

DISCRIMINATION, HARASSMENT AND BULLYING PROCEDURE

DATE:

DATE	NAME	CHANGE	APPROVED	REVISION

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1. PURPOSE

The purpose of this procedure is to ensure that all “the Company” managers, employees, visitors and contractors accept responsibility, in accordance with legislation and the Company’s Code of Conduct Policy, to create a working environment free of discrimination, harassment and bullying.

This procedure serves to inform employees on what constitutes acceptable workplace behaviour and addresses behaviours of discrimination, harassment, bullying and workplace violence in order to avoid and/or deal with any incidents of it.

Further, this procedure serves to ensure that all employees are informed of the seriousness of discrimination and harassment and how to manage incidents relating to bullying, harassment and threatening behaviour.

2. SCOPE

This procedure applies to all employees and contractors working at all (the Company’s) workplaces and visitors.

3. DEFINITIONS

Bullying – workplace bullying is repeated, unreasonable behaviour directed towards a employee, or group of workers, that creates a risk to health and safety in the workplace.

EEO Contact Officer – [Company] employee specifically trained to act as a contact or resource person for employees with queries or issues that relate to bullying, harassment and discrimination.

Discrimination – Discrimination refers to any practice that distinguishes between people or groups of people in a way that results in one person or a group of people being treated less favourably than another, because of a particular characteristic.

Diversity – the recognition and value of the unique contribution people can make because of their individual background and different skills, experiences and perspectives. People differ not just on the basis of race and gender, but also other dimensions such as lifestyle, education, religion or beliefs, physical ability, age and family responsibility.

Equal Employment Opportunities (EEO) – A legislative standard which means all employees and prospective employees have equal access to jobs, benefits and services in the workplace.

Grievance – Any type of problem, concern or complaint arising from or relating to the workplace.

Harassment – any form of behaviour that is uninvited, unwelcome and which humiliates, offends or intimidates another person, or makes the workplace uncomfortable and unpleasant.

Repeated Behaviour – refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

Unacceptable Behaviour – means behaviour that has created, or has the potential to create, a risk to a staff member’s health and safety.

Unreasonable Behaviour – means behaviour that a reasonable person, having regard for all of the circumstances would expect to victimise, humiliate, undermine or threaten.

4. LEGISLATION

Age Discrimination Act 2004 (Cth)

Australian Human Rights Commission Act 2004 (Cth)

Disability Discrimination Act 1992 (Cth)

Equal Opportunity Act 2010 (VIC)

Equal Opportunity Act 1984 (WA)

Fair Work Act 2009 (Cth)

Occupational Safety and Health Act (WA)

Racial Discrimination Act 1975 (Cth)

Sex Discrimination Act 1984 (Cth)

5. RESPONSIBILITIES

It is the responsibility of all managers, employees and contractors to ensure that [Company] is free from bullying, harassment and discrimination and to ensure the integrity of [the Company] as an Equal Employment Opportunity employer.

5.1 Employees

All employees have a responsibility to take reasonable care for their own, and others that they work with, health and safety, and to co-operate and comply with this policy and associated procedures.

It is every employee's responsibility to report any instances of Unacceptable Behaviour to a Manager/Supervisor, Senior Manager or EEO Contact Officer so that, if appropriate, the behaviour can be investigated.

5.2 Manager and Supervisors

Managers and supervisors have additional responsibilities to ensure that unacceptable behaviour is addressed sensitively, efficiently and effectively in their department. Managers and supervisors are required to seek assistance from the appropriate source(s) i.e. the Managing Director or Human Resources Manager, if they do not feel that they are appropriately able to handle the matter.

6. UNACCEPTABLE BEHAVIOUR

The [Company] Code of Conduct outlines the minimum standards for professional conduct and behaviour at [the Company]. It is a responsibility of all [Company] employees to make themselves familiar with the Code of Conduct and ensure that they comply with its directions with regards to appropriate workplace behaviour.

6.1 Harassment

Harassment generally involves behaviour that intimidates, offends or humiliates a person because of particular personal characteristic such as race, age, physical attributes, pregnancy, gender, disability, religion or sexuality. Harassment can be verbal, written, physical or visual in form, and includes innuendo. Harassment can be direct or indirect and, while it may not be intended to hurt another person, if it does, it is unlawful and the intent is irrelevant under the law. It is important to recognise that behaviour or comments which may not be offensive to one person, may be unwelcome or offensive to another.

Every employee must ensure that they do not engage in behaviour that could be deemed to harass another employee(s), manager(s) or supervisor(s), client(s) or customer(s). Employees should be aware that they can be held legally responsible for their own unlawful acts. Employees who aid, abet or encourage other persons to harass can also be held legally liable.

All forms of workplace harassment (including sexual and racial) undermine [Company] principles of integrity, open communication and respect and will not be tolerated in any form by any employee. It is every employee's responsibility to make themselves familiar with the contents of the relevant policies and related procedures and to take action to prevent harassment from occurring. Reports of such behaviour will be taken extremely seriously and may lead to disciplinary action up to and including termination of employment.

6.2 Bullying

Workplace bullying is a psychological hazard, the risks of which will be managed by [the Company] like any other hazard in the workplace. Bullying will not be tolerated in any form at any [Company] location or operation.

Bullying is defined in the *Fair Work Act 2009* as repeated, unreasonable behaviour directed towards an individual or group that creates a risk to their health and safety.

Bullying is best dealt with by taking steps to prevent it from occurring and responding quickly if it does occur.

Bullying includes action of individuals or a group of individuals and involves behaviour that may victimise, humiliate, harass, undermine or threaten.

Examples of behaviour, whether intentional or unintentional, that may be considered to be workplace bullying if they are repeated, unreasonable and create a risk to health and safety include:

- Abusive, insulting or offensive language;
- Unjustified criticism or complaints;
- Continuously and deliberately excluding someone from workplace activities;
- Withholding information that is vital for effective work performance;
- Setting unreasonable timelines or constantly changing deadlines;
- Setting tasks that are unreasonably below or beyond a person's skill level;
- Denying access to information, supervision, consultation or resources such that it is detrimental to the employee;
- Spreading misinformation or malicious rumours;

- Changing work arrangements, such as rosters and leave, to deliberately inconvenience a particular employee or employees; and
- Excessive scrutiny at work.

A single incident of unreasonable behaviour is not considered to be workplace bullying however, it may have the potential to escalate and should not be ignored.

Workplace bullying does not include;

- Occasional differences of opinion and non-aggressive conflicts and problems in working relations; or
- Workplace counselling, managing under-performance and other actions in accordance with Company policies and procedures.

6.2.1 How does bullying occur?

Workplace bullying can occur wherever people work together. Bullying can be carried out in a variety of ways, including face to face communication and through email or text messaging, internet chat rooms, instant messaging or other social media channels.

Workplace bullying can be directed at a single employee or group of employees and be carried out by one or more employees. It can occur:

- **Downwards** from managers or supervisors to employee(s);
- **Sideways** between employees; or
- **Upwards** from employees to supervisors or managers.

6.2.2 What is not considered to be workplace bullying?

There are times when [Company] managers or supervisors may take reasonable management action to effectively direct and control the way work is carried out. It is reasonable for managers and supervisors to allocate work and to give fair and reasonable feedback on a employee's performance. These actions are usually not considered to be bullying if they are carried out in a reasonable manner. Examples of reasonable management action include:

- Setting reasonable performance goals, standards and deadlines;
- Rostering and allocating working hours where the requirements are reasonable;
- Transferring an employee for operational reasons;
- Informing an employee about unsatisfactory work performance when undertaken in accordance with any workplace policies or agreements such as performance management guidelines;
- Informing an employee about inappropriate behaviour in an objective and confidential way;
- Implementing organisational changes or restructuring; and/or
- Termination of employment.

6.3

Workplace Conflict

Low level workplace conflict is generally not considered to be workplace bullying. This is because not all conflicts or disagreements have negative effects. When conflict is at a low level and is task based, it can benefit an organisation by generating debate leading to new ideas and innovative solutions. It does not always pose a risk to health and safety however,

in some cases, workplace conflict that is not managed may escalate to the point where it meets the definition of workplace bullying.

6.4 Violence

Workplace violence is any action, incident or behaviour in which a person is assaulted, threatened, harmed or injured in circumstances relating to their work. Incidents of workplace violence will not be tolerated at any [Company] site or operation and may be reported to the police.

7.

PROCEDURE

Like other workplace hazards, issues of Unacceptable Behaviour are best managed by responding as early as possible. An EEO, bullying or harassment grievance is a complaint or issue raised by an employee, contractor, consultant or any other person working or visiting [the Company] premises or sites during the course of employment who experiences discrimination, bullying or harassment.

7.1

How To Get Help.

Employees, contractors, consultants or any other person working or visiting [Company] premises or sites can raise or report issues of workplace harassment, bullying or discrimination verbally or in writing using any of the following methods. *NB: There is no requirement to work through the following options sequentially.*

OPTION 1 - Contact the person involved directly

Early intervention and resolution can sometimes be achieved by the individual self-managing the situation and telling the other person that the unreasonable behaviour is not welcome and asking that it stop.

If the person experiencing the behaviour is able, they should tell the person(s) to stop the behaviour and let them know that the behaviour is not acceptable and bring this policy to their attention. It may not have been the other person's intention to hurt or offend others and asking for the behaviour to cease may give the other person the opportunity to stop or change their behaviour after having it highlighted to them.

OPTION 2 - Contact an EEO Contact Officer

EEO Contact Officers are employees who have been selected and trained by the Company to be another point of contact for people with complaints. EEO Contact Officers provide information about possible options and information to employees in their workgroup.

An EEO Contact Officer will take the following steps:

- Listen to the complainant and consider if they are the right person to give advice. If they are not suitable they will forward the complaint to the most appropriate person with the complainant's consent;
- If they are the appropriate person to support the complainant, they will:
 - Explain the investigation process including the options that are available;
 - Explain possible options if the person is unhappy with the outcome and/or if the Company is not dealing with the complaint to satisfactory standards;
 - Advise other alternatives.
- Provide appropriate paperwork for completion by the complainant;

- Maintain the complainant's confidentiality at all times;
- Provide support as required for the complainant; and
- Keep in regular contact with the complainant.

For list of EEO Contact Officers see Appendix A attached to this procedure.

OPTION 3 - Contact Supervisor or Manager

If Option 1 and/or Option 2 does not resolve the issue as expected, or if the individual does not feel safe and confident enough to self-manage a situation, they can seek the assistance of another person to raise the issue, such as a supervisor or manager, or human resources officer. Anyone asked to act on behalf of an individual should use a confidential and non-confrontational approach.

Supervisors and line managers may intervene on issues they directly observe in their work teams or if they are requested to intervene by a member of the team. If a supervisor or manager approaches an individual directly about their behaviour they should record the action(s) taken.

Health and Safety representatives can also raise issues on behalf of employees in their work group.

OPTION 4 - Contact Managing Director

If Options 1, 2 and 3 are not effective or may be considered to be inappropriate, a formal complaint in writing may be sent to the Managing Director to resolve the conflict. The Managing Director will then consider the complaint and take all action deemed necessary to resolve the complaint.

OPTION 5 - Contact an External Agency

If it is felt that using Options 1 - 4 are not appropriate, or in situations where the complainant believes that the complaint has not been appropriately dealt with by the Company, it may be of benefit for the person to seek assistance from an external agency.

7.2 Investigation Procedure

The aim of an investigation is to investigate the circumstances of the matter, review what has occurred and determine an appropriate course of action/remedy.

The EEO, bullying and harassment grievance process is:

- Completely confidential - only people directly involved in making or investigating a complaint will have access to information about the complaint;
- Impartial - both sides will have equal opportunity to explain themselves and no assumption will be made or actions taken until all relevant information has been collected and considered;
- Free of repercussions - no action will be taken against anyone for making a genuine complaint or helping someone make a complaint; and
- Timely - all complaints will be dealt with as promptly as possible. This may vary depending on the severity or location of the complaint.

Conducting the Investigation

Once a complaint has been received by the Company, either verbally or via the Grievance Reporting Form, a workplace investigation process will be initiated in accordance with the [Company] Grievance Handling Procedure.

Ongoing Monitoring

After the complaint has been filed, the investigator will monitor the parties to the complaint to ensure that there are no further repercussions.

7.3 Complaint Resolution

There are a number of outcomes with regard to resolution of a complaint. These include, but are not limited to, the following:

7.3.1 Agreement

As explained in OPTION 1, many complaints may be resolved through agreement between the parties involved. If this happens, no records or notes will go on anyone's employment file. The person who handles the complaint will write a confidential report which will then be filed in a confidential complaint filing system held with the Human Resources Department.

7.3.2 Disciplinary Action

If the person managing the complaint determines from the evidence that there has been a breach of one of the [Company] Policies or Standards, the party(s) to the breach will be dealt with through Counselling and Discipline Procedure.

If a complaint is made mischievously (i.e. consists of lies or is frivolous or vexatious), disciplinary action may be taken against that party. Making untrue allegations about another person may also lead to legal action for defamation (damage to reputation).

Level of Disciplinary Action

The level of disciplinary action will depend on:

- Seriousness of the breach;
- Intent and level of maliciousness;
- Employment history - previous official warnings about similar breeches or behaviour; and/or
- Extenuating circumstances that mean disciplinary action should not be taken (known as mitigating circumstances).

Range of Disciplinary Action

Disciplinary action may involve one or more of the following:

- A written apology;
- Counselling;
- An official warning;
- Loss of promotion rights or wage/salary increase for specified period;
- Transfer or demotion; and/or
- Termination of employment.

A record of the complaint and the resulting disciplinary action will be placed on relevant employment files and the files of the Human Resources department.

Insufficient Evidence to Act

If there is not enough evidence to determine whether or not the alleged matter(s) occurred, no disciplinary action will be taken. Instead the parties to the complaint may be monitored and further training and policies provided for employee development. If this happens, no records or notes will go on employment files. The person who handles the complaint will write a confidential report which will then be filed in a confidential complaint filing system by the Human Resources department.

8. REFERENCE DOCUMENTS

[Company] Grievance Handling Procedure

Australian Human Rights Commission <http://www.hreoc.gov.au/index.htm>

Equal Opportunities Commission Western Australia www.eoc.wa.gov.au

FairWork <https://www.fwc.gov.au/>

9. ASSOCIATED FORMS

Grievance Reporting Form – All sites

APPENDIX 1 EEO CONTACT OFFICERS

