

# ESA's Policy & Procedures (APPENDIX 5)

## Harassment

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### 1. Objectives

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As an employer, ESA has a moral and legal responsibility to provide a work environment that is free from harassment in all its forms.

With your help we aim to create a workplace free of harassment - one in which staff are able to work positively and productively, providing efficient service for clients without the costly stresses and distractions that harassment causes.

The chief objectives of this policy are to ensure that:-

- 1.1 Harassment does not occur.
- 1.2 There are no reprisals for making a complaint.
- 1.3 There is an increased awareness of what harassment is and the consequences.

Harassment of any kind will not be tolerated and will result in disciplinary action.

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### 2. What is Harassment/Workplace Bullying?

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**Harassment** or **Workplace Bullying** is repeated, unreasonable behaviour directed to an employee or group of employees, that creates a risk to health and safety.

**Unreasonable behaviour** means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimize, humiliate, undermine or threaten.



**Behaviour** includes actions of individuals or a group, and may involve using a system of work as a means of victimizing, humiliating, undermining or threatening.

### **Bullying behaviour?**

Harassing or bullying behaviour can include (but is not limited to):-

- 2.1 Verbal abuse, threats, sarcasm, and other forms of demeaning language or communication.
- 2.2 Constant unconstructive criticism and/or nitpicking.
- 2.3 Isolating or ostracizing behaviour.
- 2.4 Deliberately withholding information that a person needs to adequately exercise her/his role.
- 2.5 Overloading a person with work or allowing insufficient time for completion and then criticising the employees work in relation to this.
- 2.6 Spreading gossip or rumours.

Harassing and bullying behaviour also includes **occupational violence**. This is an incident(s) where an employee is physically attacked or threatened in the workplace.

A **threat** is a statement or behaviour that causes a person to believe they are in danger of being physically attacked.

Bullying of any kind is a breach of the duties of care owed by both employer and employee and persons held accountable for such behaviour can face prosecution under the *Occupational Health and Safety Act 1985*.

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## 3. Sexual Harassment

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**Sexual harassment** is unwelcome conduct of a sexual nature that is likely to offend, humiliate or intimidate the person at which it is directed.

It does not including conduct occurring within a personal relationship of mutual attraction and/or friendship.

Sexual harassment may occur in a single incident as well as a series of incidents. The harassment may be subtle and implicit rather than explicit. This behaviour frequently involves an abuse of power and/or trust and is often directed at a person who is unable to stop the behaviour easily.

The harassing behaviour may include (but is not limited to) unwelcome:-

- 3.1 Physical contact (e.g. kissing, touching or brushing against a person).
- 3.2 Demands for sexual favours.



- 3.3 Offensive or demeaning comments jokes and innuendo.
- 3.4 Sexual propositions or advances or requests for dates.
- 3.5 Offensive gestures.
- 3.6 Staring.
- 3.7 Displaying, sending, emailing or downloading offensive material.
- 3.8 Questions, remarks or insinuations about a person's sexual activities or private life.

Sexual harassment is unlawful under the *Sex Discrimination Act 1984 [Cth]* and the *Victorian Equal Opportunity Act 1995*.

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#### 4. Adverse effects of Harassment?

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Harassment has no place in a fair, non-discriminatory and productive work environment. The person harassed may feel embarrassed, intimidated, anxious and afraid. It can lead to:-

- 4.1 Severe distress to individuals
- 4.2 Low staff morale
- 4.3 Reduced productivity
- 4.4 Forced, not chosen career moves
- 4.5 Ill health, absenteeism and increased leave
- 4.6 Resignations
- 4.7 Poor image of the organization in the eyes of the staff and public

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#### 5. What are my responsibilities under the policy?

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All staff (including management and volunteers) must not:-

- 5.1 Harass anyone at work or persons one comes into contact with in the workplace.
- 5.2 Victimise anyone involved in a complaint or investigation.
- 5.3 Make a vexatious or knowingly false complaint.

The Site Manager is to:-

- 5.4 Implement ESA's policy and ensure all staff work in an environment free from the threat or risk of harassment.
- 5.5 Ensure that all staff are aware that harassment is not tolerated
- 5.6 Role model appropriate behaviour at all times.
- 5.7 Act on any matter brought to their attention in accordance with ESA policy.

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#### 6. What to do if you are harassed

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You have the right not to be harassed in the workplace and that right will be supported by ESA. If you believe you have been harassed at work:-

- 6.1 Tell the person to stop



6.2 If you feel comfortable to doing so, tell the other person in a direct and firm manner that their behaviour is unacceptable - tell the person in writing if you prefer. If the person's behaviour or attitude does not change, or you feel uncomfortable raising the issue with them, then seek advice from the Site Manager or a member of the ESA Board. You may wish to resolve the matter with the person or persons after seeking advice.

### Make a complaint

#### Complaints Procedure

There are two procedures available to staff members who wish to make a complaint. One is an informal process aimed at conciliating or mediating an acceptable outcome with speed and confidentiality. The other is a formal investigation involving the making of a written complaint, formal interviews of parties and witnesses, the preparation of a written report and recommendation to the Site Manager for his/her action. A staff member with a complaint can nominate which procedure they wish to follow and can change their nomination after initiating a particular procedure.

#### **INFORMAL PROCEDURE**

1. An incident or conduct occurs that you find unacceptable.
2. Tell the person that you find their behaviour unacceptable and want it to stop. If you feel you cannot tell the person directly, or the unwelcome behaviour continues, speak to the Site Manager or a member of the ESA Board.
3. Options for resolving the situation will be discussed with you with the aim of resolving the issue satisfactorily, equitably, and in accordance with ESA's responsibilities to provide a workplace free of harassment.
4. If the behaviour persists or you are not satisfied with the informal process, you may choose to make a formal complaint.



## **FORMAL PROCEDURE**

1. An incident or conduct occurs that you find unacceptable.
2. Contact the Site Manager or a member of the ESA Board. You will need to submit your complaint in writing.
3. The Site Manager or a member of the ESA Board will interview you about the matter. You can bring a support person to the interview and may advise of your preference as to location of the interview.
4. At the discretion of ESA, and to ensure an impartial investigation, an external investigator may be appointed to investigate the complaint and make recommendations.
5. A summary document of the complaint is provided to the person(s) you have complained about and they are given an opportunity to respond in an interview with the Site Manager or a member of the ESA Board.
6. Where there is a dispute over facts, statements from witnesses and other relevant evidence is gathered.
7. The Site Manager or a member of the ESA Board makes a decision as to whether the complaint has substance based on the available evidence. This is done in a report documenting the investigation process, the evidence, the finding, and a recommended outcome.
8. The Site Manager or a member of the ESA Board follows through on the decision or after due consideration, decides on an alternative course of action.

### 6.3 Possible outcomes of a complaint

If your complaint is substantiated, the possible outcomes can range from an apology, counseling of the person against whom a complaint is found, to disciplinary action, which can range from transfer to an alternative position, a written warning, a first and final warning, or termination of employment.

The outcomes can be the same regardless of whether the matter was dealt with under the formal or informal procedure. If your complaint is found to be unsubstantiated, no further action will be taken unless it is found that your complaint was made vexatiously or was knowingly false, in which case disciplinary action may be taken against you.

At the conclusion of the process, the Site Manager will follow up with the parties to ensure the offending behaviour has ceased and that neither party has been victimized.

### 6.4 Other Options



If you are not satisfied with resolution of your complaint under this policy you can make a complaint to the Equal Opportunity Commission of Victoria or the Human Rights and Equal Opportunity Commission.

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## 7. Victimization

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Victimization of employees who make complaints or reports of harassment is unlawful and will not be tolerated by ESA. Disciplinary action will be taken against any employee who victimizes or retaliates against a person who has complained of harassment, or is involved in a complaint or investigation of a complaint of harassment.

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## 8. Does the Harassment Policy extend to persons who are not staff of ESA?

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Yes, the prohibition against bullying and harassment extends to all persons that staff members come into contact with in the course of their employment.

Non staff may include clients, contractors and service providers.

This is a mutual obligation in that staff must not subject such persons to harassing or bullying behaviour, and conversely such persons must not subject staff to harassing or bullying behaviour.

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## 9. Responsibility for Employees' behaviour

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In general, employers are responsible for the behaviour of their employees, unless the employer can show that he or she took all reasonable precautions to prevent harassment from occurring.

For example, an employer could be legally liable for a complaint of sexual harassment if management knew about it and did nothing.

What is considered to be a reasonable precaution will vary depending on the size and nature of the business and workplace.

Generally, reasonable precautions include:

- 9.1 Having appropriate harassment policies in place
- 9.2 Ensuring all staff are aware of them
- 9.3 Running ongoing education programs for staff
- 9.4 Including harassment information in all staff inductions.

