

Anti-Discrimination and Equal Employment Opportunity Policy

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Author:	Kerry Ganley, Senior HR Officer	
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Title	CEO	Date

Year Reviewed		
2013	Comment: <i>Bullying (COR017) and EEO policies split into 2 separate policies and put on new template</i>	
	Signature:	23/10/2013
	Name & Title:	Dr Brett Dale / CEO Date
2014	Comment	
	Signature	__/__/20__
	Name & Title:	_____/ CEO Date
2015	Comment	
	Signature	__/__/20__
	Name & Title:	_____/ CEO Date

Policy

1.0 Purpose

NTGPE aims to provide an environment where employees and others in the workplace are treated fairly and with respect, and are free from unlawful (or any) discrimination, harassment and vilification.

NTGPE aims to ensure that when employment decisions are made, they are based on merit, not on irrelevant attributes or characteristics that an individual may possess. NTGPE seeks to create a work environment which promotes good working relationships.

2.0 Scope

2.1 Application

This policy applies to employees, agents and contractors (including temporary contractors) of NTGPE.

2.2 This Policy is not limited to the workplace or work hours. This Policy extends to all functions and places that are work related. For example, work lunches, conferences, Christmas parties and client functions. Equal Employment Opportunity (EEO) laws apply to all areas of employment.

2.3 Limitations

nil

3.0 Definitions

3.1 Harassment

Harassment is a form of discrimination and is deemed to be any unreasonable behaviour that is personally offensive to the recipient or creates a hostile or unproductive work environment. While it is recognised that there may be different cultural and generational perspectives on what constitutes harassment, generally harassment may be, but is not limited to sexual, racial, religious or political in nature, or refer to someone's disability, age, personal attributes, etc.

3.2 Workplace Harassment

Workplace harassment is defined as any repeated inappropriate language or behaviour that offends, demeans, belittles, humiliates or intimidates others in the workplace and includes inappropriate or offensive art work, screen savers, jokes or other materials at the workplace.

3.3 Workplace

The workplace is broadly defined as any place where employees gather as the result of work. This includes employees working and living away from their home base, as well as social functions organised by work or colleagues; for example, interstate travel, office lunches, receptions, annual dinners, workplace parties, conference and workshops, etc.

3.4 Discrimination

Discrimination refers to any less favourable or less reasonable treatment of a person than another in their employment because of a reason or ground which is prohibited by law. The prohibited grounds of discrimination are set out in the (Federal, State and Territory anti-discrimination laws) a full list of the grounds are outlined in the attached procedure clause 2.1.

3.5 Vicarious Liability

The liability an organisation takes on for the actions of those who function on its behalf. For example, as an employer, NTGPE may be held legally responsible for acts of harassment committed by its employees away from their normal workplace.

3.6 Sexual Harassment

Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated.

3.7 Victimization

Victimization may occur when someone has made a complaint or has had a complaint made against them and are systematically treated differently because of that.

3.8 Natural Justice (Procedural Fairness)

Natural Justice provides an entitlement for any person who has had a complaint made about them to be made aware of the content of the complaint and to have every opportunity to respond to the complaint. Natural Justice is the right to be given a fair hearing and an opportunity to present one's case and to have decisions made by an independent, unbiased decision maker.

4.0 Responsibilities

4.1 Responsibilities of Chief Executive Officer

- 4.1.1 Provide a safe working environment that includes a workplace free from harassment and discrimination and to take steps to reduce its direct and vicarious liability for the conduct of its employees, directors, agents and contract workers as far as practicable.
- 4.1.2 Ensure systems are in place to maintain, monitor and investigate workplace harassment and discrimination complaints.
- 4.1.3 Provide training to line managers and employees.

4.2 Responsibilities of Line Managers

- 4.2.1 Ensure proper standards of conduct in the workplace are established, understood and maintained.
- 4.2.2 Ensure all employees, including casual and temporary employees, are made aware of this policy.
- 4.2.3 Ensure the removal of offensive posters, videos, pictures, jokes (email and hard copy), screen savers, and any other similar material from the workplace.
- 4.2.4 Take prompt, effective and corrective action to deal with repeated offensive behaviour.
- 4.2.5 Keep all related records of employee complaints, investigations and outcomes confidential.

4.3 Responsibilities of Employees

- 4.3.1 Be aware of workplace harassment and discrimination legislation and employee responsibility and obligations.
- 4.3.2 Be familiar with and abide by this policy and related procedure.
- 4.3.3 Work in a safe and healthy manner respecting the cultural differences of others and promote a positive and courteous work environment free from any form of harassment and discrimination.
- 4.3.4 Respect the rights of others and not to condone, encourage or practice harassment or discrimination.

4.3.5 Make line managers aware of possible harassment which might be occurring in the workplace.

4.3.6 Assist in the resolution of any harassment and discrimination matters including mediation or conciliation conferences.

5.0 Inclusions to this Policy

5.1 Procedure

5.2 Attachment - Acknowledgement Form

6.0 Related Policies and Legislation

6.1 GOV017 Code of Conduct Policy

6.2 COR 017 Workplace Bullying Policy

6.3 Federal, State and Territories Anti-Discrimination Laws

Procedure

1.0 EEO Laws

Under EEO laws, discrimination, vilification, sexual harassment, bullying and victimisation are unlawful and strictly prohibited.

2.0 Discrimination

2.1 Direct discrimination in employment occurs when a person is treated less favourably than another in their employment because of a reason or ground which is prohibited by law. The prohibited grounds of discrimination are set out in the (Federal, State and Territory anti-discrimination laws) and include sex, race, age etc. A full list of the grounds of discrimination which operate federally and in the Territory in which workplace participants undertake their work for NTGPE will be relevant and are listed below.

- Race (including colour, nationality, descent, ethnic, ethno-religious or national origin)
- Sex
- Disability/impairment, including physical, mental and intellectual disability
- Carers' responsibilities, family responsibilities, carer or parental status, being childless
- Breastfeeding
- Industrial/trade union membership, non-membership or activity
- Employer association membership, non-membership or activity
- Irrelevant criminal record
- Association (i.e. association with a person who has one or more of the attributes for which discrimination is prohibited)
- Homosexuality, transexuality, sexuality, sexual preference/ orientation, lawful sexual activity, gender identity
- HIV/AIDS
- Religious belief, affiliation, conviction or activity
- Political belief, opinion, affiliation, conviction or activity
- Pregnancy (including potential pregnancy)
- Age (including compulsory retirement)
- Marital status, domestic status, relationship status
- Irrelevant medical record
- Defence service

3.0 Indirect Discrimination

3.1 Indirect discrimination may occur when an employer imposes a policy, requirement or condition which applies to everyone equally but it in fact operates to disadvantage a particular group because of a characteristic of that group, such as their sex, age, race (i.e. a prohibited ground of discrimination).

Example: The Council imposes a height restriction on all applicants for the position of "Parking Officer", that is, an applicant must be over 185cm (6 feet) tall in order to be successfully considered for the position. This requirement at first glance appears fair because it applies to all applicants irrespective of gender. However, in practice this

requirement will disadvantage women as a group because statistically, women are naturally shorter than men. So the effect is to disadvantage women because of their sex.

- 3.2** Discrimination also includes the situation where a workplace participant harasses another person based on a ground of discrimination. Harassment is unwelcome conduct that a reasonable person would expect to offend, humiliate or intimidate.

4.0 Vilification

- 4.1** Vilification is a public act which incites hatred, severe contempt or severe ridicule of a person or group, because of race, homosexuality, transgender, transexuality or HIV/AIDS. Vilification is a particularly serious breach of EEO laws and will be dealt with accordingly.

5.0 Sexual Harassment

- 5.1** Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated. Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person. However, conduct will not be sexual harassment if a reasonable person, having regard to all the circumstances, would not have anticipated that the conduct would offend, humiliate or intimidate the other person. Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a hostile working environment for other workplace participants can also be unlawful.

- 5.2** Examples of sexual harassment include, but are not limited to:

- Physical contact such as pinching, touching, grabbing, kissing or hugging.
- Staring or leering at a person or at parts of their body.
- Sexual jokes or comments.
- Requests for sexual favours.
- Persistent requests to go out, where they are refused.
- Sexually explicit conversations.
- Displays of offensive material such as posters, screen savers, Internet material etc.
- Accessing or downloading sexually explicit material from the Internet.
- Suggestive comments about a person's body or appearance.
- Sending rude or offensive emails, attachments or text messages.

6.0 Victimization

- 6.1** Victimization is where a person is retaliated against or subjected to a detriment because they have lodged a complaint, they intend to lodge a complaint or they are involved in a complaint of unlawful conduct. Workplace participants must not retaliate against a person who raises a complaint or subject them to any detriment.

7.0 Rights And Responsibilities

- 7.1** All workplace participants must:

- 7.1.1 understand and comply with this Policy;

- 7.1.2 ensure they do not engage in any unlawful conduct towards other workplace participants, customers/clients or others with whom they come into contact through work;
 - 7.1.3 ensure they do not aid, abet or encourage other persons to engage in unlawful conduct;
 - 7.1.4 follow the complaint procedure in this Policy if they experience any unlawful conduct;
 - 7.1.5 report any unlawful conduct they see occurring to others in the workplace in accordance with the complaint procedure in this Policy; and
 - 7.1.6 maintain confidentiality if they are involved in the complaint procedure.
- 7.2** Workplace participants should be aware that they can be held legally responsible for their unlawful conduct.
- 7.3** Workplace participants, who aid, abet or encourage other persons to engage in unlawful conduct, can also be legally liable.

8.0 Breach Of This Policy

- 8.1** All workplace participants are required to comply with this Policy at all times. If an employee breaches this Policy, they may be subject to disciplinary action. In serious cases this may include termination of employment. Agents and contractors (including temporary contractors) who are found to have breached this Policy may have their contracts with NTGPE terminated or not renewed.
- 8.2** If a person makes an unfounded complaint or a false complaint in bad faith (e.g. making up a complaint to get someone else in trouble or making a complaint where there is no foundation for the complaint), that person may be disciplined and may be exposed to a defamation claim.

9.0 Complaint Handling Procedure

- 9.1** If a workplace participant feels that they have been subjected to any form of unlawful conduct contrary to EEO laws or this Policy, they should not ignore it. NTGPE has the following complaint procedure for dealing with these issues. The complaint procedure has numerous options available to suit the particular circumstances of each individual situation. The manner in which a complaint will be handled is solely at the discretion of NTGPE's Complaint Officer.

10.0 Examples Of The Ways In Which A Complaint Can Be Dealt With

Confront the Issue

- 10.1** If a workplace participant feels comfortable doing so, they should address the issue with the person concerned. A workplace participant should identify the offensive behaviour, explain that the behaviour is unwelcome and offensive and ask that the behaviour stop. It may be that the person was not aware that their behaviour was unwelcome or caused offence.
- 10.2** This is not a compulsory step. If a workplace participant does not feel comfortable confronting the person, or the workplace participant confronts the person and the behaviour continues, the workplace participant should report the issue to a NTGPE Complaints Officer.
- 10.3** If a workplace participant is unsure about how to handle a situation and is also unsure if they want to make a complaint they should contact a Contact Officer for support and guidance. The Contact Officer aim to assist people uncertain about their rights. Contact Officer is listed at the end of this EEO Policy.

Report the Issue

- 10.4** A workplace participant should report the issue to a Complaints Officer. The Complaints Officer(s) in the workplace participant's workplace is/are the Executive (i.e. CEO, DMCE or Business Manager).
- 10.5** The Complaints Officer will aim to deal with the workplace participant's complaint in accordance with this Policy. There are two complaint procedures that can be used: informal and formal (detailed further below). The type of complaint procedure used will be determined by the nature of the complaint that is made.

Informal Complaint Procedure

- 10.6** Under the informal complaint procedure there is a broad range of options for addressing the complaint. The procedure used to address the issue will depend on the individual circumstances of the case. Possible options include, but are not limited to:
- 10.7** the Complaints Officer discussing the issue with the person against whom the complaint is made; and/or
- 10.8** the Complaints Officer facilitating a meeting between the parties in an attempt to resolve the issue and move forward.
- 10.9** The informal complaint procedure is more suited to less serious allegations that if founded, would not warrant disciplinary action being taken.

Formal Complaint Procedure

- 10.10** The formal complaint procedure involves a formal investigation of the complaint. Formal investigations may be conducted by a Complaints Officer or a person from outside NTGPE, appointed by NTGPE.
- 10.11** An investigation generally involves, collecting information about the complaint and then making a finding based on the available information as to whether or not the alleged behaviour occurred. Once a finding is made, the Complaints Officer or the external investigator will make recommendations about resolving the complaint.
- 10.12** If NTGPE considers it appropriate for the safe and efficient conduct of an investigation, workplace participants may be required not to report for work during the period of an investigation. NTGPE may also provide alternative duties or work during the investigation period. Generally, employees will be paid their normal pay during any such period.

11.0 Confidentiality

- 11.1** The Complaints Officer will endeavour to maintain confidentiality as far as possible. However, it may be necessary to speak with other workplace participants in order to determine what happened, to afford fairness to those against whom the complaint has been made and to resolve the complaint. If a complaint is raised and it appears that unlawful conduct has potentially occurred, NTGPE will endeavour to take appropriate action in relation to the complaint.
- 11.2** All workplace participants involved in the complaint must also maintain confidentiality, including the workplace participant who lodges the complaint. Spreading rumours or gossip may expose workplace participants to a defamation claim. Workplace participants may discuss the complaint with a designated support person or representative (who is not a workplace participant employed or engaged by NTGPE). However, the support person or representative must also maintain confidentiality.

12.0 Possible Outcomes

- 12.1** The possible outcomes will depend on the nature of the complaint and the procedure followed to address the complaint. Where an investigation results in a finding that a person

has engaged in unlawful conduct or breach of this Policy, that person may be disciplined. The type and severity of disciplinary action will depend on the nature of the complaint and other relevant factors. Where the investigation results in a finding that the person complained against has engaged in serious misconduct, this may result in instant dismissal. Any disciplinary action is a confidential matter between the affected workplace participant and NTGPE.

- 12.2** Agents and contractors (including temporary contractors) who are found to have engaged in unlawful conduct and/or breached this Policy may have their contracts with NTGPE terminated or not renewed.
- 12.3** NTGPE may take a range of other non-disciplinary outcomes to resolve a complaint, depending on the particular circumstances. Examples include, but are not limited to:
- training to assist in addressing the problems underpinning the complaint;
 - monitoring to ensure that there are no further problems;
 - implementing a new policy;
 - requiring an apology or an undertaking that certain behaviour stop; and/or
 - changing work arrangements.

13.0 What To Do If You Are Not Satisfied With The Outcome

Review

- 13.1** If any of the parties are not satisfied with the way the complaint was handled or the outcome of the complaint process they can contact the Chief Executive Officer. The complaint handling process and/or the outcome may then be reviewed by the Chief Executive Officer. If a review is undertaken, the Chief Executive Officer's decision in relation to the review will be final.
- 13.2** NTGPE's goal is to resolve issues in-house wherever possible. Workplace participants can seek the assistance of an outside agency if they feel that their complaint has not been adequately addressed.

Complaints Officer

- Chief Executive Officer
- Executive Manager Support Services
- Director Medical & Cultural Education

Contact Officer

- Senior HR Officer

Contacts for Outside Agencies

- *Australian Human Rights Commission*
Toll Free: 1300 656 419
- *Anti-Discrimination Commission (NT)*
Toll free: 1800 813 846

Attachment

1. Anti-Discrimination and Equal Employment Opportunity Policy - Employee Acknowledgement Form

**ANTI-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY
ACKNOWLEDGEMENT**

I, (employee/contractor name) _____ acknowledge:

- I have read the NTGPE Anti-Discrimination & Equal Employment Opportunity Policy;
- That I must comply with the Policy; and
- That there may be disciplinary consequences if I fail to comply, which may result in the termination of my employment or contract for services.

Employee/contractor Signature _____ Dated __ / __ / __

Please return completed form to Senior HR Officer