

# Transport Discrimination Free Workplace Policy

## Applicable to:

This Policy applies to staff who undertake work on behalf of the Transport agencies listed below:

- Transport for NSW (TfNSW)
- Department of Transport (DoT)
- Sydney Trains
- NSW Trains
- State Transit Authority (STA)
- Sydney Metro

The term 'staff' is used in this Policy to cover all ongoing, temporary or casual staff, staff seconded from another organisation, labour hire workers, professional services contractors and consultants.

Division:	People and Culture
Date of publication:	11 February 2020
Effective date:	11 February 2020
Review date:	11 February 2021
Document owner:	Chief People Officer
Document Approver:	Secretary
Superseded Documents:	CP14022.4 Transport Discrimination Free Workplace Policy

## 1 Purpose

Transport is committed to providing a safe and fair work environment with a positive workplace culture free from discrimination. This commitment is clearly referenced in the [Code of Conduct](#) and is consistent with our legal obligations under state and federal anti-discrimination legislation. Our core values reinforce our commitment.

The purpose of this Policy is to allow staff and job applicants to be treated fairly, regardless of personal characteristics, responsibilities or interests that are not relevant to the role or the individual's ability to fulfil the inherent requirements of the role.

### 1.1 Definitions

All terminology in this Policy is taken to mean the generally accepted or dictionary definition with the exception of the following terms which have a specifically defined meaning:

Term	Definition
Discrimination	<p>Discrimination is unlawful when it is against attributes that are protected under equal opportunity and anti-discrimination legislation ('protected attributes'). Unlawful discrimination is based on one or more of the grounds listed in anti-discrimination legislation. Discrimination in the workplace may occur when someone is treated unfairly compared to another person on the grounds of a personal characteristic, responsibility or interest, such as:</p> <ul style="list-style-type: none"> <li>• race (including colour, descent, national origin, ethnic origin or immigrant status);</li> <li>• gender (including transgender/transsexual status);</li> <li>• pregnancy;</li> <li>• marital status;</li> <li>• age;</li> <li>• disability (including any presumed or actual physical, sensory, intellectual, psychiatric, mental illness or disorder, and the presumed or actual presence in the body of organisms causing disease);</li> <li>• religious belief;</li> <li>• sexual orientation;</li> <li>• carer's responsibilities;</li> <li>• criminal record;</li> <li>• political opinion;</li> <li>• membership or non-membership of a trade union; and/or</li> <li>• some other characteristic specified under anti-discrimination or human rights legislation.</li> </ul>
Direct discrimination	<p>Direct discrimination occurs when someone is treated less favourably compared to someone else in the same or similar circumstances, due to their attributes or characteristics.</p>

Term	Definition
Indirect discrimination	Indirect discrimination occurs when a requirement, rule or practice that is the same for everyone has a negative effect or result on a particular person or group. To be unlawful, the requirement has to be unreasonable in the circumstances.
Associate discrimination	Associate discrimination is harassing or treating someone unfairly because their associate (friend, relative, business associate, etc) belongs to a particular group of people who are covered by anti-discrimination legislation.
Harassment	Harassment may be a form of discrimination and occurs in the form of behaviours a person does not want or invite, and which a reasonable person would consider to be offensive, embarrassing, intimidating, threatening, humiliating and/or insulting.

## 2 Mandatory Requirements

Transport promotes and implements employment policies and practices that are fair, transparent and inclusive to prevent discrimination. Diverse needs of staff are recognised and supported.

Discriminatory treatment of staff or job applicants can be harmful to those experiencing it and those who witness it, and can also have a negative effect on the organisation's reputation.

There are different kinds of discrimination:

### 2.1 Direct discrimination

Direct discrimination is easier to identify than indirect discrimination. It deals with the concept of treating someone differently because of protected attributes.

Examples of direct discrimination include, but are not limited to:

- not employing someone who is the best candidate for the role because he or she is an Aboriginal person;
- assigning menial work to a professional engineer because she is a woman;
- refusing to promote a staff member who has carer's responsibilities because of an assumption that these responsibilities will impact on their ability to deliver inherent requirements of the role;
- removing a pregnant woman from a higher-paying role or shifts, when this is not medically required; and/or
- failing to appoint an older person who is well qualified for the job because he or she may not 'fit in' with a younger team.

### 2.2 Indirect discrimination

Indirect discrimination is more difficult to identify. It involves a requirement that on its face appears to be innocuous, but has the effect that people with certain attributes would be less able to comply with it than those without those attributes.

Examples of indirect discrimination include, but are not limited to:

- Basing career progression on seniority as opposed to merit. This may disadvantage young people, women and recent arrivals from overseas, who are likely to have less seniority due

to age, child-rearing responsibilities or national origin. Since years of experience is not necessarily an indicator of knowledge and skills, such a practice could be considered unreasonable in the circumstances and may be indirect discrimination on the grounds of age, sex or race.

- An employer who specifies that staff need to be a certain height to perform a certain role could be indirectly discriminating against women and some ethnic groups, who are less likely to be this height than men or people from other ethnic groups. Claims could be made of indirect sex or race discrimination if a person could show that the role does not require the criteria to satisfactorily perform the role.

### **2.3 Victimisation**

Victimisation means retaliating against someone for making a complaint of discrimination. This includes treating someone less favourably because they have supported someone who has made a complaint or because they have been involved in the investigation of a complaint.

Actions which may constitute victimisation include, but are not limited to:

- ignoring a person or deliberately failing to acknowledge them;
- punishments designed to cause a person detriment (e.g. allocating unfavourable or less favourable shifts);
- threats of any kind; and/or
- intimidation.

Under anti-discrimination legislation, it is unlawful to victimise a person because the person has made a complaint, intends to make a complaint or is a witness to a complaint.

Employers and individuals may be liable for penalties for victimisation even if the original complaint of unlawful discrimination is later found to be unsubstantiated.

### **2.4 Confidentiality**

All reports of discrimination will be treated seriously and managed promptly in accordance with the relevant policies and procedures. On receipt of a complaint, an assessment will be made as to how the matter should best be handled. Options may include local resolution between the involved parties, facilitated discussion, mediation, and/or investigation. Complaints should be settled locally within the workplace wherever possible, but in some cases this will not be appropriate.

All staff involved in a complaint (including its resolution) must maintain confidentiality and only discuss the matter with their nominated support person(s), representatives, personal advisors or immediate family members. Any breach of confidentiality may result in disciplinary or legal action. Confidentiality not only protects the complainant, it also maintains the integrity of an investigation and respects the rights of the people who are the subject of the complaint.

Transport has a duty of care for the health and wellbeing of staff whilst at work. The nature of some incidents may need to be reported to external authorities. Information including the identity of the complainant, respondent and nature of an incident may need to be disclosed. For example, incidents involving violence, assault and stalking could constitute criminal conduct and may need to be reported to the police. Where appropriate, consent from the victim will be obtained for certain matters, for example domestic violence. Transport has the obligation to report certain incidents which do not require the victim's consent, for example corruption.

### 3 Accountabilities

All staff must ensure, insofar as reasonably practicable, that discrimination does not occur by creating a work environment where everyone treats others with dignity and respect.

Accountabilities to prevent discrimination may include, but are not limited to:

Accountability	
Transport	<ul style="list-style-type: none"> <li>• Promoting an inclusive workplace culture, and organisational policies and procedures that are fair, transparent, accessible and promoted.</li> <li>• Continuously improving on measures to prevent discrimination in the workplace.</li> <li>• Providing avenues to report inappropriate behaviour which is experienced or witnessed.</li> <li>• Providing access to Employee Assistance Programs (EAP).</li> <li>• Maintaining official records of complaints of discrimination in accordance with the <a href="#">NSW State Records Act 1998</a>.</li> <li>• Develop strategies to prevent, as far as possible, instances of discrimination.</li> </ul> <p><b>Recruitment and induction</b></p> <ul style="list-style-type: none"> <li>• Integrating selection principles in all stages of the recruitment and selection process to ensure all job applicants are treated fairly.</li> <li>• Making staff aware of the behavioural requirements outlined in this Policy and the Code of Conduct.</li> </ul> <p><b>During the employment lifecycle</b></p> <ul style="list-style-type: none"> <li>• Establishing clear, fair and robust governance and processes across all aspects of people management.</li> <li>• Inclusion of our values in performance management agreements and reviews.</li> <li>• Providing all staff with the opportunity to apply for available jobs, higher grade duties, job rotation schemes and flexible working arrangements.</li> <li>• Providing staff with access to relevant training and development opportunities.</li> <li>• Consultation with stakeholders and subsequent reviews of this Policy.</li> </ul> <p><b>Staff exit</b></p> <ul style="list-style-type: none"> <li>• Establishing measures to seek feedback and capture reasons for staff exits.</li> </ul>
Managers	<ul style="list-style-type: none"> <li>• Raising awareness and promoting acceptable standards of behaviour. Effective measures may include regular inclusion of</li> </ul>

<b>Accountability</b>	
	<p>values in team meetings, coaching discussions and 'toolbox talks'.</p> <ul style="list-style-type: none"> <li>• Demonstrating leadership by proactively modelling positive behaviours and an interest in staff to support an inclusive culture that recognises good performance.</li> <li>• Applying policies and procedures to support an inclusive, fair and equitable workplace free from discrimination.</li> <li>• Ensuring, insofar as reasonably practicable, that staff understand their responsibilities and legal obligations under the Code of Conduct and this Policy, including reporting inappropriate behaviours.</li> <li>• Treating instances of discrimination seriously and dealing with complaints promptly, fairly, impartially and confidentially.</li> <li>• Providing reasonable work-related adjustments for people with a disability and/or those with a medical condition.</li> <li>• Monitoring and taking appropriate early intervention in regard to workplace 'hotspots' e.g. sudden increases in sick leave, decrease in performance, observed increase in workplace arguments and friction, and observed changes in staff behaviour.</li> <li>• Observing and promoting the organisation's values and merit selection principles when undertaking recruitment and selection activities.</li> </ul>
All staff	<ul style="list-style-type: none"> <li>• Respecting the rights of others and not becoming involved in or encouraging discrimination, victimisation or other inappropriate behaviour against their colleagues or members of the public.</li> <li>• Being responsible for their own behaviour and how their actions may impact others, and stopping the behaviour if they become aware it may be perceived as discriminatory.</li> <li>• Communicating and treating others with respect and courtesy.</li> <li>• Maintaining confidentiality if involved in a complaint.</li> <li>• Seeking advice, support and assistance from their manager and/or HR Advisory if discrimination is experienced or witnessed.</li> <li>• Reporting instances of discrimination.</li> <li>• Complying with the Code of Conduct, this Policy and relevant legislation.</li> </ul>
Workplace Conduct and Investigations Unit	<ul style="list-style-type: none"> <li>• Supporting the management of reports of discrimination promptly, fairly, impartially, sensitively and confidentially, in accordance with this Policy and associated procedures.</li> <li>• Working with and supporting agencies in investigations of reported discrimination matters.</li> </ul>

Accountability	
	<ul style="list-style-type: none"> <li>Monitoring and reporting on discrimination matters.</li> </ul>
HR Advisory	<ul style="list-style-type: none"> <li>Responding to staff enquires relating to this Policy.</li> <li>Providing initial advice to staff who report discrimination.</li> <li>Triaging staff enquires prior to escalating matters to WCIU if required.</li> </ul>
Organisational Development	<ul style="list-style-type: none"> <li>Conducting discrimination awareness and management briefing and / or training across Transport to raise staff awareness of their rights and responsibilities in relation to appropriate workplace behaviour and their obligations to prevent and eliminate inappropriate behaviour.</li> <li>Ensuring, insofar as reasonably practicable, that management development programs raise awareness of managers' responsibilities regarding discrimination.</li> <li>Establishing induction programs and other appropriate training to provide information about staff members' obligations regarding discrimination.</li> </ul>

Each Transport agency is accountable for the implementation and monitoring of this Policy, for example ensuring systems are in place to:

- make this Policy available to all persons in the agency impacted by it;
- ensure that any individuals or organisations that must observe this Policy as a result of a contract or other agreement with the agency are advised; and
- monitor implementation.

## 4 Breaches of This Policy

Transport may commence disciplinary action if a person to whom this Policy applies breaches this Policy (or any of its related procedures), up to and including termination of employment or contract.

This includes, but is not limited to, instances where a staff member has been found to discriminate against others (in the workplace or during work-related activities), breached confidentiality, victimised a person lodging or otherwise involved in a complaint, or made a vexatious complaint.

## 5 External Contacts

Staff may contact the following external agencies for further information:

- Anti-Discrimination Board: telephone 1800 670 812 or visit [http://www.antidiscrimination.lawlink.nsw.gov.au/adb/adb1\\_index.html](http://www.antidiscrimination.lawlink.nsw.gov.au/adb/adb1_index.html)
- Australian Human Rights Commission: telephone 1300 656 419 or visit <http://www.humanrights.gov.au/>
- Fair Work Commission: telephone 1300 799 675 or visit [www.fwc.gov.au](http://www.fwc.gov.au)

## 6 Document History

Date & Policy No.	Approved by	Amendment Notes
8 July 2014 Policy No. CP14022	Secretary	Policy approved
3 November 2016 Policy No. CP14022.1	Executive Director Group Human Resources	Amended to reflect title changes within People and Corporate Services  Amended to reflect organisational changes under Transport: removal of RailCorp, Transport Cleaning Services and WestConnex from Policy coverage
3 July 2017 CP14022.2	Deputy Secretary People and Corporate Services	Amended to reflect GSELA Amendments to Sections 1.1,2,2.2,2.3,2.4,3 and 7
1 July 2018 CP14022.3	Secretary	Inclusion of Sydney Metro as agency to which this policy applies from 1 July 2018.
29 July 2019 CP14022.4	Chief People Officer	Updates to obsolete job titles, Division/Branch name and template changes to front page.
11 February 2020 CP14022.5	Chief People Officer	Removal of RMS as an Agency to which this Policy applies (update to front page).

## 7 Attachments

The table below lists the documentation that supports or is referred to in this document.

Title	Agency
Code of Conduct	Transport
Prevention and Management of Bullying and Harassment Policy	Transport
Responding to Bullying and Harassment Procedure	TfNSW
Discrimination Free Workplace Procedure	Sydney Trains
Harassment, Discrimination and Workplace Bullying Prevention Procedure	STA
Grievance Resolution Procedure	STA
Discrimination Harassment and Bullying Prevention and Management Procedure	RMS

The table below lists legislation that supports or is referred to in this document. NSW legislation is available at <http://www.legislation.nsw.gov.au/>. Commonwealth legislation is available at <http://www.comlaw.gov.au/>.

Title	Jurisdiction
<i>Age Discrimination Act 2004</i>	Commonwealth
<i>Anti-Discrimination Act 1977</i>	NSW
<i>Australian Human Rights Commission Act 1986</i>	Commonwealth
<i>Community Relations Commission and Principles for Multiculturalism Act 2000</i>	NSW
<i>Disability Discrimination Act 1992</i>	Commonwealth
<i>Fair Work Act 2009</i>	Commonwealth
<i>Industrial Relations Act 1996</i>	NSW
<i>Racial Discrimination Act 1975</i>	Commonwealth
<i>Sex Discrimination Act 1984 (and Amendment 2013)</i>	Commonwealth