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NORTHERN CAPE PROVINCE  
REPUBLIC OF SOUTH AFRICA

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# DEPARTMENT OF ENVIRONMENT AND NATURE CONSERVATION

**POLICY ON SEXUAL HARASSMENT  
10 OCTOBER 2012  
HUMAN RESOURCE UNIT**

*"A PROSPEROUS AND EQUITABLE SOCIETY LIVING IN HARMONY WITH OUR NATURAL RESOURCES"*

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## **1. CONCEPTUAL BACKGROUND**

### **1.1 INTRODUCTION**

In terms of the Public Service Co-ordinating Bargaining Council Resolution 3 of 1999 and the Public Service Regulations 2001, as amended, departments were given the mandate to develop policies and programmes which would enhance their managerial actions especially in respect of their human resource matters. The effect of the aforementioned is that departments are capacitated to develop their own policies and guidelines which will suit their needs, and with this added advantage those departments have greater autonomy in the day-to-day management of their human resource matters.

It can also be mentioned that in 1999, the then Director General for the province indicated that it was necessary to develop universal policies for the province, especially in those areas which are considered transversal. Although the then Director General had the intention to develop provincial policies for transversal issues, such intentions never materialized. For this reason, departments are still dependent on themselves to develop even those transversal policies until such time that provincial policies are developed.

### **1.1 PREAMBLE**

The Department of Environment and Nature Conservation (DENC), as part of its approach to an integrated Employee Assistance Programme has developed a policy which will provide a broad framework to sensitize against sexual harassment and manage cases if and when such an unacceptable practice occurs. It must be emphasized that any form of sexual harassment in the work environment is condemned and will not be tolerated.

### **1.2 DEFINITION OF SEXUAL HARASSMENT**

- (i) Sexual harassment is unwanted conduct of a sexual nature. The unwanted nature of sexual harassment distinguishes it from behaviour that is welcome and mutually acceptable.
- (ii) Sexual attention becomes sexual harassment if:
  - (a) The recipient has made it clear that the behaviour is considered offensive; or
  - (b) The perpetrator should have known that the behaviour is regarded as unacceptable.
  - (c) The unwanted behaviour persists, although a single incident of harassment can constitute sexual harassment.

### **1.2 LEGISLATIVE REQUIREMENTS**

- **Labour Relations Act, [No 66 of 1995]**



## 2. POLICY STATEMENT AND APPLICATION SCOPE

### 2.1 POLICY STATEMENT

The aim of this policy is to:

- Create an environment, which upholds personal integrity and freedom, and condemns any form of sexual harassment.
  - Discourage and prevent sexual harassment in the workplace.
  - Create a procedure to handle such cases.
- (a) Sexual harassment in the workplace will not be permitted or condoned under any circumstances.
- (b) All employees and other persons who have dealings with DENC have the right to be treated with dignity.
- (c) The department will strive to create and maintain an atmosphere of mutual respect among its employees and will take all reasonable steps in line with the grievance/disciplinary procedure to discourage, prevent and eliminate any form of sexual harassment.
- (d) Persons who have been subjected to sexual harassment in the workplace have a right to raise a grievance and have their allegations dealt with seriously, expeditiously, sensitively and confidentially.
- (e) Employees will be protected against victimization, intimidation and retaliation for lodging grievances and from false accusations.
- (f) Heads of Directorates must take all reasonable steps to communicate this Policy to all employees and independent parties (e.g. service providers, contractors and the general public) having dealings with the department. In this regard the Supply Chain Management Sub directorate will have to ensure that especially service providers and contractors are informed about the contents of this Policy where applicable.
- (i) A non-employee who is a victim of sexual harassment may lodge a complaint with the department if the harassment has taken place in the workplace or in the course of the harasser's employment.
- (g) An employee, who is sexually harassed by a supplier, contractor or other member of the public having dealings with the department, may lodge a complaint with the department if the harassment has taken place in the workplace or in the course of the harasser's employment.

## 2.1

### FORMS OF SEXUAL HARASSMENT

- (i) Sexual harassment may include unwelcome physical, verbal or nonverbal conduct, and is not limited to the examples listed as follows:
  - (a) Physical conduct of a sexual nature includes all unwanted physical contact, ranging from touching to sexual assault and rape, and includes a strip search by or in the presence of the opposite sex.
  - (b) Verbal forms of sexual harassment include unwelcome innuendoes, suggestions and hints, sexual advances, comments with sexual overtones, sex-related jokes or insults or unwelcome graphic comments about a person's body made in their presence or directed toward them, unwelcome and inappropriate enquiries about a person's sex life, and unwelcome whistling or suggestive noises directed at a person or group of persons.
  - (c) Non-verbal forms of sexual harassment include unwelcome gestures, indecent exposure, the unwelcome display of sexually explicit pictures and objects, and electronic mail, letters and faxes with a sexual connotation.
  - (d) Quid pro quo harassment occurs where a supervisor, member of management or co-employee, influences or attempts to influence the process of employment, promotion, training, discipline, dismissal, salary increment or other benefit of an employee or job applicant, in exchange for sexual favours.
    - (ii) Sexual favouritism exists where a person who is in a position of authority rewards only those who respond to her/his sexual advances, whilst other deserving employees who do not accept any sexual advances are denied promotions, favourable merit rating or salary increases.
    - (iii) Sexual harassment can occur in relationships of unequal power or amongst peers. It is possible for women to be harassed by men or other women, and men to be harassed by women or other men.

## 2.3

### DUTIES OF INSTITUTIONAL HEADS/SUPERVISORS/MANAGERS

- (i) Heads of Directorates or their designated representatives/Regional Offices/Reserves shall be designated sexual harassment contact officers in accordance with the operational requirements of the Department and report sexual harassment cases to the Employee Assistance Programme Coordinator. The EAP Coordinator shall ensure that the designated sexual harassment contact officer(s) are properly trained.
- (ii) Institutional heads, managers and supervisors are expected to familiarize themselves with this Policy and are required to:

- (a) create and maintain an environment that will not support or tolerate any form of sexual harassment;
- (b) ensure that staff in their area is familiar with the Policy and as far as is practical ensure that the provisions of this Policy are adhered to;
- (c) this policy should be handed to every new employee as part of her/his appointment documents;
- (d) inform staff that sexual harassment will not be tolerated in the workplace;
- (e) ensure that their own behaviour provides a model of conduct in line with the principles of this Policy;
- (f) on advice of the Employee Assistance Programme Coordinator, take appropriate action in relation to complaints received in the workplace for which they are responsible;
- (g) provide a supportive environment for the work of the designated sexual harassment contact officers, provide release time to enable them to fulfill their role to attend training programmes and any other activities associated with their role;
- (h) refer complaints to a designated sexual harassment contact officer/EAP Coordinator , with due consideration of gender sensitive issues;
- (i) take appropriate action on any complaints of victimisation that may follow a complaint of sexual harassment;
- (j) in instances where a manager, institutional head or supervisor observes, or is informed of behaviour that could constitute sexual harassment occurring within their area of responsibility, they should advise the person(s) involved that the behaviour could give offence and that the behaviour should cease immediately; and
- (k) bring this policy to attention of contractors, service providers, consultants, tenderers, etc.

## **2.4 DUTIES OF THE EAP COORDINATOR**

- (i) The EAP Coordinator is responsible for:
  - (a) giving confidential advice, counseling and assistance to victims of sexual harassment;
  - (b) taking all reasonable steps to facilitate the conciliation and resolution of sexual harassment complaints;



- (c) performing an educative role in the elimination of sexual harassment;
- (d) informally investigating complaints of sexual harassment;
- (e) arranging training for supervisors and managers;
- (f) developing and distributing relevant educative material in the workplace;
- (g) arranging and delivering awareness raising programmes for employees in conjunction with managers and supervisors.
- (h) liaison with senior management to ensure that anyone engaged to provide a service for the department is advised of the provisions of this Policy;
- (i) maintaining records on sexual harassment complaints in the specific institution concerned, and informing managers and supervisors of the incidence of sexual harassment occurring in their area of responsibility; and
- (j) monitoring and reviewing the implementation of this Policy.

## **2.5 PROCEDURES FOR HANDLING ALLEGATIONS OF SEXUAL HARASSMENT**

- (i) Employees can either resolve the problem of sexual harassment in an informal way or a formal procedure can be followed.
- (ii) The employee should not be under any duress to accept one or the other option.
- (iii) Where section 3(ii) of this policy is concerned, the disciplinary procedure in terms of this policy may apply.
- (iv) Where section 3(iii) of this policy is concerned, the department may request the harasser's employer to take appropriate action.

## **2.6 INFORMAL PROCEDURE**

- (i) The complainant may wish to resolve the complaint in an informal manner by approaching the alleged harasser through:
  - (a) A meeting arranged by the sexual harassment contact officer with the complainant and the alleged harasser as soon as possible. The complainant will be given the opportunity to explain to the alleged harasser that her/his conduct is unwelcome, that it offends her/him or make her/him uncomfortable and that it interferes with her/his work and that he/she wants the alleged harasser to refrain from the unwelcome conduct.
  - (b) At the meeting referred to in subsection (a), no formal record of the proceedings are kept or placed on the files of the parties concerned.

However, the parties may agree, together with the designated sexual harassment contact officer to minute the proceedings. These minutes may be used at a later stage to clarify either party's case should the harassment continue.

- (c) It may be necessary for the designated sexual harassment contact officer to counsel the perpetrator with regard to her/his behaviour.
  - (d) Any other measure deemed appropriate by the designated sexual harassment contact officer and the complainant.
- (ii) The informal procedure is appropriate for less serious cases of sexual harassment. Serious cases of sexual harassment, for example rape, sexual assault or other criminal conduct of a sexual nature, should preferably be dealt with in terms of the formal procedure, subject to section 12 of this Policy.

## **2.7 FORMAL PROCEDURE**

- (i) The formal procedure should be implemented in any of the following circumstances:
  - (a) Where the sexual harassment is of a serious nature.
  - (b) The informal procedure has already been applied without success.
  - (c) The harassment continues after the informal procedure had been followed.
  - (d) Where the aggrieved person has chosen to follow a formal route.
- (ii) The complainant must lodge a formal complaint in writing to her or his supervisor or institutional head.
- (iii) The supervisor or institutional head may follow the Disciplinary Code and Procedures for the Public Service. (Copy attached)
- (v) Should a complaint of alleged sexual harassment not be satisfactorily resolved by the internal procedures set out in subsection (ii), either party may within 30 days of the dispute having arisen refer the dispute for conciliation in terms of the normal procedures.
- (v) Should the dispute remain unresolved, either party may refer the dispute to the Labour Court within 30 days of receipt of the certificate issued by the chairperson.

## **2.8 LEGAL CONSEQUENCES OF SEXUAL HARASSMENT**

- (i) Persons found guilty of sexual harassment could be punished in terms of the Disciplinary Code and Procedures for the Public Services.



- (ii) Perpetrators of sexual harassment can be dismissed from the public service if:
  - (a) the sexual harassment is serious;
  - (b) the conduct continues after warnings were given; and
  - (c) the perpetrator victimizes or retaliates against an employee who in good faith lodges a complaint of sexual harassment.

## **2.9 CRIMINAL AND CIVIL CHARGES**

A victim of sexual harassment has the right to institute separate criminal and/or civil proceedings against an alleged perpetrator, and the legal rights of the victim are in no way limited by this Policy.

### **2.10 CONFIDENTIALITY**

- (i) Employers and employees must as far as possible ensure that grievances about sexual harassment are investigated and handled in a manner which ensures that the identities of the persons involved are kept confidential.
- (ii) In cases of sexual harassment, management, employees and the parties concerned must endeavour to ensure confidentiality in the disciplinary enquiry. Only appropriate members of management as well as the aggrieved person, representative, alleged perpetrator, witnesses and interpreter if required, may be present at the disciplinary enquiry.
- (iii) The department is required to disclose to either party or to their representatives, such information as may be reasonably necessary to enable the parties to prepare for any proceedings in terms of this Policy.

## **2.2 APPLICATION SCOPE**

This policy will apply to all officials of the Department of Environment and Nature Conservation, including all:

- (a) Job applicants
- (b) Clients
- (c) Suppliers
- (d) Contractors
- (e) Other members of the public having dealings with the department.

### **3. POLICY FRAMEWORK**

#### **3.1 IDENTIFICATION AND CONSULTATION OF STAKEHOLDERS**

This policy document was distributed to staff members within the department and their feedback and inputs are included where changes were suggested and motivated. Information sessions were also held as part of the consultation process. The recognized Labour Unions are not excluded in the process as they do have shop stewards within the department, and them being part of the departmental staff, thus had the opportunity to participate in the process. Furthermore, it needs to be mentioned that the department cannot negotiate with the Unions (Organized Labour) as a separate entity on this policy. Especially, because there are matters of mutual interests that must be dealt with in the formal structures created for this purpose, such as the Provincial Bargaining Council.

#### **3.2 TIMEFRAMES**

In August 2007 a draft of this policy was reviewed by the departmental legal services and policy unit who submitted their comments on the policy. After incorporating those comments a second draft was sent to the policy and planning unit on the 14-18 February 2008 to align and re-check the policy. 02- 14 April 2008, the policy unit used the soft copies of this policy to align it with the provincial template.

#### **3.3 IMPLEMENTATION STRATEGY**

It is the responsibility of each Head of department to ensure that this policy is carefully followed within the department. All managers should make members of their employees aware of the obligation to familiarize themselves with and follow this policy.

An implementation plan will be drafted which will outline how and when this policy will be implemented. The plan will be drafted two months after the implementation date of this policy. In order to ensure adequate implementation of this policy the human resource unit will compile an infrastructure investment (in terms of human capital) and policy management plan. The plan will be updated on an annual basis and will contain details on future guidelines for this policy. The financial implications if any will be indicated on the plan in order to ensure that funds are available or availed.

The implementation date for this policy is 10 OCTOBER 2012

#### **3.4 FINANCIAL IMPLICATIONS**

This policy will be funded by the Human Resource Unit. The budget for the financial year is .....

#### **3.5 COMMUNICATION**

This policy should be communicated through the respective directorates. However, the most important unit to contact would be Human Resources, especially the Employee Assistance Programme (EAP).

### **3.6 COMPLIANCE, MONITORING AND EVALUATION (M&E)**

This policy will be administered by the Employee Health and Wellness unit.

### **3.7 POLICY REVIEW**

This policy will be reviewed when the need arises or in case of the occurrence of extenuating circumstances (political mitigation, or pronouncement by legislation and/or regulations). The contact person for this policy will be required to submit all relevant information pertaining to this policy in conjunction with a signed memo with all amendments (addition or omission) during the third quarter annually.

***The exception***, the Policy development unit will be conducting all extenuating reviews throughout the year, therefore it is paramount that any new information received be submitted to this unit, in order to coordinate the review process of this policy.

### **3.8 POLICY IMPACT**

The desire of this policy is create a safe environment for all staff members and protect them from being coerced into uncomfortable relations by staff members with higher ranks.

### **3.9 INTERIM MEASURES**

This is an interim document for this Department until such time that a provincial policy has been developed.

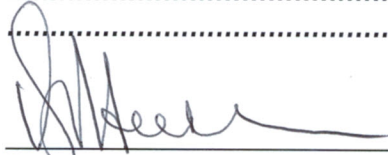


4. ADOPTION OF POLICY

Approved / ~~Not Approved~~

**Comments:**

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**HEAD OF DEPARTMENT**

2012/10/10

**DATE**