

Work Procedure / Instruction

Procedure number: QMS006

Harassment, Discrimination and Equal Opportunity

Objectives:

Bunbury Harvey Regional Councils (BHRC) general obligations in regard to anti-discrimination and equal employment opportunity (EEO) are outlined in the *Local Government Act 1995* and *Equal Opportunity Act 1984*.

The objects of this Act are:

(a) *to eliminate, so far as is possible, discrimination against persons on the ground of sex, marital status or pregnancy, family responsibility or family status, sexual orientation, race, religious or political conviction, impairment, age, publication of relevant details on the Fines Enforcement Registrar's website or, in certain cases, gender history in the areas of work, accommodation, education, the provision of goods, facilities and services and the activities of clubs; and*

(b) *to eliminate, so far as is possible, sexual harassment and racial harassment in the workplace and in educational institutions and sexual harassment and racial harassment related to accommodation; and*

(c) *to promote recognition and acceptance within the community of the equality of men and women; and*

(d) *to promote recognition and acceptance within the community of the equality of persons of all races and of all persons regardless of their sexual orientation, religious or political convictions or their impairments or ages.*

BHRC upholds the value that all employees are entitled to be treated equally and to have access to employment, promotion, training and the benefits of employment on the basis of merit.

This organisation is committed to providing a positive working environment where employees and others in the workplace are treated fairly and with respect and are free from unlawful discrimination, harassment, bullying, vilification or victimisation.

Guidelines:

The Equal Opportunity Act is described as:

An Act to promote equality of opportunity in Western Australia and to provide remedies in respect of discrimination on the grounds of sex, marital status, pregnancy, sexual orientation, family responsibility or family status, race, religious or political conviction, impairment, age, or publication of details on the Fines Enforcement Registrar's website, or involving sexual or racial harassment or, in certain cases, on gender history grounds.

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BHRC will strive to create a workplace that is free from discrimination against any employee regardless of their:

- Sex
- Gender
- Disability/impairment
- Marital status
- Political and religious views or activity
- Lawful sexual activity
- Race
- Gender identity or sexual orientation
- Status as a parent or carer
- Age
- Physical features
- Pregnancy or potential pregnancy
- Irrelevant criminal record
- Irrelevant medical record
- Personal association with a person who has any of these attributes

Responsibilities:

Management, Supervisors and Leading Hands

BHRC will ensure that all managers are trained in effectively managing workplace discrimination and harassment and are up to date with the equal employment opportunity law and legislation. BHRC will ensure that all new employees are advised of the equal employment opportunity policies, procedures and expected standards.

Supervisors and Leading Hands

Supervisors are responsible for:

- Promoting, training, developing and transferring employees on the basis of merit and performance, and free from any discriminatory assumptions
- Ensuring that all Human Resources practices are applied fairly, consistently and without bias
- Role-modelling non-discriminatory behaviour and practices within the workplace at all times
- Regularly monitoring the working environment to ensure that it is free from sexually explicit or offensive material
- Responsibly acting upon any behaviour within the working environment that may be construed as discriminatory or sexual harassment
- Providing confidential advice and information to employees, including investigating any grievances or complaints that an employee may lodge

Employees

All BHRC Employees are responsible for:

- Understanding, respecting and applying this Harassment, Discrimination and Equal Employment Opportunity procedure
- Not tolerating any form of harassment or discrimination and for notifying the relevant manager should such circumstances arise

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- Attempting, wherever practical, to amicably resolve any personal harassment or discrimination matter with the employee/s involved, prior to notifying their Supervisor
- Conducting themselves in a non-discriminatory manner at all times in the workplace

Procedure:

Reporting Discriminatory Behaviour or Sexual or Physical Harassment

Other than in circumstances which may constitute severe and/or wilful sexual or physical harassment and/or discrimination and may thereby be subject to summary dismissal, any employee who believes that they have been subject to actions or words that may be discriminatory or that constitute unwelcome sexual or physical harassment should act upon such discrimination by soon as is practicable.

Please document complaint by using QMS F-017 Workplace Harassment Complaint Form.

- **Where the employee feels comfortable** in doing so, in the first instance they should address the issue with the person concerned.
- The employee should identify the offensive behaviour, explain that the behaviour is unwelcome and offensive and request that the behaviour stops.
(It may be that the person was not aware that their behaviour was unwelcome or caused offence).
- **Where the employee feels uncomfortable** in directly addressing the person, or where the person has been addressed and the offensive behaviour continues, the employee should report the issue to either their Supervisor or to the CEO by making either a formal or informal complaint as follows:

Informal Complaint Procedure

Informal procedures emphasise resolution rather than factual proof or substantiation of a complaint. Informal ways of dealing with complaints of discrimination and harassment can include the following action:

- the individual who has been discriminated against or harassed wants to deal with the situation themselves but may seek advice on possible strategies from their supervisor or another officer
- the individual who has been discriminated against or harassed asks their supervisor to speak to the alleged harasser on their behalf
 - The supervisor privately conveys the individuals concerns and reiterates the organisation's policy to the alleged perpetrator without assessing the merits of the case
- a complaint is made, the perpetrator admits the behaviour, investigation is not required and the complaint can be resolved through conciliation or counselling
- a worker or supervisor observes unacceptable conduct occurring and takes independent action even though no complaint has been made.

Informal action is usually appropriate where:

- the allegations are of a less serious nature but the individual subjected to the behaviour wants it to cease nonetheless
- the individual subjected to the behaviour wishes to pursue an informal resolution
- both parties are likely to have ongoing contact with one another and the complainant wishes to pursue an informal resolution so that the working relationship can be sustained.

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An employee should not be required to exhaust informal attempts at resolution before formal action commences. Employees have the right to formalise their complaint at any stage.

Formal Complaint Procedure

Formal complaints procedures focus on looking at whether a complaint can be substantiated, or at least whether the parties can be brought together to try and reach a satisfactory outcome.

Formal complaints procedures usually involve:

- investigation of the allegations
- application of the principles of natural justice
- making a finding as to whether the discrimination or harassment occurred, or whether it is likely it occurred
- submitting a report with a recommended course of action to the appropriate decision-maker (Supervisor or CEO)
- Implementation of an appropriate outcome.

Formal procedures are usually appropriate where:

- informal attempts at resolution have failed
- the person alleging discrimination or harassment has been victimised
- the complaint involves serious allegations of misconduct and informal resolution could compromise the rights of the parties
- the complaint is against a more senior member of staff
 - Formal procedures may help to ensure that the complainant is not victimised or disadvantaged
- the allegations are denied and the person who claims to have been harassed wishes to proceed and investigation is required to substantiate the complaint
- the person alleging discrimination or harassment wishes to make a formal complaint from the outset.

The steps involved in a formal complaint

To ensure consistency and fairness, employers should document the steps involved in a formal complaint, by using QMS F-017 Workplace Harassment Complaint Form. The usual sequence of events is as follows:

- the complainant is interviewed and the allegations are put in writing
 - Discuss with the complainant their legal rights, including lodging a formal complaint with the relevant state or federal tribunals
- the allegations are conveyed to the alleged perpetrator in full
- the alleged perpetrator is given the opportunity to respond and defend themselves against the allegations
- if there is a dispute over facts, statements from any witnesses and other relevant evidence are gathered
- Help to clarify whether the behaviour actually constituted discrimination or harassment
- In order to ensure that an objective and efficient investigation can be conducted, BHRC may request that either or both participants be stood down with pay or required to perform alternative duties for the period of the investigation
- a finding is made as to whether the complaint has substance
- a report documenting the investigation process, the evidence, the finding and recommended outcome(s) is submitted to the appropriate decision-maker (CEO)

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- CEO implements the recommended outcome/s or decides on an alternative course of action.

All parties should be permitted to have a union official, support person, advocate or other representative accompany them to any interviews or meetings.

Consideration of evidence (See Appendix 1)

A formal complaint should not be dismissed on the ground that no one saw or heard the incident/s occur. Given the nature of the offence, there are often no direct witnesses to alleged acts of discrimination and harassment. Those responsible for investigating complaints should consider all available evidence, including any surrounding evidence.

The following type of evidence may be relevant:

- supporting evidence provided by a medical practitioner, counsellor, family member, friend or co-worker
- supervisors reports and personnel records (eg, unexplained requests for transfer, sudden increase in sick leave)
- complaints or information provided by other employees about the behaviour of the alleged perpetrator
- records kept by the person claiming to have been discriminated against or harassed
- whether the evidence was presented by the parties in a credible and consistent manner
- the absence of evidence where it should logically exist.

Outcomes

Outcomes can include any combination of the following:

- counselling
- disciplinary action
 - e.g. demotion, transfer, suspension, probation or dismissal, at the discretion of the CEO
- formal apology
- conciliation/mediation conducted by an impartial third party where the parties to the complaint agree to a mutually acceptable resolution
- official warnings that are noted on the perpetrator's personnel file
- Disciplinary action against the person who complained if there is strong evidence that the complaint was vexatious or malicious.

Outcomes will depend on factors such as:

- the severity and frequency of the discrimination or harassment
- the weight of the evidence
- the wishes of the person who was discriminated against or harassed
- whether the harasser could have been expected to know that such behaviour was a breach of policy
- whether there have been any prior incidents or warnings.

If there is insufficient proof to decide whether or not discrimination or harassment occurred employers should nevertheless:

- remind those involved of expected standards of conduct
- conduct further training and awareness raising sessions for staff
- Monitor the situation carefully.

Employers must ensure that the outcome of a substantiated complaint does not disadvantage in any way the person who was discriminated against or harassed.

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Disciplinary Action

Any manager, supervisor or employee of BHRC identified as engaging in either discriminatory practices or harassment of another employee will be subject to disciplinary action that may include termination of employment.

BHRC will not tolerate any form of victimisation by a manager, supervisor or fellow employee against an employee who has filed a discrimination or harassment complaint or participated in an investigation.

Disciplinary action is at the discretion of the CEO and may include demotion, transfer, suspension, probation or dismissal.

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Definition:

Bullying	<p>Unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.</p> <p>Unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten.</p> <p>There is no requirement that bullying be intentional.</p> <p>Bullying and physical harassment includes, but is not limited to circumstances where an employee:</p> <ul style="list-style-type: none"> • Using physical intimidation to create fear in another employee • Forces another employee to participate in an “initiation” process • Plays offensive or demeaning practical jokes on another employee • Forces another employee to undertake demeaning tasks <p>Note: It is not bullying for a manager or supervisor to counsel a Worker about their performance or to take other reasonable managerial actions such as disciplinary action, issuing of work directions or allocation of work in compliance with business needs and systems.</p>
Direct Discrimination	<p>When a person treats, or proposes to treat, someone unfavourably because of a personal characteristic protected by law.</p> <p>Prohibited grounds of discrimination include race (including colour, nationality, descent, ethnic, ethno-religious or national origin) sex, disability (including physical, mental and intellectual) age (including compulsory retirement) religious belief or activity, pregnancy (including potential pregnancy) marital or relationship status, carers’ or family responsibilities, carer or parental status or being childless, homosexuality, transsexuality, sexuality, sexual preference, lawful sexual activity, gender identity, breastfeeding, industrial/trade union membership, non-membership or activity, employer association membership, non-membership or activity, political belief or activity, temporary absence from work because of illness or injury, HIV/AIDS, criminal record, spent convictions, medical record, defence service, or association with a person who has one or more of the attributes for which discrimination is prohibited.</p>
Discrimination	<p>When someone is treated unfairly because they belong to a particular group of people or have a particular characteristic.</p> <p>Discrimination happens when an employee is treated unfavourably because of his or her race, skin colour, national origin, gender, disability, religion, or age.</p> <p>It is illegal to discriminate in any facet of employment.</p>
Indirect Discrimination	<p>Indirect discrimination is when there's a practice, policy or rule which applies to everyone in the same way, but it has a worse effect on some people than others.</p>
Harassment	<p>Unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating and intimidating, hostile, degrading, humiliating or offensive</p>

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	<p>environment for that individual.</p> <p>Any form of behaviour that is not wanted, offends, humiliates or intimidates.</p> <p>This behaviour creates a hostile environment and targets the person because of sex; pregnancy; breastfeeding; race (including colour, nationality, descent, ethnic or ethno-religious background); age; marital or domestic status; homosexuality (actual or perceived); disability (actual or perceived, past, present or future); transgender status (actual or perceived); carer's responsibilities (actual or presumed); or association with a person who has one or more of the attributes for which harassment is prohibited.</p>
Sexual Harassment	<p>Unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated or intimidated, where a reasonable person would anticipate that reaction in the circumstances, even if the person did not intend to offend.</p> <p>Can be experienced by both men and women and includes acts or conduct by people of the same sex.</p> <p>It includes actions which a person finds offensive, such as:</p> <ul style="list-style-type: none"> • Persistent, unwelcome demands of a sexual nature • Sexually explicit or offensive letters, phone calls or email messages • Requests for sexual favours • Leering, patting, pinching, touching or unnecessary familiarity or physical touching • Offensive comments about physical appearance, dress or private life • Constant requests for drinks or dates especially after prior refusal • Intrusive questions or comments about a person's private life or reference to a person's sexuality or physical appearance • Visually displaying in the workplace derogatory objects, pictures or calendars • Displaying screen savers containing any overtly sexual content
Victimisation	<p>Victimisation occurs where an employee is treated less favourably or subjected to detriment because they:</p> <ul style="list-style-type: none"> • Have made a complaint of discrimination or harassment • Intent to make a complaint • Have provided any information or evidence in connection with a complaint of discrimination or harassment
Vilification	<p>Any public act capable of inciting hatred towards, serious contempt for, or severe ridicule of a person or group of persons or on the ground of the race, religion, sexuality or gender identity of the person or group.</p>
Worker	<p>Any person who carries out work in any capacity for BHRC including work as an employee, contractor or subcontractor; an employee of a contractor or subcontractor, an employee of a labour hire company assigned to work at BHRC, an apprentice or trainee, a student gaining work experience or a volunteer.</p>

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Workplace	Any place where Council work is carried out including any place where a Worker goes, or is likely to be, while at work. This includes buildings, vehicles, plant such as graders, rollers, public access roads etc
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A guide to the informal resolution of complaints by managers or supervisors

The following information is a guide to assist with the informal resolution of complaints within the workplace.

Managers/supervisors

Suggestions for managers/supervisors when approached by an individual regarding discriminatory or harassing behaviour.

- Be aware that individuals who approach you about harassment may feel a range of emotions; anger, distress, vulnerable, intimidated, frustrated, powerless, etc.
- Support the complainant by reassuring them they that have taken the appropriate action by seeking your assistance.
- Listen, take seriously, be sensitive and nonjudgmental.
- Inform them that no form of harassment is acceptable and they have a right to complain and have the offensive behaviour stopped.
- Outline the organisation's policy and procedures.
- Ask the complainant how they want the situation to be handled.
- Discuss options and outcomes.
- Advise about confidentiality.

Practical steps towards a positive resolution

- Seek advice and/or assistance from personnel on how to handle the situation, if necessary.
- Assist complainant undertake "self-help" resolution if required
 - discuss ways in which they could tell the offender that their behaviour upsets them and they want them to stop it, or refer person to contact officer who can be able to provide advice.
- Undertake any immediate action, such as removal of graffiti.
- If necessary, approach the person against whom the complaint is made.
- The initial aim should be to stop the behaviour perceived as harassing, now and in the future.
- Monitor and ensure behaviour does not recur and that the complainant is not victimised.
- Any record keeping should be on the appropriate form.
- Discuss continuing, serious and/or difficult problems with management or employee relations/personnel as soon as possible
 - it may not be possible for the complainant to resolve the issue alone and management may need to take formal investigatory action.
- Management may need to take other action to protect all staff. Discuss with, and keep, the complainant informed of any action taken (internal formal option).

Informal discussions with the person against whom a complaint has been made

- Listen to their point of view
- Inform them of relevant policy and procedures.
- Inform them that if the alleged behaviour did occur they would be in breach of the organisation's policy and state/federal law.
- Advise that even if behaviour were not intended to be offensive, offence has been taken and needs to be resolved.
- Clarify acceptable and unacceptable behaviour.
- Discuss any action needed to resolve the complaint and relay this to the complainant.
- Obtain an undertaking that the behaviour in question, regardless of whether admitted or not, will not be repeated by the respondent in the future.
- Advise of potential penalties if the behaviour continues, the need for confidentiality

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Further Information:

Local Government Act 1995

Equal Opportunity Act 1984

QMS F-017 Workplace Harassment Complaint Form

Review by: Tony Battersby

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Review Responsibility: Tony Battersby / Michelle Lloyd

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