



Policy

122. DISCRIMINATION, WORKPLACE BULLYING AND HARASSMENT POLICY

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Strategic Outcome: Good government

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Responsible Officer: Enterprise and Risk Manager

1. POLICY STATEMENT

Council is committed to providing a safe and healthy workplace environment. This policy, in conjunction with Council's Code of Conduct, Equal Employment Opportunity Management Plan and Policy, and Work Health and Safety Policy, is in response to State and Federal legislation and a reflection of Council's statutory obligations.

Discrimination, harassment, bullying, and workplace violence are unacceptable behaviours and will not be tolerated by the Council.

2. PURPOSE

The purpose of this policy is to provide guidance to all staff on how to identify and report unacceptable behaviours, ensure responses are timely and actions taken demonstrate Council's intolerance to these behaviours. In line with Council's values, this policy is designed to assist in promoting a workplace culture of dignity and respect.

3. SCOPE

This policy applies:

- To all workers of the Berrigan Shire Council including volunteers, contractors and councillors;
- To recruitment;
- To all Council worksites and the extended work environments, including Council social gatherings, work related trips, and social media.

4. OBJECTIVE

This policy is designed to assist the Council to meet the following Delivery Plan objective:



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2.2.2 Council operations support ethical, transparent and accountable corporate governance.

5. DEFINITIONS

Bullying is any repeated anti-social behaviour that offends, degrades or humiliates a person, and has the potential to create a risk to health, safety and wellbeing. Bullying refers to coercive, unethical activities that create an environment of fear.

Discrimination is unfair or unjust treatment of or decisions affecting an individual because of their sex, race, age, marital status, transgender status, carer's responsibilities, disability, age, pregnancy, union membership or other personal activities covered by the NSW Anti-Discrimination Act 1977 and Fair Work Act 2009.

Harassment means verbal or physical conduct which, because of its severity and/or persistence, is likely to create a hostile or intimidating environment which may detrimentally affect an individual's employment. Harassment is defined by reference to the nature and consequences of the behaviour, not the intent of the initiator (NSW Anti-Discrimination Act 1977).

Reasonable management action is lawful and is not bullying or harassment. There are times when Council may take reasonable management action to effectively manage their operations. This includes:

- Setting reasonable performance goals, standards and deadlines;
- Allocating work;
- Rostering and allocating reasonable working hours;
- Transferring a worker for operational reasons;
- Failing to promote someone after a proper, documented selection process;
- Informing a worker that their performance is unsatisfactory, after following established performance management guidelines;
- Informing a worker, objectively and confidentially, that their behaviour is inappropriate;
- A restructure.

Sexual Harassment means unwelcome sexual advances, requests for sexual contact and verbal or physical conduct of a sexual nature when submission to, or rejection of, such advances, request or conduct is explicitly or implicitly a term or condition affecting employment decisions; and/or when such advances, requests or conduct have a detrimental effect on an individual's work environment (Sex Discrimination Act 1984).

Workplace conflict is generally not considered to be workplace bullying. Not all conflict is negative nor does it always pose a risk to health and safety. When conflict is at a low level and task based, it can generate debate and lead to new



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ideas and innovative solutions. However, in some cases, conflict that is not properly managed may escalate to the point where it fits the criteria for workplace bullying. A single incident of unreasonable behaviour is not bullying, although it may have the potential to escalate into bullying. Single incidents can still create a risk to health and safety.

Workplace violence occurs when a person is abused, threatened or assaulted in circumstances relating to their work. Unlike bullying, an action does not need to be repeated to be considered violent. Threats to harm someone, violence and damage to property are criminal matters that should be referred to the Police.

6. POLICY IMPLEMENTATION

6.1 Responsibilities

Workers

All workers have a responsibility to:

- Be aware of the behaviours that could constitute discrimination, harassment or bullying;
- Be aware of the extended work environments where discrimination, harassment or bullying can occur such as social outings, workplace trips and social media.
- Ensure your own conduct does not cause offence or misunderstanding and support the values expected by the Council;
- Be prepared to stand up against discrimination, harassment or bullying at work or to support colleagues who are being subjected to inappropriate behaviours;
- Seek advice and support if necessary.

Managers

All managers have a responsibility for the implementation of this policy and to prevent, stop and take action to deal with inappropriate behaviour without waiting for a complaint from a worker.

Managers are responsible for taking an active role in ensuring proper standards of conduct amongst workers under their control.

Managers must ensure that once they become aware of an issue relating to discrimination, harassment or bullying they have a duty of care to ensure the matter is resolved in a timely manner.

6.2 Reporting inappropriate behaviour



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Informal reporting

Wherever possible the informal process should be used. There are a number of informal options available to resolve the matter:

- If you feel you are able to, you could approach the individual concerned, making it clear that their behaviour is unwelcome and that you would like it to stop. You may also consider taking a support person with you when you do this. Taking early and direct action may resolve the matter to your satisfaction without the need to resort to a formal complaint;
- You may wish to discuss the matter with your Manager or the Human Resource Officer to facilitate a meeting between you both or individually.

Whilst the informal process is based on open discussion, any complaint made is treated seriously, and nobody will be victimised as a result of the complaint (refer *Internal Reporting Policy*).

If you feel an informal approach would be inappropriate, or these options have been unsatisfactory, you should proceed to lodge a formal complaint. Prior to this you are encouraged to seek advice from the Human Resource Officer, or pursue advice through alternative channels such as your respective Union, Anti-Discrimination Board, Fair Work Australia or Workcover NSW.

Formal reporting

The formal process is used where:

- A complaint of discrimination, harassment or bullying is not resolved through the informal process;
- The individual feels the informal approach is not appropriate;
- Inappropriate behaviour persists.

Put the complaint in writing to your Manager, or where the complaint is about your Manager, address to the General Manager or contact the Human Resource Officer to assist in addressing the letter to the most appropriate person. The letter should include:

- The nature of the complaint;
- Reference to dates, times and places (if applicable) in relation to a specific incident(s);
- The names of any witness(es) to the incident(s) should also be included.



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6.3 Acknowledgement of complaint

Written notification acknowledging receipt of the complaint and impending investigation will be forwarded to the person who has lodged the complaint, within five days of receiving the formal report.

6.4 Investigating complaints

All formal reports of inappropriate behaviour will be investigated.

Where possible all investigations will be handled in-house and co-ordinated by the Director Corporate Services.

Due to the nature of the complaint, or issues arising from an in-house investigation, there may be an identified need to involve external investigators. In this instance the Director Corporate Services will consult with the General Manager with a decision made to continue to handle in-house or to outsource the services of an independent investigator.

In-house Investigation

The purpose of the investigation is to gather all pertinent facts to decide whether allegations of inappropriate behaviour are substantiated.

The investigation will involve:

- Interviewing the complainant, the accused and any witnesses, all of whom have the right to be accompanied by a support person;
- A record of the interview will be made, and interviewees will be asked to agree and sign the statements made to confirm it is a true record of the interview;
- In instances where there is a risk to the health and safety of workers or the security of the organisation, it may be necessary to suspend the respondent, with pay.

The length of time needed to investigate a complaint will vary depending upon the nature of the complaint and the complexity, however, in all cases a response should be made to the complainant within four weeks of the start of the investigation, even if to advise on the progress of the investigation, unless otherwise mutually agreed.

6.4 Investigation Outcomes

Following the investigation, potential outcomes will involve the following:

- The services of an external independent investigator may be sourced;
- The complaint may not be upheld therefore all records of the matter will be disregarded. The complainant will receive feedback for this decision;



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- The Director of Corporate Services (or delegate) may decide that the matter may be resolved through mediation if both parties agree;
- If it has been found that inappropriate behaviour has occurred, the Director of Corporate Services (or delegate) will refer the matter to the General Manager to decide upon disciplinary action;
- If it has been found that the claim is false and has been made with malicious intent and contains no substance, this will be considered inappropriate behaviour and will be referred to the General Manager to decide upon disciplinary action;
- Disciplinary action will be in accordance with the Local Government (State) Award (Award). Each case will be assessed individually following the disciplinary procedures outlined in the Award.

6.5 Follow Up

When a complaint has been resolved informally or through formal procedures, the appropriate Manager should monitor the situation to ensure that the inappropriate behaviour has stopped and there has been no subsequent victimisation.

6.6 Confidentiality

Any complaint received either formally or informally will be treated confidentially and in accordance with the Berrigan Shire Council Privacy Management Plan. All involved in the complaint and any subsequent investigations are expected to maintain strict confidentiality. Any breaches in confidentiality will be contrary to Council's Code of Conduct and may lead to disciplinary action.

6.7 Further Action

Workers involved in a complaint of inappropriate behaviour including the complainant and the accused are entitled to pursue further courses of action if they believe the process employed by the Council has been unjust.

Options available for further action include contacting the following organisations:

- Fair Work Australia
- Workcover NSW
- Anti-Discrimination Board

6.8 Support

Council has in place the Employee Assistance Program and encourages any employees affected by inappropriate behaviour to contact the providers.

7. RELATED POLICIES OR STRATEGIES

Work Health and Safety Act 2011

Work Health and Safety Regulations 2011



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Fair Work Act 2009

NSW Anti-Discrimination Act 1977

Disability Discrimination Act 1992

Sex Discrimination Act 1984

Local Government (State) Award 2010

Berrigan Shire Council Code of Conduct

Berrigan Shire Council Privacy Management Plan

Berrigan Shire Council Equal Employment Opportunity Management Plan

Equal Employment Opportunity Policy

Work Health and Safety Policy

Employee Assistance Program Policy

Internal Reporting Policy

Social Media Policy