

**DISCRIMINATION, BULLYING AND HARASSMENT POLICY**

Everyone has the right to feel safe and secure while at work. It is the policy of Bartsch Builders that it will not tolerate any action that could be interpreted as an act of discrimination, bullying and/or harassment as set out below.

Discrimination

Discrimination is unfairly treating people because of their particular personal characteristics or because they belong to a certain group. Discrimination can be direct or indirect. Indirect discrimination is treatment which appears to be equal but is unfair to certain people. Discrimination is unlawful if it is also unreasonable or if it is for an irrelevant reason. It is unlawful to unfairly treat people because of their:

- Age
- Sex
- Chosen gender
- Race
- Disability
- Sexuality
- Marital or domestic partner status
- Social origin
- Irrelevant criminal history
- Pregnancy
- Association with a child
- Caring responsibilities
- Identity of a spouse
- Religious appearance or dress
- Political opinion
- Religion
- Trade or union activity

However, discrimination against a worker for any of the above reasons is not unlawful if it is based on the inherent requirements of a position.

Discrimination under WHS Legislation

Under WHS legislation a person must not engage in discriminatory conduct for a prohibited reason. For the discrimination to be unlawful the prohibited reason must be the dominant reason for the conduct.

A person engages in discriminatory conduct if the person:

- Dismisses a worker
- Terminates a contract for services with a worker
- Puts a worker to his or her detriment in the engagement of the worker
- Alters the position of a worker to the worker's detriment
- Refuses or fails to offer to engage a prospective worker
- Treats a prospective worker less favourably than another prospective worker would be treated in offering terms of engagement
- Terminates a commercial arrangement with another person
- Refuses or fails to enter into a commercial arrangement with another person

A person also engages in discriminator conduct if they organise to take any action referred to above or threatens to organise or take that action.

Discriminatory conduct is engaged in for a prohibited reason if it is engaged in because the worker, prospective worker or a person in connection with a commercial arrangement:

- Is, has been or proposes to be a health and safety representative or a member of a health and safety committee,
- Undertakes, has undertaken or proposes to undertake another role under the WHS Act,
- Exercises a power or performs a function or has exercised a power or performed a function or proposes to exercise a power or perform a function has a health and safety representative or as a member of a health and safety committee,
- Refrains from, has refrained from or proposes to refrain from exercising a power or performing a function under the WHS Act or refrains from, has refrained from or proposes to refrain from
- Exercises, has exercised or proposes to exercise a power under the WHS Act or exercises, has exercised or proposes to exercise a power under the WHS Act in a particular way,
- Performs, has performed or proposes to perform a function under the WHS Act or performs, has performed or proposes to perform a function under the WHS Act in a particular way
- Raises or has raised or proposes to raise an issue or concern about work health and safety with:
  - the PCBU
  - an inspector
  - a WHS entry permit holder

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- exercising a power or performing a function under the WHS Act in a particular way
- Assists or has assisted or proposes to assist, or gives or has given or proposes to give any information to any person exercising a power or performing a function under the WHS Act
- Is involved in, has been involved in or proposes to be involved in resolving a work health and safety issue under the WHS Act
- a health and safety representative
- a member of a health and safety committee, another worker
- any person who has a duty under the Act in relation to the matter
- any other person exercising a power or performing a function under the WHS Act,
- Is taking action, has taken action or proposes to take action to seek compliance by any person with any duty or obligation under the WHS Act

## Bullying and Harassment

Workplace bullying is any behaviour that is repeated, systematic and directed towards a worker or group of workers that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten and which creates a risk to health and safety.

Examples of bullying behaviour include, but are not limited to:

- Abusive, insulting or offensive language
- Behaviour or language that frightens, humiliates, belittles or degrades
- Spreading gossip, rumours and innuendo of a malicious nature
- Physical assault or unlawful threats, including inappropriate or violent initiating practices
- Intruding on a person's space by pestering, spying or tampering with their personal effects or work equipment
- Deliberately denying access to information, consultation or resources
- Setting tasks that are unreasonably beyond a person's ability
- withholding information that is vital for effective work performance
- Teasing or regularly making someone the brunt of practical jokes
- Displaying material that is degrading or offensive
- Unfair treatment in relation to accessing workplace entitlements
- Deliberately excluding, isolating or marginalising from workplace activities
- Intimidating a person through inappropriate persona comments, belittling opinions or unjustifiable criticism
- Ignoring or isolating a person from normal workplace activities
- Setting impossible deadlines
- deliberately denying access to information, consultation or resources

Workplace bullying is not conduct that involves:

- Reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline, counsel, retrench or dismiss a worker
- Reasonable administrative action taken in a reasonable manner by an employer in connection with a worker's employment
- A decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer or benefit in connection with an worker's employment
- Reasonable action taking in a reasonable manner under an Act affecting a worker

## Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature where a reasonable person would have anticipated the possibility that the affected person may feel offended, afraid or humiliated. Sexual harassment is determined from the point of view of the person feeling harassed. Conduct that may constitute sexual harassment includes, but is not limited to:

- Unwelcome touching or kissing
- Sexual pictures, objects, emails, text messages or other literature
- Questions about sexual activity
- Comments or jokes, leering or staring
- Direct or implied propositions, or requests for dates

However, sexual harassment does not include mutual attraction or friendship with consent from the perspective of the participants.

This policy is not limited to just workers of Bartsch Builders but is also directed towards other workers, to staff of clients, suppliers or members of the public. This policy applies if the above behaviour occurs during working hours, including attendance at work-related functions provided that the worker making the complaint is directed to attend the function.

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This policy may extend to functions a worker attends voluntarily or conduct which occurs outside the workplace so long as Bartsch Builders determines that the conduct has sufficient connection to the workplace or affects the capacity of the workers concerned to perform their duties.

Bartsch Builders will take complaints of discrimination, bullying and harassment seriously and take action in accordance with its Discrimination, Bullying and Harassment Procedure.

Luke Bartsch  
Project Supervisor

18<sup>th</sup> January 2018

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