



COUNCIL POLICY

Anti-Discrimination, Harassment & Equal Employment Opportunity Policy

Date November 2016

Council Resolution Date 28 November 2016

Clause Number CCL16/213(FPC16/21)

Responsible Position Manager Human Resource Services

Branch Human Resource Services

Division Organisational Services

Version 1.0

TRIM Reference Number ED16/139735

Review Period 2 years

Review Date November 2018

Consultation

Document Revision History	
Description	Date
Notes	

POLICY

PURPOSE

Dubbo Regional Council aims to provide an environment where employees and others in the workplace are treated fairly and with respect, and are free from unlawful discrimination, harassment, vilification and victimisation.

Council aims to ensure that in the application of all human resource policies, practices and procedures, no unlawful discrimination takes place and that all workers enjoy equal access to opportunities within Council. Council also aims to create a work environment which promotes positive working relationships.

BACKGROUND AND RELATED LEGISLATION

- Anti-Discrimination Act 1977 (NSW)
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984
- Disability Discrimination Act 1992
- Australian Human Rights Commission Act 1986
- Work Health & Safety Act 2011 (NSW)
- Local Government (State) Award
- Local Government Act 1993

Relevant Council policies:

- Grievance Resolution Management Procedure
- Code of Conduct
- Prevention of Workplace Bullying Policy and Procedure

SCOPE

The policy applies to all Workers and Council Officials of Dubbo Regional Council.

DEFINITIONS

To assist in interpretation, the following definitions apply:

Term	Definition
Council	Dubbo Regional Council
Council Official	Councillors, administrators appointed under section 256 of the Local Government Act 1993, members of Council committees, conduct reviewers and delegates of Council.
Premises	Any place (including but not limited to land, building, part of a building or vehicle) where an employee works and includes premises where Council, for the time being, has (or appears to have) the

	charge, management or control of those premises, or premises where a Council function/activity is conducted.
Support Person	Someone who has been requested to be present at an interview or meeting. The support person's role is to offer moral support to the worker or Council Official, not to represent them or speak on their behalf. Dubbo Regional Council recommends that a support person be selected from outside of their department.
Representative (Union or other)	A representative may speak on behalf of the worker. A representative can be either from a union, as defined under the Local Government (State) Award, including a local organiser or delegate, or a legal representative such as a solicitor.
Workplace	Any premises at which workers work or attend a work-related functions or activities.
Worker	Any person doing work for Council including but not limited to employees, contractors, sub-contractors, labour hire, volunteers, trainees, apprentices, work experience students.

POLICY

Under Equal Employment Opportunity (EEO) laws, discrimination, vilification, harassment including sexual harassment, bullying and victimisation are unlawful and strictly prohibited and are deemed to be unlawful conduct.

Discrimination

There are two types of discrimination being Direct discrimination and Indirect discrimination.

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 laws and include sex, race, age, disability, pregnancy (including potential pregnancy), breastfeeding, religious belief; marital status, sexual orientation, gender identity, intersex status, carers' responsibilities/family responsibilities, political belief and union membership / non-membership.

Indirect discrimination may occur when an employer imposes a policy or requirement 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).

Workplace Harassment

Workplace Harassment is any type of behaviour that intimidates, insults or humiliates a person because of their race, sex, pregnancy, marital status, breastfeeding, age, disability, sexual orientation, gender identity or intersex status. Some limited exemptions and exceptions apply.

Harassment can often be the result of behaviour that is unintentional. However, harassment will normally be unlawful regardless of whether the behaviour was intentional or unintentional.

Examples of harassment include, but are not limited to:

- Telling insulting jokes about particular racial groups.
- Making derogatory comments or taunts about someone's race or religion.
- Spreading rumours based on someone's sexual preferences / pregnancy or potential pregnancy.
- Derogatory comments or jokes about a person's disability, pregnancy, sexuality, age, religion.

Workplace Harassment does **not** include:

- Reasonable action taken in a reasonable manner by Council to transfer, demote, discipline, counsel, retrench or dismiss a worker;
- A decision by Council, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with a worker's employment;
- Reasonable administrative action taken in a reasonable manner by Council in connection with a worker's employment; or
- Reasonable action taken in a reasonable manner under legislation affecting a worker; or
- Reasonable comment, advice and feedback (including negative comment or feedback) from a worker's manager or supervisor in connection with a worker's work performance or work-related conduct.
- Feedback on a worker's work performance or work-related conduct is intended to assist the worker to improve their work performance and/or the standard of their conduct.

Sexual Harassment

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature, which makes a person feel humiliated, intimidated or offended. Sexual harassment can take many different forms and may include physical contact, verbal comments, jokes, propositions, the display of offensive material or other behaviour which creates a sexually hostile working environment.

Sexual harassment is against the law under the NSW Anti-Discrimination Act and Federal Sex Discrimination Act. Both of these acts apply to Council. Sexual harassment is also against Council policy.

Council may be vicariously liable for sexual harassment engaged in by workers and/or Council Officials. All workers and Council Officials need to be aware that legal action can be taken against them for sexual harassment and that in addition Council may be exposed to legal liability.

Sexual harassment is not behaviour which is based on mutual attraction, friendship and respect. If the interaction is consensual, welcome and reciprocated it is not sexual harassment.

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.

It is also unlawful for a worker or Council Official to sexually harass another worker or Council Official at a place that is a workplace of either or both of those persons.

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.
- Making promises or threats in return for sexual favours.
- Exposing genitals or sexual gestures.
- Insults, taunts, teasing or name-calling of a sexual nature.
- Staring or leering at a person or parts of their body.
- Unwelcome physical contact such as massaging a person without invitation, deliberately brushing up against them or forcing a person to perform sexual acts.
- Touching or fiddling with a person's clothing including lifting up skirts or shirts, flicking bra straps or putting hands in a person's pockets.
- Persistent requests to go out, where they are refused.
- Sexually explicit conversations.
- Displays of offensive material such as posters, pinups, cartoons, screen savers and internet material.
- Accessing or downloading sexually explicit material from the Internet.
- Suggestive comments about a person's body or appearance.
- Rude or offensive emails, attachments, letters, phone calls or text messages.
- Persistent questions or insinuations about a person's private life.
- Stalking.

Sexual harassment is unlawful, even if perpetrated by a supervisor or manager, co-worker, contractor, service provider, client or customer. Sexual harassment is not just unlawful during working hours or in the workplace itself, and not only between co-workers. The behaviour is unlawful in any work related context, including conferences, work functions, office Christmas parties and business or field trips, and includes interactions with clients and customers. The behaviour is also unlawful when it occurs away from the workplace but is a culmination or extension of events in the workplace.

Council aims to:

- create a working environment which is free from sexual harassment and where all members of staff are treated with dignity, courtesy and respect;
- implement training and awareness raising strategies to ensure that all employees know their rights and responsibilities;
- provide an effective procedure for complaints based on the principles of procedural fairness;
- treat all complaints in a sensitive, fair, timely and confidential manner;
- afford protection from any victimisation or reprisals;
- encourage the reporting of behaviour which breaches the sexual harassment policy; and
- promote appropriate standards of conduct at all times.

Vilification

Vilification is a public act which incites hatred, severe contempt or severe ridicule of a person or group because of race, colour, nationality, descent, ethnic, ethno-religious or national origin,

homosexuality (lesbian or gay), HIV or AIDS status, transgender status. This includes vilification because someone is thought to be lesbian, gay or transgender even if they are not, or thought to have HIV or AIDS, even if they don't. Vilification law only covers acts that are in public. It does not cover acts that are not public, for example acts that no-one else can hear.

Vilification is a particularly serious breach of EEO laws and will be dealt with accordingly.

Victimisation

Victimisation 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. Workers and Council Officials must not retaliate against a person who raises a complaint or subject them to any detriment.

STEPS AVAILABLE TO DEAL WITH UNLAWFUL CONDUCT

If a worker or Council Official feels that they have been subjected to any form of unlawful conduct contrary to EEO laws outlined in this policy or Council's Code of Conduct, they should not ignore it.

They should, as appropriate, follow one of the steps set out below.

Confront the issue

If a worker or Council Official feels comfortable doing so, they should address the issue with the person concerned. A worker or Council Official 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.

If a worker or Council Official observes offensive behaviour that is not directed at them, the worker or Council Official may also address the issue with the person concerned.

This is not a compulsory step. If a worker or Council Official does not feel comfortable confronting the person, or the worker or Council Official confronts the person and the behaviour continues, the worker or Council Official should lodge a complaint.

The immediate supervisor, manager or Human Resource Services may be able to assist with resolving the matter.

Lodge a Complaint

If a worker or Council Official feels that they have been subjected to any form of unlawful conduct contrary to EEO laws outlined in this policy or Council's Code of Conduct and do not feel comfortable confronting the issue or have done so and the behaviour has not ceased they can lodge a complaint. Workers should follow the options available in Council's Grievance Resolution Management Procedure. Council Officials should follow the procedure outlined in Council's Code of Conduct.

Seek external assistance

Workers or Council Officials who consider that they have been unlawfully discriminated against or harassed can also approach their union, the Anti-Discrimination Board of NSW, the Australian Human Rights Commission or consult a lawyer for information and confidential advice.

CONFIDENTIALITY

Persons dealing with a complaint will endeavour to maintain confidentiality as far as possible. However, in appropriate circumstances it will be necessary to speak with other workers or Council Officials (as the case may be) 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 is determined that unlawful conduct has occurred, Council will take appropriate action in relation to the complaint.

All workers and/or Council Officials involved in the complaint must also maintain confidentiality, including the worker and/or Council Official who lodges the complaint. Spreading rumours or gossip may expose workers or Council Officials to a defamation claim. Workers or Council Officials may discuss the complaint with a support person or union representative. The support person or union representative must also maintain confidentiality.

POSSIBLE OUTCOMES

The possible outcomes will depend on the nature of the complaint, the procedure followed and/or the findings. Where an investigation results in a finding that an employee has engaged in unlawful conduct and/or breach of this policy, that person may be disciplined. Where an investigation results in a finding that a worker or Council Official other than an employee has engaged in unlawful conduct, that person may also be sanctioned (in both instances refer to the section of this policy titled *Breach of this Policy*). Any action taken is a confidential matter between the affected worker or Council Official and Council.

Council 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 address the problems underpinning the complaint;
- monitoring to ensure that there are no further problems;
- implementing a new policy or modifying an existing policy;
- requiring an apology or an undertaking that certain behaviour cease; and/or
- changing work arrangements

BREACH OF THIS POLICY

All workers and Council Officials are required to comply with this policy at all times. If a worker 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 the Council terminated or not renewed.

Council Officials who are found to have breached this policy may lose their position.

If a worker or Council Official makes an unfounded complaint or a false complaint in bad faith, such as making 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.

RESPONSIBILITIES

Workers and Council Officials

All workers and Council Officials must:

- understand and comply with this policy;
- comply with Council's Code of Conduct;
- ensure they do not engage in any unlawful conduct towards other workers, Council Officials, customers/clients or others with whom they come into contact through work;
- ensure they do not aid, abet or encourage other persons to engage in unlawful conduct;
- follow the complaint procedure as set out in the Grievance Resolution Management Procedure if they experience any unlawful conduct;
- report any unlawful conduct they see occurring to others in the workplace in accordance with the complaint procedure as set out in the Grievance Resolution Management Procedure; and
- maintain confidentiality if they are involved in the complaint procedure.

All workers and Council Officials should be aware that they can be held legally responsible for their unlawful conduct.

Any worker or Council Official, who aids, abets or encourages other persons to engage in unlawful conduct, can also be legally liable.

Human Resource Services

Human Resource Services are responsible for:

- ensuring this policy is applied consistently and fairly across Council;
- providing advice in relation to this policy; and
- maintaining and reviewing the policy as needed.

Human Resource Services have been given the responsibility of ensuring Council meets its objectives as set out in the EEO Management Plan.

The EEO Management Plan aims to achieve the following:

- ensure that the Equal Employment Opportunity procedure is implemented

- oversee the content and direction of the equal employment opportunity programs
- provide staff training on EEO and related issues
- keep the senior management group up to date with legislative changes and requirements at all times
- investigate the needs of staff to assist them in balancing work and family life

The EEO Management Plan is reviewed by the EEO Committee and Executive Staff Committee bi-annually.

Council Officials, Managers and Supervisors

As a Council Official, managers or supervisors employed by Council there are some additional responsibilities under this policy.

As a designated leader within Council, Council Officials, managers and supervisors must:

- monitor the working environment to ensure that acceptable standards of conduct are observed at all times;
- model appropriate behaviour themselves;
- promote this policy within their work area;
- treat all complaints seriously and take immediate action to have the complaint investigated and resolved;
- refer complaints to another officer if they do not feel that they are the best person to deal with the case (for example, if there is a conflict of interest or if the complaint is particularly complex or serious); and
- warn workers and/or Council Officials that spreading gossip or rumours may expose them to a defamation action or a claim of victimisation.

EEO Committee

The Equal Employment Opportunity Committee consists of staff and management representatives and a representative of Human Resource Services.

The Committee has the following functions:

- to consult with staff on EEO
- to review policy and practices in the light of EEO principles
- to promote EEO best practice within Council
- to prepare the EEO Management Plan with Human Resource Services
- to recommend to management initiatives to meet Council's EEO objectives