

2.19 Discrimination, Bullying and Harassment

1. POLICY PURPOSE

The Shire of Merredin (the Shire) and its employees are committed to providing a working environment where every employee is treated equally, fairly and without prejudice.

2. POLICY SCOPE

The Shire recognises that discrimination, bullying and harassment can take place in the workplace, in an official business trip outside the physical workplace, and in any other events and circumstances where there is a connection to undertaking work.

3. LEGISLATIVE REQUIREMENTS

Equal Opportunity Act 1984 [WA]

Sex Discrimination Act 1984 [Cth]

Industrial Relations Act 1997 [WA]

Work, Health and Safety Act 2020 (WA)

Work, Health and Safety (General) Regulations 2022 (WA)

4. POLICY STATEMENT

4.1 Unlawful Discrimination

An employee is directly discriminated against if they are treated less favourably than another person in the same or similar circumstance because of any one of the grounds of discrimination outlined below. Indirect discrimination can occur where a practice or requirement is imposed upon all employees; however, a high proportion of employees with an attribute cannot comply with, or are affected by, that practice or requirement.

The Shire acknowledges its responsibilities and obligations pursuant to State and Federal equal opportunity and anti-discrimination laws.

The following is a non-exhaustive list of the grounds of discrimination for which it is unlawful to discriminate against an individual:

- a. Age;
- b. Family responsibility or status;
- c. Race or colour;
- d. Sex including gender identity, sexual orientation and intersex status;
- e. Physical or mental disability;
- f. Marital status;
- g. Political or religious conviction;
- h. Pregnancy;
- i. Criminal record;
- j. Breastfeeding;
- k. Gender history;
- l. Impairment;
- m. National extraction or social origin; and
- n. Trade union activity

4.2 Sexual Harassment

The *Equal Opportunity Act 1984* (WA) and the *Sex Discrimination Act 1984* (Cth) provide that it

is unlawful to engage in sexual harassment. Sex discrimination, sexual harassment, sex-based harassment, conduct that creates hostility in the workplace environment on the ground of sex and victimisation are unlawful and unacceptable.

Some examples of sexual harassment include, but are not limited to:

- a. Physical contact (touching, rubbing, patting, embracing, brushing up against etc.);
- b. Gestures of a sexual nature;
- c. Leering or staring;
- d. Offensive telephone calls, emails, text messages, social media posts and messages, or notes;
- e. Sexual suggestive jokes or comments;
- f. Tales of sexual exploits;
- g. Repeated requests for a date;
- h. Unwelcome comments or questions about a person's sex life, appearance or dress; and
- i. Sexually graphic material (posters, calendars, cartoons, graffiti, messages, emails).

4.3 Bullying

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, intimidating or threatening.

Bullying is also unlawful under the *Work, Health & Safety Act 2020 (WA)* and the *Work, Health and Safety (General) Regulations 2022 (WA)*.

Some examples of bullying include, but are not limited to:

- a. Loud, abusive or offensive language or comments;
- b. Yelling and screaming;
- c. Unjustified criticism and insults;
- d. Unjustified threats of dismissal or other disciplinary action;
- e. Acts of sabotaging another's work by withholding information which is required to fulfil tasks;
- f. Spreading malicious rumours or misinformation;
- g. Inappropriate comments about an employee's appearance, lifestyle of family;
- h. Deliberately excluding an employee from workplace meetings or activities;
- i. Hiding documents or equipment or withholding vital information required for effective work performance;
- j. Constantly changing targets or work guidelines;
- k. Overloading an employee with work and impossible deadlines;
- l. Setting tasks that are unreasonably below or beyond an employee's level of skill;
- m. Threats of assault or violence, or actual violence;
- n. Teasing and practical jokes; and
- o. Isolating or ignoring an employee on a constant basis.

Where an employee makes a threat of violence or assaults another employee the police should be called.

4.3.1 Reasonable Management Action

The Shire has a right to take reasonable management action to direct the way in which work is

conducted and to give employees 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:

- a. The establishment and regular use of performance management systems;
- b. The setting of reasonable performance targets and deadlines;
- c. Providing employees with constructive feedback or counselling to assist workers to improve their work performance or the standard of their behaviour;
- d. Issuing a lawful and reasonable direction to an employee to complete a work task;
- e. Preparing and amending a roster for employees;
- f. Transferring an employee to a different work location for operational reasons;
- g. Implementing organisational change;
- h. Informing an employee about inappropriate behaviour in a confidential manner; and
- i. Taking disciplinary action against an employee.

4.3.2 Other Behaviours not Considered to be Bullying

Where two or more employees have a difference of opinion and disagree on an issue, this is not usually considered to be workplace bullying. However, where conflict escalates and is repeated it may meet the definition of workplace bullying.

Additionally, bullying does not occur where bullying behaviour is a one off occurrence and if that behaviour does not create a risk to health or safety.

4.3.3 Ways in which Bullying can Occur

There are a variety of ways bullying behaviour can occur in the workplace such as verbally, through email or text message or via social media. Bullying can be directed at an individual employee or a group of employees and can be carried out by one or more employees. Bullying can occur between employees, downwards from managers to employees or upwards from employees to supervisors or managers.

4.4 What to do if you think you are being Discriminated Against, Sexually Harassed or Bullied

Refer to the Grievance Policy and Grievance Procedure for steps to take if you think you are being discriminated against, sexually harassed or bullied, or if you suspect another employee is experiencing any of those things.

4.5 Risk management

The Shire Executive regularly discuss WHS and risk management during their weekly ELT meetings. It is recognised that any actions of discrimination, bullying, and harassment are all risks to a worker's health and safety in the workplace. Any identified risks and mitigations are documented through the minutes of the meeting.

Managers, Coordinators and Supervisors are reminded to encourage and support victims to seek confidential support through 1800 RESPECT or through the Shire's Employee Assistance Program (EAP).

4.6 Consequences of Breaching this Policy

Any breach of this Policy may result in disciplinary action up to and including termination of employment.

5. ROLES & RESPONSIBILITIES

To ensure the intent of this Policy is realised various roles within the Shire must assume certain responsibilities.

5.1 The Employer

The Shire has a legal obligation to eliminate any hostile conducts as far as possible in response to positive duty under the *Sex Discrimination Act 1984 (Cth)*.

The Shire will endeavour to:

1. Provide all workplace participants with a workplace free from discrimination, sexual harassment and bullying;
2. Provide and maintain safe systems of work;
3. Provide a fair and effective procedure to investigate and resolve complaints of sexual harassment, discrimination and bullying;
4. Treat all employees fairly;
5. Provide relevant support to employees who experience or witness relevant unlawful conduct, and
6. Take suitable disciplinary action against any employee who is found to have sexually harassed, discriminated, bullied or victimised another employee.

5.2 The Employees

Employees are required to:

1. Report any incidents of sexual harassment, discrimination or bullying they may see happening around them to an appropriate manager, coordinator or supervisor;
2. Follow all policies and procedures of the Shire;
3. Ensure they do not victimise any person making a complaint of sexual harassment, discrimination or bullying; and
4. Treat all employees fairly and with respect.

6. KEY POLICY DEFINITIONS

For the purposes of this policy the term “employee/s” will extend to cover contractors, volunteers and any person performing work for or with the Shire in any capacity.

Sex discrimination, Sexual Harassment and Harassment on the Grounds of Sex are defined in the *Sex Discrimination Act 1984 (Cth)*.

7. MONITOR AND REVIEW

This Policy is monitored by the Executive Leadership Team.

The review will be undertaken by Executives and presented to Council biennially.

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