

Preventing Sexual and Racial Harassment, Bullying and Discrimination

1. Purpose

To foster an inclusive comedy landscape where everyone is welcome and feels safe.

To provide a framework and guidelines that aim to prevent and effectively manage harassment, bullying, discrimination and sexual harm issues, risks and complaints.

2. Scope

This policy:

- **Applies to all persons performing work¹** at the direction of, in connection with, or representing or on behalf of NZ Comedy. This includes but is not limited to the following organisations:
- The NZ Comedy Guild,
- The Classic Comedy Club & Bar
- The New Zealand Comedy Trust (NZ International Comedy Festival),
- Notorious Management
- Comedy.co.nz productions

This document recognises that the comedy industry in Aotearoa is a unique environment, with no one employer and a large variety of working conditions. The organisations above are leaders within the industry, and have all subscribed to this policy, but this policy can and should be used by anyone in the NZ comedy industry.

All workers, artists, producers, and participants must comply with this policy as amended from time to time. While every worker, artist, producer and participant is required to comply with this policy, this policy is not incorporated as a term of any employment contract or contract for services and does not create any rights enforceable by workers against any of the organisations named above. To the extent that there is an inconsistency between the law and this policy, the law will prevail.

¹ For the purposes of this document workers are defined as (but not limited to) persons working for the New Zealand Comedy Industry including performers (paid and unpaid), producers, venue staff, agents, managers, volunteers, staff, board members, technical crew and support crew including tour managers.

3. When this policy applies

This policy applies while the worker, artist, producer and participant are at work. It also extends to work-related functions and to conduct outside of work where there is a sufficient connection to the workplace, including, but not limited to, the following circumstances:

- All aspects of employment and contracting; 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 (such as opening nights, after parties, award nights and industry events); rehearsals, tours, work-related travel, client functions, promotional activities, conferences, seminars or training sessions – wherever and whenever workers may be as a result of their participation within NZ comedy;
- Use of social media and other electronic communication (e.g. emails, mobile); and
- Workers' treatment of other workers, clients, visitors and members of the public encountered in the course of undertaking their duties within the NZ comedy industry.

4. Key Principles

- NZ Comedy is committed to providing all employees, contractors, audiences and the above external parties a performance/work place that is free from sexual and racial harassment, bullying and discrimination.
- **Defining Sexual Harm²:** Sexual harm is any unwanted sexual behavior. It can be verbal, visual, physical or via digital technologies such as text messaging, email, phone calls and social media. The term covers a range of behaviours including unwanted sexual comments, repeated questioning or disclosing of a person's gender or sexuality without their permission, showing someone offensive sexual material, or forced sexual contact, including rape. Sexual harm is not inevitable, and it can be prevented. Every one of us can do something to challenge the culture that supports abuse and to lessen the impact after it occurs.
- **Healthy Culture:** In order to prevent harm from occurring, we need not only to tackle the bad stuff but also to actively work to create positive healthy relationships and communities. The goal is to have a comedy community in Aotearoa (and the world) where people are happy, fulfilled and create high quality work for our audiences without experiencing sexual harm, bullying or any other form of discrimination or abuse.
- **Consent and Power Dynamics:** Sexual harm is an abuse of power. Often harm happens in a relationship in which one person has more power than another – e.g. senior comics, producers or bookers, over people new to the industry. Consent means freely and willingly participating. Sometimes someone might verbally agree to something, but they are under pressure (either overtly or implied) and so they are not freely giving their consent. There is no hierarchy to respect. Nobody is exempt from this policy no matter how important they may seem.
- People in leadership roles or those with more experience also need to be aware that less experienced practitioners may use their behavior as a model. If an experienced comedian demonstrates that it is OK to make inappropriate comments in the green room, or to introduce people onstage using unacceptable language, then a newer comic learns that this is the norm.

² Defining Sexual Harm, Healthy Culture, Consent & Power Dynamics, and Leadership Roles descriptions are taken from the *Playmarket Guideline Series - Working Together: Safety, Respect and Wellbeing*, and are used with the kind permission of Fiona McNamara and Playmarket.

By contrast, if that practitioner demonstrates respect and good behaviour, these are the values that new comedians learn.

- NZ Comedy will not tolerate any form of harassment, bullying and discrimination in a performance/work place. Disciplinary action, up to and including termination of employment / cessation of engagement, may be taken against people who breach this policy.
- All workers, artists, producers and participants are required to treat others with dignity, courtesy and respect.
- NZ Comedy recognises that any form of harassment is likely to be harmful to the recipient's emotional and physical health. Harassment can damage performance, working conditions and relationships, and may substantially impact on a person's ability to perform/work by undermining their confidence, concentration and motivation.
- NZ Comedy will also not tolerate victimisation of a person who brings forward or supports a complaint under this policy.
- NZ Comedy will never blacklist someone for speaking out.
- All complaints made under this policy must be made in good faith and not be of a malicious, frivolous or vexatious nature. Such complaints could themselves be considered an act of harassment and may result in action against the vexatious complainant.
- NZ Comedy will provide support and training to help the NZ Comedy community understand how to prevent harassment, bullying and discrimination in the performance space/workplace, understand the process and develop options for resolving concerns.

A list of contact people are included at the end of this document, and includes representatives from the organisations and bodies within NZ Comedy, including the NZ Comedy Safety Network, the NZ Comedy Working Group, the NZ Comedy Guild, the NZ Comedy Trust, The Classic, and Notorious Management.

5. Definitions and examples of discrimination, harassment, sexual harassment & bullying

5.1 Discrimination

The Human Rights Act protects everyone in New Zealand from discrimination - being treated unfairly or less favourably than someone else who is in the same or similar situation as you.

The Act also makes other behaviour against the law, including sexual harassment, racial harassment, causing racial disharmony and victimisation.

Under the Act, you cannot discriminate against anyone on the grounds of:

- age, sex (gender) or sexual orientation
- marital or relationship status
- having a family or not
- being in a relationship with or related to a certain person
- religious or ethical beliefs
- colour, race, ethnicity or country of origin
- having any kind of disability, impairment or illness
- political opinions

- employment status

5.2 Harassment

Harassment is **unwelcome and unsolicited behaviour** that a **reasonable person would consider to be offensive, intimidating, humiliating or threatening**.

Sexual harassment and racial harassment are particular types of discrimination. Sexual harassment is **unwelcome or offensive sexual behaviour that is repeated or significant enough to have a harmful effect on a person**. Racial harassment is behaviour that is **racist, hurtful or offensive** and is either repeated or serious enough to have a harmful effect on a person.

It is unlawful to harass an individual or group because of a protected characteristic (such as age, sex or race, outlined above). Harassment of any kind will not be tolerated within the NZ comedy industry. Harassment that is not related to a protected characteristic is still inappropriate in the workplace and the NZ Comedy Working Group will deal with such incidents accordingly.

Harassment can be verbal, visual, physical or digital. It can include, but is not limited to:

- Intimidation, verbal abuse, repeated threats or ridicule;
- Sending offensive messages by text, email or other means;
- Derogatory comments;
- Displaying offensive materials, pictures, comments or objects;
- Ridiculing someone because of their accent or English-speaking ability;
- Telling offensive jokes or making practical jokes based on a protected characteristic;
- Belittling or teasing someone based on a protected characteristic; and
- Isolating, segregating or humiliating someone based on a protected characteristic.

5.3 Sexual Harassment

Sexual harassment is **any form of unwelcome behaviour of a sexual nature, which could be expected to make a person feel offended, humiliated or intimidated**.

It is unlawful under the Human Rights Act for a person to engage in sexual harassment, or encourage or allow another person to do so. Sexual harassment will not be tolerated within the NZ comedy industry.

Sexual harassment can be physical, spoken or written. It can include, but is not limited to:

- Staring or leering at a person or parts of their body;
- Excessive or unwelcome familiarity or physical contact, such as touching, hugging, kissing, pinching, massaging and brushing up against someone;
- Suggestive comments, jokes, conversations or innuendo;
- Insults or taunts of a sexual nature or obscene gestures;
- Nudity on stage, without appropriate trigger warnings in place;
- Intrusive questions or comments about someone's private life;

- Displaying or disseminating material such as posters, magazines or screen savers of a sexual nature;
- Making or sending sexually explicit phone calls emails or text messages;
- Inappropriate advances on social networking sites;
- Accessing sexually explicit internet sites in the presence of others;
- Unwelcome flirting, requests for sex or repeated unwanted requests to go out on dates;
- Inappropriate or unwanted gifts;
- Behaviour that may also be considered to be an offence under criminal law, such as physical or sexual assault, indecent exposure, stalking or obscene communications;
- Deliberately using the wrong name or pronoun for a transgender person, or persistently referring to their gender identity history; and
- Threatening to disclose, or disclosing, a person's sexuality or gender identity to others without consent.

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

Behaviour can still be considered to be sexual harassment even if:

- It is a one-off incident;
- The person engaging in the behaviour did not intend to humiliate, intimidate or offend;
- Other people in the workplace are not offended by the behaviour; or
- The behaviour was previously an accepted practice in the workplace.

Sexual harassment may be considered work-related even if it occurs outside of the workplace or outside of normal working hours, such as on tour, during work-related travel, or at an opening night, after party, industry event, promotional activity or conference.

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

All incidents of sexual harassment – no matter how big or small or who is involved – should be reported to the appointed Complaints Person (refer to the Complaints Handling and Investigation Procedure) or relevant leadership or management position so that appropriate action can be taken.

What is not sexual harassment?

Where workers engage in consensual, welcome and reciprocated intimate or sexual behaviour, this is not sexual harassment. However, appropriate professionalism is expected of all workers at all times, including in relation to workers engaging in consensual intimate or sexual behaviour.

In addition, power dynamics should be taken into account when considering whether behaviour is truly able to be consensual (for example, older comedians, producers or bookers, who are in, or are perceived to be in, a position of power over persons newer to the industry, or audience members).

If a person is drunk or high on other drugs they are unable to make a free agreement to do something sexual with someone else. This means that a person **cannot** give consent.

5.4 Workplace Bullying

Workplace bullying ('bullying') is where an individual or group of individuals **repeatedly behave unreasonably** to another person or group of persons at a workplace, which creates a **risk to health and safety**.

It is unlawful for a worker to engage in bullying, or encourage or allow another worker to do so. Bullying will not be tolerated within the NZ comedy industry.

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 or harassment.

Bullying can take many forms. It can be physical, spoken, written, overt or covert. Behaviours that may constitute bullying include, but are not limited to:

- Physical intimidation or abuse;
- Aggressive or intimidating conduct or threatening gestures;
- Manipulation, intimidation or coercion;
- Threats, abuse, offensive language, shouting or belittling;
- Innuendo, sarcasm and other forms of demeaning language;
- Ganging up;
- Public humiliation or belittling;
- Initiation activities that harm or humiliate;
- Practical jokes, teasing, or ridicule;
- Inappropriate blaming;
- Inappropriate emails/pictures/text messages;
- Unreasonable accusations or undue unconstructive criticism;
- Allocating unpleasant, meaningless or impossible tasks;
- Placing unreasonably high work demands on selected workers;
- Deliberately withholding information, resources, support, supervision or consultation 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;
- Withholding access to opportunities;
- Deliberately changing hours of work for a person or group to inconvenience them; and
- Unreasonable timelines or constantly changing deadlines targeted at a specific person or group.

The live performance industry is creative and continually strives for artistic excellence. Achieving such artistic outcomes often involves 'pushing the boundaries'. All workers in this process should behave in a manner that is professional, appropriate and does not constitute harassment or bullying.

Workplace bullying does not include reasonable management action carried out in a reasonable manner. **Organisations and bodies within NZ Comedy have** 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 a worker and give fair and reasonable feedback on its workers' performance.

Examples of reasonable management action include, but are not limited to:

- Setting reasonable performance goals, standards and deadlines;
- Rostering and allocating working hours where the requirements are reasonable;
- Transferring a worker for operational reasons;
- Deciding not to select a worker for promotion where a reasonable process is followed;
- Disciplinary action (including investigations) taken in a reasonable manner;
- Informing a worker about unsatisfactory work performance or inappropriate behaviour in an objective and confidential way. This includes situations where personnel, who would usually not interfere with artistic choices on stage, may give feedback in order to prevent harm to others;
- Implementing organisational changes or restructuring; and
- Termination of employment.

Workplace conflict is generally not considered workplace bullying. Differences of opinion and disagreements in the workplace (e.g. differences of opinion on artistic interpretation or direction) may arise without engaging in repeated, unreasonable behaviour that creates a risk to health and safety. This is because not all conflicts or disagreements have a negative impact on health or safety, and it is common within a workplace that people will have differences of opinion. Low level, task-based differences of opinion can benefit the organisation and workers, as it may generate debate leading to new ideas and innovation, provided all workers behave in an appropriate manner.

5.5 Victimisation

It is unlawful under The Human Rights Act to victimise someone because they complained about harassment, contacted the Commission about harassment, were involved in a dispute or supported another person to make a complaint. Victimisation will not be tolerated within the NZ comedy industry.

Victimisation is a very serious breach of this policy and is likely (depending on the severity and circumstances) to result in formal disciplinary action against the perpetrator. The perpetrator may also be subject to legal proceedings under anti-discrimination or criminal law.

6. Rights & Responsibilities

As a participant in NZ Comedy, you are entitled to:

- A workplace free from discrimination, harassment, sexual harassment and bullying;
- The right to raise issues or to make an enquiry or complaint in a reasonable and respectful manner without being victimised;
- Request to have a support person (e.g. a co-worker, friend, family member or union representative) present during the complaints process;
- Have a friend or support person in a green room, for female, non-binary or other vulnerable comedians;
- Reasonable flexibility in working arrangements, especially where needed to accommodate family responsibilities, disability, religious beliefs or culture; and

- Have recruitment and selection decisions based on merit and not affected by irrelevant personal characteristics (unless permitted by law).

As a participant in NZ Comedy, you must:

- Understand the policy and comply with its procedures.
- Not harass, bully, discriminate against or victimise any person.
- Discourage any form of harassment, bullying or discrimination by making it clear that such behaviour is unacceptable.
- Support anyone in NZ Comedy who feels they have been subject to harassment, bullying or discrimination, including supporting them to make a formal complaint if appropriate.
- Maintain privacy and confidentiality if you are involved in a complaint procedure.
- Notify any of the Contact People listed within this document with any concerns about breaches of the policy.

7. Roles and responsibilities of leadership and management positions

In addition to the responsibilities of workers, personnel in leadership and management positions within the industry (e.g. the NZ Comedy Working Group, producers, promoters, CEOs, executive directors, artistic directors, general managers, company managers, stage managers, heads of department, supervisors, human resource managers, board members) must also:

- Take all reasonable steps to ensure a safe workplace, free from harassment, bullying and discrimination;
- Model appropriate standards of behaviour;
- Provide education and make workers aware of their obligations under this policy, the Code of Conduct and other related policies, and the law;
- Treat all workplace incidents and complaints seriously and take immediate action where a complaint is made;
- Inform a complainant that they can raise the matter with police, if the allegations are of a criminal nature and that the complainant 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;
- Where appropriate, help workers resolve complaints informally;
- Refer formal complaints about breaches of this policy to the appropriate Complaints Person for investigation;
- Use their best endeavours to prevent workers who raise an issue or make a complaint from being victimised and taking steps to address the issue where it occurs;
- Provide workers (including bystanders) with information about the support available to them;
- Make recruitment and job selection decisions based on merit – that is, the skills and abilities of the candidate as measured against the inherent requirements of the position – regardless of personal characteristics, other than where it is lawful to do so;

- Not ask discriminatory questions or request information during a recruitment process, unless it is directly relevant to a genuine requirement of the position; and
- Reasonably consider requests for flexible working arrangements.

Furthermore, personnel in senior leadership positions (e.g. producers, promoters, CEOs, executive directors, artistic directors, general managers, company managers, human resource managers, board members), including owners must also:

- Monitor the effectiveness of this policy, the Code of Conduct and other related policies;
- Review and update the information within the policy, the Code of Conduct and other related policies on at least an annual basis, so that it remains relevant;
- Provide training or guidance to workers regarding discrimination, harassment, sexual harassment and bullying and how to make a complaint or take bystander action;
- Provide training or guidance to managers on this policy, the Code of Conduct, the complaints process and other related policies and mechanisms to support workers to make a complaint or take bystander action; and
- Promote this policy, the Code of Conduct and other related policies throughout the NZ Comedy industry.
- Ensure this policy, the Code of Conduct and other related policies comply with The Health and Safety at Work Act 2015, the Crimes Act and other relevant New Zealand laws.

7.1 Contact Person(s)

Contact Persons are available to support workers who are experiencing workplace discrimination, harassment, sexual harassment or bullying, or who need support to take bystander action (as defined below).

Contact Persons are workers who have been trained to provide confidential and impartial information and support to help workers make an informed decision about their options for resolving issues.

Contact Persons cannot provide legal advice or resolve complaints; however, they can act as a support person to someone experiencing discrimination, harassment, sexual harassment or bullying, or a bystander, and can provide information relating to external support services and organisational policies and procedures. Contact Persons are also able to attend mediation sessions or complaints meetings as a support person.

A representative from the NZ Comedy Safety Network may act as a Contact Person. There is a full list of Contact Persons at the end of this document. You may also report to a relevant manager or industry leader.

Refer to the Complaints Handling and Investigation Procedure for further details.

7.2 Complaints Person(s)

Complaints Persons are responsible for investigating all complaints of workplace discrimination, harassment, sexual harassment, and bullying, including by conducting interviews with workers and providing advice to the relevant leadership and management personnel (e.g. producers, promoters, human resources team, managers/supervisors) on the outcome of the complaint and any disciplinary measures in response to a complaint. **Refer to the Complaints Handling and Investigation Procedure for further details.**

Complaints Persons are impartial and will not have any direct relationship with the workers involved in the complaint, either as a manager or otherwise. There may be instances where an external Complaints Person will need to be engaged. The Working Group will engage an external Complaints person when required.

A representative from the NZ Comedy Working Group will act as Complaints Person, unless the matter is referred to an external Complaints Person.

8. Supporting bystander action

In order to promote a safe, equitable and respectful workplace, all workers are encouraged to take appropriate action (in accordance with this policy) if they witness or hear about workplace discrimination, harassment, sexual harassment and bullying.

- **See:** Know where the line is. If you see or hear something that makes you feel uncomfortable, don't ignore it.
- **Talk:** It takes courage to speak up. Talk with your boss, 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.

Victimisation of someone taking bystander action is unlawful and will not be tolerated.

9. Consequences of breaching this policy

If a worker engages in discrimination, harassment, sexual harassment, bullying, vilification or victimisation, or otherwise breaches this policy, they may be subject to mediation, investigation, disciplinary action up to and including termination of employment / cessation of or a criminal proceeding.

10. How to make a complaint

The NZ Comedy Working Group strongly encourages any worker who believes they have been discriminated against, harassed, sexually harassed, bullied, victimised or vilified to report this behaviour to the appointed Complaints Person, as outlined in the Complaints Handling and Investigation Procedure.

Any worker who has witnessed unlawful discrimination, harassment, sexual harassment or bullying is encouraged to report the complaint to the Complaints Person.

A complaint can be dealt with formally or informally depending on the circumstances. Whether a matter is dealt with informally or formally will depend on the nature of the incident.

Where a complaint is made, NZ Comedy may have an obligation to deal with the complaint even if the person making the complaint decides that they do not wish to pursue the complaint or does not want to deal with the matter formally. In some situations, it may be appropriate to address a complaint without identifying a particular individual, such as by providing training to all workers.

This policy does not supersede an individual’s right to pursue a police report and/or investigation, seek legal counsel, or complain to the Human Rights Commission, or Ministry of Business, Innovation or Employment.

11. Frivolous, vexatious or malicious complaints

The NZ Comedy Working Group encourages the reporting of behaviour that a worker genuinely believes to be discrimination, harassment, sexual harassment, bullying, vilification or victimisation. Furthermore a worker 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 appropriate disciplinary action (which may lead to dismissal) may occur against the complainant. Examples of frivolous, vexatious or malicious complaints include, but are not limited to:

- Fabricating a complaint;
- Making a complaint for the malicious purpose of deliberately harming someone;
- Seeking to re-agitate issues that have already been addressed or determined; and
- Making a complaint that the complainant does not genuinely believe to be true.

12. Additional Information, support and advice

If you have a query about this policy or need more information, please contact any of the representatives listed below:

NZ Comedy Working Group
Donna Brookbanks
Amanda Kennedy
Livi Reihana
Justine Smith
Michèle A’Court
James Nokise
Lauren Whitney
Kirsty Hardwicke
Felicity Drace
Scott Blanks
Richard Carrington

NZ Comedy Safety Network
Bec Sandys
Eli Matthewson
James Roque
Natalie Samy
Hannah Campbell
Ben Hurley
Bridget Davies
Jamaine Ross
Plus all members of the Working Group

13. Review details

This policy was adopted by the NZ Comedy Working Group on 20 August 2020.

The Policy will be reviewed annually (or more frequently if needed) and changes to the policy and procedures may be made when necessary. A consultation process within the NZ comedy industry will be followed for all changes. Once a significant change has been made the NZ comedy industry will be notified.

This policy is a live document and never final.

This policy was last updated on 19 August 2020.

If you have any questions about these policies and procedures, suggestions for improvement, or other concerns please email nzcomedyworkinggroup@gmail.com to get in touch with our team or make use of our Reporting Form at any time: <https://nzcomedy.typeform.com/to/fXfimMbX>