



Western Cape
Government

Western Cape Government Workplace Harassment Policy

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Strategic direction is hereby provided for the transversal implementation of the WCG Workplace Harassment Policy in terms of Section 7(3)(c)(iii) of the Public Service Act, 1994.

Dr Harry Clifton Malila

Digitally signed by Dr Harry Clifton Malila
Date: 2023.05.26 17:42:40 +02'00'

DR H MALILA
DIRECTOR-GENERAL

DATE:

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TERMINOLOGY AND CONCEPT CLARIFICATION

Terminology has been updated in terms of the International Labour Organisation Standards on Harassment, C190 - Violence and Harassment Convention, 2019 (No. 190), the Employment Equity Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, the Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, No. R. 1890, March 2022, as well as the United Nations High Commissioner for Refugees and Human Rights. Unless the context indicates otherwise, these terms and concepts shall have the following meaning:

Term/Concept	Meaning and clarification
Alleged	Refers to a declaration or a claim, made in the absence of tested evidence, that an incident or event occurred with specified illegal or undesirable conduct.
Alleged Perpetrator	A person or employee who is being accused of carrying out an act of harassment.
Bullying	Unwanted conduct which is persistent or a single incident which is serious and insults, demeans, humiliates, lowers self-esteem or self-confidence, or creates a hostile or intimidating environment or is calculated to indicate by submission or by actual or threatened adverse consequences, which includes the abuse of coercive power by either an individual or a group of individuals.
Complainant	Refers to the employee(s) or person(s) making the complaint.
Complaint	In the context of this policy, it refers to a report of harassment.
Cyber Bullying	Refers to any act (for example text, cartoons, memes, and web posts) on any form of online communication that is committed, assisted, or aggravated in part or fully using Information and Communications Technology, and or technological devices, which has the same effect as conventional bullying.
Discrimination	Means any act or omission, including a policy, law, rule, practice, condition, or situation which directly or indirectly imposes burdens, obligations or disadvantage on; or withholds benefits, opportunities or advantages from, any person on one or more of the prohibited grounds, namely: race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language,

Term/Concept	Meaning and clarification
	<p>birth and HIV & AIDS status; or any other ground where discrimination based on that other ground causes or perpetuates systemic disadvantage undermines human dignity or adversely affects the equal enjoyment of a person's rights and freedoms in a serious manner that is comparable to discrimination on a ground in section 6(1) of the Employment Equity Act, 1998 (EEA).</p>
Employer	<p>In the context of this policy, it refers to the Head of the Department.</p>
Gender-based violence (GBV)	<p>Gender-Based violence refers to harmful acts directed at an individual based on their gender. It is rooted in gender inequality, the abuse of power and harmful norms. Gender-based violence can include sexual, physical, mental, and economic harm inflicted in public or in private. It also includes threats of violence, coercion, and manipulation. This can take many forms such as intimate partner violence, sexual violence, child marriage, female genital mutilation and so-called 'honour crimes'. The consequences of gender-based violence are devastating and can have life-long repercussions for survivors. It can even lead to death.¹</p> <p>For the purposes of this policy GBV will be regarded as a form of harassment that happened in the workplace</p>
Harassment Contact Advisor	<p>Departments to nominate employee/s to act as Harassment Contact Advisor (replacing previous Sexual Harassment Officer) for reporting purposes and to fulfil an advisory role in relation to dealing with and referring of cases to the relevant Employee Relations Directorate. It needs to be noted that they are not trauma counsellors.</p>
Incident	<p>In the context of this policy, refers to an incident or occurrence of harassment as defined in this policy. It is important to note that harassment does not need to be a repeated conduct and can be a single incident.</p>
Intimidation	<p>When a person without lawful reason threatens, compels or persuades a particular person to do or to abstain from doing a certain thing or act. An attempt to do so will also be regarded as intentional conduct that "would</p>

¹ United Nations High Commissioner for Refugees

Term/Concept	Meaning and clarification
	cause a reasonable person" to fear injury or harm, physical, psychologically or otherwise.
Malicious Complaints	An allegation of harassment, as defined, made against an employee, which is unfounded, frivolous, or malicious. It will be deemed to be a serious transgression by the person who made the malicious complaint, and such person may be subject to disciplinary and/or any other appropriate action.
Organised Labour	Refers to the collective representation of employees through trade unions and other labour organisations, advocating for workers' rights, interests, and welfare in the workplace and beyond. Organised Labour is a stakeholder in assisting with the prevention and elimination of harassment in the workplace.
People Manager	Means the same as supervisor.
Protected disclosure	A disclosure that contains information about unlawful and wrongful conduct, made in good faith and to the right person or body as per the WCG Whistleblowing Policy and/or the Protected Disclosures Act, 2000 (Act 26 of 2000).
Psychosocial Risks	Refers to the psychosocial hazards and risks related to the structural or organisational features of a person's work. Harassment is considered a psychosocial risk and a potential work-related stress factor.
Retaliation	The action of hurting someone or doing something harmful to someone in response to something they have done or said that was harmful to the retaliator.
Sexual Harassment	Is any unwanted conduct, which is sexual in nature, <i>within conjunction with</i> unacceptable behaviours, practices or threats and can be physical, verbal or non-verbal. The conduct must impair the dignity of the person affected or create a negative or hostile environment. Sexual harassment is relevant in a workplace if granting sexual favours becomes a condition of employment, or refusal to do so affects employment decisions, or if it affects the employees' work or creates a hostile environment.
Stakeholder	Refers to an individual, group, or organisation that has a vested interest or concern in the policy's outcomes or decisions. They can influence or be

Term/Concept	Meaning and clarification
	influenced by the policy and may include Heads of Department, employees, organised labour and other entities relevant to the policy's impact or success.
Victimisation	Means intentionally treating someone in an unfair manner and refers to the action of singling someone out for cruel or unjust treatment.
Workplace	Includes all WCG premises, as well as all other areas/spaces where an alleged act of harassment was perpetrated by an employee or service provider of the WCG, during the execution of such official duties. The protection of employees against harassment applies in any situation in which the employee is working, or which is related to their work. This includes, but not limited to work related trips, travel, training, events, or social activities.
Workplace bullying	As a form of harassment, means unwanted conduct in the workplace which is persistent or serious and demeans, humiliates and often degrades so as to create a hostile or intimidating work environment or is calculated to force and induce behaviour that is submissive in nature by actual or threatened adverse consequences. It can often be described as the assertion of power through aggression, work interference or work sabotage — which prevents work from getting done.
Workplace Harassment	Harassment includes violence, physical abuse, psychological abuse, emotional abuse, sexual abuse, gender-based violence, sexual harassment, verbal abuse, passive-aggressive harassment, online harassment, workplace bullying and racial, ethnic or social origin harassment. Harassment is unwanted or unsolicited conduct which includes unacceptable behaviours, practices, or threats, whether through a single occurrence or repeated occurrences, that is aimed at, result in, or are likely to result in physical, psychological, sexual, economic and/or financial harm. Harassment can also be "vertical" or "horizontal". Vertical harassment refers to harassment between the employer/ people manager and employee. Horizontal harassment refers to harassment between employees in the same position on the same level. For the purpose of this policy the terms "harassment" and "workplace harassment" means the same and are used interchangeably throughout this Policy.

ABBREVIATIONS

Unless the context indicates otherwise, the following terms are used in their abbreviated form in the document:

Abbreviation	Meaning
CCPWCP	Co-ordinating Chamber of the PSCBC for the Western Cape Province
CRU	Corporate Relations Unit
DER	Directorate Employee Relations
DG	Director-General
EEA	Employment Equity Act 55 of 1998
EWP	Employee Wellness Programme
GBV	Gender Based Violence
HCA	Harassment Contact Advisor
HOD	Head of Department
OB	Organisational Behaviour
POPIA	Protection of Personal Information Act 4 of 2013
PTM	Provincial Top Management
WCG	Western Cape Government

WCG VALUES

The Western Cape Government (WCG) identified six (6) core values that embody a common understanding of the expected behaviour of all WCG employees. These principles also constitute the policy principles governing the Policy.



Caring

To care for those we serve and work with.



Competence

The ability and capacity to do the job we were employed to do.



Accountability

We take responsibility.



Integrity

To be honest and do the right thing.



Innovation

To be open to new ideas and develop creative solutions to problems in a resourceful way.



Responsiveness

To serve the needs of our citizens and employees.

1. INTRODUCTION

- 1.1 Harassment against all employees in the workplace is often an abuse of power. This Policy recognises that harassment particularly affects employees in vulnerable employment who, while covered by labour legislation, may have in practice poor access to the exercise of labour rights.
- 1.2 Any form of harassment is considered a violation of human rights, which is unlawful in South Africa and thus prohibited within the Western Cape Government (WCG).
- 1.3 As recognised in terms of the definitions of the International Labour Organisation, Sexual Harassment, Workplace Bullying and Violence (henceforth referred to as “Harassment”) is a global phenomenon and a serious matter that negatively impacts workplaces across the world.²
- 1.4 Harassment is classed as unfair discrimination (and thus falls within the jurisdiction of the Employment Equity Act 55 of 1998 (EEA)) and does not only result in a violation of human rights, but may also lead to poor morale among employees, unexplained absenteeism, late coming and poor concentration at work. The WCG will therefore aim to maintain a safe and healthy working environment where every employee and member of the public has the right to be treated with dignity and respect. Any person lodging a complaint will be protected by the principles and provisions of this policy as well as the general applicable provisions as determined by law.
- 1.5 All reported allegations/incidents of harassment in the workplace will be treated seriously, investigated expeditiously with sensitivity and strict confidentiality. The alleged perpetrator may face disciplinary action in terms of the Disciplinary Code and Procedure for the Public Service which may lead to dismissal.
- 1.6 The WCG Harassment in the Workplace Policy needs to be read in conjunction with the Code of Good Practice on the prevention and elimination of harassment in the workplace and Section 62 of the EEA and any collective agreement state provisions.

² International Labour Organisation C190 - Violence and Harassment Convention, 2019 (No. 190)

2. HARASSMENT CONCEPTUAL FRAMEWORK

2.1 In consideration of the definitions of the International Labour Organisation and the Code of Good Practice³, the term Harassment in the WCG encapsulates the following:

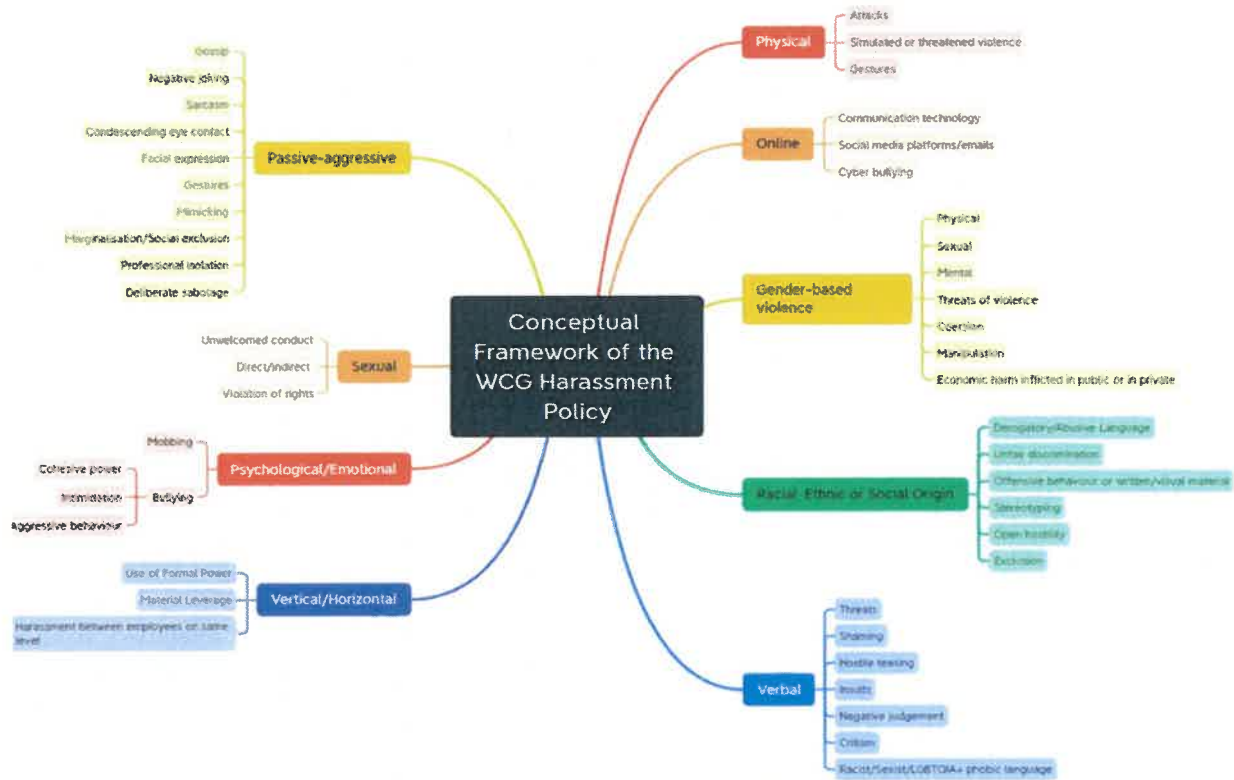


Figure 1: The Conceptual Framework of the WCG Harassment Policy

3. POLICY STATEMENT

3.1 The WCG condemns and shall not tolerate any conduct which directly or indirectly constitutes a form of harassment (as described in this policy) that discriminates against any of its employees and/or the public, and/or negatively affects its work environment and/or service delivery obligations.

³ Code of Good Practice on the prevention and elimination of Harassment in the Workplace (Government Gazette, 18 March 2022).

- 3.2 The WCG therefore expects and promotes the highest standards of personal and professional conduct.
- 3.3 Every employee will be respected, treated fairly, and allowed to pursue his/her/their career aspirations, within a safe work environment. This includes creating a working environment that is free from any form of harassment and employees will be protected against victimisation, intimidation and/or retaliation for lodging complaints or making protected disclosures.
- 3.4 Employees who have been subjected to harassment in the workplace during the execution of such employee's official duties, have the right to lodge a complaint and the WCG, as employer, will investigate the complaint and take appropriate action as required.
- 3.5 Every employee of the WCG (regardless of rank or designation) has a responsibility and a role to play in contributing towards creating and maintaining a safe working environment which is free from harassment.
- 3.6 Failure to abide by this policy may lead to disciplinary action.
- 3.7 The WCG commits itself to educating employees as to the nature and effects of harassment in the workplace.

4. PURPOSE

- 4.1 The purpose of this transversal policy is to-
- 4.1.1 in line with the relevant national statutory prescripts and policy provisions, make all WCG employees aware of what constitutes harassment in the workplace, and their responsibilities in preventing and managing such incidents; and
 - 4.1.2 provide guidance in relation to the procedure and process in dealing with allegations of harassment.
 - 4.1.3 endeavour to achieve a workplace that is free from all forms of harassment.

5. SCOPE OF APPLICATION

- 5.1 This policy applies to all WCG office bearers and employees employed in terms of the Public Service and Educators Act.

- 5.2 This policy covers –
 - 5.2.1 any repeated incident or conduct that unfairly or unreasonably offends, humiliates, intimidates, belittles, undermines, scares, excludes, or embarrasses anyone it is directed at, or anyone who sees or overhears it; and
 - 5.2.2 any incident or conduct which may constitute any form of harassment as defined.
- 5.3 This policy does not cover the following:
 - 5.3.1 Work-related interpersonal conflict, occasional differences of opinion or disagreement with decisions and resolving administrative problems.
 - 5.3.2 Reasonable and appropriate corrective management of an employee's poor work performance or conduct.
 - 5.3.3 Enforcement of lawful directives issued by the WCG.

6. OBJECTIVES

- 6.1 The objectives of this policy are to –
 - 6.1.1 define and conceptualise harassment in the workplace;
 - 6.1.2 explain the procedure to be followed in reporting alleged harassment;
 - 6.1.3 explain the process of managing and dealing with harassment; and
 - 6.1.4 create and maintain a working environment in which the dignity of employees is respected and free of harassment through the implementation and practice of this policy.

7. REGULATORY FRAMEWORK

- 7.1 The WCG accepts accountability for the management of harassment in the workplace and subscribes to the constitutional values of human dignity and equality and the legal framework in which it is required to operate. Read in conjunction with current legislation, the WCG Harassment Policy draws its legal mandate from, but is not limited to:
 - 7.1.1 Constitution of the Republic of South Africa, 1996
 - 7.1.2 Public Service Act, 103 of 1994.
 - 7.1.3 Public Service Regulations, 2016.
 - 7.1.4 Labour Relations Act, 66 of 1995.
 - 7.1.5 Employment Equity Act, 55 of 1998.
 - 7.1.6 Basic Conditions of Employment Act, 75 of 1997.
 - 7.1.7 The Occupational Health and Safety Act, 85 of 1993.

- 7.1.8 Protection from Harassment Act, 17 of 2011.
- 7.1.9 Promotion of Equality and Prevention of Unfair Discrimination Act, 4 of 2000.
- 7.1.10 Protection of Personal Information Act, 4 of 2013.
- 7.1.11 Disciplinary Code and Procedure for the Public Service (PSCBC Resolution 1/2003).
- 7.1.12 SMS Handbook, 2003.
- 7.1.13 Personnel Administrative Measures (PAM), 2016.
- 7.1.14 The Protected Disclosures Act, 26 of 2000.
- 7.1.15 WCG Whistleblowing Policy, 2018.
- 7.1.16 Code of Good Practice on the Prevention and Elimination of Harassment in the Workplace, 2022.

8. AUTHORISATION

- 8.1 This policy underwent an extensive consultation process with all stakeholders in accordance with the WCG Policy Mandating Protocol and was subsequently declared mandated. The Director-General determined this as a transversal policy under Section 7(3)(c)(iii) of the Public Service Act to be effective from the date of its signing.
- 8.2 The Western Cape Provincial Government Sexual Harassment Policy 2011 is herewith repealed.

9. THE MANAGEMENT OF HARASSMENT IN THE WCG

9.1 General

- 9.1.1 The WCG will not tolerate any form of harassment and disciplinary action may be taken against any employee who -
 - a) participates in any conduct classified as harassment in the workplace; or
 - b) victimises, intimidates or retaliates against an employee who has lodged a complaint about harassment in the workplace.

9.2 Procedure to follow

- 9.2.1 A procedural guide on the handling of allegations of harassment is attached to this policy as Annexure A.

10. ROLES AND RESPONSIBILITIES

10.1 All WCG employees (regardless of rank or position) shall -

10.1.1 respect all WCG employees, as well as all members of public;

10.1.2 provide full support when required to assist with an enquiry;

10.1.3 report acts of harassment;

10.1.4 at all times be discreet and maintain strict confidentiality;

10.1.5 actively contribute to a workplace that is free from harassment;

10.1.6 refrain from performing and/or participating in conduct and/or acts regarded as harassment;
and

10.1.7 encourage a culture of whistleblowing without fear of victimisation, intimidation or harassment.

10.2 Harassment Contact Advisors (HCA)

10.2.1 The designated HCA acts in an advisory and supporting capacity and will be required to be trained as Harassment Contact Advisor who will, *inter alia*, provide information and support to persons who have reported an alleged incident of harassment, or who believe they have been harassed.

10.2.2 HCA will contact the Branch People Management, Chief Directorate People Management Practices, Directorate Employee Relations and arrange to attend HCA training as soon as possible after appointment.

10.2.3 The HCA, amongst other things, should advise:

- a) The complainant of the informal and formal procedure available to deal with harassment;
- b) The complainant that when reporting harassment, employees may choose to handle the complaint informally or formally, however employees must be advised that the employer may choose to proceed with a formal procedure if, in the opinion of the employer, the allegation poses a threat to the employer's obligation to maintain a safe workplace.
- c) That the matter will be dealt with confidentially; and

- d) That the complainant should be assured that steps will be taken to ensure they are protected should they be victimised or intimidated because of seeking advice or following either the informal or formal procedure.

10.2.4 HCA will, where required, refer those employees who are experiencing or have experienced harassment to EWP:

- a) arrange for complainants to attend counselling and provide complainants with information about available counselling services as well as information on how to access independent counselling services;
- b) refer complaints of harassment to be investigated by the applicable Directorate Employee Relations (DER) whose responsibility it is to assess the risk to the complainant and others in the workplace, amongst others, the possible suspension of the perpetrator;
- c) follow up and maintain contact with the complainant(s) to ensure that the situation has been resolved and that he/she/they are supported in their workplace;
- d) provide records to the relevant DER of harassment complaints in the specific department concerned who in turn will be required to, on a quarterly basis, inform the Chief Directorate People Management Practices, The Department of the Premier, of reported harassment in their area of responsibility; and
- e) maintain and respect strict confidentiality and as such all data that is provided for reporting purposes must be compliant with the Protection of Personal Information Act, 2013.
- f) with the consent of the complainant, to support and assist the relevant DER, when so requested.

10.3 The relevant Directorate responsible for Employee Relations shall:

- 10.3.1 perform an advocacy role in the workplace by arranging and delivering awareness-raising programmes for employees in conjunction with people managers/supervisors in the elimination of harassment in the workplace;
- 10.3.2 develop and circulate relevant educative material in the workplace;
- 10.3.3 liaise with senior management to ensure that anyone engaged to provide a service for the WCG is advised of the provisions of this policy;
- 10.3.4 ensure that the appropriate steps are taken in terms of this policy, as well as the disciplinary code and procedure for the Public Service.
- 10.3.5 act as the Champion of the WCG's endeavours to achieve a workplace free of harassment.

- 10.3.6 train and empower HCA to fulfil their responsibilities as described in paragraph 9.2.3. Once the HCA has notified the DER of a complaint received, the relevant DER will, investigate the complaint in order to assess the risk to the complainant and others in the workplace; and
- a) make recommendations to the complainant as to the best course of action in relation to following an informal or formal process;
 - b) make recommendations to the employer regarding whether precautionary suspension or transfer of the alleged harasser should be considered;
 - c) to monitor and evaluate progress in relation to the informal conciliation and resolution of harassment cases that has been reported to the relevant DER;
 - d) follow up and maintain contact with the complainant(s) to ensure that the situation has been resolved and that he/she/they are supported in their workplace;
 - e) report an allegation of harassment by an external stakeholder to the HOD;
 - f) perform an educative role in the elimination of harassment in the workplace;
 - g) in collaboration with Organisational Behaviour (OB) circulate relevant educative material in the workplace;
 - h) coordinate with the HCA to arrange and deliver awareness-raising programmes for employees in conjunction with people managers/supervisors;
 - i) maintain records on harassment complaints in the specific institution concerned and on a quarterly basis inform the Chief Directorate People Management Practices: The Department of the Premier, people managers/supervisors of the incidence of harassment occurring in their area of responsibility;
 - j) maintain and respect confidentiality and as such all data that is provided for reporting purposes must comply with the provisions of the Protection of Personal Information Act, 2013; and
 - k) with the consent of the complainant, to support and assist HCA, when requested.
- 10.4 Directorate Corporate Communication is responsible to support awareness raising programmes or projects in order to champion the importance of a harassment free workplace.
- 10.5 The Directorate Organisation Behaviour, Sub-Directorate: Employee Health and Wellness is responsible for Employee Health and Wellness services to all employees who require such services.

10.6 People manager/supervisor will be required to –

- 10.6.1 as far as reasonably possible, create and maintain a workplace free of harassment;
- 10.6.2 assume the responsibilities of the implementation of this policy for their team;
- 10.6.3 ensure all their employees are aware and made familiar with this policy;
- 10.6.4 inform employees of the seriousness of harassment;
- 10.6.5 treat all alleged incidents in a serious light;
- 10.6.6 refer all informal and/or formal complaints lodged with him/her to the HCA for further handling and referral to the relevant DER; and
- 10.6.7 ensure their own and employees' conduct is in line with the provisions of this policy.

10.7 Heads of Department

10.7.1 While the relevant Corporate Communications Directorate is responsible for the communication of this Policy to all employees, HOD's must take all reasonable steps to ensure that their employees are informed of this Policy.

10.7.2 HOD's are required to –

- a) communicate regularly by written and oral means, the seriousness of the issue, the existence of this Policy and its salient aspects, as well as the requirement to maintain confidentiality in respect of all information pertaining to reported incidents, to all employees within their departments and to third parties interacting with their departments;
- b) communicate regularly with all people managers/supervisors in their departments concerning their responsibilities regarding the implementation of this Policy;
- c) designate the employee responsible to perform the functions of the Harassment Contact Advisor (HCA⁴);
- d) ensure that the HCA attends the relevant training interventions and has access to the necessary resources to fulfil his/her/their assigned functions; and
- e) if a complaint is lodged with the HOD, he/she/they shall refer the said complaint to the HCA to take appropriate action.

⁴ Noting that this responsibility may not warrant the creation of any additional posts on the departmental establishment, but rather result in the duties and responsibilities of a Harassment Contact Advisor being added to the daily tasks of an employee.

11. NON-COMPLIANCE

- 11.1 Non-compliance with the provisions of this policy may be dealt with in terms of the Disciplinary Code and Procedures of the Public Service; the Educator's Disciplinary Procedures, the SMS Handbook and in terms of the provisions provided for in this policy.

12. DATE OF IMPLEMENTATION

- 12.1 The Western Cape Provincial Government Sexual Harassment Policy as implemented on 20 May 2011 is herewith repealed.
- 12.2 The Western Cape Government Policy on Harassment has been declared duly consulted in the CCPWCP on 24 April 2023 and is implemented with effect from the signing of this policy.
- 12.3 The relevant HOD will be responsible for the implementation and championing of a harassment free WCG work environment within the respective department.

13. POLICY REVIEW

- 13.1 Policy review will be undertaken in terms of the Policy Development and Renewal Program.

PROCEDURES FOR HANDLING ALLEGATIONS OF HARASSMENT

1. GENERAL

- 1.1 All cases of harassment are recognised as a serious matter by the WCG and therefore, complaints shall, as soon as is reasonably possible in the circumstances⁵, without undue delay, be dealt with in a sensitive, confidential, efficient, effective manner.
- 1.2 The WCG recognises that an employee who is accused of or who is being investigated for an allegation of harassment, may experience trauma. All complaints will be investigated with due regard to the rights of the parties concerned.
- 1.3 A complainant reporting a case of harassment may elect to utilise the informal mediation process or the formal disciplinary process to address the complaint.
- 1.4 This **informal mediation process**, if so, chosen by the complainant, will involve the intervention and assistance of the departmental HCA as a mediator and independent third party.
- 1.5 Informal mediation process is a confidential and voluntary process (to all parties) in which the HCA assists parties in reaching a resolution. An informal facilitation process provides an effective means of resolving conflict at the lowest level possible and as an alternative to formal proceedings. This allows the affected employees the opportunity to discuss the issues raised and consequently determine the underlying concerns or potential misunderstandings. Furthermore, options on reaching an agreement may be explored to ultimately resolve the issues in a written agreement. This would however not be applicable if a party withdrew or abstained. Any case of harassment may be dealt with in terms of the Disciplinary Code and Procedure if so, elected by the complainant, and at any stage.
- 1.6 An employee who is a **victim of alleged harassment** by a fellow employee may lodge a complaint with either his/her/their people manager/supervisor, HCA or HOD if the alleged

⁵ Considering the nature of sexual harassment in that it is a sensitive issue, that the complainant may fear reprisal and the relative positions of the complainant and the alleged perpetrator in the workplace.

conduct has occurred during the course of the alleged perpetrator's employment in which instance the disciplinary procedure, as provided for within the Public Service, may be applied unless the informal mediation process is elected.

- 1.7 An employee who **reports alleged harassment or provides information** during the investigation of a complaint must act in good faith. It is a violation of this Policy for an employee or person to knowingly make a false harassment complaint or knowingly provide false information during the investigation of a complaint. Such conduct may, in the case of employees, lead to disciplinary action in terms of the Disciplinary Code and Procedures of the Public Service/Disciplinary Code for Educators and SMS Handbook.
- 1.8 An employee who is harassed during performing their official duties has the right to institute separate criminal and/or civil proceedings against the alleged perpetrator. The employee's rights are in no way limited by the provisions of this policy.
- 1.9 If the complainant has lodged a complaint directly to either the HOD, or, the people manager/supervisor, the complaint must as soon as possible be referred to the HCA for further handling. Failure by the people manager / supervisor to refer the matter to the HCA will be viewed in a serious light and may lead to disciplinary action. (Note: an employee may opt to report the matter directly to the DER).
- 1.10 An HCA may approach the perpetrator whilst, without revealing the identity of the complainant, indicate to him/her/them that certain forms of conduct constitute harassment and are deemed to be offensive, unsafe and unwelcome. Added to that the said behaviour makes employees feel uncomfortable.
 - 1.10.1. The HCA must follow up and maintain contact with the complainant(s) to ensure –
 - a) that the complainant(s) feel supported; and
 - b) that the employer has done all that was reasonably practicable to eliminate the harassment.
 - 1.10.2. An investigation, depending on the nature and complexities, should be finalised as soon as possible.
- 1.11. The complainant and alleged perpetrator may also elect to be represented by a union representative or fellow employee during the informal mediation process.

2. INFORMAL MEDIATION PROCESS

- 2.1 The purpose of an informal mediation process is to assist the complainant, *inter alia* in the process of informing the alleged perpetrator that the conduct in question is not welcome; offends the complainant; makes the complainant feel uncomfortable; interferes with the complainant's work, makes them feel unsafe; and to ensure that such offensive behaviour does not re-occur and that there are no reprisals against the complainant.
- 2.2 The following steps will be followed when a complainant requests an informal mediation process:
- 2.2.1 As soon as the alleged incident of harassment has been reported to the HCA, the HCA will inform the complainant(s) on how the informal mediation process will unfold.
 - 2.2.2 The HCA must, as soon as possible, arrange a meeting with the alleged perpetrator.
 - 2.2.3 The HCA must explain the process to parties and ensure that an attendance register, and minutes are kept.
 - 2.2.4 During the informal mediation process the HCA will facilitate the meeting between the complainant and the alleged perpetrator who will be informed that the conduct was perceived as unwelcome.
 - 2.2.5 Should the matter be resolved during the informal mediation process, the parties must, with the assistance of the HCA, record in writing that the matter is resolved.
 - 2.2.6 During the informal mediation process, the complainant may still elect to refer the matter for formal disciplinary action.
 - 2.2.7 If necessary, the HCA may refer the perpetrator for counselling through the Directorate Organisation Behaviour, Sub-Directorate: Employee Health and Wellness regarding his/her/their unwelcome conduct.

3. FORMAL DISCIPLINARY PROCESS

Note that the processes, rights and responsibilities are depicted in the Disciplinary Code, Procedures for the Public Service, the SMS Handbook and the Employment of Educators Act.

- 3.1 An official complaint is a formal written statement setting out the facts and circumstances of the alleged harassment.

- 3.2 A formal disciplinary process may be followed in cases where –
- 3.2.1 an informal mediation process has been followed, however the harassment continued;
 - 3.2.2 the complainant has chosen to follow a formal disciplinary process; and/or
 - 3.2.3 the alleged perpetrator has chosen not to participate in the informal mediation process.
- 3.3 The following steps will be followed when a complainant requests that a formal disciplinary process be followed:
- 3.3.1 The complainant must lodge a written complaint to his/her/their people manager/supervisor and/or HCA. The people manager/supervisor shall, if the complaint is lodged with him/her/them, immediately refer the complaint to the HCA for further handling.
- 3.4 In cases where the complainant is unwilling to proceed with a formal procedure, the HCA must still assess the risk to other employees. In assessing the risk, the HCA must consider the severity of the harassment and whether the perpetrator has a history of harassment. If it appears that the HCA, after a proper investigation, is of the opinion that there is a significant risk of harm to other employees a formal procedure must be followed irrespective of the wishes of the complainant. In referring the matter to the relevant HOD, the HCA must provide -
- 3.4.1 a description of the alleged conduct;
 - 3.4.2 the complainant's reasons in writing for his/her/their unwillingness to pursue the matter further or to be called as a witness; and
 - 3.4.3 compelling reasons in support of a formal disciplinary process, inclusive of risks to other employees, the complainant as well as the risks to the employer's obligation to maintain a safe workplace.
- 3.5 The HOD must refer the matter to the relevant DER who will investigate the matter and make the appropriate recommendation(s).

Procedures for handling allegations of harassment

INFORMAL	FORMAL
<p>The Harassments Contact Officer (HCO) facilitates informal round table discussion between complainant and harasser</p> <p>OR</p> <p>The HCO conducts an informal discussion with the harasser about the behaviour</p> <p>OR</p> <p>Complainant referred to the relevant supervisor to implement progressive discipline</p>	<p>Reserved for more serious complaints</p> <p>The HCO conducts the initial investigation</p> <p>Matter is referred to the relevant Dir: ER for formal investigation</p> <p>May lead to misconduct charges, Disciplinary Hearing, and Possible Dismissal</p>

3.6 Time Frames

The general time frame placed is for addressing a harassment complaint is ninety (90) days.

3.7 Disciplinary Sanctions

3.7.1 The sanctions must be proportionate to the seriousness of the harassment in question, and should be provided that:

- a) Warnings may be issued for minor instances of harassment. A warning issued to a perpetrator must describe the essence of the discriminatory misconduct.
- b) Dismissal may ensue for continued minor instances of harassment. A warning issued to a perpetrator must describe the essence of discriminatory misconduct.
- c) In appropriate circumstances upon being found guilty of harassment, a perpetrator may be transferred within the workplace or to another workplace within the company; and
- d) A complainant about harassment has the right to lay a criminal charge or institute civil proceedings against the alleged perpetrator.

3.8 Recourse available

3.8.1 Should this matter not be satisfactorily resolved by the internal formal procedure outlined above, a complainant of harassment may lodge a dispute against the employer. In some instances, a complaint of harassment may become a "grievance" if the employer fails to act on a complaint of harassment.

3.8.2 Claims of harassment under PEPUDA may be referred to the Equality Court. Similarly, an alleged perpetrator of harassment may refer a dispute arising from disciplinary action taken by the employer to the CCMA or, where appropriate, the Labour Court; and it will be disciplinary offence to victimise or retaliate against a complainant who in good faith lodges a grievance of harassment.

4. CONFIDENTIALITY

4.1 All complaints must, in line with the prescripts of POPIA, be investigated, and disciplinary action(s) managed with the strictest confidentiality while still ensuring that the rights of the affected person(s) and/or complainant/s are upheld.

4.2 Employers and employees must ensure that complaints about harassment are investigated and handled in a manner that ensures that the identities of the persons involved are kept confidential for the purpose of protecting the confidentiality of all parties involved.

4.3 All internal and external communications related to an incident of harassment should be treated as confidential.

4.4 Considerations of confidentiality do not preclude WCG from taking appropriate steps to protect the safety or dignity of employees, either during the conduct of the investigation or subsequently.

4.5 In cases of sexual harassment, the parties concerned must endeavour to ensure confidentiality in the disciplinary inquiry.

- 4.6 Only parties designated to handling disciplinary cases as well as the aggrieved person's, representatives, the alleged perpetrator, witnesses when giving evidence and an interpreter, if required, should be present in the disciplinary inquiry.
- 4.7 WCG is required to disclose to the complainant, the perpetrator and/or their representatives, all relevant information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this policy.

5. OTHER

- 5.1 Employees who experience or have recently experienced emotional, physical or psychological distress because of harassment are encouraged to contact the Directorate Organisation Behaviour, Sub-Directorate: Employee Health and Wellness. As a service provider for the WCG, the Employee Health and Wellness Programme provides services to support and assist these employees in overcoming their personal challenges and difficulties.
- 5.2 These interventions provided by the Directorate Organisation Behaviour, Sub-Directorate: Employee Health and Wellness who aim to support the employee(s) in managing and dealing with different forms of harassment.

Email: Karen.Scholtz@westerncape.gov.za

Tel: +27 21 483 6143

Department of the Premier

Chief Directorate: People Management Practices

Chief Director: Louise Esterhuysen

www.westerncape.gov.za



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