work or situation including any specific activity or circumstance, these laws make it unlawful to discriminate against a person because of a characteristic (protected attribute) such as: sex, race, colour, sexual orientation, gender identify, gender expression, intersex status, transgender status, age, physical or mental disability, marital or relationship status, family or carer's responsibilities, pregnancy, breastfeeding, religion, political opinion, social origin, service in the voluntary defence forces, or other protected attributes, depending on the State or Territory.

### *Direct discrimination*

When someone is treated less favourably or disadvantaged because of a personal characteristic or circumstance e.g., when an employee misses out on an internal promotion because they are considered too old for the job.

### *Indirect discrimination*

Indirect discrimination occurs when everyone is treated the same way according to a rule, policy, or directive, but which has the effect of being less favourable to people of a particular sex, age group, race, religion etc and which is not reasonable in the circumstances e.g., if a security company has height requirements for its employees – this may exclude a large proportion of women and this requirement is unreasonable.

There are exceptions from anti-discrimination law which may apply in some situations for example, because of the inherent requirements of a particular job.

## **3.3 Harassment**

Harassment is a form of discrimination. In general, harassment refers to behaviour:

- that is unwelcome (not wanted) or uninvited (not asked for);
- that a reasonable person would have anticipated would humiliate, offend, or intimidate the persons concerned; and
- that is based on one of the protected attributes.

Harassment can include, but is not limited to:

- sexual harassment (see below);
- sex-based harassment (see below);
- subjecting another person to a workplace environment that is hostile on the ground of sex (see below);
- verbal abuse or comments that put down or stereotype people, jokes or offensive gestures, ignoring or isolating a person or group because of or based on a protected attribute (including their race, sexual orientation, gender identity or expression, intersex, pregnancy, disability etc);
- mimicking someone's accent, or the habits of someone with a disability; or
- display or circulation of racist, pornographic, or other offensive images or materials in any format.

## **3.4 Sexual Harassment**

Sexual harassment occurs where a person:

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

Sexual harassment can be a one-off incident or a pattern of behaviour. Examples include but are not limited to:

- Unwanted touching or familiarity (including brushing up against someone);

- Indecent or sexual assault;
- Suggestive emails or jokes;
- Sexual propositions;
- Sexual references in conversations;
- Obscene phone calls;
- Leering or staring;
- Asking intrusive questions about a person's private life or body;
- Inappropriate advances on social networking sites; and/or
- Offensive language.

Mutual attraction between people is not sexual harassment. Conduct which is welcome or consensual is not unlawful and friendships or other relationships (whether sexual or not) which develop between people at or connected to work are typically a private concern unless they adversely impact on the workplace or create a conflict of interest. However, even conduct which is welcome may not be appropriate in the workplace.

### **3.5 Sex-based harassment**

Harassment on the ground of sex or "sex-based harassment" occurs where:

- by reason of the sex of the person harassed (or a characteristic that generally relates to their sex or that is imputed to their sex), a person engages in unwelcome conduct of a demeaning nature in relation to the person harassed; and
- this occurs where a reasonable person, in all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated, or intimidated.

Sex-based harassment includes harassing conduct that is "demeaning" but need not necessarily be "sexual".

Sex-based harassment could be a one-off incident or a pattern of behaviour. Examples include:

- Asking intrusive personal questions based on a person's sex, including about their body or anatomy
- Making sexist, misogynistic (prejudiced against women) or misandrist (prejudiced against men) remarks about a specific person
- Making inappropriate comments and jokes to a person based on their sex, including about their appearance, gestures, and voice
- Requesting a person to engage in degrading conduct based on their sex

### **3.6 Workplace environment that is hostile on the ground of sex**

A person (first person) subjects another person (second person) to a workplace environment that is hostile on the ground of sex if:

- the first person engages in conduct in a workplace where the first person and/or the second person work;
- the second person is in the workplace at the same time as or after the conduct occurs; and
- a reasonable person, having regard to all the circumstances, would have anticipated the possibility of the conduct resulting in the workplace environment being offensive, intimidating or humiliating to a

person of the sex of the second person (or a characteristic that generally relates to their sex or that is imputed to their sex).

The primary difference between a hostile work environment and other forms of unlawful conduct, such as sexual and sex-based harassment, is that the conduct that is not directed towards a particular person but results in a generally hostile environment.

Conduct that may create a hostile work environment includes but is not limited to the following conduct, which is often the precursor to sexual harassment: displaying obscene or pornographic materials, general sexual banter, innuendo, offensive jokes, and casual sexism.

### 3.7 Bullying

#### *Workplace Bullying*

Workplace bullying is defined as repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety. It includes behaviour that intimidates, offends, degrades, or humiliates a worker, possibly in front of co-workers, clients, or customers.

#### *Repeated Behaviour*

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

#### *Unreasonable Behaviour*

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.

#### *Examples of workplace bullying*

Examples of workplace bullying can include but are not limited to:

- Undermining work performance;
- Deliberately and inappropriately withholding work-related information or resources;
- Intentionally setting unreasonable timelines or constantly changing deadlines;
- Intentionally setting tasks that are unreasonably below or beyond a person's skill level;
- Changing work arrangements, such as rosters and leave, to deliberately inconvenience a particular employee or employees;
- Ignoring or isolating individuals;
- Teasing or making someone the brunt of pranks or practical jokes;
- Name calling and ridicule; and/or
- Verbal abuse or belittling comments

#### *What is not workplace bullying?*

Reasonable management action is not considered to be workplace bullying if the action is taken in a reasonable and lawful way. For example:

- Transfer of employment for operational reasons;
- Allocating work and giving constructive feedback on performance;
- Rostering and allocating working hours where the requirements are reasonable;
- Informing Staff about unsatisfactory work performance and/or inappropriate behaviour in an appropriate way;
- Performance management (provided you are given reasonable performance goals, standards and deadlines);
- Unsuccessful in achieving an internal promotion following a fair process;
- Implementing organisational changes or restructuring; and/or taking disciplinary action, including suspension or termination of employment.

### **3.8 Prohibited behaviour**

Some types of behaviour are very likely to offend at least some people and are completely banned. These are as follows:

- having sex at work
- touching the sexual parts of anyone else's body
- indecent or sexual assault
- exposing the sexual parts of your own or someone else's body
- deliberately accessing pornography, racist, anti-gay or anti-transgender material on the internet
- displaying or distributing pornography, sexual, racist, anti-gay or anti-transgender material in any form anywhere in the workplace
- stalking another employee, customer, client, or workplace visitor
- initiation rites that are sexual, dangerous, or offensive, humiliating or intimidating in other ways
- intentionally referring to a person who is transgender by their previous name or gender, or calling them 'it'.\*

## **4. EFFECTS OF DISCRIMINATION, HARASSMENT AND WORKPLACE BULLYING**

Behaviours of this nature may lead to the loss of trained and talented employees, damage staff morale, engagement, and productivity, increase absenteeism, cause costly workers' compensation claims or legal action, and lead to the decline of physical and mental health of employees.

## **5. RESPONSIBILITIES**

### **5.1 Managers and senior management**

All NIDA managers and senior management must take all reasonable steps to prevent harassment. This includes all of the following:

- Making sure that everyone they supervise understands this policy;
- Understanding why this policy is important and responding effectively to any questions or concerns about it;
- Making it clear that discriminating, harassing and bullying behaviour will not be tolerated;
- Promoting and encouraging a working environment that is free from discrimination, harassment and bullying;

- Demonstrating and modelling appropriate behaviour;
- Ensuring that the work environment is free of any material, including interactions via email, phone, SMS or social media that is sexually suggestive, racist, anti-gay, anti-transgender or otherwise offensive;
- Contributing to a working environment that is fair, equitable and harassment free;
- Making sure that the workplace and work processes do not facilitate discrimination and/or harassment – for example, do not require people to work late in isolated areas;
- Acting immediately if they have reason to believe that discrimination, harassment and/or bullying could be occurring (whether or not a report has been made);
- Encouraging Staff to intervene or report discrimination, harassment or bullying if they witness or are told about it, if they feel safe to do so;
- Ensuring that those who wish to make a report or raise an issue with regards to discrimination, harassment and bullying are supported and not victimised in any way; and
- Reporting to the Board and Executive on incidents and outcomes of discrimination, harassment, and bullying.

## 5.2 All staff

- All Staff of NIDA must treat others with respect and take all reasonable steps to prevent discrimination, harassment and bullying in our workplace. This means: Not discriminating against, harassing, or bullying anyone or encouraging others to do so. You may be liable at law for your actions if you engage in discrimination, harassment, or bullying. You may also be liable if you cause, request, instruct, induce, encourage, aid, authorise, assist, or permit someone to subject another person to discrimination or harassment:
- Stopping your behaviour immediately if someone seems to be offended by your behaviour and apologising if appropriate.
- Taking care to avoid behaviour that could be interpreted as discrimination, harassment or bullying. It is not a legally acceptable defence to say that you did not mean or intend to humiliate, offend, intimidate or demean someone else. Some people may also not feel comfortable telling you that your behaviour is offensive and unwelcome. This may be because of their personality or because they are too worried about the possible impact on their employment. It is your responsibility to ensure that you do not engage in conduct which is unwelcome or offensive.
- Intervening if you experience or become aware of inappropriate behaviour, in a way that is comfortable for you and if you feel safe to do so. Intervention may include reporting the behaviour;
- Participating in any inquiries or investigations about alleged discrimination, harassment and/or bullying;
- Maintaining confidentiality if you are involved in an investigation in relation to discrimination, harassment, or bullying. Disciplinary action can be taken for spreading rumours and may result in legal action for defamation. Listening to the wishes of anyone impacted by discrimination, harassment or bullying.

## 6. WHAT CAN YOU DO IF YOU HAVE BEEN SUBJECTED TO OR BECOME AWARE OF UNACCEPTABLE BEHAVIOUR?

### 6.1 Staff

If you experience discrimination, harassment or bullying, there is action that you can take that may resolve the problem. Some of these options include:

- If you feel safe and comfortable, you can tell the person that their behaviour is unacceptable and that it must stop. Maybe the other person is not aware that their behaviour is intimidating or unwelcome and will stop once they are told. It may be useful to speak with your Manager and/or the Director People and Culture in the first instance to seek guidance on how to do this;
- You may wish to report the behaviour using the Online Grievance Portal (available on the NIDA Intranet);

- If you wish to make a report relating to sexual assault or sexual harassment, please lodge a report using the Report Sexual Assault or Sexual Harassment form located on the NIDA Intranet. This form is also available on NIDA's Website in the Policies section.
- If you wish to make a report, you are encouraged to make the report as soon as possible after the incident(s) have occurred. NIDA understands that people will share their experience when they feel comfortable and that it may take time to process what has happened and feel ready to talk. Knowing about incidents and issues is helpful for NIDA's future efforts to prevent repeat and escalated incidents.

## **6.2 Reports regarding Managers**

If the alleged offender is a manager then report the Manager to the Director, People and Culture. You may wish to report the behaviour via the Online Grievance Portal.

## **6.3 External bodies**

You may wish to seek help from an external body or authority who can provide information about your options and in some cases may be able to provide a free, confidential dispute resolution process, which may be legally enforceable. Some external bodies which specialise in independent resolution of discrimination, harassment and/or bullying include:

- Australian Human Rights Commission.
- State Equal Opportunity Commissions
- State Workplace Health and Safety regulators; or
- the Fair Work Commission.

There may be time limits for lodging a complaint with an external body.

## **6.4 Bystanders**

If you become aware of discrimination, harassment, or bullying, by witnessing it or being told about it, you should intervene in a way you feel comfortable and safe. This may include:

- Redirecting the conversation.
- Separating the alleged offender from the situation before the circumstances escalate.
- Speaking up publicly to address the behaviour.
- Checking in with the person impacted and offering to help progress the matter.
- Encouraging the alleged offender to reflect on their behaviour and apologise.
- Reporting the behaviour using the Online Grievance Portal

When determining what action may be appropriate, you should take into account the preferences of the person impacted and the nature of the conduct. The person impacted may just want the behaviour to stop and to receive an apology from the alleged offender. However, in some circumstances, it may be necessary for you to make a report about the conduct (eg if the conduct is a criminal offence).

## **6.5 How NIDA will respond**

If discrimination, harassment, or workplace bullying is reported or observed, the following steps will be adhered to:



- a) The Manager or a member of the People and Culture team will speak to the parties involved as soon as possible, gather information and respond in a way that they consider appropriate, taking into account the views of the person impacted.
- b) Potential informal steps NIDA may take include:
  - i. A Manager speaking to the alleged harasser about their behaviour.
  - ii. Facilitating or mediating an open conversation between the parties.
  - iii. Putting systems in place to prevent further issues.
  - iv. Initiating further reviews to understand underlying cultural issues and taking preventative action such as education.
- c) If issues cannot be resolved or the unreasonable behaviour is considered to be of a serious nature, the Director, People and Culture may investigate or appoint an external investigator. Information/reports will be considered before a decision is made.
- d) All reports will be treated as confidentially as possible while an investigation or resolution process is underway. Only those people directly involved in the matter or in resolving it will have access to the information.
- e) There will be no victimisation of the person making the report or helping to resolve it. Reports made maliciously, vexatiously or in bad faith will result in disciplinary action.
- f) All parties are required to maintain confidentiality while an investigation or resolution process is underway.
- g) All meetings will be documented and stored securely.

## 7. VICTIMISATION

7.1 Victimisation occurs when the alleged offender takes any action that can reasonably be interpreted as 'retribution' against the person impacted as a result of them having made a report. Victimisation will not be tolerated and may result in disciplinary action being taken up to and including termination of employment.

7.2 Victimisation includes subjecting, or threatening to subject, another person to any detriment because that person has made or proposes to make an allegation of harassment, discrimination or bullying, provides information in relation to a report or intervenes to stop inappropriate behaviour. This is regardless of whether or not the allegation is pursued, or a formal report is made.

7.3 Victimisation may include, but is not limited to:

- Threatening behaviour, including threatening comments made to the person or about that person;
- Inappropriate discussion of the matter;
- Disparaging comments about the person who has made the report to the person, or to others about the person;
- Encouraging others to treat the person who made the report in a detrimental way.

Any individual who believes that they are being victimised has the right to report this and take action in accordance with the procedures outlined in this policy (see clause 6).

## 8. MALICIOUS AND VEXATIOUS REPORTS

8.1 Reports that are found to have been made falsely and maliciously will result in disciplinary action, which may include termination of employment.

8.2 Examples of frivolous or vexatious reports include (but are not limited to) situations where false or misleading information is provided, relevant information is withheld, facts are distorted or there is no demonstrated commitment to resolution.

## 9. VICARIOUS LIABILITY

9.1 Under legislation, the employer, as well as the offender, may be legally responsible for discrimination, harassment or bullying that occurs in the workplace or in connection with the person's employment. An employer may be vicariously liable for the conduct of:

- Individual employees;
- Managers and senior management;
- Contractors, casual workers, volunteers, consultants, or individuals employed on commission.

9.2 Senior management may also, by default, be liable for the conduct of employees for whom they are responsible. Accordingly, all employees are expected to be proactive in drawing situations of potential liability to the attention of Managers and senior management.

## 10. CONSEQUENCES OF BREACHING THIS POLICY

10.1 Appropriate disciplinary action will be taken against a person who is found to have breached this policy. These measures will depend on the nature and circumstance of each breach and could include:

- A verbal or written apology;
- One or more parties agreeing to participate in counselling or training;
- A verbal or written reprimand (may include formal warning); and/or
- Demotion or dismissal of the person engaging in the discriminatory, harassing or bullying behaviour.

10.2 If the investigation finds that discrimination, harassment, or bullying has not occurred or cannot be substantiated, NIDA may still take appropriate action to address any workplace issues leading to the report.

## 11. RELATED LEGISLATION / INFORMATION AND USEFUL CONTACTS

- [Work Health and Safety Act 2011](#)
- Full-time staff can access NIDA Employee Assistance Program (EAP) | AccessEAP – 1800 818 728
- Casual staff can access support via Support Act Wellbeing Helpline – 1800 959 500
- [Lifeline Telephone Counselling and Support](#) – 13 11 14
- Safe Work Australia – [Guide for preventing and responding to workplace bullying](#)
- Age Discrimination Act 2004: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/ada2004174/](http://www.austlii.edu.au/au/legis/cth/consol_act/ada2004174/)
- Disability Discrimination Act 1992: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/dda1992264/](http://www.austlii.edu.au/au/legis/cth/consol_act/dda1992264/)
- Racial Discrimination Act 1975: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/rda1975202/](http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/)
- Sex Discrimination Act 1984: [http://www.austlii.edu.au/au/legis/cth/consol\\_act/sda1984209/](http://www.austlii.edu.au/au/legis/cth/consol_act/sda1984209/)
- New South Wales Anti-Discrimination Act 1977 (NSW): [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/aa1977204/](http://www.austlii.edu.au/au/legis/nsw/consol_act/aa1977204/)

## 12. VARIATIONS

NIDA reserves the right to vary, replace or terminate this policy from time to time.

## 13. CHANGE HISTORY

<b>Date</b>	<b>Change Description</b>	<b>Reason for Change</b>	<b>Author/s</b>	<b>Version</b>
05/05/2009	Creation.		Human Resources Manager.	1.0
20 /11/2014	Inclusion of an up-to-date list of grounds for discrimination, Include the role of external agencies.	Review and update.	Executive Director People and Culture after review by ET and consultation with employees.	2.0
November 2016	Policy review and update		Executive Director People and Culture	3.0
October 2019	Policy review and update	Review and update	People and Culture Manager External HR Consultant	4.0
January 2023	Policy review and update	Legislative updates	Director, People and Culture External Legal Review	5.0
January 2024		EAP Update	Director, People and Culture	6.0