



POLICY MANUAL

WORKFORCE

3.3 WORKPLACE BEHAVIOURS POLICY

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| Distribution | Elected members, All Employees, Contractors, Visitors & Volunteers |
| Responsible Officer | Chief Executive Officer |
| Date adopted | 17 November 2021 |
| File Reference | N/A |

Purpose

To educate all employees, contractors, volunteers, visitors and Elected Members on what constitutes unacceptable behaviour in relation to workplace discrimination, bullying and harassment and the procedures that will be followed in order to rectify such incidents.

The Shire of Goomalling does not tolerate any form of workplace discrimination, bullying or harassment and is committed to its duty to foster a safe workplace for all employees, volunteers, contractors and visitors.

Objective

The objectives of this policy are to:

- Create an Equal Employment Opportunity and safe environment for all employees, contractors, volunteers, visitors and Elected Members, free of discrimination, harassment and bullying and where all people are treated with dignity, courtesy and respect;
- Create and increase awareness amongst employees, contractors, volunteers, visitors and Elected Members of their rights and obligations in relation to discrimination, harassment and bullying;
- Encourage employees, contractors, volunteers, visitors and Elected Members who are victims of, or witnesses to workplace discrimination, harassment or bullying to report all incidents, no matter how minor or severe;
- Provide effective and efficient informal and formal complaint processes based on the 'Procedural Fairness' and 'Natural Justice' principles;
- Treat all complaints in a sensitive, fair, timely and confidential (where possible) manner;
- Reduce the Shire's direct and indirect risk associated with workplace discrimination, bullying or harassment. For example:
 - Losing valued and talented employees;
 - Reduced productivity and morale;
 - Stress related worker's compensation claims lodged and
 - Reputational damage through media exposure and/or potential litigation
- Explain costs associated with counselling, mediation, compensation claims and possible legal action; and

- Identify behaviour occurring that contravenes the Shire of Goomalling Values, Code of Conduct and legal responsibilities, and negatively impacts the Organisation's reputation.

Scope

Elected Members, Employees, Volunteers, Contractors, Visitors and Work Experience Students.

Standard

Procedural fairness is concerned with the procedures used by a decision-maker, rather than the actual outcome reached. It requires a fair and proper procedure be used when making a decision. It is considered highly likely that a decision-maker who follows a fair procedure will reach a fair and correct decision.

What is equal employment opportunity?

Equal opportunity in employment means that employees are judged on their ability to do the job based on merit rather than assumptions about them based on different characteristics.

What is discrimination?

Discrimination occurs when a person is treated less favourably than another person because of certain attributes. Under Federal and State laws, it is against the law to discriminate against people or to harass them, in various areas of public life because of their:

- Race, including colour, ethno-religious background or nationality under the *Racial Discrimination Act 1975*;
- Sex, pregnancy, transgender or marital status under the *Sex Discrimination Act 1984*;
- Disability under the *Disability Discrimination Act 1992*;
- Carers' responsibilities under *WA Equal Opportunity Act 1984*;
- Sexual Orientation under *WA Equal Opportunity Act 1984*; or
- Age under the *Age Discrimination Act 2004*.

Direct discrimination is where someone is treated less favourably because of their sex, age, race, disability, pregnancy or any of the other grounds covered by anti-discrimination legislation.

Indirect discrimination occurs when a requirement (or rule) that is the same for everyone has an effect or result that is, or is likely to, disadvantage employees because of their sex, race, disability etc.

What is harassment?

Harassment is defined as behaviour that is directed at an individual or group of employees, contractors, volunteers, visitors that, because of its severity and/or persistence, is likely to create a hostile or intimidating environment and detrimentally affect an individual's participation in employment. Harassment is determined by reference to the nature and consequences of the behaviour, not the intent of the initiator, and occurs in circumstances

where a reasonable person would have found the behaviour to be offensive, humiliating or intimidating.

What constitutes general harassment?

- Abusing a person loudly, usually when others are present;
- Repeated threats of dismissal or other severe punishment for no reason;
- Constant ridicule or being put down;
- Leaving offensive messages on email or the telephone;
- Sabotaging a person's work, for example, by deliberately withholding or supplying incorrect information, hiding documents or equipment, not passing on messages or getting a person into trouble in other ways;
- Maliciously excluding or isolating a person from workplace activities;
- Persistent and unjustified criticisms, often about petty, irrelevant or insignificant matters;
- Humiliating a person through gestures, sarcasm, criticism and insults, often in front of management or other workers; and
- Spreading gossip or false, malicious rumours about a person with an intent to cause the person harm.

What is not workplace discrimination or harassment?

It is important for all employees to understand that workplace discrimination or harassment does not include the Senior Staff/Executive Management Team and designated Supervisors legitimately exercising their right to direct and control the manner in which work is done, monitoring employees' performance and dealing with underperformance in an appropriate and constructive manner, as per the Organisation's procedures.

What is sexual harassment?

Sexual harassment is any behaviour of a sexual nature, which is unwanted, unwelcome or uninvited which makes a person feel humiliated, intimidated or offended.

It may involve a single incident or a series of incidents. The Commonwealth (Federal) *Sex Discrimination Act 1984* and the W.A. (State) *Equal Opportunity Act 1984* declare sexual harassment to be unlawful.

What behaviour(s) may constitute sexual harassment?

Sexual Harassment can take many forms, from relatively mild sexual banter to actual physical violence. Examples of behaviour that may be classed as Sexual Harassment include unwanted:

- Physical contact - e.g. touching; patting; pinching; kissing/embracing someone or sexual assault.
- Verbal comments - e.g. innuendo; smutty jokes; suggestive comments about someone's appearance or body; persistently inviting someone out; questions about a person's private life; requests for sexual favours.
- Nonverbal actions - e.g. leers; stares; displays of sexually explicit material; offensive body and hand movements; suggestive letters and drawings, including email; indecent exposure, stalking, taking unwanted photographs.

What is not workplace Sexual Harassment?

Sexual Harassment is not behaviour which is based on mutual attraction, friendship or respect. If the interaction is consensual, welcome and reciprocated it is not Sexual Harassment.

It is also important for all Employees to understand that Workplace Sexual Harassment does not include the Organisation legitimately exercising its right to direct and control the manner in which work is done, monitoring Employees' performance and dealing with underperformance in an appropriate and constructive manner, as per the Organisation's procedures.

Sexual harassment and criminal conduct

Although the Commonwealth (Federal) *Sex Discrimination Act 1984* declares sexual harassment to be unlawful (deemed a civil offence), some types of sexual harassment may also be offences under criminal law.

If the Organisation suspects a criminal incident has occurred, the Organisation shall encourage the complainant to report the matter to the police as soon as possible, and will be provided with any necessary support and assistance.

What is workplace bullying?

Workplace bullying can be defined as repeated, unreasonable or inappropriate behaviour directed towards a worker, or a group of workers, that creates a risk to health and safety (Code of Practice: Violence, Aggression and Bullying at Work (2006)).

Behaviour is considered inappropriate if a worker or workers are harmed, intimidated, threatened, victimised, undermined, offended, degraded or humiliated.

While some workplace bullying may involve verbal abuse and physical violence, bullying can also be subtle intimidation with inappropriate comments about personal appearance, constant criticisms, isolation of workers from others and unrealistic, embarrassing or degrading work demands. Workplace bullying can also be carried out via letters, email and telephone text messages.

What is victimisation?

Victimisation includes threatening, harassing or punishing a person in any way because they have objected to, or made a bullying claim about the manner in which they have been treated.

Workplace victimisation can be either overt or covert behaviour.

Overt behaviour includes:

- Loud or abusive language;

- Yelling or screaming;
- Unexplained rages;
- Unjustified criticism or insults, particularly in front of others;
- Humiliating or demeaning conduct; or
- Unjustified threats of dismissal or other disciplinary action.

Covert behaviour includes:

- Sabotage by withholding information;
- Hiding documents or equipment;
- Constantly changing targets/work policies;
- Overloading an employee with work and impossible deadlines, causing physical and/or mental exhaustion;
- Withholding training or resources which is typically offered to other employees;
- Isolating or ignoring an employee on a constant basis; or
- Practical joking.

What is not workplace bullying or victimisation

It is also important to understand what isn't bullying and to provide managers with guidance on what actions they are legally allowed to conduct. This section therefore clarifies what isn't bullying.

An isolated incident of inappropriate or unreasonable behaviour may be an affront to dignity at work but as a one-off incident it is not considered to be bullying. However, since the organisation has a general duty to provide employees with a safe workplace and systems of work, single incidents of this type should not be ignored.

It is important to differentiate between a person's legitimate authority at work and bullying. The organisation has the legal right to direct and control how work is done, and managers have a responsibility to monitor workflow and give feedback on performance.

If an employee has obvious performance problems, these should be identified and dealt with in a constructive way that does not involve personal insults or derogatory remarks. In situations where an employee is dissatisfied with management practices, the problem should also be raised in a manner that does not involve personal abuse.

Definitions

Discrimination, harassment or bullying of anyone is deemed unlawful under both State (WA) and Federal (Commonwealth) legislation. Disciplinary action will be taken against any employee who discriminates, harasses or bullies a fellow colleague. Sexual harassment can also be deemed a criminal offence under criminal law leading to prosecution.

All Individuals: Employees, volunteers, contractors and work experience students.

Assessor: The person who officially investigates the claim.

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| Claimant: | The person who is lodging the claim. |
| Respondent: | The person who is allegedly discriminating, harassing and/or bullying. |
| Grievance Officers: | Any member of the Senior Staff/Executive Management Team. |

Roles & Responsibilities

Elected Members

- To provide model leadership in this area and display appropriate standards of conduct.

Chief Executive Officer/Executive Management/Senior Staff

- To provide model leadership in this area and display appropriate standards of conduct;
- To provide employees with a safe and confidential reporting structure; and
- To take all claims seriously and investigate with integrity and fairness.

Supervisors

All line supervisors are required to:

- Model appropriate behaviour and monitor to ensure acceptable standards of conduct are observed at all times;
- Ensure that all employees, volunteers and contractors where applicable are working in a safe environment, free from workplace bullying and victimisation. This includes actively promoting this policy within their Team;
- Provide the resources and support to employees when incidents of workplace bullying and victimisation occur;
- Address workplace bullying and victimisation incidents immediately if they are evident within their Team;
- Refer any claims to another officer or external 3rd party if they feel they are not the best person to handle the claim (e.g. there is a conflict of interest or the claim is too complex or serious); and
- Ensure their employees are aware of their responsibilities and are trained in the Organisation workplace discrimination, harassment, bullying and victimisation procedures. This information will be made readily available to all employees of the Shire of Goomalling, in hard copy at the Shire Depot and Administration office.

Employees

All employees are required to:

- Adhere to and uphold this Policy and the Shire of Goomalling Code of Conduct;
- Advise their line supervisor of incidents as soon as possible. This also includes reporting incidents that may have been witnessed; and
- Maintain confidentiality if they are involved in any form of the investigation of a claim (e.g. either as a respondent, witness or claimant).

Legislation

[Equal Opportunities Act 1984](#) and associated Regulations

[Work Health and Safety Act 2020](#) and associated Regulations

[Industrial Relations Act 1979](#) and associated Regulations

[Corruption Crime and Misconduct Act 2003](#) and associated Regulations

[Code of Practice: Violence, Aggression and Bullying at Work \(2006\)](#)

[Workers' Compensation & Injury Management Act 1981](#) and associated Regulations
[Public Interest Disclosure Act 2003](#) and associated Regulations

Federal

[Sex Discrimination Act 1984](#) and associated Regulations

[Racial Discrimination Act 1975](#) and associated Regulations

Document Links

Nil

Delegation

Nil

Review History

| Version | Review date | Minute no. | Notes |
|---------|------------------|---------------|---|
| 1 | September 2015 | 1 092015.SM | |
| 2 | 21 October 2020 | 269 OM_211020 | Formerly 2.1 OHS Bullying in the Workplace and 4.42 Workplace Behaviour |
| 3 | 17 November 2021 | 9.4 OM_171121 | Annual Review - Resolution 427 |