



Policy Title	Inappropriate Workplace Behaviour
Related Documentation	Grievance and Dispute Handling Authorised Statement Grievance and Dispute Handling Procedure Work Health and Safety Policy Code of Conduct Workplace Investigation Authorised Statement Equal Employment Opportunity Policy
Relevant Legislation/ Corporate Plan	Local Government (State) Award <i>Work Health and Safety Act 2011</i> <i>NSW Anti-Discrimination Act 1977</i> <i>NSW Industrial Relations Act 1996</i> <i>Race Discrimination Act 1975 (Cth)</i> <i>Sex Discrimination Act 1984 (Cth)</i> <i>Disability Discrimination Act 1992 (Cth)</i> <i>Age Discrimination Act 2004 (Cth)</i>
Responsible Officer	Executive Manager People and Performance

Policy details may change prior to review date due to legislative changes, therefore this document is uncontrolled when printed.

Objectives

To affirm Council's commitment to providing a workplace free from behaviours that is unlawful or inappropriate, including discrimination, harassment, bullying, violence or victimisation.

Policy Statement

Council is committed to providing a harmonious work environment that is free from discrimination, harassment, bullying, violence and victimisation. This behaviour is not condoned or tolerated by Council. Such behaviour constitutes misconduct, breaches Council's Code of Conduct and may also be unlawful.

Scope

This policy applies to all workers and Councillors in any of Council's workplaces which includes but is not limited to: conferences, training courses, workshops, business or field trips and any other work function such as Christmas parties and farewells.

DATA AND DOCUMENT CONTROL

Division: City Governance Section: People and Performance Record No: CDO-23/966	Adopted Date: 31/05/2011 Revised Date: 12/12/2023 Minute Number: 321 Review Date: 30/12/2026	Page: 1 of 7
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Definitions

Bullying

Workplace bullying is a form of harassment, and is the repeated, unreasonable behaviour directed towards a worker or group of workers that creates a risk to their health, safety and welfare (including psychological welfare). It is most often an abuse of power. Workplace bullying may involve:

- Behaviour aimed to demean, humiliate or intimidate workers either as individuals or as a group
- The less favourable treatment of a person by another in the workplace, beyond that which may be considered reasonable and appropriate workplace practice
- Unwelcome and unreasonable behaviour that creates a hostile, uncomfortable atmosphere leading to stress

Examples of such behaviour may include, but is not limited to:

- Continual unjustified and unnecessary comments about a worker or colleague, their work or capacity for work
- Continual ignoring or exclusion of a worker, colleague or group of workers or colleagues from normal conversation, work assignments, work-related social activities and networks
- Unreasonable demands and impossible targets
- Phone calls, letters or emails which are threatening, abusive or offensive
- Taking deliberate advantage of a lack of understanding or knowledge due to inexperience
- Restrictive and petty work rules
- Being intentionally overworked and being forced to stay back or perform additional tasks
- Unjustified open or implied threats of demotion, dismissal or disciplinary action
- Constant criticism or denigration of a worker(s) or colleague(s) in front of others
- Denying access to training or promotion opportunities

These examples are indicative rather than exhaustive.

What bullying is not

Bullying should not be confused with the legitimate exercise of managerial or supervisory authority. It is not bullying for a Supervisor, within the framework of Council policies and procedures, to counsel a staff member on their performance or institute proceedings for unsatisfactory performance, misconduct or dismissal with complaints from others.

It is not bullying for staff to express differences of opinion or difficulties they may have with another staff member provided it is done in the appropriate manner.

An isolated incident of the behaviour described in the definition above may be in breach of the Code of Conduct, but as a once-off incident it is not necessarily considered to be bullying.

Examples of what bullying is not may include, but is not limited to:

- Allocating work to a worker
- Rostering and allocating working hours
- Transferring a worker
- Implementing organisational change
- Deciding not to select a worker for promotion
- Setting performance goals, standards and deadlines
- Performance management
- Informing a worker about unsatisfactory performance
- Informing a worker about inappropriate behaviour
- Constructive feedback and downsizing

Discrimination

Discrimination occurs when someone is treated unfairly because they happen to belong to a particular group of people or have a particular characteristic. Discrimination can be “direct” or “indirect”.

Direct discrimination is treating someone unfairly compared to someone else in the same or similar circumstances.

Indirect discrimination means a requirement (or rule) that is the same for everyone but has an effect or result that is unequal and unreasonable having regard to the circumstances.

The grounds for discrimination include:

- A person’s sex;
- Gender identity;
- Sexual orientation;
- Intersex status;
- Pregnancy;
- Breastfeeding;
- Race (including colour, nationality, descent, ethnic or ethno-religious background);
- Age;
- Marital or relationship status;
- Homosexuality;
- Disability;
- Transgender status;
- Carers’ responsibilities; or
- If a person has an infectious disease.

Harassment

Harassment means unsolicited and unwelcome behaviour which may cause offence or distress to its recipients, and which creates an intimidating, hostile or offensive work environment. Harassment is unlawful when the harassment occurs in relation to any of the grounds for discrimination under the *Anti-Discrimination Act 1977* and associated acts as identified above under the definition of “discrimination”.

Acts or behaviour that may appear to be humorous and/or insignificant to one person may be offensive or disturbing to another. Harassment is defined by reference to the nature and consequences of the behaviour, not the intent of the initiator (*NSW Anti-Discrimination Act 1977*). Harassment in the workplace may include, but is not limited to:

- Coercive behaviour to control, influence or affect the career or job of a person;
- Offensive jokes, suggestions or derogatory comments;
- The distribution or display of offensive or obscene material;
- Sending derogatory or offensive material through email;
- Stereotyping, or making assumptions about a person’s behaviour, values, culture and abilities;
- Intimidation;
- Abuse or assault.

Sexual Harassment

Sexual harassment is unsolicited and unwelcome sexist or sexual behaviour or activity that the recipient sees as offensive and/or distressing. Sexual harassment may include, but is not limited to:

- Offensive or smutty jokes;
- Personally offensive verbal comments;
- Comments or teasing about a person’s alleged sexual activities or personal life;
- Persistent unwelcome social invitations or telephone calls from work mates at home or at work;

- Being followed home from work;
- Posters of a sexual nature in the workplace;
- Physical contact such as frequent brushing against a person, touching, pinching, patting or putting an arm around someone when it is unwelcome;
- Offensive hand or body gestures;
- Sexual harassment, assault or rape.

Victimisation

Victimisation may occur when someone exploits or treats another person unfairly. In the workplace it may include:

- Bullying and intimidation by co-workers
- Being denied a promotion or being moved to a position with lower responsibility
- Dismissal from employment
- Being refused further work

Victimisation is unlawful under Anti-discrimination legislation

Violence

For the purposes of this policy Council identifies workplace violence as violence committed against a worker by a member of the public.

Violence can be described as the attempted or actual exercise by a person of any physical force so as to cause injury to a worker, and includes any threatening statement or behaviour which gives a worker reasonable cause to believe they are at risk of injury.

Violence includes verbal and emotional threats, and physical attack to an individual's person or property by another individual or group.

Worker

A person as defined under the *Work Health and Safety Act 2011* is a "worker" if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:

- A worker;
- A contractor or subcontractor;
- A worker of a contractor or subcontractor;
- A worker of a labour hire company who has been assigned to work in the person's business or undertaking;
- An outworker;
- An apprentice or trainee;
- A student gaining work experience;
- A volunteer;
- A person of a prescribed class.

Legislative Context

Legal Consequences of Workplace Discrimination, Harassment, Bullying, Violence and Victimisation

- Workers that discriminate, harass or bully may, in addition to disciplinary penalties, be prosecuted under the *NSW Anti-Discrimination Act 1977*, the *Race Discrimination Act 1975*, the *Sex Discrimination Act 1984*, the *Age Discrimination Act 2004* or the *Disability Discrimination Act 1992*.
- Under the *Work Health and Safety Act 2011*, a workplace in which discrimination, harassment, bullying, violence and victimisation is tolerated or condoned is not a safe working environment and could result in criminal charges.

- Under S104 of the *NSW Industrial Relations Act 1996*, if the worker alleges that their resignation as a result of bullying conduct was a “constructive dismissal”, they may succeed in a claim of unfair dismissal.
- Under the *Anti-Discrimination Act 1977*, an employer may be legally responsible for discrimination and harassment which occurs in the workplace or in connection with a person’s employment unless it can be shown that ‘all reasonable steps’ have been taken to reduce this liability. This legal responsibility is called ‘vicarious liability’.
- Under the *Anti-Discrimination Act 1977*, a person may be seen as ‘aiding and abetting’ where they cause, instruct, induce, aid or permit another person to do an act that is unlawful. This includes observing an unlawful act and not reporting it to the relevant person.
- Physical assault constitutes a criminal offence.

Discrimination, harassment, bullying, violence and victimisation may occur between:

- Co-workers;
- A supervisor and a subordinate, that is, people using the power of their position to exercise control over another person;
- A worker and a member of the public
- A worker and a Councillor.

Principles

1. All workers shall ensure their behaviour is appropriate and in accordance with this and other relevant Council policies and procedures.
2. Directors, Managers, Coordinators, Supervisors and Team Leaders shall take reasonably practicable steps to prevent discrimination, harassment, bullying, violence and victimisation in workplaces under their control.
3. Council will make every reasonable effort to distribute and publicise this Policy Statement throughout the organisation and elsewhere as appropriate.
4. All workers will be provided with awareness and prevention training in workplace discrimination, harassment, bullying, violence and victimisation.
5. Council will take all allegations of workplace discrimination, harassment, bullying, violence and victimisation seriously and take action to promptly address the matter, including measures to prevent the potential for such behaviour to reoccur.
6. Council will deal with complaints of workplace discrimination, harassment, bullying, violence and victimisation in accordance with the Grievance and Dispute Handling Procedure. With regard to workplace violence, Council will endeavour where appropriate or possible to settle all complaints within the workplace.
7. Nothing in this policy will be construed as excluding the involvement of any external body competent to deal with alleged workplace discrimination, harassment, bullying, violence or victimisation.
8. Management will identify hazardous work areas and implement control measures to prevent or minimise the risk of workers being exposed to specific hazards such as acts of violence from members of the public. .
9. Workers should report all work areas which they consider may be a high risk area for workplace violence to their supervisors.
10. Victims of workplace discrimination, harassment, bullying, violence or victimisation will be provided with access to appropriate counselling, mediation and other forms of worker assistance.
11. Complainants will be given as much protection as possible to avoid victimisation or retaliation. If an investigation results in the transfer or relocation of a worker or workers, the complainant will not be transferred or relocated without their agreement.
12. If it has been found that a worker has been subjected to workplace discrimination, harassment, bullying, violence or victimisation in the course of their engagement with Council, all attempts shall be made to minimise any potential disadvantage to the worker.
13. Any worker found to be responsible or complicit in discrimination, harassment, bullying, violence or victimisation may be subjected to disciplinary action up to and including termination of their employment.

14. Those in authority who knowingly tolerate such behaviour are also guilty of misconduct and could be held legally liable under the principles of vicarious liability and/or aiding and abetting.
15. Council shall take all reasonable steps to keep complaints and information obtained in the course of any subsequent investigation confidential.

Responsibility

General Manager

- Take all reasonable step to allow Council to meet its commitment to this policy.
- Foster the development of a culture within Council that is respectful of individual workers, and discourages discrimination, bullying, harassment, violence and victimisation of any sort.
- Act in a manner which provides an example of good and acceptable workplace behaviour.
- Commit adequate resources and staffing for the effective implementation of this policy.
- Encourage all Directors, Managers, Coordinators, Supervisors and Team Leaders to commit to a workplace that is safe and free from workplace discrimination, harassment, bullying, violence and victimisation.

Directors, Managers, Coordinators, Supervisors and Team Leaders

- Take all reasonable steps to prevent workplace discrimination, harassment, bullying, violence and victimisation.
- Provide leadership by treating all workers with dignity, respect and compassion.
- Act in a manner consistent with this policy and Councils Code of Conduct.
- Actively promote this policy so that workers are aware they do not have to be the recipients of workplace discrimination, harassment, bullying, violence and victimisation, and so that workers are aware of the procedures to deal with these types of behaviour if they occur.
- Consult with relevant workers, health and safety representatives, equal employment opportunity representatives and Council's Employee Assistance Provider (EAP) to develop strategies to prevent or minimise the incidence of workplace discrimination, harassment, bullying, violence and victimisation.
- Provide information, instruction and support training to workers about Council's policies and procedures in relation to workplace discrimination, harassment, bullying, violence and victimisation.
- Promptly deal with complaints of workplace discrimination, harassment, bullying, violence and victimisation in a sensitive and unbiased manner and resolve them with the assistance of relevant people.

People and Performance

- Communicate and assist in educating workers on this policy.
- Provide assistance in the resolution of complaints where appropriate.

Contact Officers

- Fulfil their obligations under Council's Grievance and Dispute Handling Procedure.

Workers

- Ensure that they take the appropriate steps to protect themselves from workplace discrimination, harassment, bullying, violence and victimisation if it exists in the workplace.
- Ensure that they do not adversely affect the health, safety and welfare of others by engaging in workplace discrimination harassment, bullying, violence and victimisation.
- Help to eliminate workplace discrimination, harassment, bullying, violence and victimisation by:
 - Refusing to join in with discriminatory, harassing or bullying actions/behaviours
 - Supporting others to say "no" to discriminatory, harassing or bullying actions/behaviours
 - Reporting instances of workplace violence where they witness it occurring.

END OF POLICY STATEMENT

DOCUMENT HISTORY AND VERSION CONTROL RECORD

Contact for inquiries and proposed changes

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