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### PURPOSE

San Miguel Yamamura Australasia Group ('SMYA') aims to provide an environment where employees and others in the workplace are treated fairly and with respect, and are free from unlawful discrimination, vilification, sexual harassment, harassment of any kind, bullying and victimisation.

SMYA aims to ensure that when employment decisions are made, they are based on merit, not on irrelevant attributes or characteristics that an individual may possess. SMYA also tries to create a work environment which promotes good working relationships.

### COMMENCEMENT OF POLICY

This Policy will commence from 26 April 2017. It replaces all other Anti-Discrimination & Equal Employment Opportunity Policies (whether written or not).

### APPLICATION OF POLICY

This Policy applies to employees, agents and contractors (including temporary contractors) of SMYA, collectively referred to in this Policy as 'workplace participants'.

This Policy is not limited to the workplace or work hours. This Policy extends to all functions and places that are work related. For example, work lunches, conferences, Christmas parties and client functions. Equal Employment Opportunity (EEO) laws apply to all areas of employment, as well as the provision of goods and services.

This Policy does not form part of any employee's contract of employment. Nor does it form part of any other workplace participant's contract for service.

### EEO LAWS

Under EEO laws, discrimination, vilification, sexual harassment, harassment of any kind bullying and victimisation are unlawful and strictly prohibited.


### DISCRIMINATION

Direct discrimination in employment occurs when a person is treated less favourably than another in their employment because of a reason or ground which is prohibited by law. The prohibited grounds of discrimination are set out in the Federal, State and Territory anti-discrimination laws and include sex, race, age etc. A full list of the grounds of discrimination which operate federally and in the State and/or Territories in which workplace participants undertake their work for SMYA will be relevant and can be found on [www.humanrights.gov.au](http://www.humanrights.gov.au)

### INDIRECT DISCRIMINATION

Indirect discrimination may occur when an employer imposes a policy, requirement or condition which applies to everyone equally but it in fact operates to disadvantage a particular

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group because of a characteristic of that group, such as their sex, age, race (ie a prohibited ground of discrimination).

Discrimination also includes the situation where a workplace participant harasses another person based on a ground of discrimination. Harassment is unwelcome conduct that a reasonable person would expect to offend, humiliate or intimidate.

### **VILIFICATION**

Vilification is a public act which incites hatred, severe contempt or severe ridicule of a person or group, because of race, homosexuality, transgender, transsexuality or HIV/AIDS. Vilification is a particularly serious breach of EEO laws and will be dealt with accordingly.

### **SEXUAL HARASSMENT**

Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated. Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person. However, conduct will not be sexual harassment if a reasonable person, having regard to all the circumstances, would not have anticipated that the conduct would offend, humiliate or intimidate the other person. Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a hostile working environment for other workplace participants can also be unlawful.

Examples of sexual harassment include, but are not limited to:


- physical contact such as pinching, touching, grabbing, kissing or hugging
- staring or leering at a person or at parts of their body
- sexual jokes or comments
- displays of offensive material such as posters, screen savers, internet material etc
- accessing or downloading sexually explicit material from the internet
- suggestive comments about a person's body or appearance
- sending rude or offensive emails, attachments or text messages.

### **BULLYING**

Bullying is repeated, unreasonable and inappropriate behaviour directed towards an individual or group, which creates a risk to health and safety.

Please refer to the SMYA Workplace Bullying Policy for more information in relation to workplace bullying.

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### VICTIMISATION

Victimisation is where a person is retaliated against or subjected to a detriment because they have lodged a complaint, they intend to lodge a complaint or they are involved in a complaint of unlawful conduct. Workplace participants must not retaliate against a person who raises a complaint or subject them to any detriment.

### RIGHTS AND RESPONSIBILITIES

All workplace participants must:

- understand and comply with this Policy;
- ensure they do not engage in any unlawful conduct towards other workplace participants, customers/clients or others with whom they come into contact through work;
- ensure they do not aid, abet or encourage other persons to engage in unlawful conduct;
- follow the complaint procedure in this Policy if they experience any unlawful conduct;
- report any unlawful conduct they see occurring to others in the workplace in accordance with the complaint procedure in this Policy; and
- maintain confidentiality if they are involved in the complaint procedure.

Workplace participants should be aware that they can be held legally responsible for their unlawful conduct.

Workplace participants, who aid, abet or encourage other persons to engage in unlawful conduct, can also be legally liable.


### GENDER EQUALITY IN THE WORKPLACE

'SMYA' aims to fulfil its obligations under the *Gender Equality Act 2012* (Cth) ('the **Act**'), by developing and implementing a workplace program which will attempt to eliminate discrimination and contributing to gender equality in employment and in the workplace.

The aim of SMYA's actions are to:

- (a) promote and improve gender equality (including equal remuneration between women and men) in employment and in the workplace; and
- (b) support employers to remove barriers to the full and equal participation of women in the workforce, in recognition of the disadvantaged position of women in relation to employment matters; and

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- (c) promote, amongst employers, the elimination of discrimination on the basis of gender in relation to employment matters (including in relation to family and caring responsibilities); and
- (d) foster workplace consultation between employers and employees on issues concerning gender equality in employment and in the workplace; and
- (e) improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace.

These actions are about attempting to achieve the potential of all workplace participants. It has direct benefits throughout the organisation. These benefits include increased productivity, increased morale, reduced absenteeism, and higher retention rates of employees. For these reasons, Actions in this area have been incorporated into SMYA’s strategic plan.

**BREACH OF THIS POLICY**

All workplace participants are required to comply with this Policy at all times. If an employee breaches this Policy, they may be subject to disciplinary action. In serious cases this may include termination of employment. Agents and contractors (including temporary contractors) who are found to have breached this Policy may have their contracts with SMYA terminated or not renewed.

If a person makes an unfounded complaint or a false complaint in bad faith (e.g. making up a complaint to get someone else in trouble or making a complaint where there is no foundation for the complaint), that person may be disciplined and may be exposed to a defamation claim.

**COMPLAINT HANDLING PROCEDURE**


If a workplace participant feels that they have been subjected to any form of unlawful conduct contrary to EEO laws or this Policy, they should not ignore it. SMYA has a complaint procedure for dealing with these issues. The complaint procedure has numerous options available to suit the particular circumstances of each individual situation. The manner in which a complaint will be handled is solely at the discretion of the HR Manager.

**EXAMPLES OF THE WAYS A COMPLAINT CAN BE DEALT WITH**

**Confront the issue**

- If a workplace participant feels comfortable doing so, they should address the issue with the person concerned. A workplace participant should identify the offensive behaviour, explain that the behaviour is unwelcome and offensive and ask that the behaviour stop. It may be that the person was not aware that their behaviour was unwelcome or caused offence.
- This is not a compulsory step. If a workplace participant does not feel comfortable confronting the person, or the workplace participant confronts the person and the behaviour continues, the workplace participant should report the issue to the HR Department.

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If a workplace participant is unsure about how to handle a situation and is also unsure if they want to make a complaint they should contact the HR department for support and guidance. The HR department aim to assist people uncertain about their rights.

### **Report the issue**

A workplace participant should report the issue to the HR department.

The HR Manager will aim to deal with the workplace participant's complaint in accordance with this Policy. There are two complaint procedures that can be used: informal and formal (detailed further below). The type of complaint procedure used will be determined by the nature of the complaint that is made.

### **Informal complaint procedure**

Under the informal complaint procedure there is a broad range of options for addressing the complaint. The procedure used to address the issue will depend on the individual circumstances of the case. Possible options include, but are not limited to:

- the HR department discussing the issue with the person against whom the complaint is made; and/or
- the HR department facilitating a meeting between the parties in an attempt to resolve the issue and move forward.

The informal complaint procedure is more suited to less serious allegations that if founded, would not warrant disciplinary action being taken.

### **Formal complaint procedure**

Formal complaint procedure involves a formal investigation of the complaint. Formal investigations may be conducted by the HR Manager or a person from outside the company, appointed by SMYA.


An investigation generally involves, collecting information about the complaint and then making a finding based on the available information as to whether or not the alleged behaviour occurred. Once a finding is made, the HR Manager or the external investigator will make recommendations about resolving the complaint.

If SMYA considers it appropriate for the safe and efficient conduct of an investigation, workplace participants may be required not to report for work during the period of an investigation. SMYA may also provide alternative duties or work during the investigation period. Generally, employees will be paid their normal pay during any such period.

### **CONFIDENTIALITY**

The HR Manager will endeavour to maintain confidentiality as far as possible. However, it may be necessary to speak with other workplace participants in order to determine what happened, to

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afford fairness to those against whom the complaint has been made and to resolve the complaint. If a complaint is raised and it appears that unlawful conduct has potentially occurred, SMYA will endeavour to take appropriate action in relation to the complaint.

All workplace participants involved in the complaint must also maintain confidentiality, including the workplace participant who lodges the complaint. Spreading rumours or gossip may expose workplace participants to a defamation claim. Workplace participants may discuss the complaint with a designated support person or representative (who is not a workplace participant employed or engaged by SMYA). However, the support person or representative must also maintain confidentiality.

### **POSSIBLE OUTCOMES**

The possible outcomes will depend on the nature of the complaint and the procedure followed to address the complaint. Where an investigation results in a finding that a person has engaged in unlawful conduct or breach of this Policy, that person may be disciplined. The type and severity of disciplinary action will depend on the nature of the complaint and other relevant factors. Where the investigation results in a finding that the person complained against has engaged in serious misconduct, this may result in instant dismissal. Any disciplinary action is a confidential matter between the affected workplace participant and SMYA.

Agents and contractors (including temporary contractors) who are found to have engaged in unlawful conduct and/or breached this Policy may have their contracts with SMYA terminated or not renewed.

SMYA may take a range of other non-disciplinary outcomes to resolve a complaint, depending on the particular circumstances. Examples include, but are not limited to:

- training to assist in addressing the problems underpinning the complaint;
- monitoring to ensure that there are no further problems;
- implementing a new policy;
- requiring an apology or an undertaking that certain behaviour stop; and/or
- changing work arrangements.

### **QUESTIONS**

If a workplace participant is unsure about any matter covered by this Policy, a workplace participant should seek the assistance of HR Manager.

### **ASSOCIATED DOCUMENTS**

Workplace Bullying Policy

Complaint & Grievance Form

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