

■ Discrimination, Harassment and Bullying Prevention Policy & Procedure

1. Purpose / Introduction

Energy Action has established this Policy in recognition of its commitment to equal opportunity, anti-discrimination, and anti-bullying legislation. This Policy should be read in conjunction with Energy Action's other Policies.

It gives effect to Energy Action's commitment, as an employer, to take all reasonable steps to eliminate discrimination, harassment and bullying of or by team members.

It is desirable that concerns and complaints of bullying, discrimination or harassment within Energy Action are resolved as early as possible, preferably by advice and conciliation undertaken by appropriately trained persons for that purpose.

2. Scope

This policy applies to all members of the Energy Action team comprising Energy Action Directors, employees, volunteers, student placements and contractors of Energy Action (**EA People will be used to define Scope**).

3. Definitions

Bullying

The Fair Work Act amendments have also redefined what constitutes bullying in the workplace as being when:

- An individual or group repeatedly behaves unreasonably towards a worker or group
- The behaviour creates a risk to health and safety
 - (a) "Behaviour" includes actions by an individual or a group and may involve using a system of work as a means of victimising, humiliating, undermining, or threatening
 - (b) "Unreasonable behaviour" means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine, or threaten
 - (c) "Risk to health and safety" includes risk to psychological as well as physical health.

Bullying however does not include:

- One off instance of insensitivity or rudeness, or
- Reasonable management activities carried out in a reasonable manner

Bullying can take place between individuals or groups, including between

- A staff member and a supervisor or manager
- Co-workers; or
- A staff member and another person in the workplace, e.g., client, contractor, or service provider

Any incident of bullying-type behaviour will not be tolerated, condoned, or ignored. As advised and defined by legislation, a single incident of bullying may also constitute occupational violence.

Discrimination

Discrimination means treating someone unfairly or less favourably because of a characteristic such as their sex, race, or age (see list of protected attributes below). Discrimination can also be setting a requirement that people with a particular characteristic (protected attribute) cannot meet and which is not reasonable in the circumstances.

Energy Action undertakes to ensure the elimination of discrimination and harassment based on the following attributes:

- Race, colour, national or ethnic origin, descent, nationality
- Sex, gender identity, lawful sexual activity, sexual orientation
- Marital status, pregnancy or potential pregnancy, breastfeeding, family responsibilities, status as a parent or carer
- Religious or political belief or activity, industrial activity, irrelevant criminal record; age, physical features, disability (past, present, or imputed), medical record
- Personal association with a person who is identified by reference to any of the above listed attributes

Energy Action Policy should be interpreted to include all attributes protected by Commonwealth and State anti-discrimination legislation.

Discrimination can occur as direct or indirect discrimination:

- (a) Direct discrimination involves treating a person less favourably because of their status than another person of a different status would be in comparable circumstances. It is recognised that some forms of harassment may amount to unlawful discrimination. An example of direct discrimination would be deciding not to promote or appoint a female staff member to a higher position because she is pregnant
- (b) The term indirect discrimination refers to a requirement, condition or practice which appears to be neutral, but which results in a particular person or group being adversely affected and which is not reasonable in the circumstances. Indirect discrimination is usually unintended. An example of indirect discrimination would be locating an employment benefit or service for staff in an area which is not accessible to wheelchair users.

Harassment

Harassment refers to discriminatory behaviour in relation to a protected attribute, which is reasonably likely in all the circumstances to humiliate, offend, intimidate, or distress the person(s) concerned.

Examples include intrusive or inappropriate questions or comments about a person's private life, unwanted written, telephone or electronic messages or communications, promises or threats relating to a person's status in the workplace or physical violence or the threat of physical violence. Staff must not be harassed based on disability, including in relation to:

Sexual Harassment

A person sexually harasses another person if he or she:

- Makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person
- Engages in any other unwelcome conduct of a sexual nature in relation to the other person in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, or intimidated

“Conduct of a sexual nature” includes:

- Subjecting a person to any act of physical intimacy
- Making, orally or in writing, any remark or statement with sexual connotations to a person or about a person
- Making any gesture, action, or comment of a sexual nature in a person's presence or about a person

Sexual harassment may occur among peers or co-workers, and in subordinate-supervisor, supervisor-subordinate situations. It can also occur in the provision of goods and services.

Sexual harassment might occur as a single incident or a series of incidents and may include:

- Personally, offensive comments of a sexual nature
- Sexual or smutty jokes
- Comments or teasing about a person's alleged sexual activities or private life
- Persistent unwelcome invitation/s, telephone calls, text messages, video texts, photographs, attachments, or emails
- Use of Energy Actions computer systems and social networking sites for the retention and distribution of sexually explicit material
- Inappropriate use of camera phones
- Offensive hand or body gestures
- Physical contact such as patting, pinching, touching, or putting an arm around another person
- Display of sexually suggestive material, in electronic or other formats

- Distributing sexually explicit material through electronic or other means
- Unwanted declarations of affection
- Sexual assault and rape

The definition of sexual harassment does not require intent on the part of the person being accused but is based on a reasonable person's view that in all the circumstances, the person harassed would feel offended, humiliated, or intimidated. Lack of protest by the person experiencing the sexual harassment does not imply that the conduct was welcome. Forms of sexual behaviour that may initially appear mild or trivial can constitute sexual harassment

Certain acts of sexual harassment may constitute a criminal offence. Physical molestation or assault, indecent exposure, obscene communications (including e-mail, telephone calls and text messages), sexual assault, rape and stalking will be reported to the police. Action may subsequently be pursued with or by the police and Energy Action will support a complainant who wishes to report and action a complaint. If the person does not wish to pursue the matter with the Police, the matter can be dealt with under this Policy.

Vilification (Racial and Religious)

Vilification is any form of conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of another person or class of person on the grounds of their race or religion. Such conduct can be a single event or series of events over a period, and may include the use of internet, telephone messages and e-mail to publish or transmit statements.

Victimisation

For complaints to be brought forward, complainants must feel secure in the knowledge that Energy Action Procedures will be followed without fear of detriment. Victimisation includes any unfavourable treatment of a person who has been involved with a discrimination, harassment, bullying, sexual harassment, or vilification complaint. It is not necessary for the initial complaint to have been made under these procedures.

Any complaint of victimisation will be treated in the same manner as a complaint of discrimination, harassment, bullying and sexual harassment or vilification.

4. Policy

Energy Action is committed to providing prompt and fair processes to resolve complaints of discrimination, harassment, sexual harassment, and bullying.

- The principles of natural justice apply at all stages of the complaint resolution process. Those involved in the complaint resolution process have a duty not to be affected by bias or conflict of interest and must act fairly and impartially. Each party must be given a fair opportunity to know the case against them and to be heard
- All staff and persons involved with Energy Action complaint procedures will be treated with respect and courtesy. Enquiries and complaints will be dealt with in a sensitive, equitable, fair, and confidential manner. Matters will be dealt with expeditiously while ensuring that all parties are provided with sufficient time to prepare and/or respond
- It is of vital importance and in the best interests of all parties that confidentiality is maintained where possible

- Where appropriate, steps will be taken to ensure harmonious working relationships during and after conciliation and investigation. Energy Action will endeavour to ensure that staff members using the complaint resolution procedures are not victimised.

Investigation

The processes for conducting investigations of complaints of discrimination, harassment and bullying for Energy Action should follow a clear detailed documented procedure.

Confidentiality

There is an obligation on all parties to maintain privacy of personal information. Information collected and held, and staff associated with the implementation of this policy will be governed by privacy legislation and Energy Action relevant Privacy Policies and provisions.

Energy Action is under an obligation to keep personal information secure, and to disclose it only under appropriate and lawful circumstances.

However, the law requires that such persons act reasonably and in good faith and disclose information only to those legitimately involved in resolving the complaint: unnecessary disclosure may incur liability for breach of confidentiality.

Record-keeping Principles

Energy Action is committed to maintaining privacy of personal information.

5. Procedures

If you feel you are experiencing or witnessing workplace bullying, and are not comfortable dealing with the problem yourself, or your attempts to do so have not been successful, you should raise the issue promptly either with your supervisor, Human Resource Manager, health and safety representative or another manager within the organisation.

If you witness unreasonable behaviour you should bring the matter to the attention of your manager or Human Resources as a matter of urgency.

If workplace bullying or unreasonable behaviour is reported or observed Energy Action will take the following steps:

- The responsible supervisor or manager will document the grievance and discuss with HR
- The Manager / HR will speak to the parties involved as soon as possible, gather information, and seek a resolution to satisfactorily address the issue for all parties.

If issues cannot be resolved or the unreasonable behaviour is of a serious nature, HR or an external person may be appointed to investigate. Both sides will be able to state their case and relevant information will be collected and considered before a decision is made.

All complaints and reports will be treated in the strictest of confidence, and must be documented and filed in HR. Only those people directly involved in the complaint or in resolving it will have access to the information.

There will be no victimisation of the person making the report or helping to resolve it. Complaints made maliciously or in bad faith may result in disciplinary action.

6. Consequences of Breaching this Policy

Appropriate disciplinary action may be taken against a person who is found to have breached this policy. The action taken will depend on the nature and circumstance of each breach and could include:

- A verbal or written apology
- One or more parties agreeing to participate in counselling or training
- A verbal or written reprimand
- Transfer, demotion, or dismissal of the person engaging in the bullying behaviour

If workplace bullying has not been substantiated

If an investigation finds workplace bullying has not occurred or cannot be substantiated, Energy Action may still take appropriate action to address any workplace issues leading to the bullying report.

Fair Work Commission

At all stages, both parties have the right to seek advice from the Fair Work Commission (FWC). 1 January 2014 has seen the implementation of the FWC having the jurisdiction to deal with complaints of bullying and the power to put in place orders to stop any bullying and harassing behaviour. The FWC may make any orders it deems appropriate to stop the bullying behaviour, except for pecuniary penalties, with the focus of this legislation being on preventing bullying, stopping the behaviour if it does occur and rectifying positive working relationships, not on collecting financial compensation.

What does this mean for employees?

Most employees throughout Australia (all of those working for a Pty Ltd or Ltd company, incorporated volunteering associations with multiple staff and the Australian Government, except for a few agencies), will be able to apply to the FWC to have an order put in place to stop bullying.

From the time the complaint is made to the FWC, they will have 14 days to commence dealing with the application for an order to stop bullying

7. Authority

This Policy has been authorised by the Board of Directors.

Energy Action may amend or vary this Code of Conduct, in its absolute discretion, from time to time.

8. Related and Supporting Policies

This Policy is supported by and linked to specific Energy Action Policies. These Policies include, but are not limited to:

- Conflict of Interest
- Diversity & Inclusion
- Work, Health & Safety (WHS)
- IT Policy
- Social Media
- Securities Trading
- Privacy Policy
- Whistle Blower
- Anti-Bribery and Anti-Corruption
- Corporate Governance Statement

- Revision History

Version Number	Author	Date	Changes
Version 1	Sarjeet Arkan	4 October 2021	Policy Developed

Approved by the Board of Energy Action Limited on 29 November 2021

APPENDIX 1: EXPANDED DEFINITION OF BULLYING

What constitutes bullying? What does not constitute bullying?

Workplace bullying is repeated, unreasonable behaviour directed towards a person or group of persons at a workplace, which creates a risk to health and safety. It is offensive, abusive, intimidating, or insulting behaviour which makes the recipient feel upset, threatened, or humiliated, undermines their self-confidence and which may cause harm to a person's health and wellbeing. Bullying behaviour is not always intentional and sometimes people do not realise that their behaviour can be harmful to others.

One-off behaviour's do not normally qualify as bullying; however, a single incident may be a warning sign for bullying and steps should be taken to prevent a reoccurrence.

While some bullying may be overt such as verbal abuse and threat of physical violence, bullying can also be covert behaviour including subtle intimidation through inappropriate comments about personal appearance, constant criticisms, isolation and/ or exclusion, or unrealistic, embarrassing, or degrading demands.

Examples of bullying behaviour include but are not limited to:

- Abusive, insulting, or offensive language by one or more persons to another or others.
- Behaviour or language which frightens, humiliates, belittles, or degrades, including criticism that is delivered with a raised voice.
- Inappropriate comments.
- Teasing or regularly making someone bear the brunt of pranks or practical jokes.
- Behaviour that undermines treats less favourably or disempowers others. Examples may include overloading a person with work, setting timelines that are difficult to achieve or constantly changing deadlines, setting tasks that are beyond a person's skill level, ignoring or isolating a person, deliberately denying access to information, consultation or resources, or unfair treatment in relation to accessing entitlements such as leave or training
- Inappropriate written communication including letters, email, or telephone text messaging.

It is important to differentiate between a person's legitimate authority, as opposed to abuse or bullying. Supervisors have the right to direct and govern how work is done, and a responsibility to monitor workflow and to manage performance.

Examples of behaviour's which do not constitute bullying, without limitation are:

- Performance Management / Disciplinary action taken against staff where the appropriate management protocols have been followed and communicated in a professional manner in conjunction with the ENERGY ACTION performance management Procedures
- Constructive and appropriately delivered feedback and/or counselling intended to assist staff to improve their performance or the standard of their behaviour.
- Critical comments indicating performance deficiencies where the comments are objective and communicated professionally in line with Energy Action Policies and Procedures.
- Expressing an opinion, where comments are objective and communicated professionally in line with Energy Action Code of Conduct