



# KIMBERLEY HARASSMENT AND BULLYING POLICY

AUTHORITY

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## VARIATION RECORD

Version Number	Version Date	Brief Description of Change
1.0	October 2007	Original policy issued. Board approved on 25 October 2007.
1.1	13 November 2009	Removed words <i>Human Rights and</i> from clause 12.
1.2	November 2012	Amendments to: item 3 added unlawful harassment examples, item 4 added workplace violence, item 9 added Grievance officer and duty of care and removed officer names, item 10 added Grievance Officer, policy and Worksafe referral.
2.0	December 2014	Update for KPA, item 4 changes to bullying definition, item 4.1 workplace violence made a sub heading, item 5 addition of racial in title, item 10 addition of Fair Work Commission.

## 1. SCOPE

This policy (**Policy**) prohibits certain types of conduct occurring in any work related context including events which occur outside of business hours and/or away from Kimberley Ports Authority (**KPA**) premises such as work functions, office Christmas parties and business trips (**Work Environment**). The Policy applies to all persons in the work environment including employees, contractors, consultants, agents, visitors and customers.

## 2. GENERAL POLICY

KPA is committed to creating a work environment free from harassment, bullying, victimization and vilification (Unlawful Conduct). KPA aims to create a work environment where everyone is treated with dignity, courtesy and respect.

## 3. WHAT IS HARASSMENT?

Harassment is any unwelcome behaviour or conduct which has no legitimate workplace function and which makes a person feel:

- Offended or humiliated;
- Intimidated or frightened, or
- Uncomfortable at work.

It can be an isolated incident or repeated behaviour.

There are three types of unlawful harassment, namely sexual, racial and disability harassment.

- Sexual harassment is unwelcome conduct of a sexual nature that a reasonable person would anticipate the possibility that the victim would be offended, humiliated or intimidated by. The conduct includes oral and written statements and physical gestures.
- Racial harassment is when a person is threatened, abused, insulted or taunted about their race, or a characteristic generally associated with their race and they believe if they object to the unwanted behaviour they will be disadvantaged in their workplace, or they are disadvantaged.
- Disability harassment is when a person is threatened, abused, offended or excluded because of their disability.

Examples of harassment include:

- Unwanted physical contact such as patting, hugging, touching or other forms of unnecessary familiarity.
- Racially based jokes or comments.
- Sexual jokes, suggestive behaviour and sexual innuendo.
- Requests for sexual favours.
- Mimicking someone with a disability.

- Unwanted comments about a person's sex life.
- Leering, wolf whistles, cat calls and obscene gestures.
- Displays of offensive posters, pictures, graffiti or pornographic material.

Harassment need not be intentional to be unlawful. The crucial factor is how the conduct was perceived and experienced by the person who claims to have been harassed.

#### **4. WHAT IS BULLYING?**

Bullying is repeated, unreasonable or inappropriate workplace behaviour that is directed towards a worker or group of workers that creates a risk to health and safety.

Examples of bullying behaviour are:

- Initiation rituals;
- Physical or verbal abuse;
- Excluding or isolating employees;
- Intimidation;
- Assigning meaningless tasks unrelated to the job; and
- Undermining work performance by deliberately withholding information vital for effective work performance.

##### **4.1. Workplace Violence**

Workplace violence is any incident where a person is threatened, attacked or physically assaulted whilst at work or a work related event. Examples may include:-

- Hitting, shoving, pushing;
- Attacks involving any weapon such as a knife, gun etc;
- Threats of physical harm such as "I'm going to kill you" or "you're dead!" and
- Throwing objects.

Bullying is similar to harassment however the reasons for bullying behaviour can be much broader than the grounds on which it is unlawful to harass someone. An employer has a duty to provide a safe workplace for employees free of bullying and violence. This includes protection from other employees and also from external sources such as clients and suppliers.

#### **5. WHAT IS RACIAL VILIFICATION?**

Vilification is publically encouraging or inciting hatred, ill feeling or severe contempt for an individual or a group of people on the basis of their race, colour, national or ethnic origin.

#### **6. WHAT IS VICTIMIZATION?**

Victimization is threatening or subjecting a person to any detriment, on the ground, that the person has or proposes to:

- make a complaint; or

- provide information in relation to a complaint; under this policy, KPA's Equal Opportunity Policy or related legislation.

## **7. WHAT IS NOT UNLAWFUL CONDUCT?**

KPA has a legitimate right to direct and control how work is performed. Supervisory staff have a responsibility to monitor workflow and give feedback. Legitimate comments or advice including criticisms regarding standards of work, workplace behaviour or feedback on performance are not unlawful.

This Policy does not apply to situations where an employee has a grievance about legitimate and reasonable:

- Performance management processes;
- Disciplinary action; and
- Allocation of work.

## **8. WHO IS RESPONSIBLE FOR THE IMPLEMENTATION OF THIS POLICY?**

It is the responsibility of every person bound by this Policy to take action to prevent the occurrence of Unlawful Conduct. Failure to do so may result in disciplinary action. KPA has a legal responsibility to take all reasonable steps to ensure the workplace is free from Unlawful Conduct. KPA may be held liable for the conduct of a person who behaves in a manner in breach of this policy. Legal liability and fines, damages and terms of imprisonment may also be imposed on any individual found guilty of **Unlawful Conduct**. Similar types of penalties may be imposed on any other individual who has failed to act to prevent Unlawful Conduct occurring.

## **9. WHO CAN PROVIDE ASSISTANCE IN RELATION TO THIS POLICY?**

To ensure that this policy is properly implemented KPA will appoint one or more Grievance Officers. A Grievance Officer can provide further information in relation to this Policy and the handling of complaints. A Grievance Officer cannot give an opinion on the merits of a complaint. However a Grievance officer also has a duty of care to provide a safe workplace, so if they are told something that suggests the workplace is not safe then they may have to act, even if the individual does not want them to.

## **10. COMPLAINT PROCESS**

### ***10.1. Reporting of Incidents***

If a person experiences behaviour in breach of this Policy or believes that another individual is acting in breach of this Policy then they must immediately bring the matter to the attention of their supervisor or Grievance Officer.

An attempt will be made to resolve the matter informally. If that is not successful then the person experiencing the conduct may make a formal complaint which will be investigated in accordance with the Grievance Policy.

A person who makes a complaint will not be victimized, penalized or disadvantaged as a result of making a complaint provided that the complaint is made honestly and fairly. Persons who make false or malicious complaints will however be subject to disciplinary action and may be subject to legal action such as defamation proceedings.

### **10.2. Investigation**

Any complaint of Unlawful Conduct will be promptly, fully and impartially investigated in accordance with KPA's Grievance Policy.

Any person about whom a complaint is made will be entitled to know the details of the allegations made against them and be given an opportunity to respond to those allegations.

All parties will be entitled to be accompanied by a support person at any meeting in relation to the investigation of the complaint.

### **10.3. Confidentiality**

All persons involved in the investigation of a complaint, including the parties and any witnesses must keep information about the complaint confidential except where disclosure is required for the purposes of the investigation or by law. Breach of confidentiality is a disciplinary offence and will be dealt with accordingly.

### **10.4. Outcomes**

KPA will take appropriate action to ensure that any Unlawful Conduct which it finds has occurred does not continue. Anyone found to have breached this policy or the law or to have made a false or malicious complaint will be subject to disciplinary action.

This may include, but is not limited to the following:

- |             |            |
|-------------|------------|
| Counselling | Apology    |
| Warning     | Training   |
| Demotion    | Suspension |
| Dismissal   |            |

A complainant who is not satisfied with the outcome of an investigation can contact an external agency such as the Equal Opportunity Commission, Worksafe or Fair Work Commission for advice or help.