

HARASSMENT AND BULLYING PROCEDURE

Current version number: 2.4 File reference: PER210/205803 Maintained by: Governance / HR Manager

Original issue date: October 2007 Last review date: July 2023 Next review date: July 2025

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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.
2.1	April 2017	Update Grievance Officer to Fair Treatment Officer throughout; item 1 amended; item 2 added last two paragraphs; item 4.1 added sentence in first paragraph; item 6 added first sentence, item 8 added a sentence on responsibilities; and item 10.2 added to investigations.
2.2	November 2019	Changed policy to procedure throughout, item 4.1 added third party at dot point 4, item 7 last dot point added, item 8 relocated second paragraph to item 10.5, item 9 added EAP paragraph, item 10.1 second paragraph added information on the CEO involved in the decision for a formal Fair Treatment process.
2.3	July 2020	Procedure now maintained by COO. Total revision of structure and wording. Complaints process moved to Fair Treatment Procedure.
2.4	July 2023	Item 2 updated WHS Act 2020 and added item 7 psychosocial hazards.



3/8/23

1. SCOPE

This procedure prohibits certain types of conduct of Kimberley Ports Authority (**KPA**) employees, contractors, consultants, agents, visitors and customers in their interactions with each other. The procedure applies during and outside of business hours.

2. GENERAL PROCEDURE

KPA is committed to creating a work environment free from harassment, bullying, victimisation and vilification (**Unlawful Conduct**). KPA aims to create a work environment where everyone is treated with dignity, courtesy and respect. This procedure is consistent with KPA's Code of Conduct.

This procedure is 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)*, the *Work Health and Safety Act 2020 (WA)* and the *Fair Work Act 2009*.

3. WHAT IS HARASSMENT?

Harassment is any unwelcome behaviour or conduct and which makes a person feel:

- Offended or humiliated;
- Intimidated, 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 but are not limited to:

- 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, and
- 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. Threats of harm can be direct or indirect via a third person being informed of them and can be visual, oral, in writing or through gestures. Threats of harm can also be in relation to a person's family.

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...you're dead!", directed at a person or communicated to a third person, and
- Throwing objects.

An employer has a duty to provide a safe workplace for employees free of harassment, 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 publicly 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 VICTIMISATION?

Victimisation is threatening or subjecting a person to any detriment because the person has or proposes to:

- lodge a complaint of discrimination or harassment;
- provided information or documents to an investigation;
- attended a conciliation conference;

- reasonably asserted their rights, or supported someone else's rights; or
- made an allegation that a person has acted unlawfully;

under this procedure, KPA's Code of Conduct and/or its Equal Opportunity Procedure or related legislation.

It is unlawful to victimise a person making a complaint about being victimised.

7. WHAT IS A PSYCHOSOCIAL HAZARD

Psychosocial hazards are aspects at work or work situations which can lead to psychological or physical harm. Both short and longer term exposure to psychological hazards may cause harm to a person. Risk factors include but are not limited to:

- Job demands;
- Low job control;
- Inadequate support from supervisors and / or co-workers;
- Lack of role clarity;
- Poor organisational change management;
- Inadequate reward and recognition;
- Poor organisational justice;
- Traumatic events or material;
- Remote or isolated work;
- Poor physical environment;
- Violence and aggression;
- Bullying and harassment, including sexual harassment;
- Conflict or poor workplace relationships and interactions, and
- Burn out or fatigue.

Chapter 3, Division 11, Section 55A of the Work Health and Safety (General) Regulations 2022 outlines responsibilities for managing psychosocial hazards.

8. 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 Procedure does not apply to situations where an employee has a grievance about matters that are **legitimate** and **reasonable** such as but not limited to:

- Performance management processes;
- Disciplinary action;
- Allocation of work, and
- Refusal to grant leave, training and other professional development where there are reasonable grounds for refusal.

9. WHO IS RESPONSIBLE FOR THE IMPLEMENTATION OF THIS PROCEDURE?

It is the responsibility of every person bound by this Procedure 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 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.

10. WHO CAN PROVIDE ASSISTANCE IN RELATION TO THIS PROCEDURE?

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

Relationships Australia provides an Employee Assistance Program (EAP) for KPA employees where confidential counselling can be accessed for a range of matters including: conflict and harassment, anxiety and depression, work and career problems to name a few. This service is provided free for six sessions and includes immediate family members of KPA employees. The service can be accessed by calling 1300 364 277 or emailing eap@relationshipsaustralia.org.au. There is a local Relationships Australia counselling service available in Broome.

11. MAKING A COMPLAINT

11.1. Reporting of Incidents

If a person experiences behaviour in breach of this Procedure or believes that another individual is acting in breach of this Procedure then they must immediately bring the matter to the attention of their superintendent/manager or FTO.

An attempt will be made to resolve the matter through one or more of the informal options outlined in the Fair Treatment Procedure. If that is not successful then the person experiencing the conduct, through their superintendent/manager/FTO, may seek to make the complaint formal. A formal complaint will be investigated and dealt with in accordance with the Fair Treatment Procedure.

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.

11.2. 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.