

POLICY NO.	M.13
POLICY SUBJECT	Anti-Discrimination, Sexual Harassment and Bullying Policy
ADOPTION DATE	17 December 1998
LAST REVIEW DATE	26 November 2020 (C.05/1120)

1 Overview

The Shire strongly supports the concept that every employee, elected member and member of the public employed by or engaged in business with the Shire has a right to do so in an environment where every employee is treated equally, fairly and without prejudice, free from discrimination, sexual harassment and bullying. The Shire is committed to providing such an environment.

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 of Bridgetown-Greenbushes in any capacity.

2 Purpose

The purpose of this policy is to provide a definition and a framework of what constitutes discrimination, harassment or bullying in the workplace.

3 Links to Other Policies

- Complaints/Grievance
- Code of Conduct
- Information, Communication Technology Use

4 Statutory Environment

Federal Legislation

- Age Discrimination Act 2004.
- Disability Discrimination Act 1992.
- Racial Discrimination Act 1975.
- Sex Discrimination Act 1984 (Cth)

State Legislation

- Western Australia – Equal Opportunity Act 1984.
- Occupational Safety and Health Act 1984 (WA)
- Occupational Safety and Health Regulations 1996 (WA).

5 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:

- Age;
- Family responsibility or status;
- Race or colour;
- Sex including gender identity, sexual orientation and intersex status;
- Physical or mental disability;
- Marital status;
- Political or religious conviction;
- Pregnancy;
- Criminal record;
- Breastfeeding;
- Gender history;
- Impairment;
- National extraction or social origin; and
- Trade union activity

6 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. 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.

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

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

7 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.

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

- Loud, abusive or offensive language or comments;
- Yelling and screaming;
- Unjustified criticism and insults;
- Unjustified threats of dismissal or other disciplinary action;

- Acts of sabotaging another's work by withholding information which is required to fulfil tasks;
- Spreading malicious rumours or misinformation;
- Inappropriate comments about an employee's appearance, lifestyle of family;
- Deliberately excluding an employee from workplace meetings or activities;
- Hiding documents or equipment or withholding vital information required for effective work performance;
- Constantly changing targets or work guidelines;
- Overloading an employee with work and impossible deadlines;
- Setting tasks that are unreasonably below or beyond an employee's level of skill;
- Threats of assault or violence or actual violence;
- Teasing and practical jokes; and
- 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.

8 The Employer

The Shire recognises that discrimination, sexual harassment and bullying can undermine health, performance and self-esteem of individuals and has the potential to create a hostile and intimidating environment. The Shire is therefore committed to any action which ensures the absence of sexual harassment in the workplace including general training of the workforce and specific training for officers identified to deal with complaints, where required. Appropriate disciplinary action will be taken against any individual found to be engaging in such conduct.

The Shire will endeavour to ensure the work environment is conducive to encouraging employees to report discrimination, sexual harassment or workplace bullying. Managers and supervisors must ensure employees who make complaints, or witness any inappropriate workplace behaviour are not victimised.

The Shire will ensure all workers are educated as to the nature, effects and possible consequences of unlawful discrimination.

The Shire of Bridgetown-Greenbushes will endeavour to:

- Provide all workplace participants with a workplace free from discrimination, sexual harassment and bullying;
- Provide and maintain safe systems of work;
- Provide a fair and effective procedure to investigate and resolve complaints of sexual harassment, discrimination and bullying;
- Treat all employees fairly; and
- Take suitable disciplinary action against any employee who is found to have sexually harassed, discriminated, bullied or victimised another employee.

9 Employees

Employees are required to:

- Report any incidents of sexual harassment, discrimination or bullying they may see happening around them to an appropriate manager or supervisor;
- Follow all Shire policies and procedures;

- Ensure they do not victimise any person making a complaint of sexual harassment, discrimination or bullying; and
- Treat all employees fairly and with respect.

10 Consequences of Breaching This Policy

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

An employee whose health or work performance has been affected by sexual harassment or workplace bullying will not have their employment status or conditions disadvantaged in any way.

Council has grievance and investigation procedures to deal with discrimination, sexual harassment and bullying. Any reports will be treated seriously and investigated promptly, confidentially and impartially.

COMPLAINTS/GRIEVANCE PROCEDURE

All complaints of discrimination, sexual harassment and bullying will be treated confidentially and resolved promptly.

Wherever possible the handling of complaints and resolution of such will be at the workplace where they occurred. Care will be taken throughout the investigation to ensure that neither the complainant nor the alleged harasser are victimised.

It is recognised that cases of sexual harassment may occur between supervisor and employee and as such, alternative methods of raising complaints are provided for by this procedure.

Procedure

1. A complaint of sexual harassment may be lodged with any of the following:
 - Immediate Supervisor/Manager (except where this person is the alleged harasser)
 - Departmental Manager (if applicable - except where this person is the alleged harasser)
 - Human Resources Officer (except where this person is the alleged harasser)
 - Chief Executive Officer (if the alleged harasser is a Departmental Manager or Shire President)
 - Shire President (only if the alleged harasser is the Chief Executive Officer or Councillor)
2. A person receiving a complaint of sexual harassment will:
 - Decide, in consultation with the complainant, whether the matter can be resolved at this level or whether it should be referred to a more senior level of management.
 - Assure the complainant that all details of the complaint will be treated confidentially and allow the person to decide on procedure.

- Prepare a confidential report for the Chief Executive Officer on the nature of the complaint and ensure follow-up reports are provided until the matter is resolved.
 - Ensure no information regarding the complaint is discussed outside this procedure.
 - In a case where a union shop steward receives the complaint, the divisional manager and/or grievance officer is to be advised of the details of the complaint.
3. The person handling the complaint, whether it is the person who received the complaint or a more senior person, will, with the approval of the complainant:
- As soon as possible, advise the alleged harasser of the nature of the complaint and provide an opportunity for that person to comment. Where appropriate the alleged harasser should be invited to discontinue any perceived unwelcome behaviour.
 - Advise the alleged harasser of the right to contact their Union for advice and representation.
 - Advise the alleged harasser that no disciplinary action will be taken without the person being given the opportunity to be heard.
 - Keep simple, brief notes of the facts of the interviews held with both the complainant and alleged harasser.
4. If it is not possible to resolve the complaint through simple mediation between the complainant and the alleged harasser:
- The matter will be independently investigated (by whom)? and where the complainant or the alleged harasser is a member of a Union, the Union will be party to the investigation.
 - All documentation relating to the complaint will remain confidential and will not be produced or made available for inspection, except on the order of a Court or a request from the Commissioner of Equal Opportunity.
5. During the period of the investigation of a case of serious sexual harassment:
- The investigation is to be conducted in a manner that is fair to all parties and all parties are to be given a fair and reasonable opportunity to put their case, to have witnesses in attendance and to respond to any proposed adverse findings that may be made against them.
 - If requested by either party or by management, alternative working arrangements or a change to work schedule may be made.
 - Any reasonable request by either party for legal or union representation shall not be denied.
6. If, following investigation and resolution, a complaint is judged to have been proven:
- Remedial action will be taken.
 - A record of the detail of the remedial action will remain on the employee's personnel file for a period of 12 months, whereupon the record will be destroyed unless otherwise decided by the Chief Executive Officer.

7. If, following investigation, a complaint is judged to have been unproven:
 - The complainant will be counselled and if it is considered that the complaint was made frivolously or maliciously, disciplinary action may be taken against the complainant.
 - Continued reference to a complaint and its aftermath could be considered as either a continuing or new incident of harassment.
8. While it is Council's wish to attempt to deal with complaints of harassment internally, no employee will be penalised for bringing a complaint to any appropriate external statutory body unless that complaint is ultimately proven to be made frivolously or maliciously.

BREACH OF PROCEDURE – CONSEQUENCES

Persons who commit acts of unlawful conduct, risk exposing both themselves and the Shire to claims for compensation by a person aggrieved by the conduct. If an independent investigation determines that the alleged harasser has acted inappropriately, the Shire reserves the right to seek compensation for losses related to reduced work and/or any other specifically itemised costs incurred by the Shire as a direct result of the incident

Any breach of this policy may result in disciplinary action, including counselling, transfer, demotion and/or termination of employment.