Procedure 6.05.4 Positive Workplace

Directorate
Business & Governance

Responsible Officer
Executive Manager | People & Governance

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Introduction/background

Bega Valley Shire Council believes all its employees should be able to work in an environment free from harassment and bullying. Harassment and bullying of an employee, or group of employees, can lead to mental and physical harm of the employee and a loss of productivity in the workplace. It can damage our corporate reputation which in turn can create difficulties in recruiting people to work for us. It can also result in costly litigation which impacts upon Council’s budget and supply of services to our community.

Scope

This procedure covers all Bega Valley Shire Council employees including full-time, part-time, casual staff, volunteers and contractors. It extends beyond just the way our employees treat each other to include how we deal with our customers and suppliers.

The procedure also applies to the wider definition of today’s workplace and includes (but is not limited to) activities such as training courses, conferences, field trips, and other work-related activities conducted at locations that are not necessarily Council property.

The procedure may also apply outside of regular work hours or pattern of work. It may also cover the use of electronic technology and social media, regardless of whether used during work hours or out-of-hours, when used as the medium for harassment/bullying.

Objectives

To have a workplace where employees are treated with respect and fairness by their colleagues regardless of factors that are irrelevant to being able to do the job, including gender, skin colour, ethnicity (race), sexual preference, age, marital status, family responsibilities, pregnancy, religion, or political opinion.

Definitions

Harassment

Harassment usually constitutes repeated, unwelcome and unreciprocated acts or remarks that make the workplace unpleasant or humiliating for the targeted person. There is usually a pattern of behaviour when it comes to harassment (and bullying). It is defined as a number of incidents targeted against the same employee (or a collective group of employees).

A ‘one-off’ incident would seldom be a justification of a claim of harassment; although the person who acted in a way causing offence may need to be spoken to and have it explained that their actions have caused a level of distress to another employee.

What one employee accepts as reasonable behaviour for work, or takes as a joke, can be very distressing to another. However, just because the recipient of the ‘joke’ says nothing does not necessarily mean they find it acceptable. The use of nick-names is often justified as being comical and fun, but in reality it is often an attempt to put someone down or demean them (especially if the name refers to an aspect of the person’s physical appearance) and can be a form of harassment.

Harassment is closely related to Bullying – often they are one and the same.

Sexual Harassment

Sexual harassment is a specific form of harassment. It is any form of unwelcome sexual behaviour that makes a person feel humiliated, intimidated or embarrassed. Sexual harassment can take many different forms. It can be obvious, indirect, physical or verbal.
Examples of sexual harassment include:

- Uninvited touching
- Sexual or suggestive comments, jokes or innuendo
- Unwelcome requests for sex
- Asking about a person’s private life
- The display of sexually explicit or offensive material
- Repeated invitations to go out
- Staring, leering or stalking
- Sex based insults, taunts, teasing or name-calling
- Sexual assault
- Use of gender-based words such as ‘girl’

Bullying

Bullying is repeated unreasonable behaviour directed towards an employee, or group of employees, that creates a risk to health and safety. Bullying can occur wherever people work together. Under certain conditions most people are capable of bullying. Whether it is intended or not, bullying is a workplace health and safety hazard.

A broad range of behaviours can be bullying, and these behaviours can be direct or indirect. Examples of direct forms of bullying include:

- verbal abuse
- putting someone down
- spreading rumours or innuendo about someone
- interfering with someone’s personal property or work equipment.

Examples of indirect bullying include:

- unjustified criticism or complaints
- deliberately excluding someone from workplace activities
- deliberately denying access to information or other resources
- withholding information that is vital for effective work performance
- setting tasks that are unreasonably above or below a worker’s ability
- deliberately changing work arrangements, such as rosters and leave, to inconvenience a particular worker or workers
- setting timelines that are very difficult to achieve
- excessive scrutiny at work.
Reasonable management actions carried out in a fair way are not bullying. For example:

- setting performance goals, standards and deadlines
- allocating work to an employee
- rostering and allocating working hours
- transferring an employee to another job at a similar level and with similar skill requirements
- deciding not to select an employee for promotion
- informing an employee about unsatisfactory work performance
- informing an employee about inappropriate behaviour
- implementing organisational changes
- performance management processes
- constructive feedback
- restructuring.

**Reporting**

Employees are encouraged to report incidences of workplace harassment or bullying. If you are being harassed or bullied, or see others being harassed or bullied at work, you must report it as soon as possible. In the first instance you should report the matter to your supervisor or manager. If the complaint concerns your supervisor or manager then you should take the matter to the manager-once-removed. Subsequently you can discuss it with the Executive Manager | People & Governance.

Any employee reporting an incident (or incidents) of harassment or bullying must be aware that from the time of reporting the organisation is duty bound to follow up the report. It needs to be clearly understood that employees cannot make a report but then ask for no further action be taken. Where a manager or supervisor becomes aware of a harassment or bullying incident (or incidents) then they must act upon the disclosure.

Reports of harassment and bullying will be dealt with quickly, objectively and fairly.

**Vexatious Claims**

Any employee found to be making untrue claims of harassment or bullying for purposes of causing suffering or distress to another person will be regarded as having made a vexatious claim. In such cases the person making the vexatious claim will be considered as the perpetrator of an act of harassment or bullying and will themselves be subject to the disciplinary procedures outlined in this procedure.

An unsuccessful claim of harassment or bullying will not automatically be regarded as a vexatious claim.

**Independent management action**

A manager or supervisor may become aware of potential or real situations of harassment or bullying through observation, overhearing or being informed of situations by other people in the workplace. So as to maintain a positive workplace culture our managers and supervisors are required to deal with these incidents even if an informal or formal complaint has not been made. Action could take the form of holding a staff meeting and discussing expected standards of conduct, re-circulating this policy or arranging awareness raising sessions. Depending upon the severity of the incident it may require application of the informal or formal investigation procedures described in this document.
Non-compliance with this policy

Disciplinary action may be taken against anyone who harasses or bullies another employee, customer or supplier. Discipline may involve a warning, transfer, counselling, demotion or dismissal, depending on the circumstances and according to the requirements of the applicable award.

Harassment/Bullying Procedure

Employees who believe they are a victim of harassment or bullying are encouraged to use informal procedures to resolve the issue when deemed safe to do so. Informal resolution techniques will be more successful when applied as soon as harassing or bullying behaviour becomes evident.

If informal resolution procedures are unsuccessful, or the complaint is of a significant nature, then it may require commencement of a formal investigation procedure.

Informal Procedure

In many cases the perception of harassment or bullying arises from misunderstandings, accidental use of inappropriate language and lack of cultural appreciations. Often the accused person will be surprised to learn their behaviour or language has caused harm or distress to another person in the workplace and will be quite willing to offer an apology and change their behaviour. Resolving these types of issues through the informal procedure will generally result in far less angst for all people concerned and is therefore encouraged in the first instance.

Informal resolution can be achieved by:

- Self-help (the aggrieved person resolves it themselves)
- Third party intervention (support and advice from a manager or contact officer)

Self Help

In this case the aggrieved person approaches the alleged harasser or bully and asks them to cease their behaviour. This could be done verbally or in writing. A support person might be used if it was felt this would assist in ensuring the safety and integrity of all people concerned. If the offensive behaviour continues then it may be necessary to escalate to a formal investigation.

Intervention by a Third Party

It might be appropriate to involve a third party in an attempt to resolve a perceived complaint of harassment or bullying when the aggrieved person does not feel comfortable or powerful enough to raise the issue themselves. A third party might be a manager, supervisor, contact officer or another person the complainant feels comfortable to use. The purpose of the third-party is to convey information; not to resolve the complaint. The matter might be taken up with the alleged harasser/bully’s manager or supervisor with a request they talk to the identified person about the allegation.

Denial of Allegation

If the person who the allegation is made against denies the accusation, or refuses to participate in the informal resolution process, then the complainant must decide what further action to take. This could be:

- Escalate to a formal investigation, or
- Cease to pursue the claim of harassment or bullying.

Because of the importance of a positive workplace culture, employees who genuinely believe they are the victims of harassment or bullying are encouraged to pursue the matter. The organisation will fully support any employee who raises a genuine complaint of harassment or bullying.
Formal Investigations

Formal complaint investigation procedures may be required where:

- The complainant wishes to pursue this course of action from the outset;
- The allegations are serious and informal procedures would be inappropriate;
- The harassment or bullying has continued despite informal interventions;
- The alleged harasser/bully has denied the allegations and it is deemed necessary to escalate to a formal investigation.

During the investigation other staff will become aware of the complaint through the process of being witnesses and other information gathering processes. Whilst any formal investigation must maintain confidences it cannot provide anonymity of the complainant. Employees who choose to escalate harassment and bullying complaints to a formal investigation need to take this into consideration in their decision to do so.

Investigation Principles

The following principles will be applied to all formal investigations, which are intended to protect all parties:

- The person who is alleged to have committed the harassment/bullying will be treated as innocent unless the allegations are proved to be true;
- Allegations will be investigated promptly;
- All allegations need to be put to the person they are made against;
- The person the allegations are made against must be given a chance to explain his or her version of events;
- If the complaint is upheld, any disciplinary action needs to be proportionate with the seriousness of the matter;
- Mitigating factors should be taken into account when assessing if disciplinary action is necessary;
- Right of appeal is explained.

Formal Investigation Procedure

An Investigating Officer will be nominated to case-manage formal investigations. The Investigating Officer will be a neutral person outside of the complainant’s and accused person’s work area, and also must not have a significant personal relationship with any of the people who are involved in the case. If during the course of the investigation the Investigating Officer perceives a conflict of interest may have arisen it should be raised with the General Manager. Depending upon the degree of conflict of interest the General Manager may allow the Investigating Officer to continue the investigation or alternatively might appoint a new Investigating Officer.

Interviews

Interviews conducted with the complainant, alleged harasser/bully and witnesses will generally form the basis of most evidence gathering.

- All interviews will be audio recorded;
- A written transcript will be taken from the recorded audio file;
- The interviewee will be provided with a copy of the transcript and an electronic copy of the audio file;
- The interviewee may have a support person present during the interview. The support person may be a union delegate, work friend, or other suitable person. The support person should not be a potential witness or respondent to the case. The role of the support person is only to observe the process, provide
emotional support to the interviewee, and to confirm the interview was conducted in an appropriate manner if required to do so at a later time. The support person does not actively participate in the interview and is required to refrain from making any comments during the interview.

**Step 1: Collect information from complainant**

The complainant is interviewed and the basis of the complaint will be formally recorded and evidence sought that might confirm the allegation. The complainant should be asked to provide evidence such as (but not limited to):

- Dates, times and places of alleged incidents;
- Diary notes when incidents occurred;
- Specific details of the alleged harassment or bullying;
- Names of persons who may have observed or heard the alleged incidents;
- Documents that might form a basis of evidence for the complaint;
- Nominated people that could be questioned because they have evidence which goes to the basis of the complaint.

The Investigating Officer should only accept evidence that would be admissible in a court of law (or similar tribunal). For example, the following would not be acceptable as evidence:

- Covert audio or video recordings where the person being recorded could not have reasonably been aware this was occurring;
- Hearsay evidence (not directly observed or heard by the person being questioned).

The complainant should also be asked about their preferred resolution to the claim if it is shown to be true.

**Step 2: Interview the alleged harasser or bully**

The specific allegation/s made by the complainant against the alleged harasser or bully should be put to them. The person should then be asked to respond to the claim made against them. If an incident is acknowledged to have occurred, however the accused person has a different version of events or explanation, then they should be asked to provide corroborating evidence. Corroborating evidence could include other people who witnessed the event. Those identified persons should then be included in the investigation.

The alleged harasser or bully is to keep the content of the interview confidential until such time as the investigation is complete. They should not discuss the alleged complaint with any potential witnesses or the complainant.

**Step 3: Interview other parties**

Other persons who may have information relevant to the complaint should be interviewed. They are to be provided with an overview of the allegation and the persons involved. Questioning should focus upon specific points of the allegation the interviewee may have information about. They too should maintain confidentiality and not discuss the case with the persons involved or other potential witnesses.

**Outcome of Investigation**

The Investigating Officer will write a report detailing the outcome of the formal investigation. The investigation report will clearly state whether the complaint is found to be true or is dismissed.

If the investigation confirms harassment or bullying has occurred then the Investigating Officer will make a recommendation of disciplinary action that should be taken against the guilty person. This disciplinary action could include:

- A verbal or written apology from the harasser or bully;
- A formal warning;
- Suspension from work without pay for a nominated period of time;
- Transfer, demotion or dismissal of the harasser/bully;
- Referral to police for possible criminal charges.

The investigation report is to be sent to the General Manager for approval to proceed with the recommendations coming from the investigation.

Where the alleged harasser or bully is found to have no case to answer there must be no reference to the matter in their work history or personnel files.

**De-briefing of complainant and respondent/s**

The Investigating Officer should prepare letters to both the complainant and the respondent to the claim. The letters should outline:

- The basis of the original claim of harassment or bullying;
- An overview of the investigation process;
- The determination of the claim of harassment or bullying and the basis for making the determination;
  - (The identity of witnesses linked to specific evidence should be avoided wherever possible so as to avoid recriminations against those persons)
- Recommendations coming from the determination.

Separate meetings should be held with the complainant and the respondent to the claim at which time de-briefing of the outcomes of the investigation are discussed. The individual letters detailing outcomes of the investigation should be handed over at the meeting. The opportunity to have a support person present should be offered. The complainant and the (alleged) harasser/bully should be given an opportunity during de-briefing to respond to the outcomes and recommendations of the investigation.

A file note should be made of the main points of discussion and responses provided. Ordinarily these debriefings would not be audio recorded, however if there was concern about how the conversation might be received, or there was a possibility of litigation against the organisation, then the option to audio record should be considered.

A copy of the file note from the respective de-briefing meeting should be provided to the complainant and the respondent.

**Escalation to external tribunals**

If the complainant is unsatisfied with the outcome of the investigation they have an option to escalate their complaint to the appropriate NSW State or Commonwealth body responsible for dealing with workplace harassment or bullying complaints.

**Record Keeping**

**Informal process record keeping**

Informal procedures will not ordinarily generate documentation or other forms of evidence that need to be filed. However, all persons involved in resolution of an informal complaint are encouraged to keep their own diary notes with dates, times and an overview of what occurred or was said in discussion. If the complaint was to be escalated to a formal investigation or referred to an external legal body these diary notes can be requested or subpoenaed, so it is important they are true and accurate, although they do not need to be highly detailed; summary points will usually suffice.
Formal complaint record keeping

Formal complaint investigation documentation must be filed according to the organisational record keeping procedures. All transcripts of interviews, investigation reports, debriefing letters and file notes are to be securely filed. The Content Manager archiving system is to be used and documentation given a descriptor with enough detail to accurately identify it. Content Manager Container F11/246 is to be used.