

Ministerial Staff

Equal Opportunity and Diversity Policy

July 2022



Office of
the Premier

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1. Introduction

- 1.1. This policy outlines the standards of behaviour expected to prevent discrimination based on personal characteristics (reflecting the requirements of the *Equal Opportunity Act 2010*), promote social inclusion, diversity, and equity and to increase participation among Ministerial Staff, and outlines the procedure in the event that expected standards of behaviour are not met.
- 1.2. The Premier's Office is committed to providing a safe environment that is free from risks to health and safety and free from discrimination and harassment. We recognise that each employee brings unique capabilities, experience, skills, knowledge, and personal characteristics to work and encourages all staff to contribute to the success of Government regardless of their background.

2. Purpose and application of this policy

- 2.1. This policy applies to all Ministerial Staff (**Ministerial Staff**).
- 2.2. The purpose of this policy is to ensure Ministerial staff treat each other fairly and with dignity and observe the principles of confidentiality and respectful treatment in dealing with issues under this policy.
- 2.3. All employees will be expected to contribute to the creation of a harmonious workplace where diversity is respected and encouraged, fostering social inclusion.

3. Expected standards of behaviour

- 3.1. Ministerial Staff are expected to observe the following minimum standards of behaviour, including:
 - (a) being polite and courteous to others
 - (b) maintaining a commitment to diversity, inclusion and equity, including being respectful of the differences between people and their circumstances
 - (c) compliance with the Ministerial Staff Code of Conduct
 - (d) ensuring they do not engage in behaviour which would constitute sexual harassment. This standard of behaviour is expected of Ministerial Staff whether they are dealing with colleagues, supervisors, managers, other stakeholders or any other individual in connection with their duties
 - (e) ensuring they do not assist or encourage others in, or in connection with, the workplace to engage in harassment
 - (f) reporting any harassment, whether experienced personally or witnessed against others in, or in connection with, the workplace in line with the Ministerial Staff Complaint Resolution Policy and Procedure
 - (g) participating in any complaint resolution process (where requested to do so), which may include an investigation, undertaken in accordance with the Ministerial Staff Complaint Resolution Policy and Procedure or otherwise taken in response to, or connection with, allegations of workplace bullying or

occupational violence; and

- (h) keeping information confidential, or otherwise treating information as directed, arising from any complaint resolution process undertaken in relation to allegations of harassment or occupational violence.

4. Legislation

- 4.1. Provisions relating to harassment (including sexual harassment), discrimination and victimisation are contained in both Commonwealth and Victorian legislation (and summarised in paragraph 11.1 of this policy).
- 4.2. The *Occupational Health and Safety Act 2004 (Vic)*, among other things, provides that an employer must provide a workplace that is without risk to health and safety and requires employees to take reasonable care for the health and safety of others and to co-operate with their employer regarding health and safety measures.

5. Unlawful Discrimination?

- 5.1. “Unlawful discrimination” occurs when someone is treated, or it is proposed they be treated, unfavourably because of a personal characteristic protected by Commonwealth, state or territory law. In Victoria, it can be unlawful to treat a person unfavourably on the basis of characteristics such as the following:

Protected attribute (attribute)	Example of unlawful conduct
Age	Not being considered for a promotion because you are considered too old or too young
Breastfeeding	Being requested to cease breastfeeding in public
Employment activity	Being denied carers leave, annual leave or other workplace rights
Gender expression	Being treated unfairly due to your gender expression
Gender identity	Being treated differently because of your identity with a particular gender
Disability	Being treated differently or denied access based on disability or imputed disability
Industrial activity	Being treated unfairly because of your association with a union
Lawful sexual activity	Being treated unfavourably due to your sexual activity
Marital status	Being treated differently due to your relationship status, or absence of
Parental status	Being treated unfairly or differently because of your parental status

Carer responsibilities	Being treated unfairly because of your carer’s status
Physical features	Being treated unfairly because of your appearance or physical features
Political belief or activity	Being treated unfairly or excluded due to your political belief or activity
Pregnancy	Being treated unfairly or denied opportunity due to pregnancy
Race	Being treated unfairly or denied opportunity due to your race, ethnicity and origin
Relationship status	Being treated unfavourably due to your relationship status, or absence of
Religious belief or activity	Being treated differently due to your religious belief or activity
Sex	Being denied participation or opportunity due to being female, male or intersex
Sexual Orientation	Being denied opportunity due to your sexual identity
Personal association	Being treated unfairly or denied opportunity because you are personally associated to a person with any of the protected attributes listed above.

5.2. Unlawful discrimination includes both direct and indirect discrimination:

“Direct discrimination” is when someone is treated, or it is proposed they be treated, unfavourably because of the above characteristics protected by law.

“Indirect discrimination” occurs when an unreasonable condition is imposed that disadvantages a person with a personal characteristic listed above and protect by law.

5.3. Discrimination in the workplace can occur in any context, including:

- (a) recruitment, appointment and promotion of employees and potential employees
- (b) the conditions, benefits and terms offered to employees
- (c) how employees interact with each other
- (d) the availability and levels of training offered to employees; and
- (e) the transfer, dismissal or retrenchment of employees.

6. Harassment

What is harassment?

6.1. Harassment is any unwelcome conduct, whether verbal or physical, that intimidates, offends or humiliates another person, or makes the workplace uncomfortable and unpleasant, in particular conduct which happens because a person has a certain attribute

referred to in State or Commonwealth anti-discrimination legislation (and above at paragraph 5.1) such as their gender, pregnancy, race or ethnic background, marital status, age, sexual orientation, trans status or disability.

- 6.2. The intention of the perpetrator is irrelevant. If the behaviour offends, humiliates, or intimidates another person, it will be considered harassment and therefore a breach of this policy.
- 6.3. Harassment can include:
 - (a) verbal abuse or comments that put down or stereotype people;
 - (b) derogatory or demeaning jokes intended to offend on the basis of stereotyped characteristics;
 - (c) offensive communications (such as telephone calls, posters, letters, e-mails, faxes, screen savers, web sites, posts on social media platforms);
 - (d) insults, taunting, name calling, innuendo or bullying;
 - (e) persistent or intrusive questions or comments about an individual's personal life;
 - (f) unwelcome invitations, especially after prior refusal;
 - (g) activities that involve sexual, sexist, racist or other discriminatory behaviour;
 - (h) non-verbal behaviour such as whistling, staring and leering;
 - (i) engaging in behaviour which is embarrassing, humiliating or intimidating;
 - (j) derogatory comments about race, religion and customs;
 - (k) teasing or offensive language and racist behaviours;
 - (l) sexual harassment; and
 - (m) mocking customs or cultures.
- 6.4. The above listed inappropriate behaviours, whether repeated or not, will also constitute misconduct under the Misconduct Policy and Procedure.
- 6.5. Harassment can include incidents outside of the workplace if they are in the course of the employee's duties, if persons involved include a Ministerial Staff member or if the conduct has the requisite connection to the Ministerial Staff member's employment.
- 6.6. What is important is how the behaviour affects the person it is directed against. Ministerial Staff should be aware that differing social and cultural norms may mean that behaviour that is acceptable to some may be perceived as offensive by others.

What is not harassment?

6.7. Administrative action

Ministers, Chiefs of Staff or other managers frequently have to make difficult decisions (e.g. changing work allocation or reassigning desks). These decisions may not please everybody, but they do not constitute harassment.

6.8. Performance evaluation

Giving appropriate criticism and taking appropriate corrective action in relation to a Ministerial Staff member's unsatisfactory performance or conduct is part of a Minister's, Chief of Staff's, or manager's role and does not constitute harassment.

6.9. Consensual relationships

A friendship or consensual relationship of a sexual nature does not constitute harassment, providing the interaction is consensual, welcome, and reciprocated. However, a consensual relationship may lead to a conflict of interest.

7. Victimisation

- 7.1. A Ministerial Staff member who makes a complaint, or intends to make a complaint, about discrimination or harassment (including sexual harassment) is protected from being victimised.
- 7.2. This protection extends to any Ministerial Staff member who does or may give evidence or information in connection with such complaint and to a Ministerial Staff member who makes an allegation of discrimination or harassment (including sexual harassment) even if no formal complaint is made.
- 7.3. Similarly, a Ministerial Staff member must not victimise any other person who makes a complaint, or intends to make a complaint, about the behaviour of a Ministerial Staff member that is in contravention of this policy.
- 7.4. Victimisation is unlawful under Victorian and Commonwealth laws and will not be tolerated.

8. Dealing with discrimination, harassment, and victimisation: what to do about behaviour that contravenes this policy?

- 8.1. Any Ministerial Staff member who feels that they have been subjected to discrimination, harassment (including sexual harassment) or victimisation, or who feels that someone else is being subjected to discrimination, harassment (including sexual harassment) or victimisation, should immediately report the incident in accordance with the Ministerial Staff Complaint Resolution Policy and Procedure.

9. Support for Ministerial Staff

- 9.1. A range of options are available to provide support regarding discrimination and harassment. Ministerial staff are encouraged to contact their Chief of Staff, the Premier's Chief of Staff, or the General Counsel or their delegate.

Employee Assistance Program (EAP)

- 9.2. All Ministerial Staff (and their immediate family) have access to the EAP, which provides for a limited number of counselling sessions at no cost to the employee and can be provided over the phone or face-to-face.
- 9.3. Managers and supervisors can access Manager Assist through the EAP, to help with workplace issues.

9.4. The EAP provider is Converge International and can be contacted on 1300 687 327.

External support

9.5. Complaints of discrimination and harassment can also be lodged with the Victorian Equal Opportunity and Human Rights Commission, the Victorian Civil and Administrative Tribunal and in some circumstances, WorkSafe Victoria, the Fair Work Commission, or the Australian Human Rights Commission.

9.6. If the complaint appears to be a criminal offence, the complainant and/or the Premier's Office may report the matter to Victoria Police.

9.7. Ministerial Staff may also wish to access other support services, such as The Centres Against Sexual Assault.

9.8. Ministerial Staff may also wish to contact their union for representation and support.

10. Violation of this policy

10.1. Ministerial Staff who engage or are involved in discrimination, harassment (including sexual harassment) or victimisation will be subjected to disciplinary action which may include termination of employment in accordance with the Ministerial Staff Complaint Resolution Policy and Procedure and the Ministerial Staff Misconduct Policy and Procedure.

11. Further information

Related legislative and regulatory instruments

Victorian Legislation

Equal Opportunity Act 2010

Racial & Religious Tolerance Act 2001

Charter of Human Rights & Responsibilities Act 2006

Occupational Health and Safety Act 2004

Federal Legislation

Racial Discrimination Act 1975

Sex Discrimination Act 1984

Disability Discrimination Act 1992

Age Discrimination Act 2004

Fair Work Act 2009

Information can also be obtained from:

- Ministerial Staff Collective Agreement (Vic) 2019
- Ministerial Staff Code of Conduct
- Ministerial Staff Complaint Resolution Policy and Procedure
- Ministerial Staff Prevention of Sexual Harassment Policy
- Ministerial Staff Misconduct Policy and Procedure

Victorian Equal Opportunity and Human Rights Commission

204 Lygon Street

Carlton VIC 3053

Telephone: 1300 891 848

Website: www.humanrightscommission.vic.gov.au

Australian Human Rights Commission

GPO Box 5218

SYDNEY NSW 2001

Telephone: (02) 9284 9600 Website: www.humanrights.gov.au

12. Policy management details

Title and version number	Ministerial Staff Workplace Bullying and Occupational Violence Prevention Policy
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For further information, or if you have any queries, please contact your Minister’s Chief of Staff or the General Counsel.

Ministerial Staff are required to comply with the policies and procedures applicable to Ministerial Staff. Failure to do so may result in disciplinary action including termination.