

FAIRNESS AND EQUITY POLICY AND PROCEDURES

1 Aim

The aim of this Policy is to outline Council's commitment to equality, dignity and respect in the workplace.

2 Scope

This Policy applies to all employees of Council and directly relates to and should be read in conjunction with Council's EEO Management Plan.

3 Policy Statement

3.1 Council is committed to ensuring all employees and applicants for employment with Council are treated fairly and with respect and dignity, in accordance with relevant legislation in all aspects relating to their employment.

Council will ensure that all employees and applicants for employment are treated fairly and decisions made are based only on merit. This is regardless of a person's:

- sex (including pregnancy);
- race, colour, religion, or lack thereof, ethnic or ethno-religious background, descent or nationality;
- marital status;
- disability (including past, present or future physical, intellectual, psychiatric, learning disorders, or having any organism capable of causing disease, for example HIV);
- homosexuality (male or female, actual or presumed);
- age;
- transgender/transsexuality; or
- family/carer's responsibility.

Employees must ensure they are aware of and comply with the provisions of Council's Code of Conduct, Policy on the use of Council Internet Access by Staff and Policy and Procedure for the Use of Electronic Mail (e-mail).

3.2 Council recognises that everyone has the right to be treated with respect and dignity at work. Harassment and workplace bullying have a serious impact on health, safety and wellbeing and will not be tolerated at Kiama Council.

All employees have the right to a working environment that is free from discrimination, harassment and bullying. Council is committed to treating all complaints seriously and achieving effective resolution.

- 3.3 Where there are found to be acts of discrimination, harassment or bullying Council will take appropriate action which may include disciplinary action in accordance with the provisions of the Local Government (State) Award 2007.

4 Definitions

- 4.1 **Unlawful discrimination.** Discrimination means treating someone unfairly because they belong, or are considered to belong, or have a characteristic that is considered to belong to a particular group of people.

For an action to amount to unlawful discrimination, it must relate to a prohibited ground or prohibited reason as defined by the relevant legislation.

Discrimination may be unlawful regardless of whether it is direct or indirect, intentional or unwitting.

Employers may discriminate in favour of a particular group but only when they can demonstrate that such discrimination is a genuine occupational requirement and thereby obtaining exemption under the relevant legislation.

- 4.2 **Direct discrimination.** Direct discrimination is treating a person or group of people unfairly because of particular characteristics that relate to them or are considered to relate to them.
- 4.3 **Indirect discrimination.** Indirect discrimination results from practices or requirements that may appear to be neutral but that result in a particular person or group of people being adversely affected.
- 4.4 **Affirmative Action** legislation was established by the Federal Government to ensure that women have access to employment and ongoing employment opportunities. The aim of affirmative action legislation is to ensure that women are able to compete on the same terms as men, in a labour market that traditionally favoured men.

Affirmative action does not mean that EEO target group members are appointed to positions simply because they belong to a target group; they must compete for positions on the basis of merit. Affirmative action aims to make EEO target members more able to compete for opportunities.

Affirmative action aims to redress the workforce imbalances of past discrimination. It also aims to provide the skills and conditions that EEO target group members need to compete more effectively for available positions and other workplace opportunities.

- 4.5 **Harassment.** Harassment is any form of behaviour that:
- is not welcome; and
 - offends, humiliates and intimidates a person or group, and
 - targets a person or group because they belong to a group with particular characteristics (grounds) as defined in the relevant legislation.

Harassment is often a form of unlawful discrimination, however, whilst in some cases harassment may not amount to unlawful discrimination, the behaviour may be a breach of Council's Code of Conduct and therefore inappropriate.

- 4.6 **Bullying.** Workplace bullying is repeated, unreasonable behaviour, either obvious or hidden that intimidates, degrades, insults, humiliates or causes harm to an individual or group within a workplace and may include physical or psychological behaviour.

5 **Legislation**

Council is bound by the following legislation that relates to various aspects of Equal Employment Opportunity:

- Local Government Act 1993;
- Commonwealth Disability Discrimination Act 1992;
- Commonwealth Sex Discrimination Act 1984;
- NSW Anti-Discrimination Act 1977;
- Commonwealth Racial Discrimination Act 1975;
- Commonwealth Age Discrimination Act 2004;
- Human Rights and Equal Opportunity Act 1987;
- NSW Industrial Relations Act 1996;
- Occupational Health and Safety Act 2000 and OH&S Regulation 2001; and
- NSW Crimes Act 1996.

Council is required to ensure that:

- employees are not discriminated against;
- equal employment opportunities are promoted for members of EEO target groups including women, people from culturally diverse backgrounds, people with disabilities and people of Aboriginal or Torres Strait Islander descent; and
- it prepares an EEO Management Plan in accordance with the Local Government Act.

6 **Equal Employment Opportunity (EEO)**

Equal Employment Opportunity means that all decisions relating to employment and assignment of benefits are made on the basis of merit. Council values fairness and equity and requires that all decisions are fair and equitable, including recruitment, promotion, training, discipline and other work benefits including access to overtime, technology and equipment.

7 Harassment

Harassment is unwanted, unwelcome, offensive or intrusive behaviour that may range from unpleasant comments to physical violence. The perception of whether or not behaviour is threatening or harassing lies with the receiver and a person may inadvertently harass others without intending to do so.

Harassment may include, but is not limited to:

- offensive physical contact or coercive behaviour that is intended to be derogatory or intimidating;
- insulting or threatening gestures;
- interference with a person's workspace, work materials, equipment or property;
- continual unjustified comments about a person's work or capacity for work;
- pictures, posters, graffiti, written or electronic materials that are offensive or obscene including images, emails and phone ring tones;
- phone calls, letters or messages (electronic or otherwise) that are offensive, abusive or threatening;
- persistent following or stalking within the workplace, or to and from work;
- dismissive treatment or material expressing prejudice or stereotypical assumptions about the group to which the person may belong;
- continual exclusion of a person or group from normal conversation;
- inequitable assignment of work, access to work related activities or restriction to networks;
- jokes about food preferences, religious practices or social customs;
- attributing of stereotypical or extreme behaviour to a particular racial group;
- practical jokes played on people with physical disabilities;
- overbearing or abusive behaviour towards employees with intellectual disabilities;
- display of sexually or racially denigrating or otherwise offensive material;
- sexual comments;
- touching another person in a sexual manner; or
- disparaging remarks about employees who have made workers' compensation claims.

Under both State and Federal legislation, harassment is a form of discrimination and is unlawful. Harassment constitutes misconduct, undermines the employment relationship and the reputation of Council and may also constitute a serious breach of discipline. In its most serious form, harassment may also be a criminal offence.

All employees are entitled to a harassment-free workplace. Council aims to prevent harassment and will therefore investigate complaints and take appropriate action against people who harass others.

8 Display of Material in the Workplace

The display of sexually or racially denigrating or otherwise offensive material is prohibited in all Council workplaces, vehicles, plant, equipment and facilities.

The display of such material may constitute vilification that incites hatred, contempt or ridicule of a person or group. Vilification on the basis of race, actual or alleged homosexuality or actual or alleged HIV/AIDS infection is unlawful.

Council has a responsibility to ensure that the workplace it provides reflects community expectations and is not offensive. The display of materials considered by a reasonable person to be denigrating is a form of harassment. The display of sexist, racist sexually denigrating, racially denigrating or otherwise offensive material is banned from Council premises, workplaces, vehicles, plant and equipment.

All managers and supervisors must enforce this policy by removing any offensive materials, should they be displayed, and taking other appropriate action, which may include disciplinary action. Managers of contractors, suppliers and volunteers must also ensure that people for whom they are responsible abide by Council's policy. Managers must ensure they keep appropriate records of any complaints made and any action they take in response to the complaint. This may include notes about reasons for not taking further action.

Material includes, but is not limited to, graphics such as pictures, posters, cartoons, picture calendars, graffiti, painted or printed clothing, written, printed or computer generated material such as poems, notes, quotes, and jokes which are sexist, racist, sexually denigrating or racially denigrating or which are likely to cause offence. This covers material on both Council equipment and personal equipment such as mobile phones and portable computers.

Vilification is unlawful under the NSW Anti-Discrimination Act on the grounds of race, homosexuality, transgender status and actual or alleged HIV/AIDS infection. Vilification is conduct, which incites hatred towards, serious contempt for, or severe ridicule of a person or group of persons.

Legally, Council has responsibility to ensure that offensive materials are not displayed in the workplace. Managers and supervisors are required to monitor workplaces in this respect and to take whatever action is necessary to eliminate or remove such materials.

9 Bullying

The Occupational Health and Safety Act and Regulation 2000 imposes a duty on employees and employers to provide a safe workplace. This includes a workplace free of bullying.

Workplace bullying may include, but is not limited to:

- inappropriate notes or e-mails;
- teasing;
- threatening and intimidating statements or action;
- abusive behaviours such as threats or actual violence;
- aggressive, abusive or offensive written or spoken language;
- demeaning, derogatory remarks or written or spoken comments;
- constant unreasonable and unconstructive criticism;
- deliberate exclusion, isolation, alienation, from normal work meetings or interaction;
- unreasonable high work demands placed on one employee but not on others;
- consistent allocation of demeaning or meaningless tasks;
- consistently ignoring someone; and
- encouraging other employees to gang up on someone.

Bullying does not include:

- occasional differences of opinion, conflicts or problems in work relationships;
- appropriate management of genuine performance issues;
- directing employees to carry out duties that are within the limits of their skills; competence and training; and
- for employees to discuss, appropriately, difficulties they have with other employees, provided they are not expressed in threatening or offensive manner

10 Responsibilities

Council is responsible for taking reasonable steps for preventing discrimination, harassment and bullying.

Directors, managers and supervisors are required to lead by example and, as management representatives, have both a statutory and common law duty of care.

Employees also have responsibility for ensuring that they do not discriminate against, harass or bully other employees, delegates of Council, contractors, consultants, suppliers or members of the public.

Whilst all employees are responsible for their own behaviour, managers and supervisors are also accountable for ensuring that appropriate standards of conduct are maintained in the workplace and that discrimination, harassment and bullying are not tolerated. Council is liable for the behaviour of employees unless it can show it took reasonable steps to prevent the behaviour.

All parties are responsible for maintaining confidentiality when providing information or investigating complaints and are required to report any incidents

in such a way to enable Council to effectively manage and resolve them.

Council requires all employees irrespective of their position, to contribute in a positive and productive way to ensure a workplace free of discrimination, harassment and bullying.

11 Making Reasonable Adjustment

Legislation requires Council to make reasonable adjustment to cater to employees with specific needs to ensure discrimination does not occur. This means that when a person with a disability is considered the best person for the job, Council should provide reasonable facilities or services, or make changes to the position description.

Any adjustments or alterations that will enable the person with the disability to do the job must be made unless they impose an “unjustifiable hardship” on Council. The adjustments may include:

- a change of work practices or job design;
- modifications to equipment or premises; and
- training or other assistance.

Reasonable adjustment may mean:

- swapping some duties between an employee with a disability and others on the team;
- adapting usual equipment, or providing special equipment for an employee;
- allowing an employee with a disability to work flexible working hours to accommodate their needs;
- re-locating a work unit to a physically accessible area; and
- accommodating different work practices in situations such as job interviews, competency assessments and/or other performance reviews.

Similarly, reasonable adjustment should be made for employees flexibility because of carer’s responsibilities.

12 The Merit Principle

The merit principle is a central legal concept of equal employment opportunity. It demands that jobs, benefits and opportunities are offered based on the merit of those concerned rather than consideration of irrelevant factors. Following the merit principle involves:

- ensuring job requirements are not discriminatory
- advertising positions in a manner that attracts suitably qualified pools of applicants and
- developing employment policies and practices which aim to eliminate bias and nepotism.

13 Managing EEO Related Complaints

Step 1 – Determine if there are grounds for a complaint:

- an employee who believes they have grounds for a complaint may seek the advice of their manager/supervisor; an EEO Contact Officer; the EEO Officer; the Human Resources Section, the EAP or their Union.

An employee who believes they may be the target of discrimination, harassment or bullying has the right to make a complaint to:

- their supervisor and/or manager;
- Council's EEO Officer;
- Council's Human Resources Section; or
- their Union Delegate.

The Local Government (State) Award 2007 includes provisions relating to grievance, disciplinary and termination procedures that may be relevant to a complaint based on discrimination, harassment or bullying. An employee may request the support and assistance of a union representative at any stage of the process.

Employees may also wish to seek the support of an EEO Contact Officer and/or the Employee Assistance Program.

Employees who believe they have been discriminated against, harassed or bullied can choose how they make a complaint, however, it is preferable for complaints to be made in writing to enable thorough investigation and procedural fairness for all parties involved. Complaints should provide details of the alleged offence and the remedy sought.

Where there is a breach of Council Policy, counselling and disciplinary action will occur in accordance with the provisions of the Local Government (State) Award 2007. Such action may include termination of employment, where appropriate.

Step 2 – Approach the alleged offender and request that the offensive behaviour ceases:

- if the offensive behaviour ceases no further action may be required; and
- in some cases it is inappropriate for the employee to contact the alleged offender and the employee should lodge a complaint (progress to Step 3).

An employee who believes they have been discriminated against, harassed or bullied may wish to approach the alleged offender to attempt to resolve the issue quickly and at the lowest possible level. It is important that both parties recognise inappropriate behaviour and the alleged offender takes responsibility and ceases the inappropriate behaviour.

Step 3 - Lodge the Complaint:

- it is preferable , but not essential for complaints to be lodged in writing;
- receipt of the complaint is acknowledged;
- the person receiving the complaint should advise their Director and the Human Resources Manager immediately on receipt of the complaint; and
- if the complaint is of a criminal nature, the Human Resources Manager will refer it to the Police immediately.

Employees who become aware of an incident of discrimination, harassment or bullying must report the situation to a management representative as soon as possible regardless of whether or not the complaint is in writing. While it is desirable that all actions take place with the complainant's agreement, there are times when the duty of care overrides the wish for confidentiality.

Whilst it is preferable that complaints be made in writing, it is not essential to their investigation. It should be acknowledged, however, that investigations may be limited if insufficient evidence is provided by the complainant. Council's complaint form (appendix to this document) may assist in clarifying the nature of the complaint and remedy sought.

In accordance with the Local Government (State) Award 2007 Grievance Procedures, where an employee lodges a complaint with a supervisor or manager, the employee and the supervisor/manager must meet within two working days of notification.

If the matter remains unresolved the employee may request the matter be referred to a Manager or Director. A meeting shall be held between the employee and the Manager/Director and if the matter still remains unresolved, the employee may request a written response from the General Manager.

Grievances remaining unresolved beyond this point may be referred to the employee's union or representative.

Step 4 – Determine Investigation Strategy:

- complainant must be advised of the intended approach to be taken within two days of lodging their complaint; and
- strategy must fit within Grievance Procedures provisions of the Local Government (Award) State 2007.

The person receiving the complaint must take action to ensure the complaint is investigated by liaising with the Director and the Human Resources Section for advice. They will advise an appropriate approach for investigating complaints, including nominating an appropriate investigating officer.

Depending upon the nature and severity of the case, the situation may be resolved by speaking with the alleged offender. They may apologise to the complainant and cease the unwanted behaviour after being advised of the complaint. In other cases, it may be necessary for a more formal investigation to be conducted, including interviewing of witnesses.

In the case of a serious allegation, it may also be appropriate for an employee or group of employees to be suspended from work. Both an employee making a complaint and the alleged offender should be offered the support of Council's Employee Assistance Program.

Serious complaints may also need to be referred to the Police.

Whilst complaints clearly need to be investigated appropriately, it is desirable to involve as few people as necessary to ensure the confidentiality of both the complainant and the alleged offender. Complaints must be investigated in a fair, timely and confidential manner and all parties concerned will have the right to natural justice.

Within four weeks, the person investigating the complaint must determine whether further action is required, if they have sufficient information and if they need to interview witnesses. The person conducting the investigation must, on a weekly basis, report the outcomes of their investigation to the Director and the Human Resources Section. They must also report weekly to the employee who lodged the complaint, assuring them that the investigation is progressing.

The person who receives a complaint has the following responsibilities:

- To discuss the allegation with the complainant in order to decide, with the complainant's agreement, whether or not the matter can be resolved at the immediate workplace level;
- To contact the Human Resources Section to advise of the complaint and to determine the most appropriate person to investigate the complaint. The Human Resources Section will advise the Director of receipt of the complaint and discuss the intended action to be taken; and
- To assure the complainant that the nature and content of the complaint will remain confidential, to the extent possible and will not be disclosed outside the investigation process. While it is desirable that all actions take place with the complainant's agreement, there are times when duty of care overrides confidentiality.

The person who investigates the complaint (who is not necessarily the person who receives the complaint) has the following responsibilities:

- To discuss the allegation(s) with the complainant and assure them that the matter will be treated confidentially;
- To inform the alleged offender that a complaint has been received, the kind of investigative process that has been decided upon and their rights of representation or advice;
- To advise the alleged offender not to approach the complainant directly or indirectly about the allegation(s);

- To assure the alleged offender that no prejudicial action, or action which could be interpreted as disciplinary, will be instigated without their having the opportunity to be heard;
- To assure the alleged offender that the nature and content of the complaint will be treated confidentially, to the extent possible and will not be disclosed outside the investigation process unless the duty of care prohibits this;
- To interview witnesses, and
- To keep factual notes of discussions, meeting and interviews with the complainant and the alleged offender.

The person investigating the complaint will discuss their findings with the Director and the Human Resources Manager prior to final resolution of the complaint.

Step 5 – Recommend resolution

- person investigating discusses outcomes of investigation and recommends resolution to Human Resources Manager and Director
- proposed disciplinary action must fit within Disciplinary Procedures provisions of the Local Government (State) Award 2007

Claims of discrimination, harassment and bullying are resolved in a manner similar to other grievances, except where the complaint breaks a criminal law such as physical or sexual assault. In such a case, the complaint must also be referred to the Police.

Resolution of a complaint will vary according to the nature and severity of the complaint. Resolution may include:

- conciliation between parties;
- clarifying appropriate behaviour;
- providing preventative or awareness raising measures to an individual or group of people; or
- appropriate disciplinary action.

Disciplinary action in accordance with the provisions of the Local Government (State) Award 2007 will be taken against anyone who discriminates against, harasses or bullies an employee. Discipline may include a warning, counselling, or termination of employment, depending upon the nature and severity of the case and will be determined by the General Manager.

When there is a breach of Council Policy or standards, counselling and disciplinary action will occur, including where appropriate, termination of employment.

The victimisation of any person who has lodged a complaint or who has been asked to assist in any investigation of a complaint is unlawful. Victimisation means subjecting a person to some detriment if they have:

- lodged a complaint
- provided information or documents relating to a complaint
- attended a conciliation conference or appeared as a witness in respect of a complaint.

Examples of victimisation may include:

- moving an employee to a less responsible position while their complaint is being considered
- an employee being ostracised by other employees because of their role in the investigation of a complaint, or
- an employee being denied opportunities in the workplace after lodging a complaint.

An employee who victimises another will be subject to disciplinary action.

Damages may apply where anti-discrimination legislation is breached. Penalties imposed against individuals will not be paid or reimbursed by Council.

Whilst it is important that employees who lodge complaints are aware that there may have been disciplinary action resulting from an offence, it is not necessary for them to be told full details of sanctions taken against another employee.

14 EEO Management Plan

The General Manager is ultimately responsible for the implementation of the EEO Management Plan. Council adopts and implements an EEO Management Plan that outlines Council's objectives and the strategies for the achievement of those objectives over a four year period.

The EEO Management Plan includes details of responsibilities, target dates for implementation and performance indicators. The Plan may be amended at any time and is formally reviewed each year. As with the development of other employee-related policy, the review process includes consultation with employees via the Consultative Committee.

15 Role of the EEO Officer

The Local Government Act requires the General Manager to appoint an officer to be responsible for the day-to-day co-ordination of EEO activities and the implementation of the EEO Management Plan. The EEO Officer is also an ex-officio member of the EEO Committee.

16 Role of EEO Contact Officers

EEO Contact Officers are responsible for providing advice to employees in respect to lodging grievances and managing specific issues relating to equality, dignity and respect in the workplace.

An EEO Contact Officer must make a report to the EEO Officer, Manager Human Resources, General Manager or the relevant Director if they believe there is a serious threat to the health and well-being of the person to whom they are providing advice.

17 Role of the EEO Committee

The EEO Committee is a sub-committee of the Consultative Committee which monitors the implementation of the EEO Management Plan and makes recommendations regarding the implementation of relevant strategies and policies.

The EEO Committee is not responsible for managing complaints or grievances of a specific or individual nature.

18 Review

18.1 This policy was formally adopted on Tuesday, 19 September, 2006 and last reviewed by MANEX on 16 July 2009.

18.2 Council reserves the right to review or vary this policy in consultation with the Union representatives of employees affected by this policy. Once the consultative process has been finalised, the policy will be referred to the Consultative Committee for endorsement.

19 Attachments - WORKPLACE DISCRIMINATION, HARASSMENT AND BULLYING REPORT FORM



Authorised by:

Michael Forsyth, General Manager

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Document Content Coordinator:

Human Resources Officer

Document Process Manager:

Manager Human Resources

WORKPLACE DISCRIMINATION, HARASSMENT AND BULLYING REPORT FORM

Complainant:	Department/Section:
Position:	Pay number:
Contact phone number:	Date & time of incident:
Where did the incident occur?	
Name of alleged Offender:	Department/Section
Names of witnesses (if any):	Department/Section

1. Please describe what happened (lead-up, work process being undertaken, who was present and any other relevant information):

2. Why do you think this incident happened?

3. How do you think this incident has affected you?

Horizontal lines for writing the answer to question 3.

4. How do you think this incident can be resolved?

Horizontal lines for writing the answer to question 4.

Signed:
Employee

Date: