

POL 0005: Discrimination, Harassment and Bullying

Purpose

To ensure the Shire of Esperance provides a safe, respectful, inclusive, and discrimination-free working environment for all workers. It aims to promote fairness, dignity, and respectful conduct across the organisation while supporting a positive workplace culture and ensuring compliance with relevant legislation. The Shire of Esperance seeks to prevent discrimination, bullying, sexual harassment, and victimisation, and to uphold high standards of behaviour in all work-related interactions taking into account potential psychosocial harm.

Scope

This policy applies to all workers of the Shire of Esperance.

Definitions

Employee Assistance Program (EAP): is a confidential counselling and support service provided to workers with personal or work-related issues that may affect their wellbeing or performance.

Conflict of Interest: occurs when a worker's personal interests, relationships, or activities could improperly influence, or be perceived to influence, their ability to perform their duties impartially and in the best interests of the Shire of Esperance.

Bullying: is defined as repeated and unreasonable behaviour directed towards an employee or a group of employees that creates a risk to health and safety. Unreasonable behaviour amounts to behaviour that a reasonable person in the circumstances would see as unreasonable including behaviour that is victimising, humiliating and intimidating or threatening.

Discrimination: is treating someone unfairly or less favourably than another person due to their race, sex, marital status, pregnancy, impairment, religious or political conviction, age, family responsibility or family status, physical or mental disability, criminal record, breastfeeding, gender history, impairment, national extraction or social origin or trade union activity. These grounds may change as legislation is amended.

Harassment: is defined as any unwelcome, offensive comment or action relating to the grounds of discrimination. It is behaviour towards another employee that is offending, humiliating or intimidating. It shall not be condoned and if necessary, disciplinary action shall be taken. Any individual who experiences harassment should immediately make it clear to the person(s) concerned that such behaviour is unwelcome. However, if the individual has difficulty in doing this, then assistance should be sought from others to confront the person(s) concerned.

Sexual Harassment: can be defined as any unwelcome conduct of a sexual nature, such as an unwelcome sexual advance or an unwelcome request for sexual favours, in circumstances in which a reasonable person would anticipate that the person harassed would be offended, humiliated or intimidated.

Psychosocial risk: Refers to the potential for psychological or social factors in the workplace or environment to cause harm to a person's mental or physical health.

Practice

Workers' rights and responsibilities

All workers are entitled to –

- recruitment and selection decisions based on merit and not affected by irrelevant personal characteristics;
- work free from discrimination, bullying and sexual harassment;
- the right to raise issues or to make an enquiry or complaint in a reasonable and respectful manner without being victimised; and
- reasonable flexibility in working arrangements, especially where needed to accommodate their family responsibilities, disability, religious beliefs, or culture.

All workers must –

- follow the standards of behaviour outlined in this policy and the related policies listed at the end of this policy including the Code of Conduct;
- offer support to people who experience discrimination, bullying or sexual harassment, including providing information about how to make a complaint or a grievance, intervening where appropriate when they witness such behaviour, and not victimising any person who makes a complaint, lodges a grievance or is involved in an investigation about a complaint or grievance;
- avoid gossip and respect the confidentiality of complaint and grievance resolution procedures; and
- treat everyone with dignity, courtesy, inclusivity, and respect.

Additional responsibilities of managers

Managers must also –

- model appropriate standards of behaviour;
- take steps to educate and make workers aware of their obligations under this policy and the law;
- intervene quickly and appropriately when they become aware of inappropriate behaviour whether or not a complaint or grievance has been lodged;
- act fairly to resolve issues and enforce workplace behavioural standards, making sure relevant parties are heard;
- help workers resolve complaints informally;
- refer formal complaints about breaches of this policy to the appropriate member of the Human Resources team for investigation;
- provide appropriate support services or referral to support services for workers including to the employee assistance program;

- ensure workers who raise an issue or make a complaint are not victimised;
- take suitable disciplinary action which may include termination of employment against any worker who is found to have sexually harassed, discriminated, bullied, or victimised another worker;
- ensure that recruitment decisions are based on merit and that no discriminatory requests for information are made; and
- seriously consider requests for flexible work arrangements without discrimination.

Unacceptable workplace conduct

Discrimination, bullying, and sexual harassment are unacceptable at the Local Government and are unlawful under the following legislation and regulations –

- Sex Discrimination Act 1984 (Cth)
- Racial Discrimination Act 1975 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Age Discrimination Act 2004 (Cth)
- Australian Human Rights Commission Act 1986 (Cth)
- Equal Opportunity Act 1984 (WA)
- Industrial Relations Act 1979 (WA)
- Work Health and Safety Act 2020 (WA)
- Work Health and Safety (General) Regulations 2022 (WA)

Workers (including managers) found to have engaged in such conduct may be counselled, warned, or disciplined. Severe or repeated breaches can lead to formal discipline up to and including dismissal.

Discrimination

Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by the law, such as sex, age, race, or disability.

Discrimination can occur: Directly, when a person or group is treated less favourably than another person or group in a similar situation because of a personal characteristic protected by law (see list below).

For example, a worker is harassed and humiliated because of their race or a worker is refused promotion because of their age. Indirectly, when an unreasonable requirement, condition or practice is imposed that has, or is likely to have, the effect of disadvantaging people with a personal characteristic protected by law (see list below). For example, if redundancies are decided based on workers who have had a worker's compensation claim rather than on merit. Protected personal characteristics under law include –

- a disability, disease, or injury, including work-related injury;
- parental status or status as a carer, for example, because they are responsible for caring for children or other family members;

- race, colour, descent, national origin, or ethnic background;
- age, whether young or old, or because of age in general;
- sex;
- industrial activity, including being a member of an industrial organisation like a trade union or taking part in industrial activity, or deciding not to join a union;
- religion;
- pregnancy and breastfeeding;
- sexual orientation, intersex status, or gender identity, including gay, lesbian, bisexual, transsexual, transgender, queer, and heterosexual;
- marital status, whether married, divorced, unmarried or in a de facto relationship or same sex relationship;
- political opinion;
- social origin;
- medical record; and
- an association with someone who has, or is assumed to have, one of these characteristics, such as being the parent of a child with a disability. It is also against the law to treat someone unfavourably because you assume they have a personal characteristic or may have it at some time in the future.

Bullying

Bullying is unacceptable at the Shire of Esperance and may also be unlawful.

If someone is being bullied because of a personal characteristic protected by equal opportunity law, it is a form of discrimination. Under Federal discrimination law, this behaviour does not have to be repeated to be discrimination – it may be a one-off event.

Bullying can adversely affect the health and safety of workers therefore it is unlawful under the Work Health and Safety Act 2020 (WA) and the Work Health and Safety (General) Regulations 2022 (WA). Bullying under industrial relations and health and safety legislation is defined as repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety. Unreasonable behaviour amounts to behaviour that a reasonable person in the circumstances would see as unreasonable including behaviour that is victimising, humiliating, intimidating, or threatening.

Bullying can take many forms, including jokes, teasing, nicknames, emails, pictures, text messages, social isolation, ignoring people, or unfair work practices. Behaviours that may constitute bullying include but are not limited to –

- sarcasm, threats, loud, abusive, offensive, and other forms of demeaning language;
- coercion;
- inappropriate blaming;

- ganging up;
- constant unconstructive and unjustified criticism;
- deliberately withholding information or equipment that a person needs to do their job or access their entitlements, or acts of sabotaging another's work;
- unjustified threats of dismissal or other disciplinary action;
- spreading malicious rumours or misinformation;
- inappropriate comments about a worker's appearance, lifestyle or family;
- deliberately excluding a worker from workplace meetings or activities;
- unreasonable refusal of requests for leave, training, or other workplace benefits;
- constantly changing targets or work guidelines;
- overloading a worker with work and impossible deadlines;
- threats of or actual, assault or violence;
- teasing and practical jokes; and
- isolating or ignoring a worker on a constant basis.

Where a worker makes a threat of violence or assaults another worker, the police should be called.

Reasonable management action

The Shire of Esperance has the right to take reasonable management action to direct the way in which work is conducted and to give workers lawful and reasonable directions to complete work in a certain manner. Reasonable management action is not workplace bullying.

Some examples of reasonable management action include, but are not limited to –

- the establishment and regular use of performance management systems;
- the setting of reasonable performance targets and deadlines;
- providing workers with constructive feedback or counselling to assist workers to improve their work performance or the standard of their behaviour;
- issuing a lawful and reasonable direction to a worker to complete a work task;
- preparing and amending a roster for workers;
- transferring a worker to a different work location for operational reasons;
- implementing organisational change;
- informing a worker about inappropriate behaviour in a confidential manner; and
- taking disciplinary action against a worker.

Sexual harassment

Sexual harassment is a specific and serious form of harassment. It is unwelcome sexual behaviour, which could be expected to make a person feel offended, humiliated,

or intimidated. Sexual harassment can be physical, spoken, written, or communicated electronically such as by email, text, messages, or social media posts. It can include:

- comments about a person's private life or the way they look;
- sexually suggestive behaviour, such as leering or staring;
- brushing up against someone, touching, fondling, or hugging;
- sexually suggestive comments or jokes;
- displaying offensive screen savers, photos, calendars, or objects;
- repeated unwanted requests to go out;
- requests for sex;
- sexually explicit posts on social networking sites;
- insults or taunts of a sexual nature;
- intrusive questions or statements about a person's private life;
- sending sexually explicit emails or text messages;
- inappropriate advances on social networking sites;
- accessing sexually explicit internet sites; and
- behaviour that may also be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

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

A single incident is enough to constitute sexual harassment – it doesn't have to be repeated.

All incidents of sexual harassment – no matter how large or small or who is involved – require employers and managers to respond quickly and appropriately.

The Shire of Esperance recognises that comments and behaviour that do not offend one person can offend another. This policy requires all workers to respect other people.

Sexual harassment is not an action or behaviour where there is a mutual friendship attraction and respect which is consensual. If two workers, or a worker and a customer or supplier of the Shire of Esperance are engaged in a consensual relationship, that relationship may result in a conflict of interest or perceived conflict of interest meaning that the workers concerned will need to declare the relationship to the Human Resources team.

A breach of this policy may occur even if a complaint about the behaviour has not been made (for example, offensive screen savers, photos, objects, calendars, or emails) or a complaint is withdrawn such actions may also be in breach of other Shire of Esperance policies and/or the Code of Conduct.

Victimisation

Victimisation is subjecting or threatening to subject someone to a detriment because they have asserted their rights under equal opportunity law, made a complaint, helped someone else make a complaint, or refused to do something because it would be discrimination, sexual harassment, or victimisation. Victimisation is against the law.

It is also victimisation to threaten someone (such as a witness) who may be involved in investigating an equal opportunity concern or complaint.

Victimisation is a very serious breach of this policy and is likely (depending on the severity and circumstances) to result in formal discipline against the perpetrator.

The Shire of Esperance has a zero-tolerance approach to victimisation.

Appointment on Merit

All recruitment and job selection decisions at the Shire of Esperance will be based on merit – the skills and abilities of the candidate as measured against the inherent requirements of the position – regardless of personal characteristics.

It is unacceptable and may be against the law to ask job candidates questions, or to in any other way seek information, about their personal characteristics, unless this can be shown to be directly relevant to a genuine requirement of the position.

Resolving issues

Lodging complaints under the Grievance Resolution Policy and Procedure

The Shire strongly encourages any worker who believes they have been discriminated against, bullied, sexually harassed, or victimised to take appropriate action by making a complaint about the inappropriate behaviour to their manager and/or Human Resources in accordance with the Grievance Resolution Management Practice. The complaint will be investigated and resolved in accordance with that practice in a confidential manner. If a breach of this policy is found to have occurred a worker will be disciplined (and if appropriate, dismissed).

Workers who do not feel safe or confident to take such action under the MAN 0005 - Grievance Resolution may seek assistance from the Equal Opportunity Commission in Western Australia or the Australian Human Rights Commission for advice and support.

Confidentiality of complaints

It is unacceptable for workers at the Shire of Esperance to talk with other workers, Councillors, customers, rate payers, or suppliers about any complaint of discrimination or harassment.

Breaching the confidentiality of a formal grievance investigation or inappropriately disclosing personal information obtained in a professional role (for example, as a manager) is a serious breach of this policy and may lead to disciplinary action including termination of employment.

Records of complaints and investigations completed under this policy and the Grievance Resolution Management Practice will be kept confidential except where access to those records is required to be provided by law, for the provision of professional advice, or for the health and safety of a worker.

Employee assistance program

The Shire of Esperance workers, and their families are entitled to free, professional counselling sessions from our employee assistance provider. To access the employee assistance program employees should contact the Shire's EAP provider, TELUS Health. Employee assistance provider counselling is confidential, and nothing discussed with a counsellor will be communicated back to the Shire..

Related documents

Workers, especially managers and supervisors, are encouraged to read this policy in conjunction with other relevant policies, including -

- Code of Conduct
- Shire of Esperance Industrial Agreement 2025
- MAN 0005 - Grievance Resolution
- MAN 0028 - Recruitment and Selection
- POL 0008 - Workplace Health and Safety Policy

.....End.....

Document Information

Responsible Position	Manager Human Resources
Risk Rating	Low

Referencing Documents

- *Local Government Act 1995*
- *Work Health and Safety Act 2020 (WHS Act)*
- *Work Health and Safety (General) Regulations 2022*
- *Equal Opportunity Act 1984;*
- *Sexual Discrimination Act 1984 (Cth).*
- *Racial Discrimination Act 1976 (Cth);*
- *Human Rights Commission Act 1986 (Cth);*
- *Disability Discrimination Act 1992 (Cth);*
- *Age Discrimination Act 2004 (Cth)*
- *MAN 0028 – Recruitment and Selection*
- *MAN 0005 – Grievance Resolution*
- *Code of Conduct*

Revision History

Date	Version	CM Reference	Reason for Change	Resolution #	Next Review
Dec 2003	1		New policy	O1203-0751	Dec 2005

Sept 2007	2	D12/33			Sept 2009
Oct 2015	3		Clarification and improvement to Policy.	O1015-019	Oct 2017
Jun 2018	4	D16/29076	Minor formatting and rewording	O0618-022	Jun 2020
Feb 2020	5		No change, laid on table for further discussion	O0220-046	
Apr 2020	6	D16/29076[v2]	Amend title to include Discrimination. Amend listed legislation in Policy section. Add sentence to procedure section regarding threat or assault. Add 'consequences' paragraph. Minor spelling amendments.	O0420-109	Apr 2022
Nov 2021	7	D16/29076[v3]	Biennial review, no change.	O1121-202	Nov 2023
Nov 2023	8	D16/29076[v4]	Amend references to WHS Act	O1123-189	Nov 2025
Aug 2026	9	D16/29076[v5]	Renamed to discrimination, harassment and bullying and updated utilising WALGA template.	O0826-117	Aug 2028