



Shellharbour City Council

Business Paper

6 September 2022

Item no. 10.3.1 Attachment 1

DRAFT

Anti-Discrimination & Equal Employment Opportunity Policy

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Anti-Discrimination & Equal Employment Opportunity Policy

Policy Owner: Group Manager Human Resources	
Date Last Adopted/Amended: 10 June 2022	Review Date: 10 June 2025

1. Policy Statement/Objective(s)

Shellharbour City 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 bullying.

The objectives of the policy are to: ensure that when employment decisions are made, they are based on merit, not on irrelevant attributes or characteristics that an individual may possess. Council also tries to create a work environment which promotes good working relationships.

2. Scope

This Policy applies to all Workers and Councillors, Conduct Reviewers and Delegates of Council (collective referred to as 'Council Officials').

This Policy is not limited to the workplace or work hours. This Policy extends to all functions and places that are work related, including but not limited to:

- Conferences,
- Christmas parties and
- Council related functions.

Equal Employment Opportunity (EEO) laws apply to all areas of employment, as well as the provision of goods and services.

This Policy does not form part of any Worker's contract of employment. Nor does it form part of any other Council Official's contract for service.

3. References

Age Discrimination Act (Cth) 2004

Anti-Discrimination Act (NSW) 1977

Carer Recognition Act (NSW) 2010

Code of Conduct for Council Staff, Contractors and Volunteers

Disability Discrimination Act (Cth) 1992

Disability Inclusion Act (NSW) 2014

Local Government Act (NSW) 1993

4. External/Internal Consultations

External: Councillors
 Internal: ELT

5. Definitions

Bullying	is repeated unreasonable behaviour (physical or mental) directed towards a worker or group of workers that creates a risk to health and safety.
Discrimination	is either direct or indirect and occurs when a person or group of people, are treated less favourably than others because of certain personal characteristics, including sex, pregnancy, marital status, breastfeeding, age, disability, sexual orientation, gender identity or intersex status.
Equal Employment Opportunity (EEO)	is the principle of ensuring that all employees and potential employees are treated equitably and fairly, regardless of their race, sex, marital status, age, disability or sexual preference.
Harassment	is when a person is treated less favourably on the basis of certain characteristics such as race, sex, pregnancy, marital status, breastfeeding, age, disability, sexual orientation, gender identity or intersex status.
Harassment on grounds of sex	is harassment of another person on the grounds of the sex of the person; characteristic that relates to a person's sex and having regards to all the circumstances, a reasonable person would have anticipated that the behaviour would have offended, humiliated or intimidated another person.
Misandrist	means characterised by or expressing hatred of men.
Misogynistic	means characterised by or expressing hatred or women.
Sexual Harassment	is any unwelcome behaviour of a sexual nature that makes a person feel offended, humiliated or intimidated.
Vilification	is when someone says or does something in public that could make other people ridicule, hate or have serious contempt for a particular group of people.
Victimisation	is when someone punishes a person or treats another person badly because they have made a complaint; have participated in a complaint investigation or they are possibly going to complain.
Worker	means an employee, contractor, subcontractor, employee of a labour hire company, apprentice, trainee, and volunteer.

6. Variation and Review

Council reserves the right to review, vary or revoke this policy.

Review History

Date Policy first adopted – version 1	1 May 1996
Date amendment adopted – version 2	1 May 2010
Date amendment adopted – version 3	15 April 2019
Date amendment adopted – version 4	6 September 2022

7. EEO Laws

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

8. Discrimination

8.1. Direct 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 etc. A full list of the grounds of discrimination which operate federally and in NSW will be relevant, and are listed out below:

- **Race** – when a person is treated less favourably because of their race, colour, nationality, descent, ethnic, ethnic-religious or national origin;
- **Sex** – when a person is treated less favourably because of their sex;
- **Marital status** – when a person is treated less favourably because of their marital or relationship status;
- **Carer's responsibilities** – when a person is treated less favourably because of their carer's, family responsibilities, carer or parental status;
- **Sexual Preference** – when a person is treated less favourably because of homosexuality, transsexuality, sexuality, sexual preference, lawful sexual activity, gender identity;
- **Religious belief or activity** - when a person is treated less favourably because of their religious belief or activity;
- **Pregnancy** - when a person is treated less favourably because of pregnancy or potential pregnancy;
- **Disability** - when a person is treated less favourably because of their disability, including physical, mental and intellectual disability;
- **Breastfeeding** - when a person is treated less favourably because of breastfeeding;
- **Age** - when a person is treated less favourably because of their age;
- **Political belief or activity** - when a person is treated less favourably because of their political belief or activity;
- **Industrial/trade union membership or non-membership** - when a person is treated less favourably because of their industrial/trade union membership or non-membership.

8.2 Indirect discrimination

Indirect discrimination may occur when 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).

Discrimination also includes the situation where a Worker and/or Council Official harasses another person based on a ground of discrimination. Harassment is unwelcome conduct that a reasonable person would expect to offend, humiliate or intimidate.

9. Vilification

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.

10. Sexual harassment and harassment on grounds of sex

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.

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

Harassment on grounds of sex is harassment of another person on the grounds of the sex of the person and/or characteristics that relate to a person's sex and having regards to all the circumstances, a reasonable person would have anticipated that the behaviour would have offended, humiliated or intimidated another person.

Harassment on the grounds of sex may include but is not limited to:

- asking intrusive personal questions based on the person's sex;
- making inappropriate comments and jokes to a person based on sex;
- displaying images or materials that are sexist, misogynistic or misandrist;
- making sexist, misogynistic or misandrist remarks about a specific person;
- requiring a person to engage in degrading conduct based on their sex.

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 Workers and/or Council Officials can also be unlawful.

11. Bullying

Bullying is repeated, unreasonable behaviour directed towards an individual or group that creates a risk to health and safety. Unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten. Single incidents of unreasonable behaviour can also create a risk to health and safety and may escalate into bullying. There is no requirement that bullying be intentional.

It is not bullying for a manager or supervisor to speak with and/or discipline a Worker about their performance. Performance counselling is a necessary part of ensuring that Workers meet the Council's standards of work and behaviour. Also, other reasonable managerial actions such as disciplinary action, work directions and orders, and allocation of work in compliance with business needs and systems do not constitute bullying.

Examples of bullying include but are not limited to:

- continual unjustified and unnecessary comments about a worker or group of workers;
- abusive behaviour such as threatening gestures or actual violence;
- aggressive, abusive or offensive language including threats or shouting;
- behaviour that intimidates or humiliates;
- demeaning or derogatory remarks;
- constant unreasonable and unconstructive criticism;
- emails containing aggressive, abusive or offensive language, demeaning or derogatory remarks or comments;
- deliberate exclusion, isolation, alienation from normal work meetings or interactions;
- continually undermining someone, including encouraging other Workers to 'gang up' on them;
- deliberately withholding information that someone needs to carry out their work.

12. 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/or Council Officials must not retaliate against a person who raises a complaint or subject them to any detriment. Where a person has victimised another, it may result in disciplinary action, up to and including termination of employment or contract.

13. Rights and Responsibilities

All Workers and Council Officials must:

- understand and comply with this Policy;
- comply with the Council's Code of Conduct;

- ensure they do not engage in any unlawful conduct towards other Workers and/or 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 in this Policy if they experience any unlawful conduct;
- report any unlawful conduct they see occurring to others in the workplace in accordance with the complaint procedure in this Policy; and
- maintain confidentiality if they are involved in the complaint procedure.

Workers and/or Council Officials should be aware that they can be held legally responsible for their unlawful conduct.

Council Officials, who aid, abet or encourage other persons to engage in unlawful conduct, can also be legally liable.

14. Breach of this policy

All Workers and/or 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. Contractors (including temporary contractors) who are found to have breached this Policy may have their contracts with the Council terminated or not renewed. For Workers and/or Council Officials a breach of this Policy will result in disciplinary action, which may include termination of employment.

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.

15. Complaint handling procedure

If a Worker and/or Council Official feels that they have been subjected to any form of unlawful conduct contrary to EEO laws, this Policy or the Council's Code of Conduct, they should not ignore it. Council has an Internal Complaint Procedure for dealing with these issues. The complaint procedure has numerous options available to suit the particular circumstances of each individual situation.

16. Possible outcomes

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, breach of this Policy or breach of the Code of Conduct 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.

Agents and contractors (including temporary contractors) who are found to have engaged in unlawful conduct and/or breached this Policy or the Council's Code of Conduct, may have their contracts with the Council terminated or not renewed. For other Council Officials, a breach of this Policy or the Council's Code of Conduct could result in the loss of their position. The 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 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.

17. Questions

If a Council Official is unsure about any matter covered by this Policy, a Council Official should seek the assistance of Human Resources Manager.

18. Variations

The Council reserves the right to vary, replace or terminate this policy from time to time.

Council Official acknowledgement

19. Related Forms/Documents

- Equal Employment Opportunity (EEO) Management Plan 2022-2026
- Positive Working Relationships and Acceptable Workplace Behaviour Policy 2022

Note: Related forms can be located Online under “Forms”

20. Attachments

Attachment 1: NIL

Policy Authorised by:

Name: Council

Date: [Date adopted by ELT/SMT or Council Resolution]