

# BSES Limited - Equal Employment Opportunity and Anti-Discrimination



**Policy - BSES Limited (BSES) aims to apply the best practice principles of equal employment opportunity (EEO) and to provide a work environment free from unlawful discrimination and harassment in employment related matters.**

## **DISCRIMINATION**

*Discrimination* is treating one person or group of people less favourably than another, or others.

Discrimination on the basis of a number of 'grounds' or 'attributes' has been made unlawful by state and federal legislation. Discrimination on the basis of any of the following grounds or attributes is prohibited by legislation:

- sex, relationship status, pregnancy, breastfeeding, parental status or family responsibilities;
- sexual preference, gender identity or lawful sexual activity;
- race;
- disability or impairment;
- age;
- political or religious belief or activity;
- trade union activity;

Discrimination on the basis of having an association with a person who has any of the attributes listed above may also be unlawful.

Unlawful discrimination can take many forms including:

- less favourable treatment;
- making assumptions about an individual or groups of people; and
- setting unreasonable conditions or requirements which impact disproportionately on a particular group based on a particular attribute,

and can be classified as either direct or indirect.

Direct discrimination occurs where someone is treated less favourably because of their sex, age, racial group etc. For example, if an employer refuses to hire someone because they are a woman, this is likely to be direct sex discrimination.

Indirect discrimination is where everyone is treated on the same terms according to a rule, policy or Company directive, but that rule, policy or company directive has the effect of being less favourable to people of a particular sex, age group, race, or other groupings listed above and that rule, policy or Company directive is not reasonable in all the circumstances. For example, an employer requiring a person with 10 years' experience to do a job may be discriminating against younger applicants unless it can establish that the condition was 'reasonable' in all the circumstances.

There are some exceptions under legislation, which apply in some situations, for example, because of the requirements of a particular job. If you are unsure about

whether an act is potentially discriminatory or whether an exemption might apply, you should contact your supervisor, the Company Secretary or the Chief Executive.

## **UNLAWFUL HARASSMENT**

Unlawful harassment is a form of unlawful discrimination. In general, unlawful harassment is any form of **conduct or** behaviour that is not wanted, is not asked for and a reasonable person ought to have known would:

- humiliate someone;
- offend someone; or
- intimidate someone

and where such conduct or behaviour is because of one of the unlawful reasons.

Harassment can take many forms. Depending on the context, any of the following behaviours could be unlawful harassment:

- sexual harassment;
- making jokes based on race, sexuality, pregnancy, disability and similar attributes;
- mimicking someone's accent, or the habits of someone with a disability;
- verbal abuse or comments that put down or stereotype a group of people, or an individual; and
- offensive gestures based on race, sexuality, pregnancy, disability etc;

This list is not exhaustive. It is simply an indication of the types of behaviour that may constitute harassment.

Harassment will not be specifically unlawful, if it is not based on one of the unlawful grounds. However, BSES expects its staff to treat each other and other people with whom they come into contact with as representatives of BSES with respect and courtesy. Even if it is not harassment that is unlawful it may amount to bullying behaviour, which may also be unlawful under occupational health and safety law.

Harassment does not have to be a series of incidents or an ongoing pattern of conduct or behaviour. Just one act can constitute harassment.

It is not a legally acceptable defence to claim that an individual did not mean or intend to humiliate, offend or intimidate someone. What is important is how the conduct or behaviour affects the person it is directed towards. People's reactions differ, and it is the way that a person perceives the conduct or behaviour that is important, even when there was no intention to harass or offend and even if others see the activity as trivial or inoffensive.

In addition there is specific legislation in relation to some of the forms of harassment as outlined above such as harassment on the basis of a disability, sex or race.

## **SEXUAL HARASSMENT**

Sexual harassment is unlawful conduct and can be described as any unwelcome conduct of a sexual nature that a reasonable person ought to have known would offend, humiliate or intimidate the person at whom the conduct is directed.

Sexual harassment can include the following behaviours:

- suggestive behaviour, such as leering;
- unnecessary physical contact such as deliberately brushing up against a person, fondling, touching, patting or massaging;
- making sexual jokes or offensive telephone calls, or sending offensive electronic mail messages, downloading or viewing offensive images from the internet, or displaying offensive photographs;
- sexual innuendos, propositioning or repeated unwanted requests for dates;
- intrusive questions about sexual activity;
- sexual assault (which is also a crime under the Criminal Code);
- invading someone's personal space;
- remarks of a sexual nature about a person's clothing or body; and
- unwelcome and inappropriate letters, telephone calls, electronic mail, or other communication.
- unwelcome requests for sexual favours; or
- unwelcome conduct of a sexual nature, including making a verbal or written statement of a sexual nature to someone, or in their presence.

This list is not exhaustive. It is simply an indication of the types of conduct or behaviour that may constitute sexual harassment.

It is important to understand that some of the above forms of sexual harassment may also constitute criminal behaviour and may be treated as a criminal offence. These include:

- sexual assault;
- physically molesting a person;
- indecent exposure;
- obscene phone calls and letters; and
- downloading, or viewing or sending certain materials from the internet.

Mutual attraction is not sexual harassment. Conduct which is welcome or consensual is not unlawful and friendships (sexual or otherwise) which develop between people who meet at work is a private concern. This is subject, of course, to this relationship not interfering with the individuals' ability to properly and productively perform their work.

Employees are encouraged to take great care before engaging in conduct which they believe to be consensual or welcome. It is very important to remember that some people may not feel comfortable telling someone that their conduct is unwelcome. This may be because of that person's personality or may be due to the relative status of the people involved eg an employee may find their manager's conduct to be unwelcome but may be too worried about the impact on their employment if they discuss this with their manager.

### **RACIAL HARASSMENT**

Racial harassment is unlawful conduct which is based on a person's race, national or ethnic origin or colour.

Racial harassment can include the following conduct or behaviours:

- intimidating gestures
- derogatory remarks about a person's skin colour or appearance
- unwelcome remarks about a person's cultural observances
- racist jokes
- negative stereotyping of a particular ethnic group
- racist graffiti

- physical threats or intimidation

This list is not exhaustive. It is simply an indication of the types of behaviour that may constitute racial harassment.

### **A serious offence**

It is important to note that in Queensland, individuals may be imprisoned for up to six months if found guilty of seriously offensive behaviour against a person on the ground of race, religion, sexuality or gender identity.

### **What are your obligations?**

Everyone at BSES has a legal obligation not to discriminate against or harass, any employee, agent, contract worker, contractor, client or visitor to BSES. They also have a legal obligation not to sexually harass any workplace participant or supplier of BSES.

All BSES employees need to ensure that their behaviour is consistent with this policy not only at BSES workplaces but also at:

- other work sites such as where they are performing work on behalf of BSES;
- 'off-site' work events such as seminars or conferences; and
- BSES work related functions such as Christmas parties or other BSES sponsored social or promotional events.

All staff are responsible for promoting this policy by ensuring that:

- you treat other staff with respect and courtesy;
- incidents of discrimination/harassment are reported to the appropriate manager or supervisor
- you fully participate in any investigation into an incident of discrimination or harassment.

### **What can you do if you feel you are being unlawfully harassed or discriminated against?**

**Procedures:** If you feel that you are being unlawfully harassed or discriminated against, there is action which you can take that may resolve the problem, such as:

- do not ignore circumstances where you feel you are being unlawfully discriminated against or harassed, thinking it will go away. Ignoring the behaviour could be taken as tacit approval by the person causing the harassment or discrimination;
- where you feel comfortable ask the person to stop, or make it clear that you find the behaviour offensive or unwelcome. Maybe the alleged discriminator/harasser is not aware that his/her behaviour is intimidating or unwelcome and will stop once they are told. It may be useful to speak with your manager/supervisor in the first instance to seek guidance on how to do this;
- whilst you may feel the need to tell a trusted friend or work colleague about the matter, you should be careful. Accusations of unlawful discrimination/harassment can harm the reputation of those involved and

could ultimately lead to an action for defamation. Do not allow rumours to spread;

- raise the grievance **as soon as possible** after the incident(s) have occurred by contacting one of the following people in BSES;
  - your supervisor/manager
  - the Company Secretary
  - the Chief Executive or another person in BSES's management with whom you feel comfortable in discussing the matter ( that person will be required to report the matter to the Company Secretary or to the Chief Executive)

All reports are confidential and no persons, whether making the complaint or acting as a witness or the person allegedly discriminating or harassing will be victimised in any way. Any victimisation or reprisals will not be tolerated and can result in disciplinary action.

A written report is not necessary.

### **What will BSES do if there is a complaint?**

All complaints will be treated seriously and in accordance with BSES's grievance resolution procedure. Upon receiving a report, the Company Secretary or the Chief Executive will investigate the matter. This will mean they will speak to the person making the complaint and to the person allegedly discriminating or harassing who will be asked for their response to the allegation.

All investigations will employ the principles of natural justice and ensure that everyone receives a fair hearing.

After investigation, BSES will take whatever action it considers appropriate if there has been unlawful discrimination or harassment, including warning, counselling, disciplining or dismissing offenders. Actions taken will depend on the seriousness of the allegations.

Allegations will be taken seriously and BSES will also view lies or exaggerations about a complaint as a serious matter that may lead to disciplinary action.

### **Other possible actions**

You are entitled to contact the Queensland Anti-Discrimination Commission or the Human Rights and equal Opportunity Commission, particularly if you are not satisfied with the way that BSES has investigated the matter, or the outcome of the BSES investigation. The office closest to you will be listed in the telephone book.

Before the Commission can take any action the complaint will have to be in writing.

The Commission will be able to advise whether the complaint is covered by legislation and how the Commission might be able to assist you.

Complaints are settled through conciliation, that is, assisting people to reach a voluntary agreement acceptable to both. If conciliation is not successful, the complainant may ask for the matter to be referred for a public hearing by the Anti-Discrimination Tribunal.

### **What to do if a complaint is made against you**

- You will be contacted by either BSES management or the Commission listed above, depending upon where the complaint was made.
- You will be asked to give a written response.
- You may be required to take part in conciliation to help resolve the dispute.
- If the complaint can not be settled, it may be referred for a public hearing.
- You must not victimise the person who has complained or any other staff members who may act as witnesses.