

Discrimination, Bullying & Harassment

Policy

August 2025

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1 Overview

The Smith Family is committed to supporting diversity, equity and inclusion in the workplace and ensuring all team members are treated with dignity and respect.

We promote a psychologically safe workplace where team member attributes including gender identity, sexual orientation, cultural background, beliefs, age or abilities are valued; where we all feel safe, welcome, included and free from unlawful workplace conduct.

This policy reflects our zero-tolerance approach to unlawful workplace conduct, namely:

- Discrimination;
- Harassment;
- Sexual harassment;
- Sex-based harassment;
- Hostile work environments on the ground of sex;
- Workplace bullying; and
- Victimisation;

and our commitment to taking all reasonable steps to address this conduct in a timely, person-centred and trauma-informed way.

1.1 Purpose

This policy is intended to provide guidance for all team members employed or engaged by The Smith Family and is intended to provide information, guidance and resources on The Smith Family's approach to addressing unlawful workplace conduct including discrimination, bullying and harassment within the organisation.

1.2 Scope

This policy applies to all team members of The Smith Family employed or engaged in activities connected with their role or responsibilities at The Smith Family, including funded and organised social activities that occur both on and off Smith Family premises. Though the policy covers team member interactions with other team members and external parties, such as students and families, it only provides recourse for team members.

This policy does not cover allegations of discrimination, bullying and harassment by external individuals, community members and stakeholders relating to The Smith Family's programs and operations. These are covered by the *External Complaints and Procedures*.

For all team members, compliance with this policy is a condition of employment or engagement. However, the content of this policy is not incorporated into any contract of employment or engagement.

1.3 Definitions

- **Active Bystander** is a team member who takes action when they see or hear about disrespect, discrimination, exclusion or other unlawful behaviours as addressed in this policy taking place at work. Taking action can take many forms; for example, speaking up against sexist or disparaging language or jokes, or identifying workplace practices that discriminate against marginalised groups. It can also include encouraging others to speak up or take action. It can be taken before, during or after an inappropriate or unlawful behaviour has occurred. **Bullying** at work occurs when a person or a group of people behave unreasonably and repeatedly towards a worker or a group of workers while at work, and the behaviour creates a risk to their health and safety (whether psychological or physical). Unreasonable behaviour refers to behaviour (whether intentional or not) that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, intimidate, offend, degrade, insult, undermine or threaten a person. “Unreasonable” behaviour becomes workplace bullying when the behaviour presents a risk to the person’s health or safety. “Repeated” refers to the persistent nature of the behaviour and can involve a range of behaviours over time.
- **Discrimination** is treating, or proposing to treat, someone less favourably because of a Protected Attribute (as defined below). **Direct discrimination** occurs when an individual treats another person or group of people less favourably than another person or group in a similar situation because of a Protected Attribute. **Indirect discrimination** occurs when a policy or practice appears neutral but in fact results in an individual or group being treated less favourably when compared with another individual or group because of a Protected Attribute.
- **Diversity** is a collection of individual attributes that includes, but is not limited to, demographic diversity, cognitive diversity, background and lived experience. Demographic diversity may be visible or invisible and may include (but not be limited to) gender, marital or family status, sexual orientation, gender identity, age, disability, ethnicity, caring or family responsibilities, religious beliefs, cultural background, socioeconomic background, perspective and experience.
- **Equity** is the state where all team members are provided with fair opportunities based on their individual needs. Equity recognises that we do not all start from the same place and that we must acknowledge individual needs. Equity also means that The Smith Family may make adjustments to address imbalances where it is reasonable to do so.
- **Harassment** is unreasonable and unwanted, unwelcome or uninvited behaviour (whether it is verbal, physical, electronic or otherwise) towards another person because the other person has a particular Protected Attribute, in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated or known that the behaviour would make a person feel offended, humiliated or intimidated (whether or not that effect was intended) or which makes the workplace uncomfortable and hostile for other workers. Harassment can be a single incident or a series of incidents. It can be subtle or implicit, rather than explicit. The intention of the person engaging in the conduct is irrelevant.
- **A hostile work environment on the ground of sex** is where a workplace environment is hostile and intimidating to people of a particular sex, even if behaviour is not specifically directed at them or any person. A person (the first person) is subject to a hostile work environment on the ground of sex by another person (the second person) if:

- the conduct occurs in a workplace where one or both the first person or the second person works;
- the second person is in the workplace at the time the conduct occurs or after, and
- a reasonable person 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 first person by reason of their sex, a characteristic that is generally linked to persons of their same sex, or a characteristic that is generally attributed to persons of their same sex.
- **Inclusion** is the state where all team members have fair and equitable opportunity to contribute fully and participate in the workplace. This is achieved when individuals feel valued, respected, psychologically safe and have a sense of belonging.
- **Person-centred** keeps the person at the centre of decision-making and planning and gives that person choices about how the organisation or business will respond. Transparency and accountability underpin this approach.
- **Protected Attributes** are personal characteristics or 'attributes' which are protected under federal and state discrimination laws and include, but are not limited to: age, parental or carer status, or family or carer's responsibilities; disability / impairment (including physical, sensory and intellectual disability, work related injury, medical conditions or record, mental, psychological and learning disabilities); gender identity / expression, sexual orientation and intersex status; industrial (trade union) activity; lawful sexual activity; employment activity; physical features; religious beliefs or activities; political beliefs or activities; sex, pregnancy (including potential pregnancy) and breastfeeding; experiencing family and domestic violence; marital or relationship status; race (including colour, nationality, ethnicity and social origin) and any other characteristic prohibited by law.
- **Sexual harassment** is a particular type of harassment. Sexual harassment is any unwelcome sexual behaviour, such as an unwelcome, unsolicited or non-reciprocated sexual advance, request for sexual favours or other unwelcome conduct of a sexual nature in relation to another person, in circumstances where a reasonable person, having regard to all the circumstances, would have anticipated or known that behaviour would make a person feel offended, humiliated or intimidated, whether or not this was the effect intended. Sexual harassment can be physical and/or psychological in nature.
- **Sex-based harassment** is where a person engages in unwelcome conduct of a demeaning nature because of a person's sex, a characteristic that is generally linked to the person's sex, or a characteristic that is generally attributed to a person's sex, in circumstances where a reasonable person would have anticipated or known that the other person would be harassed, offended, humiliated or intimidated.
- **Team members** are all people employed or engaged on a permanent, contract or casual basis, including volunteers and student placements.
- **Trauma-informed approach** recognises the impact of this experience and prioritises safety, trustworthiness, choice, collaboration and empowerment in interacting with someone who has experienced trauma (see person-centred above).
- **Victimisation** occurs when a person unreasonably subjects or threatens to subject another person to a detriment because they have (or propose to) assert their rights under this policy or applicable equal opportunity or anti-discrimination law, made a complaint, helped someone else make a complaint, provided a statement or

information with respect to a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation.

- **Vilification** is publicly inciting hatred, serious contempt or severe ridicule of or offending, humiliating, insulting, intimidating a person on the basis of an attribute protected by law.

1.4 Legislative Context

Our commitment to preventing discrimination, bullying and harassment is guided by key federal laws, including:

- **Fair Work Act 2009 (Cth):** Regulates the employment relationship between National System employers and employees in Australia. It sets minimum employment standards, protects employee rights and provides a framework for resolving disputes. It also prohibits a person from sexually harassing another person in connection with work and provides protections for victims of sexual harassment. The minimum standards in the Fair Work Act may be supplemented by other legislation (as outlined below), or industrial instruments (such as Modern Awards or enterprise agreements).
- **Sex Discrimination Act 1984 (Cth):** Protects against discrimination based on sex, sexual orientation, gender identity, intersex status, marital or relationship status, pregnancy or potential pregnancy, breastfeeding or family responsibilities. It also addresses sexual harassment and harassment on the ground of sex.
- **Disability Discrimination Act 1992 (Cth):** Makes it unlawful to discriminate against individuals in various areas of public life, including employment, because of their disability.
- **Racial Discrimination Act 1975 (Cth):** Prohibits racial discrimination and promotes equality before the law for all people regardless of race, colour, descent or national or ethnic origin, or immigrant status. Protects people from racial discrimination in many areas of public life, including employment.
- **Age Discrimination Act 2004 (Cth):** Makes it unlawful to discriminate against individuals on the basis of age in many aspects of public life, including employment.
- **Australian Human Rights Commission Act 1986 (Cth):** Establishes the Australian Human Rights Commission, which investigates and conciliates complaints of discrimination and human rights breaches and is the body responsible for ensuring organisations comply with the positive duty (as identified below).

Additionally, we comply with state and territory anti-discrimination laws, including:

- **New South Wales:** Anti-Discrimination Act 1977
- **Victoria:** Equal Opportunity Act 2010
- **Queensland:** Anti-Discrimination Act 1991
- **Western Australia:** Equal Opportunity Act 1984
- **South Australia:** Equal Opportunity Act 1984
- **Tasmania:** Anti-Discrimination Act 1998
- **Australian Capital Territory:** Discrimination Act 1991
- **Northern Territory:** Anti-Discrimination Act 1992

Positive Duty

Under the **Sex Discrimination Act 1984 (Cth)**, The Smith Family acknowledges its positive duty to take reasonable and proportionate measures to eliminate, as far as possible, unlawful behaviour such as discrimination on the ground of a person's sex, sexual harassment, sex-based harassment in the workplace, hostile workplace environments and related acts of victimisation. This requires us to seek to prevent such conduct and foster a culture of respect, equality and inclusion. By adhering to these laws and fulfilling our positive duty, we strive to maintain a work environment where all employees feel safe, respected and valued.

2 Discrimination

Discrimination may be unlawful where a person treats, or proposes to treat, someone or a group of people less favourably because of a Protected Attribute (as defined in section 1.3 above).

While it is not possible to list all circumstances which would be considered discrimination, some examples include:

- Refusing training for an older employee because of their age;
- Not hiring an applicant because they are pregnant or could potentially become pregnant in the future; or
- Making redundancy decisions based on employees who spend the greatest proportion of their time in the office (as this may indirectly discriminate against employees with caring responsibilities or disabilities).

3 Bullying

While it is not possible to list all circumstances that would be considered bullying, it can range from obvious verbal or physical assault to very subtle psychological abuse and may involve:

- Physical or verbal abuse;
- Shouting, screaming or offensive language;
- Isolating or excluding others;
- Intimidation;
- Constant unconstructive criticism;
- Assigning meaningless tasks unrelated to the job;
- Deliberately changing work rosters to inconvenience a particular employee;
- Deliberately withholding information vital for effective work performance;
- Repeated refusal of requests for leave or training without adequate explanation or suggestions for alternatives; or
- Cyberbullying.

Bullying should not be confused with advice or feedback on work performance or behaviours demonstrated at work. The giving of feedback is a normal part of work and as such, feedback on work performance or work-related behaviour that is intended to assist the team member to improve their work, or the standard of their behaviour is not considered bullying.

4 Harassment

While it is not possible to list all circumstances that would be considered harassment, some examples include:

- Slurs, stereotyping, jokes, threatening, intimidating or hostile acts that show animosity towards an individual or group (even where that conduct is not directed at a particular individual or group);
- Written or graphic material that denigrates or shows hostility towards an individual or group; or
- Microaggressions – comments or actions that are hurtful or stigmatising to a marginalised group or person (even where that conduct is not directed at a particular individual or group).

Harassment should not be confused with advice or feedback on work performance or work-related behaviour of an individual. The giving of feedback is a normal part of work and as such, feedback on work performance or work-related behaviour that is intended to assist the team member to improve their work, or the standard of their behaviour is not considered harassment.

4.1 Sexual harassment

Examples of sexual harassment could include:

- Promising, directly or indirectly, a team member a reward if the team member complies with a sexually oriented request;
- Threatening, directly or indirectly, to retaliate against a team member if they refuse to comply with a sexually oriented request;
- Denying, directly or indirectly, an employment-related opportunity if the team member refuses to comply with a sexually oriented request;
- Engaging in sexually suggestive physical contact or touching another team member in a way that is unwelcome;
- Displaying, storing, viewing, downloading, forwarding or transmitting pornographic or sexually oriented materials using The Smith Family computer equipment or other facilities;
- Digital harassment – inappropriate messages or images sent via email or social media; or
- Making unwelcome sexual or romantic advances, with or without touching, toward a team member and persisting despite the team member's rejection of the advances.

Other examples, depending on the circumstances, may include:

- Sexual jokes, nicknames, language, sexual innuendo, written or oral references to sexual conduct, banter or gossip;
- Sexually suggestive objects, pictures, posters or cartoons on display or sent to Team Members;
- Sexually oriented comments on an person's body, sexual activity, deficiencies or prowess; unwelcome leers, whistles, deliberate brushes against a person's body in

a suggestive manner, sexual gestures or suggestive insulting; or Inquiry into sexual experiences or discussions of one's sexual activity.

Consensual sexual or romantic relationships between team members should not interfere with workplace activity and is not considered sexual harassment where it is invited, mutual, consensual and reciprocated.

Where team members are in a consensual relationship, it must be disclosed to the appropriate senior manager where there is a position of power or reporting relationship between the team members.

4.2 Sex-based harassment

Sex-based harassment is unwelcome conduct that is demeaning because of a person's sex. It can include:

- Unwelcome physical contact, such as touching, hugging, cornering, or kissing;
- Staring or leering;
- Suggestive comments or jokes;
- Making sexist or misogynistic remarks;
- Unwanted requests to go out on dates;
- Requests for sex;
- Emailing pornography or rude jokes;
- Sending sexually explicit texts or images;
- Intrusive questions about your private life or body;
- Displaying posters, magazines or screen savers of a sexual nature;
- Calling people sex-specific derogatory names;
- Sharing sexually inappropriate images or videos, including by social media;
- Offensive comments about a person because of their sex, sexuality or gender; or
- Deliberately misgendering someone (e.g. using incorrect pronouns).

4.3 Hostile work environment on the ground of sex

Examples include:

- Inappropriate comments and jokes: Making comments or jokes that are sexist, misogynistic or misandrist;
- Displaying or circulating offensive materials: Showing images or materials that are sexist, misogynistic or misandrist, or obscene, sexist, pornographic or sexual in nature;
- Intrusive questions: Asking personal questions about a person's sex life;
- Unwelcome physical contact: Staring, leering or touching someone without their consent;
- Unwanted invitations: Asking someone to go out on a date or requesting sex;
- Unnecessary familiarity: Deliberately brushing up against someone;
- Sexual innuendo: Using sexual innuendo or crude conversation;
- Conduct involving gendered stereotypes, such as making women workers responsible for cleaning the office; or
- Making demeaning comments about anatomical attributes or topics such as pregnancy, menstruation or menopause.

4.4 Victimisation

The Smith Family will not tolerate victimisation of team members who raise genuine complaints of discrimination, bullying, harassment or other unlawful behaviours as addressed in this policy and may take disciplinary action, up to and including termination of employment, against team members found to have victimised others.

4.5 Vilification

The Smith Family will not tolerate vilification of team members on the basis of an attribute protected by law. We may take disciplinary action, up to and including termination of employment, against team members found to have vilified others.

5 Responsibilities

5.1 Team members

Team members are responsible for:

- understanding, respecting and complying with this policy;
- not participating in discriminatory, bullying or harassing behaviour, or any of the unlawful behaviours as addressed in this policy, or victimisation in the workplace;
- being Active Bystanders when they see or hear something that does not feel right. It takes all of us to create a safe, respectful and inclusive environment;
- not tolerating any form of discrimination, bullying, harassment, victimisation or any of the unlawful behaviours as addressed in this policy which may happen to themselves or any other team member and notifying either their Manager or the Head of People & Culture should such a situation arise;
- keeping records of incidents of discrimination, bullying, harassment, victimisation or any of the unlawful behaviours as addressed in this policy – including dates and locations, who was involved, potential witnesses, and so on;
- maintaining confidentiality in relation to a complaint under this policy;
- refrain from victimising any team member who makes or gives evidence in a complaint; and
- participating in Diversity, Equity and Inclusion training and Active Bystander programs.

5.2 Managers

Managers are responsible for ensuring that the work environment is free from all forms of discrimination, bullying, harassment, victimisation and the unlawful behaviours as addressed in this policy by communicating this policy to team members and by taking action when complaints are raised and/or breaches exist. This responsibility includes:

- informing team members if their actions may be offensive and may constitute harassment, bullying, discrimination or victimisation;

- being Active Bystanders when they see or hear something that does not feel right. It takes all of us to create a safe, respectful and inclusive environment;
- acting to ensure that discrimination, bullying, harassment, victimisation and any of the unlawful behaviours as addressed in this policy is addressed or reported to the People & Culture team if required;
- providing support to team members who make a complaint in a trauma-formed, person centred way;
- ensuring that all complaints are dealt with in accordance with the Complaints Procedure below;
- keeping records of incidents of discrimination, bullying, harassment, victimisation or any of the unlawful behaviours as addressed in this policy;
- seeking assistance and advice from the People & Culture team before taking corrective or disciplinary action;
- taking corrective action to prevent discrimination, bullying, harassment, victimisation or any of the unlawful behaviours as addressed in this policy from recurring; and
- supporting a workplace culture that values diversity, equity and inclusion.

Managers who knowingly allow or tolerate any of the unlawful behaviours as addressed in this policy are in breach of this policy and may be subject to disciplinary action, up to and including termination of employment.

5.3 People & Culture

The People & Culture team are responsible for the following:

- conducting regular training and awareness programs on discrimination, bullying, harassment and victimisation, including training to integrate trauma-informed and person-centred approaches;
- implementing clear procedures for reporting and addressing complaints;
- ensuring that all complaints are taken seriously, conducted in a trauma-informed and person-centred way and investigated promptly and confidentially; working closely with all team members to ensure legislative compliance;
- communicating, in conjunction with Managers, this policy to all team members;
- continuously improving policies and procedures; and
- promoting a workplace culture that values diversity, equity and inclusion.

6 Complaints Procedure

A team member who believes there has been a breach of this policy should speak up. A team member can speak directly to the alleged perpetrator themselves (if they feel comfortable doing so) and/or lodge a complaint with:

- their Manager; or
- the People & Culture team.

This process does not commit the team member to further action and, within legal constraints, The Smith Family will take reasonable actions to keep the process confidential. The Smith Family will assess and determine the most appropriate method for addressing a complaint or report of inappropriate behaviour. The

investigation and response to the complaint will be carried out in accordance with the provisions of The Smith Family's Grievance Policy.

The Smith Family are committed to handle complaints in a timely, person-centred and trauma-informed way. This means:

- prioritising the safety, privacy and well-being of the team member affected by unlawful behaviour;
- ensuring that confidentiality is maintained to the extent reasonably possible and all affected team members have access to appropriate support(s);
- listening to the team member affected in a compassionate, nonjudgmental and sensitive manner; and
- giving the team member affected by unlawful behaviour input and choice, including the choice not to pursue a report to the extent permitted by law. Allegations of discrimination, bullying or harassment by The Smith Family students, families, sponsors, corporate partners or any other persons in The Smith Family community, should be reported to the relevant Manager or the People & Culture team as soon as possible. Please note this policy only provides coverage and recourse for team members. For allegations of discrimination, bullying and harassment by team members against external individuals, community members and stakeholders, please see refer to section 2.1 of this policy and The Smith Family's *External Complaints and Procedures* document. Should you not wish to raise the complaint with your Manager or the People & Culture team, we offer a range of options around how to report (e.g., anonymously, over the phone, in-person) and choice about how to resolve a complaint fairly, impartially and reasonably in accordance with procedural fairness principles.

- **Non-Retaliation**

The Smith Family prohibits adverse actions against team members who report or raise concerns about potential breaches of this policy.

7 Records

The documenting and recording of complaints is extremely important. All team members who experience or witness discrimination, bullying, harassment, victimisation or any unlawful behaviour as addressed in this policy should keep comprehensive records of the dates, places and the details of each incident, and any action they have taken to resolve the situation.

Likewise, Managers and the People & Culture team should keep their own records of any complaints they receive and the steps they have taken to resolve the issue. All parties are required to keep their records confidential.

8 Breach of Policy

8.1 Consequences

Breach of this policy may be regarded as misconduct, which may lead to disciplinary action (up to and including termination of employment or engagement). Other forms of disciplinary action may include a written warning, further training and/or an apology.

8.2 Escalation

Potential or realised breaches of this policy must be escalated and managed according to the Grievance Policy.

9 Related Documents and Links

Internal

- [DEI SmithNet](#)
- [DEI Policy](#)
- [Flexible Working Policy](#)
- [Parental Leave Policy](#)
- [Leave Policy](#)
- [Grievance Policy](#)
- [Gender Affirmation Policy](#)
- [Sonder EAP](#)

External

- [Diversity Council of Australia](#)
- [Australian Human Rights Commission: Respect at Work](#)
- [Person-centred and Trauma-informed Approaches to Safe and Respectful Workplaces](#)
- [Fair Work Commission](#)

A Document information

Document Details	
Document Name	Discrimination, Bullying & Harassment Policy
Document Author	Claire Stewart, DEI Lead
Document Approver	David Rae, Head of People & Culture
Document Owner – Functional Ownership	David Rae, Head of People & Culture
Document Owner – Decision Making Authority	David Rae, Head of People & Culture
Date of Approval	August 2025
Review Frequency	Annual
Date of Next Review	August 2026

Version No.	Version Date	Details	Reviewed/ Amended By	Approved By	Approval Date
v.1	18/04/18	Major update of all content	Christina Constantine	Annette Young	18/04/18
v.2	09/07/25	Update of content	Claire Stewart	David Rae	24/07/25

