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## VARIATION RECORD

Version Number	Version Date	Brief Description of Change
1.0	October 2007	Original procedure issued. Board approved on 25 October 2007.
1.1	13 November 2009	Replaced Clause 5, removed Human Rights from clause 8.4 added unlawful to clauses 9, 10 and 12.
1.2	November 2012	Amendments to: item 3 addition of extra grounds, items 7 and 8 amendment to Grievance officer, addition of Grievance Procedure and removal of officer names.
2.0	December 2014	Updated for KPA, item 8.4 addition of Fair Work Commission.
2.1	April 2017	Updated Grievance Officer to Fair Treatment Officer throughout, item 1 second paragraph added, item 2 second and third paragraphs added, item 3 direct discrimination paragraph amended, item 6 responsibilities amended, item 8.2 investigations amended, and item 8.2 victimisation added.
2.2	November 2019	Changed procedure to procedure throughout, item 3 added language, fines enforcement register and extended the definition of discrimination, item 8.1 added manager, and 8.2 added Code of Conduct.

CEO

15/11/19

## 1. SCOPE

This procedure outlines the Kimberley Ports Authority's (**KPA's**) commitment to provide equal opportunity in all aspects of employment and in the provision of goods and services to customers (**Procedure**). The Procedure applies to job applicants, employees, contractors, consultants, agents, visitors and customers.

This Procedure applies in the workplace including work outside normal work hours and at work related events such as conferences, training events, and social functions like after hour's drinks, the Christmas party, conferences and at any other place where you are a representative of KPA.

## 2. GENERAL PROCEDURE

KPA is an equal opportunity employer. KPA is committed to making employment decisions based on merit without reference to irrelevant and unlawful considerations. KPA will treat all persons bound by this Procedure equitably according to their skills, qualifications, abilities and achievements. All persons bound by this Procedure are required to ensure that they treat all persons in the work environment fairly and do not discriminate against them unlawfully.

This Procedure is consistent with KPA's Code of Conduct. This Procedure is also consistent with the State *Equal Opportunity Act 1984 (WA)* and the following Federal Equal Opportunity legislation, namely the *Sex Discrimination Act 1984 (Cth)*, *Racial Discrimination Act 1975 (Cth)*, *Disability Discrimination Act 1992 (Cth)*, *Age Discrimination Act 2004 (Cth)* and the *Australian Human Rights Commission Act 1986 (Cth)*.

## 3. WHAT IS UNLAWFUL DISCRIMINATION?

Discrimination may be either direct or indirect.

Direct discrimination occurs when a person is treated less favourably than another person in the same or similar circumstances because of one of the categories mentioned below. Indirect discrimination occurs when procedures or practices which appear at face value to be neutral, have a negative effect on a particular group of people with characteristics that would fit into one of the categories mentioned below and the procedure or practice is not justified.

Under State or Federal equal opportunity laws the grounds on which it is unlawful to discriminate against a person are:

- Sex,
- Marital status,
- Family responsibilities,
- Family status,
- Race (colour, national, social or ethnic origin, language),
- Political conviction,
- Religious conviction,
- Age,
- Disability or impairment,
- Trade union activity or membership,

- Spent convictions,
- Fines Enforcement Register,
- Sexual orientation,
- Gender history,
- Intersex status,
- Pregnancy/potential pregnancy, and
- Breastfeeding.

For example, equal opportunity laws prohibit discrimination against a person on the basis of their race. Therefore, it would be unlawful (direct) discrimination to refuse to interview an applicant because they are Aboriginal.

An example of indirect discrimination is a procedure that promotion be based on length of service. While the procedure appears to be fair to all employees the procedure may indirectly discriminate against female employees, because females are more likely to have taken career breaks to accommodate family responsibilities than male employees. In contrast a promotion procedure based on merit where employees are assessed based on their skills, qualifications, abilities and achievements would not be unlawful because all applicants regardless of their gender, age or parental responsibilities would have the same promotional opportunities.

Discrimination does not need to be intentional to be unlawful. A one-off behaviour is enough to be unlawful discrimination.

#### **4. IN WHAT CIRCUMSTANCES IS DISCRIMINATION UNLAWFUL?**

It is unlawful to discriminate in any aspect of the employment relationship including:

- Recruitment and selection,
- Promotion,
- Terms and conditions of employment,
- Employee benefits,
- Assignments, transfers and secondments,
- Dealings with clients,
- Discipline,
- Training, education and tuition assistance,
- Work environment,
- Supervision, and
- Termination of employment including dismissal, retrenchment and retirement.

It is also unlawful to discriminate in the provision of goods and services to customers.

#### **5. IN WHAT CIRCUMSTANCES IS DISCRIMINATION NOT UNLAWFUL?**

This Procedure does not prevent discrimination which is authorised by legislation. For example, it is not unlawful for an employer to implement measures intended to create equality or to meet special needs.

## **6. WHO IS RESPONSIBLE FOR THE IMPLEMENTATION OF THIS PROCEDURE?**

All persons bound by this Procedure have a legal responsibility not to behave in a discriminatory manner. It is the responsibility of every person bound by this Procedure to take action to prevent the occurrence of unlawful discrimination. 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 discrimination. KPA may be held liable for the conduct of a person who behaves in a discriminatory manner in breach of this procedure. Managers and supervisors have an added responsibility to act as a role model for appropriate behaviour and to not allow, permit, assist or tolerate inappropriate behaviours. Legal liability and damages may also be imposed on any individual found guilty of unlawful discrimination.

## **7. FAIR TREATMENT OFFICER**

To ensure that this procedure is properly implemented KPA will appoint one or more Fair Treatment Officers. A Fair Treatment Officer can provide further information in relation to this Procedure and the handling of complaints. However, a Fair Treatment Officer cannot give an opinion on the merits of a complaint.

## **8. COMPLAINT PROCESS**

### ***8.1. Reporting of Incidents***

If a person believes that they are the subject of unlawful discrimination or that another individual is acting in a discriminatory manner then they must immediately bring the matter to the attention of their supervisor/manager or a Fair Treatment Officer.

A person who makes a complaint will not be victimised, penalised 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.

### ***8.2. What is Victimisation?***

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

- make a complaint; or
- provide information in relation to a complaint;

under this procedure, KPA's Code of Conduct and its Harassment and Bullying Procedure or related legislation.

It is unlawful to victimise a person and a person may make a complaint about being victimised.

### ***8.3. Investigation***

Allegations of unlawful discrimination will be promptly, fully and impartially investigated in accordance with KPA's Fair Treatment Procedure.

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 in accordance with the principles of natural justice.

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

#### **8.4. 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.

#### **8.5. Outcomes**

KPA will take appropriate action to ensure that any unlawful discrimination found to exist does not continue. Anyone found to have breached this procedure 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, and
- Dismissal.

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