

PREVENTION OF HARRASSMENT, DISCRIMINATION & BULLYING STANDARD

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1 PURPOSE

The objective of Delta Coal's Equal Employment Opportunity (EEO) Policy is to:

- ensure that conditions of service and career opportunities are fair and equitable;
- assist all employees to achieve their full potential with respect to their positions;
- ensure that the workplace is free from unlawful discrimination and/or harassment of any kind;
- ensure that all employees are aware of their obligations; and
- deliver our services in a safe, respectful and reasonable manner.

Accordingly this Standard has been developed to provide a framework that outlines how instances of bullying, harassment or discrimination will be investigated and ensures that complaints will be managed fairly and effectively.

2 SCOPE

This Standard applies to all workers and other persons 'at work'.

"At work" includes on Delta Coal premises and at any other location where work-related activities arising from employment at Delta Coal take place (includes work related social functions). Conduct which occurred away from the place of employment may still be subject to this Standard (refer Social Media Policy).

3 DEFINITIONS

For purposes of this standard, unless otherwise stated, the following definitions apply:

3.1 BULLYING

Under Section 789FD of the Fair Work Act, a worker is bullied at work if:

- an individual; or
- a group of individuals;
- repeatedly behaves unreasonably towards the worker, or a group of workers of which the worker is a member; and
- that behaviour creates a risk to health and safety.

Workplace behaviour that generally meets the definition of bullying may include;

- behaviour that is unwelcome, unsolicited and repeated;
- behaviour that a reasonable person would consider to be offensive, intimidating, humiliating or threatening; and/or
- behaviour that poses a risk to physical or psychological health or safety.

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The above parameters will act as a guide in reviewing instances of bullying. The definition is not to be applied inflexibly and it is important that a “common sense” approach is used when considering each particular situation.

3.2 **DISCRIMINATION**

Discrimination is treating someone unfairly or unequally simply because they belong to a particular group or category of people. It is unlawful to discriminate against someone, or harass them because of their:

- sex including pregnancy and breastfeeding;
- race or ethno-religious background - this includes colour, ethnic background, descent or national identity;
- marital or domestic status;
- disability - this includes past, current and future disability. It includes a physical disability, physical illness or disease that makes, or has made, any part of the body or brain work differently, it includes mental, psychiatric, intellectual disability or learning difficulty;
- homosexuality;
- transgender status;
- age; or
- carers' responsibility.

3.3 **HARRASSMENT**

In general, harassment is any form of behaviour (can also be an object or publication) that is not wanted, not asked for and that is based on one of the grounds listed under the discrimination definition and which:

- humiliates someone (puts them down); or
- embarrasses them; or
- offends them; or
- creates a hostile work environment; or
- intimidates them.

3.4 **SEXUAL HARRASSMENT**

This is defined as:

- any unwanted sexual advances, or unwelcome requests for sexual favours; or
- other unwelcome conduct of a sexual nature; and
- in the circumstances a reasonable person would have expected you to be offended, humiliated or intimidated by the behaviour.

Both verbal and non-verbal behaviours may constitute sexual harassment. Depending on the circumstances, the following could be sexual harassment:

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- staring or leering in a sexual manner;
- unwelcome wolf whistling;
- comments about a person's physical appearance or sexual characteristics;
- sexual or physical contact (slapping, kissing, touching, hugging);
- displaying or circulating sexual material (including by email, or by posting on the internet or social networking);
- intrusive questions about sexual activity.

3.5 COMPLAINT

A complaint is when an individual raises a concern about a problem or behaviour related to potential bullying, harassment or discrimination. A complaint of this nature will be dealt with in accordance with this Standard.

3.6 VICTIMISATION

Is when a person is punished or harassed for complaining about unfair treatment or because someone thinks they are about to raise a complaint or because they have been involved in a complaint.

4 RESPONSIBILITIES

4.1 MANAGER/ TEAM LEADER RESPONSIBILITIES

Managers and Team Leaders are responsible for ensuring harassment, discrimination or bullying behaviour is identified, managed and prevented. The consequences for allowing such inappropriate behaviour to continue are serious and include disciplinary action and/or personal and financial liability for bullying, harassment or discriminatory behaviour.

A Manager/Team Leader needs to ensure that:

- staff under their control are aware that any inappropriate behaviour will not be accepted, that complaints will be thoroughly investigated and that disciplinary action may be taken if appropriate;
- every matter which is brought to their attention or where they have some knowledge, should be treated as a serious matter and should be reported to the Human Resources Coordinator irrespective of whether a complaint is made; and
- they assist in providing a safe workplace culture of openness and honesty which contributes to the elimination of inappropriate behaviour.

4.2 STAFF RESPONSIBILITIES

It is the responsibility of all staff to respect the rights of others and behave in a manner that is free of bullying, harassment or discrimination. Staff can also offer support to a person if they become aware that they are being subjected to inappropriate behaviour. Staff can also report any matter regardless of whether they are personally involved in the issue.

Staff also have a responsibility to ensure that any complaints raised are not of a vexatious nature. Such claims may lead to disciplinary and/or legal action.

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4.3 HUMAN RESOURCES COORDINATOR

The Human Resources Coordinator is responsible for ensuring that where instances of inappropriate behaviour are identified, that investigations are managed fairly, consistently and in accordance with this Standard.

5 PROCEDURE

Delta Coal will not accept bullying, harassment or discriminatory behaviour and will take action where instances are identified. These issues will be dealt with:

- impartially and without prejudice;
- confidentially, involving only those people necessary to resolve the complaint;
- empathetically, sensitively and seriously; and
- as quickly as possible.

5.1 LODGING & RECEIVING A COMPLAINT

a. Lodging a Complaint

The complainant, if able, should tell the person who is engaging in inappropriate behaviour that it is not acceptable and/or offensive so that they have a chance to stop or change that behaviour.

If it cannot be resolved directly, or the employee is unwilling to speak directly to the other person who they believe is acting inappropriately, then employees are strongly encouraged to speak to their Manager, Team Leader, or another more senior person to make the complaint.

A complaint can be lodged internally or externally (e.g. Anti Discrimination Board, Union). Delta encourages employees to lodge complaints internally before attempting to resolve the complaint with external involvement.

A complaint should be as detailed as possible. Complainants should provide, where possible identification of parties, dates, times, witnesses and other relevant circumstances.

b. Dealing with Complaints

Following a review of a complaint (including discussions with the complainant) it may be determined that no action is to be undertaken. This may be due to a number of reasons, including lack of details surrounding the complaint, or determination that the complaint is unsubstantiated or vexatious. If a complaint is not to be actioned, the complainant will be advised in writing of this and the reason why the complaint is not being pursued.

Alternatively, depending upon the circumstances it may be deemed appropriate to seek other remedies to address any unwanted behaviour prior to commencing a formal investigation. This would be discussed with the complainant and may include the introduction of formal mediation between the parties.

Should a formal investigation be deemed necessary, Delta will convene a Committee to complete an investigation in line with this standard.

c. Reluctance to Lodge a Complaint or no Complaint

Sometimes an employee will report that they are being bullied or harassed but do not wish to proceed with the lodgement of a formal complaint. In these circumstances the employee should be advised of formal and informal options to resolve the matter.

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Where the employee still does not want to proceed with the complaint, depending on the individual circumstances there may still be a need to address the issue. Inappropriate behaviour could become a significant workplace risk and Delta has a responsibility to intervene to ensure the behaviour ceases.

Therefore, Delta may instigate action to address certain behaviour separate to the decision by the complainant not to proceed. If appropriate, Delta will need to investigate the conduct it is aware of and reach a conclusion even if the employee does not wish to lodge a formal complaint.

5.2 VICTIMISATION

Delta will take all necessary steps to ensure that people involved in a complaint are not victimised by anyone for coming forward with the complaint (either as a complainant or witness) or for helping to resolve the complaint.

Disciplinary action may be taken against an employee who engages in victimisation.

5.3 INVESTIGATING A COMPLAINT

a. Timeframe to Commence an Investigation

Investigations should commence as soon as practicable. In the interim a preliminary risk assessment is to be conducted by the Investigating Committee to determine if any immediate action is required.

b. Initial Advice Provided to the Complainant and Respondent

The complainant and the respondent have rights and responsibilities during the process and should be provided with the following information:

- any action that is to be taken immediately;
- there is no assumption of guilt or innocence;
- an overview of how the complaint will be managed;
- they have an obligation to ensure that confidentiality is maintained;
- that all parties will be given the opportunity to put forward their case;
- access to EAP services;
- the right to seek independent advice; and
- the right to have a support person.

In addition, the respondent should be advised:

- the substance of the complaint in the first instance;
- that they will be provided with a document outlining the specific allegations;
- that they will be given reasonable opportunity to respond to the complaint; and
- that where appropriate, disciplinary and/or other action may result.

All parties interviewed as part of an investigation are entitled to have a Support Person attend all meetings. The Support Person is not to play an active role during any interview, but is to provide support to the individual and to act as a witness to all proceedings. Should a Support Person have a potential/perceived conflict of interest in the matter then an alternative support person will be arranged.

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c. Interviews

The complainant, respondent and any other relevant party will be invited to attend an interview to enable the Committee to fully investigate the complaint that has been made.

A record of the individual's interview will be forwarded to them as soon as practicable. The interview notes should be reviewed to ensure agreement/accuracy. The written statement must include sufficient detail to accurately reflect the record of interview. The agreed interview notes should be signed by the employee and the Investigation Committee.

When interviewing the respondent, the following steps need to be implemented:

- provide the respondent with a document that outlines the specific allegations that have been made and the nature of the complaint (including dates, times, locations etc.).
- should other allegations be uncovered during the investigation that needs to be addressed as a part of this review, these will be documented and provided to the respondent for comment.

Once the respondent is provided with details of the complaint, they can elect to respond immediately or to reconvene the meeting at a later but reasonable time.

Where Delta has elected to investigate a matter in the absence of a formal complaint, the initial meeting with the respondent will be to inform them of the investigation that is to be undertaken. In this instance, the documentation provided will outline the type of behaviour that is to form the basis of the review to be conducted by Delta.

d. Investigation Report

The investigation should be conducted in a discreet, thorough and impartial manner. An investigation report will be prepared for the Mine Manager.

The investigation report should include an outline of:

- the facts of the particular complaint;
- nature of the complaint;
- all persons interviewed (and when) and all other information relied upon. Copies of the signed statements and documents should be appended to the report;
- provide an outline of the findings of the investigation, specifically determining if complaints are substantiated, unsubstantiated or undetermined based on whether the:
 - Complaint is substantiated - On the balance of probability the issues complained of occurred;
 - Complaint is unsubstantiated - On the balance of probability the issues complained of did not occur; or
 - Complaint is undetermined - Insufficient evidence exists to determine whether or not the behaviour occurred.
- provide recommendations on appropriate course/s of action.

The possible course(s) of action will depend upon the nature of the complaint, the severity of the behaviour, the power balance between the complainant and the respondent and whether there is agreement that the

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alleged incident occurred. The aim is to resolve the complaint and to stop any further inappropriate behaviour.

Possible remedies if the conduct is substantiated include:

- an apology;
- mediation/conciliation;
- counselling;
- retraining; and
- disciplinary action.

Alternatively, a report may conclude the complaint is unsubstantiated or undetermined but may still make recommendations concerning the matter. This may include the use of mediation or other processes to assist all parties in the transition back to an effective working relationship.

e. Feedback on the Outcome of the Investigation

Both parties will be advised of the outcome (whether the complaint is substantiated, unsubstantiated or undetermined, the reasons for the decision and any follow-up action to be taken). This feedback will be provided by the relevant Senior Leadership Team Manager and/or a representative from the Investigation Committee. This feedback will be provided as soon as possible following approval of the report.

Parties should be reminded that the matter remains confidential. The nature of any disciplinary action undertaken as a result of an investigation will not be disclosed except to the individual involved.

If it is considered appropriate, for example, where ongoing monitoring is required, a Team Leader/Manager may be provided with relevant information regarding the complaint and/or investigation findings. The type of information (if any) that is to be provided will be determined in conjunction with the Investigation Committee and the Mine Manager and will be dependent on the nature of the complaint.

5.4 POSSIBLE DISCIPLINARY ACTION

If, as a result of the investigation, disciplinary action is considered, then any proposed action must be taken in accordance with the Discipline Standard for Delta Coal.

5.5 UNSUBSTANTIATED OR VEXATIOUS CLAIMS

The two main types of false claims involve misreporting of other events and claims that are simply "made up" vexatiously.

Staff who lodge such claims will be disciplined if the claim is found to be vexatious. All such instances will be reviewed against Delta's Discipline Standard. In addition, vexatious claims may also be dealt with through other forms of legal action.

5.6 CLOSING A FILE

All information gathered as part of the investigation will form part of the file.

No information regarding the complaint or the investigation should go on the parties' personnel file unless the investigation has resulted in disciplinary action.

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5.7 FOLLOW-UP & MONITORING

Contact should be made with the complainant by either an Investigating Officer or the Human Resources Manager to ensure that the complaint has been resolved. This follow-up should occur within one month of the investigation report being completed. Further action should be taken if ongoing issues exist.

Further reviews may be undertaken by the Investigating Committee or Human Resources Coordinator as appropriate.

6 REFERENCES

Delta Coal Enterprise Agreement 2019

Black Coal Mining Industry Award 2010

Anti-Discrimination Act 1977 (NSW)

Fair Work Act 2009 (Cth)

Dave McLean
Mine Manager

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