

Harassment, Bullying and/or Discrimination

Policy Number 3.100

Policy Function Human Resources

Issue Date 31 August 2016

Summary This policy provides a framework to ensure the Justice Health & Forensic Mental Health Network workplace is safe and free from any form of harassment, bullying or discrimination.

Responsible Officer Executive Director Governance and Commercial Services

Applicable Sites

- Administration Centres (e.g.: Joint Records Centre)
- Community Sites (e.g. Court Liaison Service, Community Integration Team, etc.)
- Health Centres (Adult Correctional Centres or Police Cells)
- Health Centres (Juvenile Justice Centres)
- Long Bay Hospital
- Forensic Hospital

Previous Issue(s) Policy 3.100 (September 2012 & May 2009)

Change Summary

- Deleted reference to obsolete policies.
- Inserted new policy reference.
- Removed reference to ODEOPE which no longer exists

TRIM Reference POLJH/3100

Authorised by Chief Executive, Justice Health & Forensic Mental Health Network

1. Preface

All employees have the right to be treated fairly, and be able to work in a safe and healthy workplace free from harassment and intimidation.

The Zero Tolerance to Violence in the Ministry of Health Workplace initiative ensures that employees have a right to work in an environment free from any form of abuse and violence. Justice Health & Forensic Mental Health Network (JH&FMHN) is committed to providing a workplace free from harassment, bullying and discrimination of any kind.

This policy provides a framework to ensure the JH&FMHN workplace is safe and free from any form of harassment, bullying or discrimination.

2. Policy Content

2.1 Mandatory Requirements

Standards of Workplace Conduct

JH&FMHN will ensure that employees are not subjected to treatment that is hostile or unprofessional by preventing and eliminating bullying, harassment and/or discrimination in the workplace. All employees, including managers and contractors, are expected to act fairly and reasonably towards others, including staff from other agencies, the public, and patients. High standards of workplace practice and conduct improve staff morale and produce effective working relationships and patient outcomes.

All managers and employees must act in accordance with the JH&FMHN and Ministry of Health Codes of Conduct.

Zero Tolerance to Harassment, Bullying and Discrimination

Harassment, bullying and/or discrimination may adversely affect employees, patients, visitors or the public and will not be tolerated. To ensure a workplace free from harassment and intimidation, staff must:

- respect the rights of others;
- not engage in harassment, bullying or discrimination;
- not condone harassment, bullying or discrimination;
- assist in any investigation of allegations of harassment, bullying or discrimination when requested by JH&FMHN;
- not lodge frivolous, malicious or vexatious complaints.

Staff members should report instances of harassment, bullying or discrimination directed either to themselves or others to their manager, supervisor or service director. If a manager becomes aware (through direct observation or receiving a complaint) that an employee is being harassed, bullied or discriminated against, he/she must take immediate action.

Performance management and/or disciplinary action undertaken by managers as part of a normal management function does not constitute harassment or bullying as defined by this policy.

Protection for People who Raise Concerns

In accordance with Ministry of Health [PD2015_049 Code of Conduct](#), JH&FMHN is committed to protecting any person who raises concerns about a breach of the Code of Conduct from retaliation or reprisals. Any attempt to take detrimental action against a person who raises a legitimate breach of the Code of Conduct will be treated seriously and may lead to disciplinary action.

2.2. Implementation – Roles & Responsibilities

Chief Executive and Executive Directors

The Chief Executive and Executive Directors are responsible for:

- maintaining a workplace free of harassment, bullying and discrimination;
- ensuring employees are aware of this policy and know who to contact should they be subjected to harassment, bullying or discrimination;
- supporting managers to acquire the necessary knowledge and skills to effectively deal with allegations of harassment, bullying or discrimination; and
- monitoring compliance with this policy.

Service Directors, Directors and Managers

This level of management is responsible for:

- the implementation of and adherence to this policy in order to achieve a workplace free of harassment, bullying and discrimination;
- monitoring compliance;
- ensuring they have the knowledge and skills to effectively and promptly deal with allegations of harassment, bullying or discrimination;
- including information on equity and the requirement for a harassment and discrimination free workplace in the orientation of new staff as part of local orientation programs;
- supporting staff who allege that they have been or are being harassed, bullied or discriminated against; and
- dealing with allegations of harassment or discrimination in accordance with this policy.

Employees

Employees are encouraged to:

- offer support to any employee who is being subjected to harassment, bullying or discrimination, including advising him/her to report it to his or her line manager; and
- advise the person being harassed that they are willing to act as a witness if s/he decides to lodge a complaint and maintain confidentiality (see section 3.4).

Learning & Development Centre

The Learning & Development Centre is responsible for implementation of the Zero Tolerance to Violence training.

Employee Services

Employee Services is responsible for:

- providing advice and support to managers and employees in dealing with allegations of harassment, bullying and discrimination;
- including equity and the rights and responsibilities for a harassment, bullying and discrimination-free workplace in the JH&FMHN orientation program;
- dealing with allegations of harassment, bullying or discrimination which have been submitted directly to Employee Services, or allegations concerning a vexatious or frivolous complaint. This may involve investigating the allegation or referring the allegation to a more appropriate person for investigation.

3. Procedure Content

3.1 Preventing Harassment, Bullying & Discrimination

A proactive approach to preventing harassment, bullying and discrimination in the workplace is necessary to promote employee awareness and to improve compliance. JH&FMHN is committed to the following strategies to help prevent harassment, bullying and discrimination:

- ensuring all employees are briefed on relevant Human Resources policies and receive a copy of the Code of Conduct;
- ensuring all employees are briefed on the JH&FMHN organisational values and are prepared to work within this values framework;
- promoting a harassment, bullying and discrimination-free workplace by supporting effective management practices, providing in-services, newsletters and through team meeting discussions;
- embedding the prevention of harassment, bullying and discrimination into management development activities; and
- collecting and evaluating employee data on issues affecting them through employee surveys (including exit interviews) and recording allegations of harassment, bullying and discrimination.

3.2 Dealing with Harassment, Bullying & Discrimination

Employees who experience harassment, bullying or discrimination should take one or more of the following actions:

1. Tell the person(s) conducting the harassment, bullying or discrimination to stop. It is acknowledged that some staff may be unable or unwilling to take this step. It is important that prompt action is taken to alert the person(s) involved that their communication or behaviour is causing harm and/or distress. The employee should provide examples of the behaviour, describe how it makes him or her feel, and request that the behaviour cease. An employee who has any doubt or concern about his/her safety in raising the issue directly with the person(s) should not do so.

2. Discuss the issue with their manager if they are unable to talk to the person(s) concerned directly, or if they have spoken to the person(s) but the harassment, bullying or discrimination continues. If the employee does not want to discuss the issue with the manager, s/he must contact the Director, Service Director, another manager or the Manager Employee Services.
3. Submit a written complaint about the harassment, bullying or discrimination in accordance with the JH&FMHN policy [3.090 Grievance Management](#). The complaint should provide examples of the behaviour, the dates on which it occurred and who else observed the behaviour, and the preferred outcome.

If a manager becomes aware (through direct observation or receipt of a verbal or written complaint) that an employee is being harassed, bullied or discriminated against, s/he must take action to investigate and if substantiated, stop the behaviour without delay. The manager must also explain the seriousness of making a frivolous or vexatious complaint. Depending on the circumstances, action may be informal or formal and may include a detailed investigation. The procedures detailed in JH&FMHN policies [3.090 Grievance Management](#) and [3.020 Conduct and Discipline](#) should be followed.

3.3 Dealing with Allegations or Concerns Raised by Employees

When employees make an allegation or raise concerns in relation to inappropriate behaviour in the workplace, JH&FMHN must be able to demonstrate its commitment to staff and to a workplace free of harassment, bullying and discrimination. This will only be evident if the health service takes the issues seriously, acts promptly and is fair, transparent and balanced in its handling of the matter.

Managers must not unreasonably delay taking action when a complaint or issue is raised. If there is any doubt on what action to take, the manager must seek guidance from the Executive Director, Service Director or the Director Workforce

If the inappropriate conduct is ongoing, the manager must take immediate and assertive action to stop the behaviour.

3.4 Confidentiality

It is essential that information gathered during the investigation of allegations of harassment, bullying or discrimination is treated with sensitivity and confidentiality by all parties. In particular managers conducting an investigation must be cautious about how they use or pass on information provided by employees. When interviewing employees it is important to make them aware that the information they provide will be used as part of the investigation. Refer to JH&FMHN policy [3.020 Conduct and Discipline](#).

As the outcome of the investigation may involve disciplinary action, the investigation process must be fair, impartial, professionally conducted and consistently applied across JH&FMHN facilities. This means, for example, that the staff member who has allegations made against them is provided with the substance of the complaint in the first instance and advised that s/he will be given reasonable opportunity to respond.

3.5 Feedback

Persons raising concerns or making complaints either for themselves or on behalf of others are to receive feedback following the investigation process. Feedback should be provided by the person who received the complaint. Feedback should be brief and without detail but should confirm whether the concern or complaint was substantiated, and if so, whether a meeting had been held or was planned to be held. At the conclusion

of the process, the employee will be advised that the matter was closed. S/he should also be advised that the matter should not be discussed with colleagues or the person(s) involved or partner agencies such as Corrective Services New South Wales or Juvenile Justice New South Wales and that s/he should not experience recrimination from any source as a result of having raised concerns.

4. Definitions

Harassment and Bullying

Harassment and bullying are unwelcome or unreciprocated behaviour which makes a person feel intimidated, offended or belittled. Harassment and bullying distresses, humiliates or frightens another person and makes the working environment uncomfortable or unpleasant. Harassment may occur between a manager and an employee, between colleagues, between people of different status in an organisation, or as a group action. Harassment and bullying may also involve patients, visitors and the public generally.

Harassment and bullying can take many forms. It can be overt (obvious) or subtle, direct or indirect. It is important to note that legally, harassment does not need to happen more than once for it to be against the law.

If unwelcome or unreciprocated, the following behaviours may be examples of harassment or bullying:

- physical contact or requests for sexual favours;
- persistent following (stalking);
- suggestive looks implying sexual interest;
- persistent verbal abuse or threats;
- persistently disrupting an individual's work, work space, equipment or interfering with personal property;
- jokes, derogatory or dismissive comments or gossiping;
- gestures or comments that are insulting or belittling;
- making allegations against another person which cannot be substantiated but which have the potential to cause harm to his or her reputation;
- spreading gossip and/or attempting to create a negative perception of a person or persons;
- intrusion into personal life; or
- circulating or displaying written or pictorial material that is offensive or belittling.

Discrimination

Discrimination is treating someone unfairly or harassing them because they belong to a particular group. Under the [Anti-Discrimination Act 1977](#), it is against the law in New South Wales for any employer, including the government, to discriminate against an employee or job applicant because of his or her:

- age,
- sex,
- pregnancy,

- disability or appearance (includes past, present or possible future disability),
- race, colour, ethnic or ethno-religious background, descent or nationality,
- marital status,
- sexual orientation,
- gender identification or
- carer responsibilities.

Vexatious or Frivolous claim

A vexatious or frivolous complaint is a complaint without substance which is designed to cause harm to another person, or is a complaint lodged against a person who is charged with taking reasonable performance or disciplinary management action in order to subvert the disciplinary or management process. Disciplinary action may occur to an employee making a vexatious or frivolous claim.

5. Legislation and Related Documents

Legislation [Disability Discrimination Act 1992 \(Cth\)](#)

[Sex Discrimination Act 1984 \(Cth\)](#)

[Racial Discrimination Act 1975 \(Cth\)](#)

[Anti-Discrimination Act 1977](#)

[Health Services Act 1997](#)

[Work Health and Safety Act 2011](#)

Ministry of Health [PD2010_007](#) *Grievance – Effective Workplace Resolution*

[PD2011_018](#) *Bullying - Prevention and Management of Workplace Bullying in NSW Health*

[PD2015_049](#) *Code of Conduct*

JH&FMHN Policies [2.010](#) *Code of Conduct*

[3.020](#) *Conduct and Discipline*

[3.090](#) *Grievance Management*