* Equal Opportunity
* Anti-Discrimination
* Anti-Harassment
* Bullying

**MANUAL**

**Update: V7 15.06.14**

**[INSERT CHURCH LOGO]**

**[INSERT CHURCH ADDRESS DETAILS]**

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**Equal Opportunity, Anti-Discrimination, Anti-Harassment and Bullying**

1. PREFACE:

The exact format and contents of this policy will vary according to the organisation. Therefore, the following policy can be used as guide and relevant changes made accordingly. However, any wording changes, other than those to insert a company or a person’s name(s), may change the context, meaning or purpose of the policy and we recommend you receive advice prior to making such changes.

1. DEFININTIONS:

**CCCVaT** means Christian Community Churches in Victoria and Tasmania which is an Association that aids and assists Associate Churches grow the Kingdom of God.

**Deacon** is a person appointed by the Church to serve the ministry of the Church in various official capacities, as determined by the Church. [The word ‘deacon’ is not used in Acts 6 and therefore should not be used as biblical justification. The role traditionally prescribed as deacon has more to do with church tradition that the Bible. If some biblical passages are included the best ones would be those where ‘deacons’ are specifically mentioned in1 Timothy 3 & Titus 1. There is no job description for deacons.

**Elder** a person appointed by the Church to primarily lead the Church. Expanded expectations of the role of an Elder are defined in [1 Tim 5:17](http://biblia.com/bible/esv/1%20Tim%205.17); [Titus 1:7](http://biblia.com/bible/esv/Titus%201.7); [1 Peter 5:1-2](http://biblia.com/bible/esv/1%20Peter%205.1-2); [1 Timothy 3:2](http://biblia.com/bible/esv/1%20Timothy%203.2); [2 Timothy 4:2](http://biblia.com/bible/esv/2%20Timothy%204.2); [Titus 1:9](http://biblia.com/bible/esv/Titus%201.9); [Acts 20:17](http://biblia.com/bible/esv/Acts%2020.17) + [28-31](http://biblia.com/bible/esv/Acts%2020.28-31); [1 Timothy 4:13](http://biblia.com/bible/esv/1%20Timothy%204.13); [2 Timothy 3:13-17](http://biblia.com/bible/esv/2%20Timothy%203.13-17); [Titus 1:9](http://biblia.com/bible/esv/Titus%201.9); [James 5:14](http://biblia.com/bible/esv/James%205.14); [Acts 20:35](http://biblia.com/bible/esv/Acts%2020.35); [Acts 15:16](http://biblia.com/bible/esv/Acts%2015.16).

**Manager** a personappointed by the Church to manage a person or team of people to perform tasks defined in their job descriptions.

**Pastor,** legally defined as a minister of religion, is a person employed by a Church to teach and guide. Expanded expectations of a Pastor are defined in Ephesians 4:11, Acts 20:28, and 1 Peter 5:2.

**Team Leader** a person appointed by the Church to lead a team of people on an assignment, mission or activity of the Church.

**The Leadership Team,** usually comprised of Deacons and Elders, formed to lead and manage the resources of the Church.

1. PURPOSE:

The purpose of this document is to outline [INSERT NAME OF ENTITY]’s Equal Opportunity – Anti Discrimination, Anti-Harassment and Bullying Policy.

1. DUTY OF CARE:

The New Testament includes numerous provisions for the care of others and all Christians have a duty of care to one another and behave towards one another in accordance with their faith, in a manner that exemplifies their faith and demonstrates their love for one another.

*Acts 20:28 New International Version (NIV)*

*28 Keep watch over yourselves and all the flock of which the Holy Spirit has made you overseers. Be shepherds of the church of God, which he bought with his own blood.*

*Mark 12:31 New International Version (NIV)*

*31 The second is this: ‘Love your neighbour as yourself.’ There is no commandment greater than these.”*

*Matthew 7:12 New International Version (NIV)*

*12 So in everything, do to others what you would have them do to you, for this sums up the Law and the Prophets.*

### *Matthew 7:1-5 New International Version (NIV)*

*1 “Do not judge, or you too will be judged. 2 For in the same way you judge others, you will be judged, and with the measure you use, it will be measured to you. 3 “Why do you look at the speck of sawdust in your brother’s eye and pay no attention to the plank in your own eye? 4 How can you say to your brother, ‘Let me take the speck out of your eye,’ when all the time there is a plank in your own eye? 5 You hypocrite, first take the plank out of your own eye, and then you will see clearly to remove the speck from your brother’s eye.*

*1 John 4:20 New International Version (NIV)*

*20 Whoever claims to love God yet hates a brother or sister is a liar. For whoever does not love their brother and sister, whom they have seen, cannot love God, whom they have not seen.*

*James 4:11-12 New International Version (NIV)*

*11 Brothers and sisters, do not slander one another. Anyone who speaks against a brother or sister or judges them speaks against the law and judges it. When you judge the law, you are not keeping it, but sitting in judgment on it. 12 There is only one Lawgiver and Judge, the one who is able to save and destroy. But you—who are you to judge your neighbour?*

*Colossians 3:12-14 New International Version (NIV)*

*12 Therefore, as God’s chosen people, holy and dearly loved, clothe yourselves with compassion, kindness, humility, gentleness and patience. 13 Bear with each other and forgive one another if any of you has a grievance against someone. Forgive as the Lord forgave you. 14 And over all these virtues put on love, which binds them all together in perfect unity.*

[INSERT NAME OF ENTITY] is committed to taking reasonable steps to ensure a workplace free of all forms of discrimination and harassment, including sexual harassment and bullying. It aims for equality of opportunity for all employees.

This policy is intended to ensure that there is a shared understanding amongst all [INSERT NAME OF ENTITY] employees, temporary staff, independent contractors, volunteers and work experience personnel of [INSERT NAME OF ENTITY]’s expectations in regards to acceptable and appropriate behaviour within the workplace.

Discrimination, harassment, sexual harassment and bullying is not only unacceptable, it is unlawful pursuant to the relevant legislation described below.

It is the primary responsibility of management to take reasonable measures to provide a working environment free from discrimination, harassment and bullying. It is the responsibility of every employee to not participate in discriminatory or harassing behaviour within the workplace. [INSERT NAME OF ENTITY] aims to take practicable steps to ensure our contractors provide a similar working environment.

[INSERT NAME OF ENTITY] is dedicated to implementing a proactive approach by taking reasonable steps such as educating employees; as well as continuing to monitor behaviour and endeavouring to prevent any disputes from occurring in the first instance, even in the absence of a formal dispute/grievance.

The Leadership Teamwill treat all disputes confidentially, seriously and sympathetically as far as possible. However, it may be necessary to speak with other employees in order to determine what happened, to afford fairness to those against whom the complaint has been made and to resolve the complaint.

Outlined within this policy is an internal dispute resolution process to assistemployees raise issues of concern. Appropriate disciplinary action may be taken against anyone found to have breached this policy.

No employee will be penalised or disadvantaged as a result of raising legitimate concerns or disputes relating to discrimination, harassment or bullying.

1. DISCRIMINATION:

The *Equal Opportunity Act 2010* (Vic) prohibits unlawful discrimination in the form of direct and indirect discrimination. Discrimination is also unlawful under federal legislation, including the *Age Discrimination Act 2004* (Cth), *Sex Discrimination Act 1984* (Cth); *Racial Discrimination Act 1975* (Cth); *Disability Discrimination Act 1992* (Cth); *Human Rights and Equal Opportunity Commission Act 1986* (Cth); and the *Fair Work Act 2009* (Cth) which may change from time to time.

1. Direct discrimination

Direct discrimination is treating or proposing to treat a person with a protected attribute unfavourably because of that attribute (listed below). 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.

1. Indirect discrimination

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.

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, and
* irrelevant criminal conviction (under the *Australian Human Rights Commission Act 1986* (Cth)).

## 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, and
* 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.

### Religious exceptions:

While the *Equal Opportunity Act 2010* makes it against the law to discriminate against someone because of specific personal characteristics, it also recognises that discrimination may be justified in certain circumstances.

The Act includes two [exceptions](http://www.humanrightscommission.vic.gov.au/index.php/exceptions-exemptions-and-special-measures/exceptions), general and specific, that apply to discrimination in all areas of public life. This means that discrimination may not be against the law in particular circumstances.

Under the general exception, religious bodies and religious schools can discriminate against a person on the basis of a personal characteristic in certain circumstances that include:

* ordinating or appointing priests, ministers of religion or members of a religious order
* training or educating people seeking ordination or appointment as priests, ministers of religion or members of a religious order
* selecting or appointing people to perform functions relating to, or participating in, any religious observance or practice.

Religious bodies and religious schools can discriminate on the basis of a person’s religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity where the discrimination conforms to the doctrines, beliefs or principles of the religion or is reasonably necessary to avoid injury to the religious sensitivities of people who follow the religion.

However, religious bodies and religious schools cannot discriminate on the grounds of race, disability, age, physical features, industrial or employment activity, carer status, political belief or activity, pregnancy, breastfeeding or on the basis of a personal association with a person with any protected characteristic.

Religious bodies and religious schools can also allow a person to discriminate against another person on the grounds of the person's religious belief or activity, sex, sexual orientation, lawful sexual activity, marital status, parental status or gender identity if the discrimination is reasonably necessary for the first person to comply with the doctrines, beliefs or principles of their religion.

The term ‘reasonably necessary’ requires an objective assessment of whether the discrimination is necessary.

1. HARASSMENT:

Harassment is unlawful under the Victorian *Equal Opportunity Act 2010*. A person unlawfully harasses another person if he or she makes 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.

1. Unlawful harassment may have occurred if the behaviour makes the victim feel;
* offended and humiliated,
* intimidated or frightened, and/or
* uncomfortable at work.
1. 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, and
* asking intrusive questions about someone's personal life, including their sex life.

## Sexual Harassment:

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.

Sexual harassment is unlawful in the workplace, which includes any place a person goes for the purpose of carrying out any function in relation to his/her employment. The workplace can also extend to social functions.

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, and
* sexually explicit physical contact.

Some types of sexual harassment can also be offences under the criminal law, such as:

* physical molestation or assault,
* indecent exposure,
* sexual assault,
* stalking, and
* obscene communications (by way of telephone calls, letters, emails etc.)
1. BULLYING:

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 bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety.

*“*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.

The following types of behaviour, where repeated or occurring as part of a pattern of behaviour could be considered to be workplace bullying:

* physical or verbal abuse,
* intimidation,
* yelling, screaming or offensive language,
* excluding or isolating employees,
* psychological harassment,
* assigning meaningless tasks unrelated to the job,
* giving employees impossible jobs,
* deliberately changed work rosters to inconvenience particular employees, and
* undermining work performance by deliberately withholding information vital for effective work performance.
1. Other types of behaviour may also constitute bullying.

Workplace bullying can occur between a worker and a manager or supervisor, or between co-workers. Bullying does not cover situations where an employee has a grievance about legitimate and reasonable:

* performance management processes,
* disciplinary action, and
* allocation of work in compliance with systems.
1. VICTIMISATION:

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.

1. RESOLUTION OF DISPUTES AND ISSUES OF CONCERN:

It is in the interest of any person or group who believe they have been unlawfully discriminated against, sexually harassed, bullied or victimised to take action to prevent the behaviour from recurring. [INSERT NAME OF ENTITY] believes that all disputes and issues of concern should be resolved quickly, confidentially (where possible) and wherever possible, at the lowest appropriate level. A range of internal issue resolution options are available including:

* self-resolution,
* informal resolution by the Pastor, Manager or Team Leader.
* local workplace resolution involving the Leadership Team, or
* formal investigation by an external provider.

This all needs fleshing out – maybe a reference to the CCCVaT Complaints Against Pastoral Leaders document.

1. What can an employee you do if he or she is being discriminated against?

If an employee considers he or she has been discriminated against, bullied or harassed it should be dealt with and should not be ignored, as ignoring the behaviour could be taken as tacit consent.

Anybody who experiences or witnesses discrimination, harassment or bullying is encouraged to either:

* inform the offender that the behaviour is offensive and unacceptable and against company policy; or
* seek assistance in having the behaviour stopped. This may include reporting the issue to your immediate manager, Pastor or the Leadership Team.

Where these issues may breach occupational health and safety laws**,** the incident should also be reported immediately in accordance with [INSERT NAME OF ENTITY]’s occupational health and safety policy.

1. Who can assist employees in making a report or complaint?

If an employee feels he or she is unable to resolve a matter, the following people can be contacted to assist them:

* their Manager
* their Team Leader,
* Pastor, or
* a Deacon or Elder on the Leadership Team.
* CCCVaT

[List the names of the foregoing contact officers]

Employees who believe they are being bullied in the workplace may apply to the Fair Work Commission (FWC) to have the matter heard via mediation, conference or hearing. Under this provision, the FWC must process the application within 14 days and if they are satisfied that bullying has occurred may make an order to stop bullying conduct.

In addition to the above listed, you may approach the Equal Opportunity Commission, WorkSafe or the Fair Work Ombudsman for independent advice at any time.

1. What will happen if you make a Report or Complaint?

Any complaints or reports of discrimination, harassment or bullying will be treated quickly, seriously and sympathetically. They will be investigated thoroughly, impartially and where possible, confidentially (when investigating some complaints confidentiality is not always possible). Managers, Pastors or Deacons and Elders must act immediately on any reports of harassment. Employees will not be disadvantaged in their employment conditions or opportunities as a result of lodging a complaint.

1. What will happen to the person against whom you have made a complaint?

The Leadership Teamconsiders all forms of workplace discrimination, harassment and bullying to be unacceptable behaviour which will not be tolerated. Accordingly, where such complaints have been substantiated, appropriate disciplinary action will be taken. Such action may range, based on severity of the complaint, from a formal warning (see [INSERT NAME OF ENTITY]’s disciplinary procedures) to termination of employment for serious breaches of this policy.

Similarly, where necessary, action will be taken against anyone including employees or independent contractors, who have been found to have discriminated against, harassed or bullied a co-worker, or any other person during the course of his/her employment or contract for services with [INSERT NAME OF ENTITY].

1. NATURAL JUSTICE:

A complaint of discrimination, harassment and/or bullying is a serious allegation to bring against someone. For this reason, while advisers may have feelings of sympathy for the complainant, and quite possibly negative feelings towards the respondent when dealing with a complaint, it is crucial to continually bear in mind the rights of the respondent as determined by the principles of natural justice. The adviser must approach the problem with neutrality.

1. DEFAMATION:

Defamation is unlawful under the Victorian *Defamation Act 2005* and the Victorian common law. A person should not be deterred from making a complaint of harassment by concerns about defamation laws. Generally if a complainant only discusses the complaint with appropriate people in the workplace (Pastors/Managers/Team Leaders/Deacons/Elders) and is acting in good faith (i.e. is not making the complaint out of spite or malice or without basis), then the person will not be liable for defamation.

[INSERT NAME OF ENTITY] is committed to providing an environment which is safe and free of discrimination, harassment and bullying for our employees and others with whom we associate at work. This policy has the full support and commitment of the Leadership Team. Please ensure you give your support in monitoring and avoiding practices, attitudes and traditions which lead to harassment.

[INSERT NAME OF ENTITY] may amend and vary this policy from time to time.

Consequences for Breaching this Equal Opportunity – Anti-Discrimination, Anti-Harassment and Bullying Policy:

Any breach of [INSERT NAME OF ENTITY] Policy may result in disciplinary action up to and including termination of employment. Disciplinary procedures that can be actioned by [INSERT NAME OF ENTITY] will be in line with the [INSERT NAME OF ENTITY] Disciplinary Policy.

Independent contractors and other non–employees who are found to have breached this policy may result in the termination of their contract with [INSERT NAME OF ENTITY].

If an individual’s conduct results in a breach under law they may also be personally liable.

1. WORKPLACE PARTICIPANT ACKNOWLEDGEMENT:

I acknowledge:

* I have received, read and understood the policy
* I am required to comply with the policy; and
* there may be disciplinary consequences if I fail to comply, up to and including the termination of my employment or contract.

Name:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**ANNEXURE 1:**

**Equal Opportunity – Discrimination, Harassment and Bullying**

**Frequently Asked Questions v1**

Annexure 1 forms part of the [INSERT NAME OF ENTITY] Equal Opportunity, Anti-Discrimination, Anti-Harassment and Bullying Manual but not the [INSERT NAME OF ENTITY] policy on same.

**Fair Work Commission – Anti-Bullying Regulations**

As of 1 of January 2014 the Fair Work Commission’s (FWC) Jurisdiction now extends to hearing and determining complaints from workers who believe they have been bullied within their workplace. This has come about due to an amendment of the Fair Work Act 2009. This is a significant change which further emphasises the importance for businesses of proactive internal responses to bullying. The FWC can now make any order it deems appropriate except for pecuniary (monetary) payments.

**What constitutes as bullying in accordance to the FWC**

1. A worker is bullied at work if:

(a) while the worker is at work in a constitutionally covered business:

(i) an individual; or

(ii) a group of individuals;

repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and

(b) that behaviour creates a risk to health and safety.

1. To avoid doubt, subsection (1) does not apply to reasonable management action carried out in a
reasonable manner.

**Who can apply to the FWC?**

There are several criteria in determining who is applicable to apply to the FWC:

1. The person must be a ‘worker’.

A ‘worker’ can be an employee, contractor, contractor’s employee, apprentice, trainee, volunteer or labour hire employee.

2. They must be employed by a constitutional covered business or undertaking.

Generally, a constitutionally covered business is:

1. a proprietary limited company
2. a foreign corporation
3. a trading or financial corporation formed within the limits of the Commonwealth
4. the Commonwealth
5. the Commonwealth authority
6. a body corporate incorporated in a Territory
7. a business or organisation conducted principally in a Territory or Commonwealth place.

Sole traders, partnerships, some State government employees, corporations whose main activity is not trading or financial may not be constitutionally covered businesses but this is a complex area of law and CCCVaT recommends you seek expert advice.

3. The alleged bullying must have occurred at work. It is important to note this is not necessarily limited to the
 physical workplace but generally the behaviour must have occurred during the course of the worker’s
 employment; and

4. There needs to be a continuing risk of the bullying occurring.

Generally this is likely to prevent workers who have left their employment from successfully bringing a claim. However, it is important to note that for those workers who continue in their employment there is no set time frame to lodge a complaint as long as the risk of bullying remains

**Process**

Relevant forms available at: <http://www.fwc.gov.au/index.cfm?pagename=anti-bullyingapply>

**Step 1: lodgement of the application**

A worker is able to submit their application by filling in a F72 form from the FWC. It is not a requirement that they inform their employer before doing so. The FWC is required to begin acting upon this application within 14 days. It is important to note making an application to the FWC is a workplace right and therefore workers cannot be treated adversely for making a complaint. It is important employers act to ensure all workers are aware of this to limit the risk of any further claims.

**Step 3: Response to the application**

The FWC will then notify the employer or principal and the person/s accused of the bullying behaviour and give each of them a chance to respond. They will get the notification and a copy of the application so a response can be formulated. These responses must be completed and submitted within 7 days of it being received and sent to all relevant parties (Applicant, the alleged bully/bullies, representatives, employer of the accused).

**Step 4: Dealing with the application**

Upon receiving all the relevant documentation a report will be formulated, from this the FWC then has the discretion to be able to select the appropriate way to handle this matter. This could be in the form of:

1. Preliminary discussion or conference: to establish the correct avenue or following an unsuccessful mediation.
2. Mediation: A voluntary process in which all parties work together to reach a resolution in private.
3. Conference (generally private) or hearing (generally public): will allow for the FWC to be presented with all the facts and evidence and come to a decision in regards to whether bullying has occurred and how to cease it.
4. Workplace Health and Safety regulators (WHS): The FWC may refer the matter to the WHS regulator
5. Dismissal: You can request the FWC dismiss the claim if it is frivolous, no potential for success or not in accordance with the Act. Generally the FWC will be required to hold a conference or hearing to decide whether the claim should be dismissed.

**Step 5: Outcome**

If the FWC finds bullying has occurred in the workplace and there is a risk it will continue to occur it can make any order it deems appropriate other than requiring financial payment. Orders could include: relocation, individual or group to stop bullying, support for the applicant, changing or enforcing the company’s bullying policy.

In considering the terms of an order, the FWC must take into account:

* Any final or interim outcomes arising out of an investigation into the matter that is being, or has been, undertaken by another person or body; and
* Any procedure available to the worker to resolve grievances or disputes; and
* Any final or interim outcomes arising out of any procedure available to the worker to resolve grievances or disputes; and
* Any matters that the FWC considers relevant.
* Fair Work Commission- Anti Bullying Regulations V1 30/01/2014 - 3

Breaching order: Although the order made by the FWC cannot be a financial payment, if the order is not followed it would be a statutory offence of a civil remedy which will attract a monetary penalty. An alleged breach must be reported within 6 years by the Fair Work inspector, relevant parties or an industrial association.

**Appeal by leave of the full bench**

Within 21 days of the date of the order, or a further time approved by the commission, you may appeal to the full bench of the commission. An Appeal can only be made with the commission’s permission, to gain this they will consider whether it is in the public interest to do so and whether there was an error of law or of fact.

**Outcome arising from another body**

It is important to recognise that the commission itself does not prevent access to other forms of bullying resolution. As it was previously before the legislative amendments individuals will still have access to other avenues when bullying is occurring. In Victoria such avenues potentially include seeking intervention from an Occupational Health and Safety investigator or Equal Opportunity legislation which provides an avenue for those who feel they have been harassed or discriminated against. Workcover is also a significant area in which the financial cost of bullying can be felt within companies. The above refers to Victorian legislation in this area but their simular protections from other bodies across Australia including the Australian Human Rights and Equal Opportunities Commission. The FWC may factor in determinations in other forms of remedy, but it can make independent determinations.

**What this mean for your business**

These changes increase the necessity to ensure that you are safe guarding your company by having comprehensive internal bullying policies, processes and training. If a bullying allegation has been lodged from the FWC you would begin your internal management process in a response to the allegations. The only way to protect yourself fully is to ensure you take your own proactive steps in accordance with your policies and procedures. Fair Work Commission- Anti Bullying Regulations V1 30/01/2014 - 4

**Questions:**

If not a constitutional corporation what does this amendment mean for you?

Although your employees are not covered by the new jurisdiction, this should not change your company’s approach to bullying practices in the workplace. As covered above there are other state jurisdictions in which an employee will still be able to pursue a bullying matter. It is also important to note the detrimental effects bullying can have not just legislatively but upon your organisation’s culture and profitability, as it often effects employee engagement and productivity, absenteeism, performance and so on. Therefore it is important to still review your systems, training and responses to bullying.

**What costs are involved?**

The cost of the hearing falls on each party in terms of party to party and indemnity costs. It is possible for a cost order to be issued in which one party must cover the other parties cost, however this would only be in certain situations. This is in situations in which the claim is found to be vexatious or without reasonable cause. Application for cost must be within 14 days from when the dispute is finished. Less tangible costs include the effects on the business due to these claims such as low moral, staff absence for appearances and resources redirected. You must also consider what payment will be made for those required to appear in front of the commission in work time.

**Steps that can be taken to mitigate risk of bullying**

Revisit company policies and procedures in regards to your current bullying and grievance procedures and how to handle the matters when they arise.

* Consider the processes that your business has in place including formal and informal processes.
* Continually take part in, and offer refresher training on, bully and the legislation and the process.
* Clearly state to employees what bullying is and the definition
* Investigate all bullying claims • Consider the introduction of other supports internally, such as Contact Officers
* Work on growing the perception that issues will be dealt with
* Reinvigorate your company values and consider including an emphasis on respect and accountability
* Prepare for, and accept, that serial complainants may emerge

**Strategies for dealing with a FWC claim**

* Who is responsible for representing the company if ‘management’ is named as the perpetrator?
* What is the stance on claims against individuals (as opposed to the company), be it managers or employees? Might they be viewed as the responsibility of the individual?
* What is your company stance on payment for FWC attendance by employees?
* What is your company ‘blueprint’ for preparing now, prior to any claims being lodged? Are there any potential claims that you could take action to mitigate now?

**Fair Work Commission- Anti Bullying Regulations V1 30/01/2014 - 5**

Commentary

Bullying allegations and complaints lodged through the FWC can be quite a complex and potentially costly exercise for employers. The new regulations put a further pressure on employers to ensure they have a comprehensive process for handling and reducing bullying and inappropriate behaviour in the workplace. Developing these systems will not only help reduce your chance of a complaint being taken to the commission but will also help increase business profitability and staff satisfaction.

CCCVaT recommends seeking immediate advice on all bullying matters due to later issues that can arise if any aspect is not handled appropriately and in a timely manner.

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**ANNEXURE 2:**

**Equal Opportunity – Discrimination, Harassment and Bullying**

**Frequently Asked Questions v4**

Annexure 2 forms part of the [INSERT NAME OF ENTITY] Equal Opportunity, Anti-Discrimination, Anti-Harassment and Bullying Manual but not the [INSERT NAME OF ENTITY] policy on same.

The new *Equal Opportunity Act 2010* (Vic) increases the obligations on employers to prevent discrimination, sexual harassment and victimisation in the workplace. CCCVaT can assist you with all your equal opportunity requirements from assisting you to implement new policies and procedures that are compliant with the Act through to completing a workplace audit and implementing a detailed compliance strategy for your business.

Below are some frequently asked questions. These answers are intended as general information. If you have a specific situation or need advice we recommend you call CCCVaT.

**1. What are the key features for employers under the new Equal Opportunity Act?**

The *Equal Opportunity Act 2010* has a number of important features:

* a positive duty to eliminate discrimination,
* a duty to provide reasonable adjustments for people with disabilities in employment, education and provision of goods and services, to help the person with a disability to perform the job or access education and goods and services,
* an extended definition of disability to specifically address genetic predisposition and behaviour that is a manifestation of a disability,
* protection of volunteers and unpaid workers from sexual harassment in employment, and
* a new dispute resolution process and direct access to VCAT for complainants.

**2. What can I do to protect my company from claims of vicarious liability?**

Under the new *Equal Opportunity Act 2010* employers have a positive duty to take reasonable and proportionate steps to prevent discrimination, sexual harassment and victimisation. What is reasonable and proportionate will depend on your individual circumstances. The *Equal Opportunity Act 2010 (Vic)* (EO Act) provides that the following should be considered:

* the size of the person's business or operations,
* the nature and circumstances of the person's business or operations,
* the person's resources,
* the person's business and operational priorities, and
* the practicability and the cost of the measures.

For a small business, compliance with the EO Act may involve taking steps to ensure employees are aware of the organisation's commitment to treating employees with dignity, fairness and respect and making a clear statement about how complaints from employees will be managed.

For a large company this may involve undertaking an assessment of its compliance with the EO Act and then; as a result of the assessment, developing a detailed compliance strategy that includes regular monitoring and provides for continuous improvement of the strategy.

What is ‘reasonable and proportionate’ will differ from company to company under the EO Act. If you need support or assistance in this new and difficult area contact CCCVaT.

**3. What can I do when an employee brings a complaint to me but says they don’t want anything to be done
 about it? What if I am aware there is an issue but no one is actually ‘formally’ complaining?**

Under the new *Equal Opportunity Act 2010 (Vic)* (EO Act) employers and managers have a positive obligation to prevent discrimination in the workplace. In addition Occupational Health and Safety legislation requires that steps be taken to deal with concerns of an unsafe workplace.

If an employee makes a complaint but asks you not to do anything the first step is to talk to them about why they do not want anything to be done. Are they concerned about victimisation? Are they attempting to deal with it themselves? The answers to these questions will assist you to decide what you need to do. If the employee is concerned about victimisation this needs to be taken seriously. If the employee agrees to let you proceed it is important to take all steps to prevent them being victimised for making a complaint.

If the employee is adamant they do not wish to proceed with the matter you still have an obligation to provide a safe and discrimination free workplace. This is also the case if you are aware of an issue but do not have a specific complainant.

This can be done without breaching the employee’s confidence in most instances. Rather than just focussing on the complaint, focus on the workplace. You can look at steps such as:

* conducting refresher training for employees and managers on equal opportunity and bullying and harassment,
* emphasising policy, which may be through a number of forums – employers are including it on meeting agendas, sending it with payslips and rosters – some employers also use it with a ‘must mark as acknowledged’ box when logging in to email or IT systems,
* encouraging all managers to be proactive in preventing and dealing with any issues,
* conducting a workplace audit to see where any problem areas are, and
* offering any affected employees access to an employee assistance program.

In some circumstances where there are allegations of severe bullying, harassment or discrimination you may have to breach an employee’s confidence. In these circumstances explain to the employee the legal obligations you have and ensure they are given support through the process.

If you are unsure of your obligations or what action to take, it is important you seek advice.

**4. What should I do if I get a complaint of discrimination, sexual harassment, bullying or harassment?**

If an employee makes a complaint treat it seriously. It can often be tempting to ignore it and hope it goes away. If an employee has come to you with an issue or concern it is important it is dealt with.

If you have a complaints process in place, ensure that you - and your managers - follow it. If you don’t have an existing policy we recommend you implement one. CCCVaT has a number of pro-forma policies available to Associates on our website.

Once a complaint has been made ensure you explain the process to all parties and ensure you document everything that is done throughout the process.

* Ensure you speak with all parties involved and apply natural justice.
* If disciplinary action is to be taken make sure you have investigated the matter properly and allowed the respondent a chance to respond to the allegations and to provide any mitigating factors.
* If you are unsure about how to investigate the matter or what steps to take it is important you seek advice and assistance before the matter becomes more serious.

CCCVaT can provide you with support in investigating the matter yourself.

**5. When there is banter in the office how do I ensure I don’t come across as the fun police?**

Although we want to encourage positive working relationships in the office, different people have different ideas of ‘fun’. Inappropriate sexual or discriminatory jokes are not fun and should not come in to the workplace.

Encourage employees to get along and enjoy themselves at work but ensure there are boundaries of appropriate workplace behaviour. Sometimes as an owner or manager you will have to be the voice of reason as the consequences for any breaches of the law are significant both for you and for individual employees.

**6. What is the timeframe to lodge a complaint with Fair Work Commission and the VEOHRC?**

Generally employees have up to a year to lodge a claim with the Victorian Equal Opportunity and Human Rights Commission but this can be extended if the employee can show good reasons for the delay. To lodge a general protections claim involving dismissal with the Fair Work Commission, employees have 21 days from their dismissal. If it does not involve dismissal the employee has up to six years to make a claim.

Employees who believe they are being bullied in the workplace may apply to FWC for an order to stop the bullying. Under this provision, the FWC must process the application within 14 days upon receiving the application if they are satisfied that bullying has occurred. Importantly, while the FWC will have authority to issue orders for the bullying to stop, no order for payment or pecuniary amount can be issued under this provision.

**7. Lawful sexual activity – what does that mean?**

Lawful sexual activity is defined in the EO Act as “engaging in, not engaging in or refusing to engage in a lawful sexual activity”. The courts have used the second reading speech for the bill which eventually became the EO Act 1995, to clarify its meaning. The then attorney general in that speech refers, when she speaks of lawful sexual activity, to bestiality as an example of a sexual activity that would not be covered by that term1. Although this helps us understand what lawful sexual activity is not; it does not give a definite interpretation of what lawful sexual activity is.

*1 See Cassidy v Leader Associated Newspapers Pty Ltd [2002] VCAT 1656 (21 November 2002).*

The *Anti-Discrimination Act 1991 (Qld)* states lawful sexual activity as meaning a person’s status as a lawfully employed sex worker, whether or not self-employed. But as the term in Victoria has not been defined in this manner we recommend employers assume that this means all *lawful* sexual activity and is not limited to lawful prostitution. For Victoria, this section covers any sexual activity that is legally permissible in Victoria, including legal prostitution.

**8. Has the term ‘indirect discrimination’ been removed?**

No, although it is not specifically defined in the Act. The terminology in the Act relates to unlawful actions. Indirect discrimination is referenced in the Act as occurring if you impose or propose to impose a practice, condition or requirement that has or is likely to have the effect of disadvantaging people with an attribute which is not reasonable.

An example of indirect discrimination may be having height restrictions on jobs. Although this does not appear to target anyone and the rule is ‘the same for everyone’, this could have the impact of disadvantaging particular races, or a gender.

**9. How do individual flexibility arrangements (IFAs) interact with the modern awards and the family
 responsibilities under the *Victorian Equal Opportunity Act 2010* and how do I get out of an IFA if it no longer
 suits?**

Flexibility terms within modern awards will only allow IFAs to vary:

• arrangements for when work is performed such as working hours,

• overtime rates,

• penalty rates ,

• allowances, and

• leave loading.

The IFA should include information about how it may be terminated. Generally, an IFA may be terminated by agreement or by either party giving the required written notice. Modern awards require following notice periods:

• for IFA’s created **prior to December 4 2013**, a 4 week written notice period applies.

• for IFA’s created **on or after December 4 2013** a 13 week written notice period will apply.

The above notice requirements do not affect employees covered by an enterprise agreement.

Because the IFA must satisfy the BOOT (better off overall test), it generally will not be considered discriminatory especially if it is done to assist someone who has carer or parental responsibilities. An IFA in an enterprise agreement can generally be ended by providing 28 days’ notice but VECCI recommend that you meet with the employee before a decision has been made to discuss the reasons you are considering terminating the IFA and to discuss any alternative options.

Employers cannot reasonably refuse to accommodate a person’s carer or parental responsibilities so it is important you have clear, concise reasons for the termination of the IFA.

CCCVaT recommends you advise the employee that they are welcome to have a support person present if they need to.

If the termination of the IFA will result in a major change to the person’s employment there should be consultation prior to any final decision being made. In addition you must genuinely consider any alternative proposals put forward by the employee.

**10. What do I do if I have two employees who have made claims against each other?**

It is important in these situations that you address all complaints seriously and separately. Don’t assume that an employee has only made a complaint because a complaint has been made against them. This may have occurred however the employee may still have a genuine grievance.

CCCVaT recommends you investigate all matters that have been raised but deal with them as two separate complaints. It is important that you treat all complainants fairly and equally and ensure you are not biased in favour of the first complainant. In situations like these it can often be of benefit to engage an external consultant to investigate the matters.

**11. Are there any exemptions or exceptions to the Act?**

The small business exemption has now been removed. Previously, small business was exempt for the purposes of recruitment exercises.

There are exceptions in the Act relating to the areas of accommodation, clubs, education, provision of goods and services, and sport.

The Victorian Civil and Administrative Tribunal (VCAT) Anti-Discrimination List may grant a temporary exemption from the provisions of the *Equal Opportunity Act 2010* if it believes that doing so would further the Act's goal of promoting equal opportunity2.

2 See Victorian Equal Opportunity & Human Rights Commission http://www.humanrightscommission.vic.gov.au/index.php?option=com\_k2&view=item&id=1186:exemptions&Itemid=684

Some examples of recent exemptions granted by VCAT and listed on the VHREOC website are:

* an employment round at a government department where applications are limited to indigenous people, with the aim of improving the rate of indigenous people employed in the public sector in Victoria, and
* a local council closing the public swimming pool early on two nights per week, and limiting admission to women, to enable Muslim women who cannot swim in mixed company to use the pool.

Safety considerations may also frequently interact with matters under the EO Act. While this is not specifically referenced in the EO Act, safety must be paramount in the workplace and employers are required to protect the health and safety of all workers. Where these issues overlay, VECCI recommends seeking specific advice.

**12. Our managers are concerned about their own liability – what can I do to support them and the business?**

Manager should be fully trained in both the requirements under the Act and also the requirements of your business when it comes to receiving and managing complaints. Unfortunately the initial stages of complaint handling are often handled inappropriately, which leads to a divided workforce and ultimately costs for the business.

You should ensure that your expectations throughout each stage of the employment cycle are clearly articulated and documented. For example, during a recruitment exercise, this includes ensuring that:

* the parties who are conducting interviews are aware of their obligations and do not ask questions that are irrelevant to the job (but relevant to a discrimination claim),
* any testing is consistent with the inherent requirements of the role,
* any feedback to unsuccessful candidates is delivered in a careful and consistent manner, and
* any selection decisions are based on merit – and that you can demonstrate this if called upon to do so.

Training for general people management functions is unfortunately often overlooked until there is an issue. VECCI proactively engages with a number of employers – and sees the results of this investment – in the delivery of on-site training for support throughout the employment cycle, including Recruitment and Selection; Performance Management Conversations; Engagement and Retention; and Confidently Managing Disciplinary and Termination matters.

Employers should ensure that their managers have the right ‘tools’ to confidently approach the day-to-day situations involved in managing a workforce as any issues arise. This is often where the first signs of an issue, or unrest, will be detected and represent a strong opportunity to mitigate risk as well as seeing the benefits of an engaged workforce.

On top of this, it is important that your people understand the channels in your business for raising issues and the support that is available for them.

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