**HR6 Bullying, Harassment and Discrimination Policy**

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| **Policy owner** | Head of Talent and Customer Experience |
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# Policy statement

ATNZ supports and complies with all laws, rules and regulations regarding bullying, harassment, and discrimination in New Zealand, including but not limited to:

* Human Rights Act 1993
* Health and Safety at Work Act 2015
* Employment Relations Act 2000

ATNZ will endeavour to fulfil its legal obligations by undertaking the actions contained within this policy.

# Scope

 This policy covers all bullying, harassment and discriminatory behaviours that may occur:

1. in the workplace during or outside work hours (including behaviours between colleagues/work associates in social or professional work situations, for example, during training, conferences, social work-related functions); and/or
2. within the PTE operation, including in relation to employed apprentices and other learners enrolled with ATNZ; and/or
3. Outside the workplace and outside work hours if it is in the context of the employment relationship, i.e., if it affects or is related to the workplace (for example, conduct in social media, email, or text messaging).

This policy applies to all of ATNZ’s employees, including the Chief Executive Officer and to all learners employed or enrolled with ATNZ. As far as the behavioural expectations referred to in this policy are concerned, it also applies to all other participants in the workplace, for example non-employed directors, contractors, volunteers, and others.

This policy should be read in conjunction with ATNZ’s disciplinary policy and other relevant policies (for example, any social media policy, IT policy, Health and Safety policy, etc.

# Purpose

ATNZ (“ATNZ”) is committed to ensuring a healthy and safe workplace and a workplace culture of dignity and respect where all participants in the workplace and/or learning environment are free from bullying, harassment and/or discrimination of any kind. This policy reiterates ATNZ’s commitment to create and maintain a positive and productive workplace where diversity and gender equality are appreciated and all employees, clients/customers, business partners and visitors are respected and valued. ATNZ takes its legal and moral obligations in this respect seriously and will not tolerate bullying, harassment or discrimination of any kind at any level of ATNZ.

ATNZ expects all of its learners and employees, and particularly its managers and supervisors, to role model appropriate behaviours and to take all reasonably practicable steps to enforce this policy.

# Policy

1. **Definitions**

1.1 **Bullying** generally means repeated and unreasonable behaviour towards a person or a group of people that can lead to physical or psychological harm.

a. **Repeated behaviour** means persistent (i.e., occurring more than once) behaviour and can involve a range of actions over time. A single incident is generally not considered bullying but can escalate if ignored and may, of itself, warrant disciplinary action for a reason other than bullying.

b. **Unreasonable behaviour** means behaviour that a reasonable person in the same or similar circumstances would see as unreasonable, including victimising, humiliating, intimidating, or threatening a person (bullying may also include harassment and/or discrimination or violence).

1. **Bullying** does not include (the following list of examples is not intended to be exhaustive):

i. one-off or occasional instances of forgetfulness, rudeness or tactlessness, differences in opinion or personality clashes;

ii. reasonable behaviour/performance management, including setting high behavioural or performance standards, constructive feedback, legitimate advice and peer reviews, or lawful and reasonable disciplinary action;

iii. Insistence on lawful and reasonable work-related instructions to be carried out;

1.2 **Discrimination** means discrimination as referred to in the Employment Relations Act 2000, and/or the Human Rights Act 1993.

1.3 **Harassment** means harassment as referred to in the Employment Relations Act 2000, and/or the Human Rights Act 1993, and/or the Harassment Act 1997.

a. **Racial harassment** means any unwarranted behaviour with respect to colour, race, ethnic or national origins. Racial harassment includes, but is not limited to, using language (whether written or spoken), or visual material, or physical behaviour that directly or indirectly expresses hostility against, or brings into contempt or ridicule, any person because of the race, colour, ethnic or national origins of the person which is hurtful or offensive to the person.

b. **Sexual harassment** means any unwelcome or offensive behaviour of a sexual nature. Unwelcome means that the behaviour is not solicited or invited or consented to, and is regarded by the other person as undesirable or offensive at the time. Sexual harassment can be subtle, dependent on context and may entail different cultural understandings of what is considered inappropriate behaviour. It can include, but is not limited to, the direct or indirect request for sexual intercourse, contact (e.g. touching, hugging, encroaching on someone’s personal space, kissing, staring or leering, stalking, unwanted invitations to go out on dates, repeated and unwanted advances on email or social media, intrusive and sexually suggestive private questions or comments in person or via electronic means, sexual gestures, indecent exposure) or other form of sexual activity with an implied or overt promise of preferential treatment, detrimental treatment or threat to the present or future employment status of the employee. Behaviour may not constitute sexual harassment where the behaviour is genuinely friendly banter, mutually acceptable and accepted jokes, occasional appropriate compliments or behaviour based on mutual attraction and/or genuine consent.

1.4 **Respondent** means the person who is alleged to have behaved in a way that constitutes or could be construed as bullying, harassment or discrimination, or any person who has encouraged, aided or abetted such behaviour.

1.5 **Complainant** means the person/s who says that the behaviour has been directed at them.

1. **Employee Responsibilities**

2.1 All employees of ATNZ have a shared responsibility to support the safety of colleagues and others in the workplace and to demonstrate and promote appropriate behaviours in the workplace, and are expected to treat ATNZ’s employees and all other participants in the workplace (for example, clients/customers, suppliers, business partners or any other party associated with ATNZ’s business) with respect and dignity at all times.

2.2 Employees must not engage or participate in or condone any behaviours that breach this policy. In particular, the following actions and behaviours are strictly prohibited and will be viewed by ATNZ as serious misconduct which may result in disciplinary action up to and including summary dismissal:

Acting or behaving in a way, whether during work or outside the workplace where there is a nexus between the actions/behaviour and the employment relationship (for example, conduct on social media, or in social situations outside the workplace), that constitutes or could be construed as bullying, harassment or discrimination of another employee (or any other party that is associated with ATNZ), regardless of whether or not the behaviour is intended;

Encouraging, aiding or assisting another employee or other person to act or behave in a way that is in breach of this policy;

Inciting, making or supporting an allegation of bullying, harassment or discrimination which the employee knows (or ought to have known) is false or made maliciously against another employee/other workplace participant. Malicious/false complaints may result in disciplinary action against the complainant (and any other person involved in making a malicious/false complaint) up to and including summary dismissal. If the employee has doubt about an allegation or complaint, they should raise it with ATNZ, discuss it and then let ATNZ determine appropriate further steps.

2.3 Employees are expected to promptly bring concerns about bullying, harassment or discrimination to the attention of ATNZ in accordance with procedures outlined in this policy. This includes if an employee feels they are being bullied, harassed or discriminated against, or if an employee believes someone else, they work with is being subjected to bullying, harassment or discrimination.

1. **Employer Responsibilities**

3.1 ATNZ will take any bullying, harassment and discrimination allegations and complaints seriously. ATNZ will promptly address such allegations and complaints and, where warranted, will investigate such allegations and complaints in a timely, fair and thorough manner in accordance with the procedures outlined in this policy.

3.2 ATNZ will take all reasonably practicable steps to ensure that it provides a safe and healthy work environment that is free from bullying, harassment and discrimination, and also free from victimisation or reprisals after a genuine complaint has been raised, or for participating in any investigation of the complaint.

3.3 ATNZ will not allow or tolerate the adverse treatment of any employee with respect to any aspects of their employment on the basis of any of the prohibited grounds referred to in the Employment Relations Act 2000 and/or the Human Rights Act 1993.

3.4 ATNZ’s managers must enforce this policy and take all reasonably practicable steps to ensure that both the Complainant and Respondent (and potentially any witnesses) are supported and informed about the processes under this policy. Managers must, as far as is reasonably practicable, use their best endeavours to maintain the confidentiality of the individuals concerned at all times, during and after the completion of any process under this policy. However, employees need to be aware that the principles of natural justice will usually require a manager to disclose the identities of the Complainant, Respondent and/or witnesses, as well as the details of the allegations or complaints to persons who are required to know about this, which includes but is not limited to the Respondent.

3.5 ATNZ may escalate a matter to a formal process if ATNZ believes that it is appropriate even if the matter was raised with ATNZ informally.

3.6 ATNZ will provide adequate support to the Complainant and/or the Respondent, including providing access to its subscribed Employee Assistance Programme (“EAP”) and/or other counselling.

3.7 Following an allegation or complaint of bullying, harassment or discrimination, ATNZ may suspend the Respondent where appropriate, or alternatively separate the Complainant and Respondent, temporarily assign different or restricted duties or different work sites, or take other action it considers appropriate in the circumstances.

1. **Intervention, Complaints and Resolution Processes**

4.1 ATNZ provides a range of options and processes for employees or learners to speak up and bring concerns, allegations and complaints in relation to bullying, harassment or discrimination to ATNZ’s attention, regardless of whether the employees are directly affected or have witnessed bullying, harassment or discrimination. Issues will be resolved at the most appropriate level of intervention, subject to the rights of the Complainant and the Respondent. Where possible, ATNZ promotes the resolution of issues at the lowest appropriate level of intervention as this may sometimes be the fastest and most effective way of dealing with inappropriate behaviour, particularly for issues that are perceived as ‘minor’ (for example, behaviours that do not cause the Complainant to feel unsafe, or seriously harmed, threatened or intimidated).

**Informal Intervention**

4.2 In the first instance, Complainants are encouraged to directly approach the Respondent (either verbally or in writing) and make it clear that the behaviour is unwelcome or offensive and must stop. The Complainant may involve a support person in such approach.

4.3 If the Complainant does not feel able, safe or comfortable to directly approach the Respondent, the Complainant may:

1. ask a colleague, or other trusted person who is able and willing to support the Complainant, to informally raise their concerns on their behalf with the Respondent; or
2. ask a supervisor, manager or person in the HR department for guidance on how to resolve the situation, and/or advice, support and assistance; or
3. ask a supervisor, manager or person in the HR department to intervene informally.

4.4 If the Complainant asks a supervisor, manager or person in the HR department to intervene informally, the Complainant needs to be aware that once a supervisor, manager or person in the HR department obtains knowledge of an issue, it may be escalated to a formal process if the supervisor, manager or person in the HR department is of the opinion that this is appropriate in order for ATNZ to fulfil its obligations, even though the Complainant may not wish for a formal process to be commenced (for example, in serious matters involving health and safety).

4.5 The Complainant and the Respondent, and/or ATNZ, may agree to utilise the mediation service provided by the Ministry of Business, Innovation and Employment, or agree on an internal mediation meeting with an agreed mediator. Such agreement should not be unreasonably withheld.

4.6 Informal intervention and resolution may involve a verbal or written acknowledgement of concerns or an apology (subject to the Respondent’s agreement), or training or education, or an agreement between the Complainant and the Respondent regarding future behaviour towards one another. Informal intervention does not include any disciplinary action (for example, warning or dismissal), unless misconduct or serious misconduct has been established following a disciplinary process.

**Formal Complaints Procedure for Staff**

4.7 Where a Complainant does not consider informal intervention suitable or appropriate, or where informal intervention has not achieved a resolution, the Complainant may make a formal complaint. The Complainant is entitled to seek the support of and advice from a support person and/or representative of their choice.

4.8 A formal complaint can be made to the Complainant’s manager, a different manager, ATNZ’s Head of Talent and Customer Experience, or ATNZ’s Managing Director or Chief Executive Officer. The complaint should be in writing and should detail what happened, when and where it happened, the names of persons who may have witnessed the incident/behaviour, and what the Complainant would like to happen (for example, what would provide resolution from the Complainant’s perspective; however, whilst such preferences should be taken into account, they may not be binding on ATNZ). The complaint should provide sufficient detail to fully inform ATNZ and the Respondent to enable a response, an investigation and a resolution.

4.9 ATNZ will without undue delay meet with the Complainant and hold a preliminary discussion with the Complainant to assess the circumstances and the seriousness of the complaint and determine the appropriate course of action.

4.10 The decision whether or not to proceed to a formal investigation will be in ATNZ’s sole discretion, having regard to the circumstances and the Complainant’s and Respondent’s rights.

4.11 If the complaint is progressed to a formal investigation, the Complainant and the Respondent will be notified of this.

4.12 ATNZ will assign the matter to an appropriate internal or external investigator. If an internal investigator is assigned, the Complainant and/or Respondent can raise concerns regarding the assigned investigator if there is an actual conflict of interest. Any such concern must be made immediately in order to be considered by ATNZ.

4.13 The investigator is responsible for ascertaining the facts of the complaint (on the balance of probabilities) and whether a breach under this policy (or other relevant policy) has occurred. The investigator will investigate the matter in a manner he/she sees fit, having regard to the nature of the matter, applicable legal obligations and the principles of natural justice. The investigator may interview the Complainant, the Respondent and/or any witnesses (whether nominated or not) or third parties, and/or sight any relevant documents. The Complainant, or Respondent, or any witnesses are entitled to bring a support person and/or representative to any interview or meeting that may be conducted in the course of the investigation.

4.14 All parties involved in the investigation need to understand that their accounts of events, statements or views expressed in this context will generally need to be provided to other persons (for example, complaints and witness statements must generally be provided to the Respondent). Should the Complainant or any witness object to such disclosure, ATNZ may not be able to fully and fairly investigate the complaint.

4.15 The investigator must use their best endeavours to keep the Complainant and Respondent informed throughout the investigation, and to conduct the investigation in a timely manner.

1. **Potential Outcomes of Formal Intervention**

5.1 Subject to the circumstances of the complaint and investigation, the assigned investigator may record their findings in writing (for example, in an investigation report). The investigator and/or ATNZ may provide the Respondent and the Complainant with a copy of their findings and may give them the opportunity to comment on the findings, before ATNZ makes a decision as to the outcome (including a decision whether a disciplinary process should be commenced).

5.2 ATNZ will then notify the Complainant and the Respondent of the outcome of the investigation.

5.3 If, ATNZ believes that allegations of bullying, harassment or discrimination are substantiated, ATNZ will act as it believes is appropriate in the circumstances, including potential disciplinary action in accordance with ATNZ’s disciplinary policy.

5.4 ATNZ will generally regard substantiated bullying, harassment or discrimination as serious misconduct which may result in disciplinary action up to and including summary dismissal.

5.5 Where an investigation could not substantiate bullying, harassment or discrimination (or any other kind of misconduct), ATNZ may still intervene informally by directing any party to provide an apology, or attend training. Such measures may be recorded on the employee’s personnel file, but would not, of itself, constitute disciplinary action.

5.6 Whether or not the Respondent will be subject to disciplinary proceedings and disciplinary action as a result of the investigation is generally a confidential matter between ATNZ and the Respondent. Unless the particular circumstances warrant or require disclosure of the outcome of any disciplinary process to the Complainant, ATNZ may merely inform the Complainant that the matter has been dealt with and appropriate action has been taken. Circumstances where disclosure to the Complainant may be considered are such where disclosure is necessary for ensuring the Complainant’s health and safety and ATNZ’s legal obligations in this respect.

5.7 Where established behaviour, particularly serious sexual harassment, or physical assault, may come under the Crimes Act 1961 or the Harassment Act 1997, ATNZ or the Complainant can (but are not obliged to) make a complaint to New Zealand Police.

 **Suspension**

5.8 After an allegation or complaint has been made, or during an investigation and/or any potential subsequent disciplinary process, ATNZ may remove the Respondent from the environment (or arrange restrictions), or suspended (generally on pay) the Respondent, if it considers this to be reasonable in the circumstances. In particular, this may be the case if ATNZ has genuine grounds to believe that this is necessary to protect the security or health and safety of the Complainant, Respondent or others at work, or where ATNZ has reasonable grounds to believe that the Respondent may hinder ATNZ’s ability to investigate the allegations or complaint in any way, or if ATNZ believes on reasonable grounds that, at its discretion, the seriousness of the allegations warrant such removal, restriction or suspension.

5.9 Where reasonably practicable, ATNZ will generally consult with the Respondent in relation to a removal, restriction or suspension before such action.

5.10 Where the Respondent causes undue delay to the investigation (i.e., without having genuine and reasonable grounds to do so), ATNZ may place the Respondent on unpaid suspension, or change a previously paid suspension to an unpaid suspension.

1. **Further Options for Employees**

6.1 Complainants are expected to exhaust ATNZ’s aforementioned internal informal and formal procedures in the first instance. If a Complainant is not satisfied with the outcome of an investigation into their complaint, or the resolution thereof, the employee is expected to request for ATNZ to review the investigation process and/or outcome. This equally applies to the Respondent.

6.2 If such review is not concluded to the employee’s satisfaction, the employee can invoke ATNZ’s employment relationship problem process set out in the employee’s employment agreement.

6.3 Failing this, the employee can consider the following options (in some limited circumstances, some of those options may potentially be used in the first instance). ATNZ recommends that employees seek independent and competent advice before taking any of the following steps.

**Employment Relations Act 2000**

6.4 Employees can raise a personal grievance in relation to bullying, harassment or discrimination in accordance with the provisions of the Employment Relations Act 2000. Personal grievances need to be raised within 90 calendar days of the alleged behaviour (or when it has come to the employee’s attention). Employees can also request mediation provided by the Ministry of Business, Innovation and Employment (MBIE) before or after raising a personal grievance. More information about this Act and associated processes can be accessed at:

* http://www.mbie.govt.nz/info-services/employment-skills

**Human Rights Act 1993**

6.5 The Human Rights Commission provides a free and confidential mediation service. Should this not resolve the matter, Employees can complain to the Human Rights Commission in relation to harassment or discrimination in accordance with the provisions of the Human Rights Act 1993. A complaint should be made within 12 months of the alleged behaviour. Employees cannot commence proceedings in both the employment jurisdiction and the human rights jurisdiction. More information about this Act and associated processes can be accessed at:

* https://www.hrc.co.nz/

**Harassment Act 1997 and Crimes Act 1961**

6.6 Particular behaviours may amount to harassment in accordance with the Harassment Act 1997 or criminal offences in accordance with the Crimes Act 1961 and can be complained about to New Zealand Police and pursued in the relevant jurisdictions. More information about these Acts and associated processes can be accessed at:

* http://www.police.govt.nz/
* http://communitylaw.org.nz/
* http://www.cab.org.nz/Pages/home.aspx

**Harmful Digital Communications Act 2015**

6.7 Particular behaviours, particularly ‘cyber-bullying’ may be pursued in accordance with the Harmful Digital Communications Act 2015. More information about this Act and associated processes can be accessed at:

* https://www.netsafe.org.nz/

**Protected Disclosures Act 2000**

6.8 Particular behaviours, particularly serious sexual harassment, may potentially amount to “serious wrongdoing” under the Protected Disclosures Act 2000 and may be raised in accordance with that Act and ATNZ’s Speak Up policy in this respect. More information about this Act and associated processes can be accessed at:

* http://communitylaw.org.nz/

6.9 Employees need to understand that making a protected disclosure under the Act (and ATNZ's Speak Up policy) does not guarantee confidentiality. In particular, employees are referred to Section 19(1)(b)(iii) of the Act, which mentions the principles of natural justice which generally includes the respondent’s right to know the identity of the complainant.

**Further Information for Employees and Learners**

6.10 Employees who are concerned about bullying and harassment can find further information on the WorkSafe NZ website at:

* https://worksafe.govt.nz/the-toolshed/tools/bullying-prevention-toolbox/

**7.0 Learners**

Allegations of bullying or harassment in relation to Learners will be investigated and any required action implemented under the provisions of the Learner Regulations.

**8. Policy Amendments**

ATNZ is entitled to amend and vary this policy from time to time at ATNZ’s sole discretion and all employees are required to observe such amended policy.

# Associated documents

Bullying Harassment Resolution Process

Learner Regulations

Performance Management and Disciplinary Policy

Health and Safety Policy

Equal Opportunity Policy

Individual Employment Agreement