



Bullying, and Harassment

Policy Statement

NBCA will strive to achieve a healthy and safe workplace by addressing any harassment, discrimination and workplace bullying. Staff and families must not engage in harassing, discriminatory or bullying behaviour towards anyone involved with NBCA.

There are clear grievance procedures that are thorough and fair and aim to eliminate unacceptable behaviours and reduce risks to others. We operate in a culture that fosters the principles of procedural fairness through natural justice processes.

Implementation

- Bullying and harassment is not tolerated at any NBCA service.
- All children, staff and families are treated in a fair and respectful manner and will be responsible for treating others the same way. Any form of bullying and harassment may result in cancellation of enrolment or termination of employment.
- Staff must treat harassment, discrimination and workplace bullying matters seriously and report all incidents to the director. Incidents will be dealt with in a prompt, fair and confidential manner.
- Should a matter remain unresolved, a staff member can approach the staff liaison officer on the NBCA Management Committee.

Bullying and Harassment

- Bullying is repeated and unreasonable behaviour directed towards a person or a group of people which creates a risk to health and safety. Not all behaviour that makes a person feel upset or undervalued is classified as bullying. Behaviour, whether intentional or unintentional that may be considered as bullying include but are not limited to:
 - Abusive, insulting or offensive language or comments in any medium (verbal, written, social media, telephone etc).
 - Any behaviour or series of behaviours that unfairly or unreasonably offends, humiliates, intimidates, belittles, undermines, scares, excludes or embarrasses anyone.
 - Setting unreasonable timelines or constantly changing deadlines.
 - Setting tasks unreasonably below or beyond a person's skill level.
 - Denying access to information, supervision, consultation or resources to the detriment of a person.
 - Spreading misinformation or malicious rumours.
 - Any behaviour or series of behaviours that may constitute any form of discrimination.
 - A single incident of unreasonable behaviour is not considered bullying.



Bullying and Harassment does not include:

- Interpersonal conflicts and occasional differences of opinion or disagreement with decisions made.
- Reasonable and appropriate corrective management of an employee's poor workplace performance or behaviour (including ongoing meetings to address underperformance).
- Demotion or probationary period of an employee due to poor work performance and failure of performance management.
- Performance reviews, setting performance goals, standards and deadlines.
- Counselling or disciplining for inappropriate behaviour or investigating alleged misconduct.
- Denying an employee permission to return to work due to a medical or mental health condition, not being a fit and proper person as determined by a health care professional or requesting medical certificates for time taken off work due to illness and/or medical/health conditions.
- Rostering, allocating duties, working hours and shifts.
- An employee not being selected for promotion or training.
- Implementing organisational changes or downsizing.
- Age or developmentally appropriate behaviour.
- Enforcement of Policies, Procedures, Job Descriptions, Duty Statements, Contracts of Employment or any laws and legislation pertaining to the early education and care sector.

Harassment & Threats of Violence

- Harassment can be a one off behaviour that causes physical or psychological damage. It is behaviour that intimidates, humiliates or insults someone and can include conversations or touching. Harassment can include behaviours such as:
 - Telling insulting jokes about particular racial groups.
 - Making unwanted or unwelcome sexual advances or obscene remarks or sending explicit or sexually suggestive emails or texts.
 - Displaying offensive or pornographic posters or screensavers.
 - Making derogatory comments or taunts about someone's race or religion.
 - Asking intrusive questions about someone's personal life, including their sex life.
- If a person/s known or unknown to the service harasses or makes threats to anyone within the service, educators will:
 - Calmly and politely ask them to leave the service.
 - Be firm and clear and remember your primary duty is to the children in your care.
 - If they refuse to leave, explain it may be necessary to contact the Police.
 - If they still do not leave, contact the Police. Ask another staff member to do this, if required.
 - Educators should not attempt to physically remove an unwelcome person, but try to remain calm and keep the person as calm as possible until the arrival of the Police.
 - Where possible, educators must endeavour to calmly move children away from the person.



Measurement of Severity

To better assess the severity of an incident/s, the below elements will be considered by Educators. These combined with an incident form will allow Educators to establish a rating from 1-5 with 1 being low severity and 5 being extreme.

- Aggression
- Body language
- Offensive and rude language
- Tone
- Hand gestures
- Any intimidating behavior
- Is it out of character or is this frequent?
- Was it in front of children, family members or visitors?

Principles of Natural Justice

- Natural justice refers to the duty to act fairly. The right to a fair hearing requires individuals should not be penalised by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case.
- NBCA will take all reasonable measures to adhere to the principles of "Natural Justice":
 - The person who is subject to a complaint must know the basis of the complaint or allegations made against them.
 - The person must have the opportunity to put their case forward.
 - All parties to the complaint must have the right to be heard.
 - All relevant evidence and submissions must be considered.
 - The employer must not take into account matters that are not relevant.
 - The person or people who lay the charge must not determine the charge.
 - The decision maker must be fair and just.

People's Rights

- The person who makes a complaint must not be victimised.
- The accused must not be accused publicly (defamation).
- The accused person's right is the complaint remains confidential and they have an opportunity to answer or respond to the allegation in a formal resolution process.
- The employer has a right to confront an individual regarding behaviour they perceived to be harassing.
- The employer can dismiss an employee on the grounds of committing a severe case of harassment or refusing to terminate harassing behaviours.
- The accused has the right to be informed the appropriate process has been followed.
- The accused has the right to know who lodged the complaint against them and on what grounds.
- All parties are obliged to self-reflect and make efforts to alleviate the situation, modify their behaviour or take steps to protect themselves from hazardous situations.
- The person responsible for dealing with complaints or making decisions has a right to explain all aspects clearly to all parties but must be respected and treated without bias.



Procedure

1. There will be no “off the record” grievances.
2. The details of the grievance must be heard and clearly documented.
3. The person receiving the grievance must act. This may mean making observations, investigating allegations, questioning other people or researching further. The employer may decide if the allegations are in breach of policy or unlawful.
4. The rules of natural justice must be applied.
5. Support/protection is offered to the person making the grievance.
6. The accused person’s replies to the allegations must be considered.
7. Independent advice may be sought.
8. Decisions are made and all parties are notified of the outcomes.

Strategies are arranged to protect and support the parties involved which eliminate the risks.

Strategies to Consider

- Independent advice may be sought.
- Some or all parties are required to self-reflect on their behaviours.
- Training may be considered as a strategy.
- Mediation – internal and/or external.
- Consider the advice and recommendations of a mediator.
- Counselling.
- Mentoring.
- Performance management.
- Formally reporting the incident, if unlawful.
- Internal transfer of position, role of duties.
- Offer of resignation.
- Dismissal of employment.
- Exclusion from the service.

Policy Links

Policies:

- Behaviour Guidance and Self-Regulation
- Child Protection
- Code of Conduct
- Confidentiality and Privacy
- Diversity, Equity and Inclusion
- Duty of Care
- Employment
- Exclusion
- Grievances
- Management Committee
- Workplace Health and Safety

NQS: 4.1, 4.2, 5.1, 5.2 and 7.1

Regulations: 155 – 156 and 168



Sources:

- ACT Human Rights Commission 2014
- Australian Human Rights Commission Act 1986
- Commonwealth Ombudsman’s “Better Practice Guide to Managing Unreasonable Complaint Conduct” 2012
- IHR Australia September 2014
- NBCA Employee & Workplace Health and Safety Handbooks
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984
- “Workplace Bullying – Prevention and Response” WorkSafe Victoria – October 2012
- WorkSafe ACT

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