



# TSO Workplace Discrimination, Bullying and Harassment Policy

## 1. Scope

This policy applies to:

- Board members, Foundation Board members, committee members such as Audit and Risk Committee and Friends of the TSO
- all employees, including: managers and supervisors; full-time, part-time or casual, temporary or permanent employees; job candidates; student placements, apprentices, contractors, sub-contractors and volunteers
- how the Tasmanian Symphony Orchestra (TSO) provides services to clients and how it interacts with other members of the public
- all aspects of employment, recruitment and selection, conditions and benefits, training and promotion, task allocation, shifts, hours, leave arrangements, workload, equipment and transport
- on-site, off-site or after hours work, work-related social functions, conferences, the use of digital communication - both in and outside of working hours, and wherever and whenever employees may be as a result of their TSO duties
- employees' treatment of other employees, of clients, and of other members of the public encountered in the course of their TSO duties.

## 2. Aims

TSO is committed to providing a safe, flexible and respectful environment for employees and clients free from all forms of discrimination, harassment, bullying, sexual harassment, victimisation and vilification.

All TSO employees are required to treat others with dignity, courtesy and respect.

By effectively implementing our *Workplace Discrimination and Harassment Policy* we will attract and retain talented employees and create a positive environment for employees.

## 3. Employee rights and responsibilities

All employees are entitled to:

- recruitment and selection decisions based on merit and not affected by irrelevant personal characteristics
- work free from discrimination, harassment, bullying and sexual harassment
- the right to raise issues or to make an enquiry or complaint in a reasonable and respectful manner without being victimised
- reasonable flexibility in working arrangements, especially where needed to accommodate their family responsibilities, disability, religious beliefs or culture.

All employees must:

- comply with the standards of behaviour outlined in this policy and other related policies and procedures
- offer support to people who experience discrimination, harassment, bullying or sexual harassment, including providing information about how to make a complaint
- avoid gossip and respect the confidentiality of complaint resolution procedures
- follow all principles of the TSO Whistleblower Protection Policy in the reporting of a complaint
- treat everyone with dignity, courtesy and respect
  
- participate in training provided by the TSO around workplace discrimination, harassment, sexual harassment or bullying in the workplace.

### **3.1 Additional roles and responsibilities of leadership, management and supervisory positions**

Employees and personnel in leadership and management positions must also:

- model appropriate standards of behaviour
- take steps to educate and make employees aware of their obligations under this policy, other relevant TSO policies/procedures and the law
- intervene quickly and appropriately when they become aware of inappropriate behaviour
- ensure the complainant is aware that they can raise the matter with police if the allegations are of a criminal nature and that they will be provided with appropriate support to do so
- act fairly to resolve issues and enforce workplace behavioural standards, making sure relevant parties are heard
- help employees resolve complaints informally
- refer formal complaints about breaches of this policy to the appropriate workplace delegate for investigation
- ensure employees who raise an issue or make a complaint are not victimised
- ensure that recruitment decisions are based on merit regardless of personal characteristics and that no discriminatory requests for information are made
- seriously consider requests for flexible work arrangements
  
- ensure all employee (including bystanders) have access to support if required.

### 3.2 Supporting bystander action

In order to promote a safe, equitable and respectful workplace, the TSO encourages all employees to take action if they witness or hear about workplace discrimination, harassment, sexual harassment and bullying.

- **See:** Know where the line is. If you see something or hear something that makes you feel uncomfortable, don't ignore it.
- **Talk:** It takes courage to speak up. Talk with your supervisor, your colleagues or with the person who is crossing the line.
- **Support:** Don't underestimate the power of support. It can help a colleague stand up and take action.

Note that victimisation of someone taking bystander action is unlawful and will not be tolerated.

## 4. Unacceptable workplace conduct

Discrimination, bullying and sexual harassment are unacceptable at TSO and are unlawful under the following legislation:

- *Sex Discrimination Act 1984 (Cth)*
- *Racial Discrimination Act 1975 (Cth)*
- *Disability Discrimination Act 1992 (Cth)*
- *Age Discrimination Act 2004 (Cth)*
- *Australian Human Rights Commission Act 1986 (Cth)*
- *Fair Work Act 2009 (Cth)*
- *The Anti-Discrimination Act 1998 (TAS)*
- *Work Health and Safety Act 2012 (TAS)*

**A person must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.**

Employees (including managers) found to have engaged in a breach of this Policy and/or legislation may be counselled, warned or disciplined. Severe or repeated breaches can lead to formal discipline up to and including dismissal.

## 4.1 Discrimination

Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by the law, such as sex, age, race or disability.

Discrimination can be direct or indirect.

### Direct discrimination

Tasmanian anti-discrimination legislation states that:

- (1) *Discrimination to which this Act applies is direct or indirect discrimination on the grounds of any prescribed attribute.*
- (2) *Direct discrimination takes place if a person treats another person on the basis of any prescribed attribute, imputed prescribed attribute or a characteristic imputed to that attribute less favourably than a person without that attribute or characteristic.*
- (3) *For direct discrimination to take place, it is not necessary –*
  - (a) *that the prescribed attribute be the sole or dominant ground for the unfavourable treatment; or*
  - (b) *that the person who discriminates regards the treatment as unfavourable; or*

© *that the person who discriminates has any particular motive in discriminating.*

Discrimination can occur **directly** when a person or group is treated less favourably than another person or group in a similar situation because of a personal characteristic protected by law (see list below).

*For example, an employee is harassed and humiliated because of their race; or*

*An employee is refused promotion because they are 'too old'; or*

*An employee is treated differently (not given an option for extra hours) because of family and child responsibilities.*

### Indirect discrimination

Indirect discrimination takes place when there is an unreasonable requirement, condition or a practice is imposed that has, or is likely to have, the effect of disadvantaging people with a personal characteristic protected by law (see list below).

*For example, redundancy is decided based on people who have had a worker's compensation claim rather than on merit.*

Protected personal characteristics under Federal and State discrimination law include:

- a disability, disease or injury, including work-related injury
- parental status or status as a carer, for example, because they are responsible for caring for children or other family members
- race, colour, descent, national origin, or ethnic background

- age, whether young or old, or because of age in general
- sex
- industrial activity, including being a member of an industrial organisation like a trade union or taking part in industrial activity, or deciding not to join a union
- religion
- pregnancy and breastfeeding
- sexual orientation, intersex status or gender identity, including gay, lesbian, bisexual, transsexual, transgender, queer and heterosexual
- marital status, whether married, divorced, unmarried or in a de facto relationship or same sex relationship
- political opinion
- social origin
- medical record
- an association with someone who has, or is assumed to have, one of these characteristics, such as being the parent of a child with a disability.

It is also against the law to treat someone unfavourably because you assume they have a personal characteristic or may have it at some time in the future.

## **4.2 Bullying**

Bullying is repeated, unreasonable behaviour directed towards a person or a group of persons that creates a risk to health and safety.

If someone is being bullied because of a personal characteristic protected by equal opportunity law, it is a form of discrimination.

Bullying can take many forms, including jokes, teasing, nicknames, emails, pictures, text messages, social isolation or ignoring people, or unfair work practices.

Under law, if this behaviour is not repeated it may not be bullying but it may still be discrimination.

Behaviours that may constitute bullying include:

- sarcasm and other forms of demeaning language
- threats, abuse or shouting
- coercion
- isolation
- inappropriate blaming
- ganging up
- constant unconstructive criticism
- deliberately withholding information or equipment that a person needs to do their job or access their entitlements
- unreasonable refusal of requests for leave, training or other workplace benefits.

Bullying does not need to be intentional to be unlawful. Whilst one-off incidents of unreasonable behaviour may not be considered bullying, they are still inappropriate and may constitute discrimination.

It is important to note that where harassment/bullying happens but does not relate to attributes covered by discrimination law, it is still a serious problem and may be a breach of

- workplace health and safety laws
- workers rehabilitation and compensation laws
- criminal laws relating to assault, threatening behaviour, etc.

Bullying is unacceptable in the TSO. Employees can access the TSO's Complaints and Investigation Process Guidelines to report acts of bullying.

Bullying can also be reported to the Director People and Culture or other channels as indicated in the TSO Whistleblower Protection Policy.

### **What is NOT workplace bullying**

The TSO has rights and obligations to effectively direct and control the way work is carried out. It is reasonable for managers and supervisors to allocate work to an employee and give fair and reasonable feedback on an employee's performance.

The following are examples of reasonable management actions that do not constitute workplace bullying:

- probation
- performance management (setting reasonable goals, standards and deadlines)
- disciplinary procedures, including investigations (taken in a reasonable manner)
- an instruction to carry out reasonable duties (including those that may be difficult or mundane) within the employee's skills, experience, responsibilities and capabilities
- implementing organisational changes or restructuring to accommodate the business needs of the TSO
- an instruction to comply with the TSO's policies, procedures or guidelines.

An isolated or single incident of unreasonable/inappropriate behaviour may not be considered as workplace bullying (although it may still constitute employee misconduct).

Actions that may be perceived as unfair are not of themselves workplace bullying.

Workplace conflict is generally not considered workplace bullying. Differences of opinion and disagreements in the workplace may arise without engaging in repeated, unreasonable behaviour that creates a risk to health and safety. Not all conflicts or disagreements have a negative impact on health and safety. Low level, task-based conflict can benefit the TSO and its employees as it may generate debate leading to new ideas and innovation.

### 4.3 Sexual harassment

Under the Tasmanian Anti-Discrimination Act “a person must not sexually harass another person”.

Sexual harassment takes place if a person –

- (a) *subjects another person to an unsolicited act of physical contact of a sexual nature; or*
- (b) *makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person; or*
- (c) *makes an unwelcome remark or statement with sexual connotations to another person or about another person in that person's presence; or*
- (d) *makes any unwelcome gesture, action or comment of a sexual nature; or*
- (e) *engages in conduct of a sexual nature in relation to another person that is offensive to that person.*

Sexual harassment is a specific and serious form of harassment. *It is unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated, intimidated or ridiculed.* Sexual harassment can be physical, spoken or written. It can include:

- intrusive questions, comments or statements about a person's private life or the way they look
- sexually suggestive behaviour, such as leering or staring
- brushing up against someone, touching, fondling or hugging without their permission
- sexually suggestive comments or jokes
- displaying offensive screen savers, photos, calendars or objects
- repeated unwanted requests to go out
- requests for sex
- sexually explicit posts on social networking sites
- insults or taunts of a sexual nature
- sending sexually explicit emails or text messages
- inappropriate advances on social networking sites
- accessing sexually explicit internet sites
- behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

Just because someone does not object to inappropriate behaviour in the workplace at the time, it does not mean that they are consenting to the behaviour.

Sexual harassment is covered in the workplace when it happens at work, at work-related events, between people sharing the same workplace, or between colleagues outside of work.

All employees and volunteers have the same rights and responsibilities in relation to sexual harassment.

A single incident is enough to constitute sexual harassment; it doesn't have to be repeated.

All incidents of sexual harassment, no matter how large or small or who is involved, require employers and managers to respond quickly and appropriately.

TSO recognises that comments and behaviour that do not offend one person can offend another. This policy requires all employees and volunteers to respect other people's limits.

### **Behaviour that is not sexual harassment**

Sexual harassment is not behaviour which is based on mutual attraction, friendship and respect. Where employees engage in consensual, welcome and reciprocated behaviour, this is not sexual harassment. However, appropriate professionalism is expected of all employees at all times, including in relation to employees engaging in consensual behaviour.

### **4.4 Victimisation**

Victimisation is subjecting or threatening to subject someone to a detriment because they have asserted their rights under equal opportunity law, made a complaint, helped someone else make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation. Victimisation is against the law.

It is also victimisation to threaten someone (such as a witness) who may be involved in investigating an equal opportunity concern or complaint.

Victimisation is a very serious breach of this policy as well as the TSO Appropriate Workplace Behaviour Policy, Whistleblower Protection Policy and is likely (depending on the severity and circumstances) to result in formal discipline against the perpetrator. The perpetrator may also be subject to legal proceedings under anti-discrimination legislation and criminal law.

TSO has a zero tolerance approach to victimisation.

### **4.5 Vilification**

Vilification is any public act that incites hatred, serious contempt, or severe ridicule against another person or group of people due to their race (including ethno-religious origin), homosexuality, transgender status and HIV/AIDS status. Vilification is against the law in all states except the Northern Territory and will not be tolerated at the TSO.

### **4.6 Breaching confidentiality**

It is unacceptable for employees at TSO to talk with other employees, clients or suppliers, family or friends, or the media about any complaint of discrimination, harassment, sexual harassment or bullying.

Breaching the confidentiality of a formal complaint investigation or inappropriately disclosing personal information obtained in a professional role (for example, as a manager) is a serious breach of this policy and may lead to formal disciplinary action.

## 5. Merit at TSO

All recruitment and job selection decisions at TSO will be based on merit – the skills and abilities of the candidate as measured against the inherent requirements of the position – regardless of personal characteristics.

It is unacceptable and may be against the law to ask job candidates questions, or to in any other way seek information, about their personal characteristics, unless this can be shown to be directly relevant to a genuine requirement of the position.

## 6. Resolving issues at TSO

TSO strongly encourages any employee who believes they have been discriminated against, bullied, sexually harassed or victimised to take appropriate action by referring to the TSO Complaints and Investigation Process Guidelines.

Employees who do not feel safe or confident to take such action may seek assistance from Director People and Culture, your Supervisor or Managing Director for advice and support or action on their behalf.

### 6.1 Employee assistance program

TSO employees are entitled to a certain amount of free, professional counselling from our Employee Assistance Program. To access the Employee Assistance Program, contact the Director People and Culture or your Supervisor or to go the ArtsVision and open the “*Employee Notice re EAP Services*” information under the “*hr/whs/l&d*” tab.

Employee Assistance Program counselling is confidential and nothing discussed with a counsellor will be communicated back to TSO. Employee Assistance Program counselling is available free to TSO employees regardless of whether the issue is related to a workplace problem or some other issue for the employee.

## 7. Frivolous, vexatious or malicious complaints

The TSO encourages the reporting of behaviour that an employee genuinely believes to be discrimination, harassment, sexual harassment, bullying, vilification or victimisation. Further an employee will not be disadvantaged or treated unfairly for dealing with discrimination, harassment, sexual harassment, bullying, vilification or victimisation in accordance with this policy. However, if a complaint is found to be frivolous, vexatious or malicious, then disciplinary action, including dismissal, may occur against the person making the complaint.

Examples of frivolous, vexatious or malicious complaints include:

- Fabricating a complaint
- Making a complaint for the purposes of revenge or to hurt someone
- Making trivial or petty complaints
- Seeking to re-agitate issues that have already been addressed or determined
- Making a complaint against reasonable management actions
- Making a complaint that the complainant does not genuinely believe to be true

## **8. Other relevant TSO policies**

Employees, especially managers and supervisors, are encouraged to read this policy in conjunction with other relevant TSO policies and procedures, including:

- *TSO Musicians Agreement 2014 (and its successors)*
- *TSO Staff Agreement 2015 (and its successors)*
- *TSO Whistleblower Protection Policy*
- *TSO Social Media and Public Comment Policy*
- *TSO Complaints and Investigation Process Guidelines*
- *(Note - This Policy supersedes the “Appropriate Workplace Behaviour Policy”)*

## **9. Variations**

This Policy may be varied from time to time in line with updates to legislative requirements and relevant changes to other TSO policies and procedures.

## **10. More information**

If you have a query about this policy or need more information please contact:

- Director People and Culture
- Managing Director