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Objective

The purpose of this policy and procedure is to outline how the Shire will manage incidences of unacceptable workplace behaviour.

Policy

- (1) The Shire is committed to providing a workplace that is free from discrimination, harassment, bullying and victimisation for all employees and members of the community.
- (2) The Shire believes that in providing such a workforce they will enable all employees to feel safe, secure and free from intimidation when they are at work.
- (3) The Shire prohibits any form of unacceptable behaviour in the workplace and encourages all employees to report any unacceptable behaviour to the Manager/ Supervisor or CEO. Managers and supervisors must ensure employees who make complaints or witnesses are not victimised or bullied.
- (4) The Shire has grievance and investigation procedures to deal with workplace bullying. Any reports of workplace bullying will be treated seriously and investigated promptly, confidentially and impartially.
- (5) Any breach of the Workplace Behaviour Policy will be considered a serious matter that will be investigated and may result in disciplinary action including termination of employment. Discipline may involve a warning, transfer, counselling, demotion or dismissal, depending on the circumstances.

Procedure

- (1) This policy applies to any person involved in the Shire, including all employees, potential employees, contractors, volunteers and visitors.

- (2) All employees are responsible for ensuring that their behaviour reflects the standards of conduct outlined in the Shire HR Policies and Guidelines and builds on a positive workplace culture.
- (3) All employees must take responsibility for reporting improper conduct or misconduct which has been, or may be occurring in the workplace.
- (4) They will report the details according to the guidelines and procedures set out in the Managing Issues and Grievances Procedure.
- (5) This policy applies to all activities during the course of work within the Shire including:
 - (a) In the workplace, including work outside normal working hours;
 - (b) During work activities, including dealing with members of the public; and
 - (c) At work related events, including conferences and social functions outside work premises.
- (6) Managers have a special responsibility to support employees in achieving these goals by leading by example and assisting employees to understand the HR Policy and associated policies and procedures. They must also take all reasonable steps to ensure that our workplace is free from unacceptable behaviour.
- (7) The contact person for bullying at this workplace is the Finance Manager.

Definitions

Discrimination - is treating a person less favorably on the basis of certain characteristics they possess and it can happen either directly or indirectly and be intentional or unintentional.

Direct discrimination - occurs when a person is treated less favorably than another person in the same or similar circumstances, because of any of the grounds or attributes listed below.

Indirect discrimination - occurs when an apparently neutral rule has a negative effect on a substantially higher proportion of people with a particular attribute or characteristic, such as those listed below, compared to people without that attribute or characteristic, and the rule is unreasonable in the circumstances.

For example, the minimum height requirement that used to exist in the police force *directly* discriminated against short people on the basis of physical appearance, and *indirectly* discriminated against women and people of certain races, who tend to be shorter.

Unacceptable grounds or attributes of discrimination

- (1) Discrimination based on any of the following grounds or attributes is unacceptable:

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| (a) Age; | (i) Disability or impairment; |
| (b) Family responsibility; | (j) Marital status; |
| (c) Family status; | (k) Political conviction; |
| (d) Gender; | (l) Pregnancy; |
| (e) Gender history; | (m) Race; |
| (f) Sexual harassment; | (n) Racial harassment; and |
| (g) Sexual orientation; | (o) Religious conviction. |
| (h) Spent conviction; | |

In some of the listed circumstances the *Equal Opportunity Act 1984* may apply to a relative or person who has a close relationship to a person affected by these grounds.

Examples of discriminatory behaviour

Discrimination may involve:

- (a) Offensive 'jokes' or comments about another person's racial or ethnic background, sex, sexual preference, age, disability, and the like;
- (b) Displaying pictures, calendars, pin-ups, posters, computer images (e.g. in electronic mail messages), which are offensive or derogatory;
- (c) Expressing negative stereotypes of particular groups, for example, 'married women shouldn't be working'
- (d) Judging a person on characteristics such as religious or political beliefs, cultural practices, sex or age rather than work performance;
- (e) Using stereotypes or assumptions when making decisions about a person's career.

Exceptions

- (1) In some situations, the legislation may provide exceptions to discrimination or permit what would otherwise be unlawful discrimination. In these circumstances discrimination will be permissible.
- (2) For example, while it is unacceptable to discriminate against a person with a disability, what would otherwise be unlawful discrimination may be justified if the person cannot perform the inherent requirements of their position.

Responsibilities

Liability of people involved in unlawful acts - A person who causes, instructs, induces, aids or permits another person to do something that is unlawful under the Act shall be considered to have done the act themselves.

Vicarious liability - When an employee, or agent, in connection with their employment, does something which is unlawful under the Act, their organisation, employer or principal will be liable for that act.

Refer to the Equal Opportunity Act 1984 for more information

Sexual harassment

- (1) A person sexually harasses another person if they:
 - (a) Make an “unwelcome sexual advance”;
 - (b) Make an “unwelcome request for sexual favours”; and
 - (c) Engage in other “unwelcome conduct of a sexual nature”.
- (2) The behaviour must be such that the harassed person has reasonable grounds to believe if they reject the advance, refuse the request or object to the conduct they will be disadvantaged, or they are in fact disadvantaged.
- (3) Conduct of a sexual nature can take many forms including, but not limited to:
 - (a) Unwelcome physical touching, hugging or kissing;
 - (b) Making, orally or in writing, any remark or statement with sexual connotations to a person or about a person;
 - (c) Making any gesture, action or comment of a sexual nature;
 - (d) Staring or leering at someone, or at parts of their body;
 - (e) Suggestive comments or jokes;
 - (f) Insults or taunts based on sex;
 - (g) Sexually explicit pictures, e-mails or text messages; and
 - (h) Intrusive questions about an employee's private life or body.
- (4) The motivation or intention is irrelevant.
- (5) Sexual harassment is unwelcome, uninvited behaviour which is offensive **from the viewpoint of the person being harassed**. It does not matter that the offender did not mean or intend to sexually harass the other person. In other words, an offender's 'innocent intent' is irrelevant.

Examples of sexual harassment

- (1) Sexual harassment can involve any physical, visual, verbal or non-verbal conduct of a sexual nature including both one-off incidents and a series of incidents. It also includes workplace behaviour or behaviour in connection with work, for example, at a Christmas party or at a work function outside of work hours.
- (2) Depending on the circumstances, other examples of sexual harassment include:
 - (a) Displays of sexually graphic material including posters, pictures, calendars, cartoons, graffiti or messages left on boards or desk;
 - (b) Electronic mail messages, voice mail messages, screen savers, any material of a sexual nature downloaded from the internet, or viewed on a computer, offensive telephone calls, faxes, or gifts;
 - (c) Deliberate and unnecessary physical contact, such as patting, pinching, fondling or deliberately brushing against another body, attempts at kissing;
 - (d) Leering or staring at a person's body;

- (e) Inappropriate 'humour' such as smutty or sexist jokes or comments;
- (f) Innuendo, including sexually provocative remarks, suggestive or derogatory comments about a person's physical appearance, inferences of sexual morality or tales of sexual performance;
- (g) Repeatedly asking someone out, especially after prior refusal;
- (h) Intrusive inquiries into a person's private life or in reference to a person's sexuality.

Behaviour can breach this policy even if it is not unlawful

- (1) The Shire may decide that behaviour breaches this policy even if a complaint has not been raised.
- (2) For example, storing and viewing sexually explicit images in the workplace or on a computer at work may constitute sexual harassment under this policy, even if a complaint has not been made against the offender.
- (3) This behaviour is still unacceptable at work, even if it is not unlawful, and may result in disciplinary action being taken, including termination of employment.

Alcohol and functions

- (1) Everyone who works for the Shire is expected to behave in a professional and appropriate manner at all work related events, including client or social functions, industry events and conferences.
- (2) Alcohol is no excuse for unacceptable behaviour.

Bullying

- (1) The Shire considers workplace bullying unacceptable and will not tolerate it under any circumstances.
- (2) Workplace bullying may cause the loss of trained and talented employees, reduce productivity and morale and create legal risks.
- (3) Workplace bullying is behaviour that harms, intimidates, offends, degrades or humiliates an employee, possibly in front of other employees, clients or customers.
- (4) Workplace bullying is repeated, unreasonable or inappropriate behaviour directed towards an employee, client, contractor or other external party that creates a risk to their health and safety.
- (5) Unreasonable behaviour is that which victimises, humiliates, undermines or threatens the person being bullied, or would reasonably be expected to do so.

- (6) Bullying breaches this policy and also the Shire occupational health and safety policy which provides that all workers must take reasonable care for the health and safety of their co-workers.

Examples of bullying

- (1) Bullying is defined by the effect of the behaviour, even though there may not be a specific intent to bully. Bullying may include one or more behaviours. Bullying may also include violence and aggression. Where bullying involves assault or threat of assault it may become a police matter.
- (2) There are two main types of bullying behaviour, overt and covert.
- (3) Examples of **overt** bullying include:
- (a) Abusive, insulting or offensive language;
 - (b) Behaviour or language that frightens, humiliates, belittles or degrades, including criticism that is delivered with yelling and screaming;
 - (c) Inappropriate comments about a person's appearance, lifestyle, or their family;
 - (d) Interfering with a person's personal effects or work equipment;
 - (e) Harmful or offensive initiation practices;
 - (f) Isolation of workers from others; and
 - (g) Physical assault or threats.
- (4) **Covert** behaviour that undermines, treats less favourably or disempowers others is also bullying, for example:
- (a) Overloading a person with work or not providing enough work;
 - (b) Setting timelines that are difficult to achieve or constantly changing deadlines;
 - (c) Constantly setting tasks that are below or beyond a person's skill level
 - (d) Ignoring or isolating a person;
 - (e) Deliberately denying access to information, consultation or resources; and
 - (f) Unfair treatment in relation to accessing workplace entitlements such as leave or training.

What bullying does not include

Bullying does not include:

- (a) Genuine and reasonable disciplinary procedures;
- (b) Constructively delivered feedback or counselling that is intended to assist employees to improve their work performance or the standard of their behavior;
- (c) For example, objective comments which indicate observable performance deficiencies; and
- (d) Directing and controlling how work is done (a fundamental right of all employers).

Victimisation

- (1) Victimisation means subjecting or threatening to subject someone to a detriment (as defined below), as a form of retribution in response to an actual or possible discrimination, harassment or bullying issue.
- (2) The complaint need not actually have been made; it is sufficient that the original issue could have been raised as a discrimination, harassment or bullying complaint, or that an individual:
 - (a) Intends to make a complaint;
 - (b) Makes a complaint;
 - (c) Intends to provide information as a witness;
 - (d) Provides information as a witness;
 - (e) Supports an individual who intends to make a complaint;
 - (f) Supports an individual who has made a complaint;
 - (g) Is believed to have done any of the above; and
 - (h) Victimisation also applies to anyone giving evidence about a complaint.

What is a detriment?

- (1) A detriment in employment includes demotion, dismissal, transfer, suspension, loss of a benefit, being ostracised from work or work related social functions, or being the subject of gossip or innuendo.
- (2) The Shire does not permit retaliation against a person just because they propose to, have, or are believed to have made a complaint of unacceptable behaviour under this policy, equal opportunity legislation or occupational health and safety legislation.

If someone raises a complaint with an employee about their behaviour

- (1) If a person raises a complaint directly with an employee about their behaviour, they should appreciate that others find their behaviour unacceptable.
- (2) They are giving the person an opportunity to change their behaviour, and possibly prevent a formal complaint from being made against them.
- (3) If someone does raise a complaint to another employee about their behaviour, they should be encouraged to consider monitoring and changing the behaviour, without victimising the person making the complaint.
- (4) Concerns regarding a complaint raised from either party are encouraged to discuss this with the CEO or the Human Resources Advisor