

P 1 - BULLYING, HARASSMENT & DIVERSITY POLICY

1 Objectives

- (a) To ensure a physically and mentally healthy workplace, in compliance with the *Work Health & Safety Act 2020*, the *Local Government Officers (Western Australia) Award 2021*, the *Municipal Employees (Western Australia) Award 2021*, the *Western Australian Industrial Relations Commission State System*, the *Industrial Relations Act 1979*, the *Local Government (Rules of Conduct) Regulations 2007* and all other supporting industrial relations legislation.
- (b) To ensure workers are not exposed to bullying, harassment and/or discrimination in the workplace.
- (c) To ensure individuals and the organisation protect themselves from potential litigation and other regulatory action.

2 Policy

- (a) Shire of Bridgetown-Greenbushes (the Shire) has a zero- tolerance policy for bullying, harassment and/or discrimination in the workplace. No-one is exempt from this behaviour.
- (b) All Shire workers are responsible for ensuring that workers and customers are not exposed to bullying, harassment and/or discrimination in the workplace.
- (c) The Shire encourages all workers to take action to manage workplace bullying, harassment and/or discrimination and to report instances of these behaviours immediately.
- (d) All reports will be treated seriously and dealt with promptly, confidentially and impartially.
- (e) Persons proven to be engaging in bullying, harassment or discriminatory behaviour in the workplace will be subject to disciplinary action in accord with the Underperformance & Misconduct Policy & Procedures, the Employee Code of Conduct and the Council Code of Conduct.

3 Definitions

3.1 Bullying

Workplace bullying refers to an individual or a group of individuals repeatedly behaving unreasonably towards a worker or a group of workers of which the worker is a member, and that behaviour creates a risk to health and safety.

Repeated behaviour is defined as twice or more. However, **single incidents** resulting in a risk to health and safety and will not be tolerated.

Examples of workplace bullying behaviour includes:

- (a) Abusive, insulting, or offensive language or comments.
- (b) Unjustified criticism or complaints.
- (c) Aggressive and intimidating conduct.
- (d) Belittling or humiliating comments.
- (e) Victimization, practical jokes, or initiation.

- (f) Deliberately excluding someone from workplace activities.
- (g) Withholding information that is vital to effective work performance.
- (h) Setting unreasonable timelines or constantly changing deadlines.
- (i) Setting tasks that are unreasonably below or beyond a person's position description.
- (j) Denying access to information, supervision, consultation, or resources to the detriment of an employee.
- (k) Spreading misinformation or malicious rumours. Encouraging others to engage in unsubstituted or inappropriate comments behind someone's back.
- (l) Changing work arrangements, such as rosters and leave, to deliberately inconvenience a particular employee or employees.
- (m) Excessive scrutiny at work.

Examples of behaviour NOT classified as workplace bullying includes:

- (a) Conducting business or undertaking appropriate management action and making appropriate management decisions.
- (b) Making necessary decisions to respond to poor performance or (if necessary) taking disciplinary action.
- (c) Directing and controlling the way work is carried out.
- (d) Allocating work and providing fair and constructive feedback on a worker's performance.

3.2 Councillor

Councillors are members of an elected body that makes decisions on behalf of a local government through a formal meeting process. Generally, local government council members, who include the Mayor or President and Councillors, do not have any authority to act or make decisions as individuals.

3.3 Discrimination

Unlawful workplace discrimination occurs when an employer takes adverse action against a person who is an employee or prospective employee because of the following attributes of the person:

- (a) Race
- (b) Colour
- (c) Sex
- (d) Sexual orientation
- (e) Age
- (f) Physical or mental disability
- (g) Marital status
- (h) Family or carer's responsibilities
- (i) Pregnancy
- (j) Religion
- (k) Political opinion
- (l) National extraction or social origin

3.4 Diversity

Workplace diversity means individual differences across the workforce and the adoption of work practices to create an inclusive environment in which all diverse skills, perspectives and backgrounds are valued. Examples of differences include:

- (a) Gender
- (b) Age or life-stage
- (c) Language, ethnicity, or cultural background
- (d) Disability
- (e) Sexual orientation
- (f) Religious belief
- (g) Education
- (h) Socio-economic background
- (i) Personality
- (j) Geographic location
- (k) Marital status
- (l) Family or other carer responsibilities

3.5 Employee

An employee is a person that's hired to provide a service to a company either on a full-time, part-time or casual basis in exchange for payment. Also known as staff.

3.6 Harassment

Harassment is any uninvited or unwelcome behaviour that offends, humiliates, or intimidates another person, whether that effect is intended or not. This may occur as a single act, or as a series of incidents, persistent innuendoes, or threats. It can take many forms such as:

- (a) Silent or loud
- (b) Subtle or openly hostile
- (c) Private or public

Harassment may take the form of general bullying or be specifically aimed at people with particular or different characteristics. The latter type of harassment may amount to discrimination which is unlawful.

Sexual harassment generally includes any unwelcome conduct of a sexual nature which a reasonable person would find offensive, humiliating or intimidating. It may be physical, verbal or written. Certain conduct that may be tolerated socially could constitute sexual harassment in the workplace when it is unwelcome. At the same time, sexual harassment must not be confused with conduct that has the consent of all involved.

Examples of sexual harassment include:

- (a) The public display of pornography, including on the internet.
- (b) Continued use of jokes containing sexual innuendo.
- (c) Intrusive enquiries into another worker's private life, their sexuality or physical appearance.
- (d) Persistent requests from a colleague to go for a drink where such requests have been consistently declined.

- (e) Persistent staring or leering at a person or parts of their body.
- (f) Sexually offensive telephone calls.
- (g) Requests for, or expectations of, sexual activity under threat, or in exchange for favours or promises of preferential treatment.
- (h) Deliberate or unnecessary physical contact, such as patting, pinching, fondling, deliberate brushing up against another body, or attempts at kissing.
- (i) Public displays of nudity – commonly referred to as flashing.
- (j) Sexual violence at the most extreme, sexual assault and forced attempts of sexual intercourse.

3.7 Serious Misconduct

Serious misconduct is conduct that is willful or deliberate and that is inconsistent with the continuation of the employment contract. It is also conduct that causes serious and imminent risk to the health and safety of a person or to the reputation, viability or profitability of the employer's business.

Serious misconduct includes theft, fraud, assault, sexual harassment, intoxication at work and the refusal to carry out lawful and reasonable instructions consistent with the employment contract.

Where serious misconduct is alleged the test for a valid reason for dismissal does not change. The test remains whether the reason was 'sound, defensible or well founded'.

A valid reason for dismissal does not require conduct amounting to a repudiation of the contract of employment.

Where an employee has been dismissed without notice (summary dismissal) for serious misconduct the Commission may find that, although there was a valid reason for the dismissal, the dismissal was harsh because summary dismissal was a disproportionate response.

Serious misconduct dismissal requires only one instance of the damaging behaviour.

Examples of serious misconduct behaviour include:

- (a) Bullying behaviour, as defined above (dependent on the outcome of the investigation).
- (b) Wanton disregard for the safety of others.
- (c) Deliberate acts of violence or hostility.
- (d) Fighting or assault on another person.
- (e) Malicious damage.
- (f) Financial defrauding of the organisation.
- (g) Significant or repeated levels of insubordination.
- (h) Falsification of documents.
- (i) Defaming or criticising the organisation or any member of the organisation or a tenant or client of the organisation on social media or through any other public platform.
- (j) Defaming or criticising the organisation to other organisations, including funding and regulatory bodies.

3.8 Repeated Behaviour

Repeated behaviour means the persistent nature of the behaviour and can refer to a range of behaviours over time. Under the State System, repeated behaviour means twice or more.

3.9 Underperformance

Behaviour by a worker considered unacceptable to the organisation but not as immediately harmful to the organisation as serious misconduct. The Shire will afford a worker every reasonable opportunity to reverse misconduct behaviour prior to consideration of termination of employment, cessation of contract or termination of a volunteer position.

Underperformance or poor performance is:

- (a) Unsatisfactory work performance, that is, a failure to perform the duties of the position or to perform them to the standard required.
- (b) Non-compliance with workplace policies, rules or procedures.
- (c) Unacceptable behaviour in the workplace.
- (d) Disruptive or negative behaviour that impacts on co-workers.
- (e) Continual absenteeism.
- (f) Inappropriate use of workplace facilities.
- (g) Unprofessional personal appearance.
- (h) Negligence.
- (i) Defaming or criticising the organisation to individual residents, clients, families, employees or other valued stakeholders.

Underperformance is different to misconduct. Misconduct is more serious in terms of action by the employee, impact on the organisation and consequence.

3.10 Unreasonable Behaviour

Behaviour that a reasonable person (having regard for the circumstances) would consider unreasonable. This includes behaviour that is victimizing, humiliating, intimidating or threatening.

3.11 Worker

A worker is any person who carries out work for a PCBU, including work as an employee, Councillor, outworker, apprentice or trainee, work experience student, placed with a 'host employer' and volunteers.

4 Accountabilities and Responsibilities

- (a) The Council is accountable for:
 - i. Ensuring the organisation has in place a lawful, transparent, and accountable policy framework, supported by a suite of compliant and appropriate policies and procedures.
 - ii. Endorsing (or not) each organisational policy document in a timely and effective manner.
 - iii. Delegating implementation of each policy document to the CEO.
- (b) The CEO is accountable for ensuring the development, implementation, monitoring and review of this policy document, in accord with governing legislation and Council directives.
- (c) The Executive Management Team and Managers is responsible for:
 - i. Ensuring that all employees under their direction comply with this policy document.
 - ii. Enacting process to redress non-compliance with this policy document.
- (d) All employees are individually responsible for complying with this policy document.

5 Procedures

Please refer to the procedures in the Grievance Resolution Policy, the Employee Code of Conduct and the Council Code of Conduct.

6 Training

Given the State and Commonwealth are actively prioritising eliminating bullying behaviour in the workplace and given that penalties for breaching the spectrum of newly established and relevant legislation have substantially increased, all workers will undergo bullying, harassment and diversity training.

7 Applicable Legislation and Documents

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| Act | <i>Local Government Act 1995</i> <i>Local Government Officers (Western Australia) Award 2021</i> <i>Municipal Employees (Western Australia) Award 2021</i> <i>National Employment Standards</i> <i>Work Health & Safety Act 2020</i> <i>Industrial Relations Act 1979</i> <i>Minimum Conditions of Employment Act 1993</i> |
| Regulation | |
| Local Law | N/A |
| Shire Policies | N/A |
| Related Documents | |
| Related Procedure | |

8 Administration

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| Original Adoption Date | 28 March 2024 |
| Last Variation Date | |
| Last Reviewed | |
| Scheduled Reviewed Date | 28 March 2027 |