



# COUNCIL POLICY

## Anti-Discrimination, Harassment & Equal Employment Opportunity Policy

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# POLICY

## PURPOSE

Dubbo Regional Council aims to provide an environment where workers 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 EEO LAWS AND 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 and Dispute Resolution Policy and 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:

<b>Term</b>	<b>Definition</b>
<b>Council</b>	<b>Dubbo Regional Council</b>
<b>Council Official</b>	<b>Includes Councillors, Administrators, Council committee members, delegates of Council and Council advisers.</b>
<b>Premises</b>	<b>Any place (including but not limited to land, building, part of a building or vehicle) where a worker or Council Official 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.</b>
<b>Support Person</b>	<b>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</b>

Term	Definition
	<b>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.</b>
<b>Representative (Union or other)</b>	<b>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.</b>
<b>Workplace</b>	<b>Any place where work is carried out for Council and includes any place where a worker goes, or is likely to be, while at work.</b>
<b>Worker</b>	<b>Any person doing work for Council including but not limited to employees, contractors, sub-contractors, labour hire, volunteers, trainees, apprentices, work experience students.</b>

## POLICY

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

### Discrimination

Unlawful discrimination means unfavourable treatment on the grounds of sex, pregnancy (including potential pregnancy), breastfeeding, race, age, marital or domestic status, physical or mental disability, homosexuality, transgender status, infectious disease, carer's responsibilities or political, religious or other affiliation, including union membership / non-membership.

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 because of a reason or ground which is prohibited by law.

**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).

### Harassment

Harassment is any form of behaviour towards a person that:

- is not wanted by the person;
- offends, humiliates or intimidates the person; and
- creates a hostile environment.

Harassment can occur on the same grounds as unlawful discrimination.

Harassment can be carried out in a variety of different ways, including through email or text messaging, internet chat rooms, instant messaging or other social media channels.

Harassment can often be the result of behaviour that is unintentional. However, harassment can be unlawful regardless of whether the behaviour was intentional or unintentional. In addition, harassment (including bullying) that makes the workplace unsafe contravenes work health and safety laws.

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.

Examples of behaviour that is not harassment can include:

- Reasonable management 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.
- Reasonable action taken in a reasonable manner under legislation affecting a worker.
- 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 that 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.

Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person.

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. For example, 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.

Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a hostile working environment for workers or Council Officials can also be unlawful.

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.
- 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 not just unlawful during working hours or in the workplace itself, and is not limited to conduct between co-workers. The behaviour is unlawful in any work-related context, including conferences, work functions, office Christmas parties, business or field trips and via technology, 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.

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 Council may also be exposed to legal liability.

Council aims to:

- Create a working environment which is free from sexual harassment and where all workers 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 this Policy.
- Promote appropriate standards of conduct at all times.

## **Vilification**

Vilification is a public act which incites hatred, serious contempt for 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, or 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.

## **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.

If a worker is victimised for lodging a complaint or being involved in a complaint, this should be immediately reported to the worker's supervisor, manager or People, Culture and Safety.

If a Council Official is victimised for lodging a complaint or being involved in a complaint, this should be immediately reported to the Chief Executive Officer or, if the complaint involves the Chief Executive Officer, to the Mayor.

## **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 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 the perpetrator to 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 People, Culture and Safety 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 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 and Dispute Resolution Policy and 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 or the Australian Human Rights Commission for information and assistance, or consult a lawyer for confidential advice.

## **CONFIDENTIALITY**

Persons dealing with a complaint will endeavour to maintain confidentiality as far as possible. However, in some circumstances it will be necessary to speak with other workers or Council Officials 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. Breaches of confidentiality may result in disciplinary action being taken. Workers or Council Officials may discuss the complaint with a support person or union representative, but 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 a breach of this Policy has occurred, disciplinary action may be taken. 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 actions to resolve a complaint, depending on the particular circumstances. Examples of potential non-disciplinary actions 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 will cease.
- 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, disciplinary action may be taken.

## **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 and Dispute Resolution Policy and 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 and Dispute Resolution Policy and Procedure.
- 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.

### **People, Culture and Safety**

People, Culture and Safety are responsible for:

- Ensuring this Policy is applied consistently and fairly across Council.
- Providing advice in relation to this Policy.
- Maintaining and reviewing the Policy as needed.
- Providing the organisation with regular Code of Conduct and respectful workplace behaviour training and education.

People, Culture and Safety have been given the responsibility for delivering Council's objectives as set out in the EEO Management Plan.

The EEO Management Plan aims to achieve the following:

- Implementation of the Equal Employment Opportunity Management Plan.
- Oversee the content and direction of the equal employment opportunity programs.
- Provide staff training on EEO and related issues.
- Keep the Executive and Senior Leadership Team 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 Leadership Team bi-annually.

### **Council Officials, Managers and Supervisors**

Council Officials, managers and supervisors employed by Council have some additional responsibilities under this Policy.

As designated leaders within Council, Council Officials, managers and supervisors must:

- Assess the work environment to identify hazards giving rise to risk factors associated with harassment and manage identified risks as part of Council's formal risk management process.
- Monitor the working environment to ensure that acceptable standards of conduct are observed at all times, including by third parties where the conduct has the ability to impact workers.
- 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 complaint (for example, if there is a conflict of interest or if the complaint is particularly complex or serious).
- Inform workers and Council Officials that discrimination and harassment will not be tolerated and complaints will be dealt within in accordance with this Policy.

### **EEO Committee**

The Equal Employment Opportunity Committee consists of staff representatives and a representative of People, Culture and Safety.

The Committee has the following functions:

- To support the implementation of the EEO Management Plan.
- To raise EEO awareness.
- To advise and promote EEO policies and processes.

- To support an EEO workforce and environment.
- To support and advise on diversity and inclusion training and education programs.
- To revise the EEO Management Plan, its objectives, and recommend changes.