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DISCRIMINATION, BULLYING, HARASSMENT AND WORKPLACE VIOLENCE POLICY

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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 a reflection of Council's statutory obligations.

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

Council aims to ensure all those participating in the workplace are treated with respect, dignity and fairness with an aim of creating an environment which promotes positive working relationships.

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.

The policy further sets out the types of behaviours and conduct which will be taken to constitute bullying, harassment and/or violence and establishes procedures for handling complaints of occurrences of these matters in the workplace.



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3. SCOPE

This policy applies to:

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

This policy is not limited to the workplace or working hours, and will include all work related events which includes, but is not limited to, lunches, client functions, meetings and conferences as well as Council social functions.

This policy relates to, but is not limited by, the following types of communication where the behaviour is related to Workplace Bullying, Harassment or Violence:

- verbal communication either over the telephone or in person in the workplace, or outside of it;
- written communication including letters, notes, minutes of meetings etc;
- internal and external electronic communication including (but not limited to):
 - email;
 - instant messaging;
 - faxes;
 - social media and networking forums such as Facebook, LinkedIn, Twitter, TickTok, BeReal and other forms of social media; and
 - communications via text message.

4. DEFINITIONS

Bullying is any repeated and unreasonable or anti-social behaviour that offends, degrades or humiliates a person or group of persons, 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.

Council means the Berrigan Shire Council

Discrimination is unfair or unjust treatment of or decisions affecting an individual because of their sex, race, age, marital status, gender identity, 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*.



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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 including:

- 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 their performance is unsatisfactory, after following established performance management guidelines;
- informing a worker, objectively and confidentially, their behaviour is inappropriate; and / or
- 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 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 may 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



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repeated to be considered violent. Threats to harm someone, violence and damage to property are criminal matters that will be referred to the Police.

5. POLICY IMPLEMENTATION

5.1 Standards of Behaviour

In line with Council's commitment to creating a workplace which is free of workplace health and safety risks, fair treatment and one which strives to create positive working relationships, all those covered by this policy and any associated procedures or guidelines, are expected to observe the following minimum standards of behaviour.

1. Being polite and courteous to others.
2. Being respectful of the difference between people and their circumstances.
3. Ensuring they do not engage in any bullying, harassing, discriminatory or violent behaviours towards others in, or connected with, the workplace which includes customers, clients, supervisors and other managers.
4. Ensuring they do not assist, or encourage others in the workplace, or in connection with the workplace, to engage in any bullying, harassing, discriminatory or violent behaviour of any type. Assisting will include ignoring unacceptable behaviour when it is witnessed.
5. Adhering to the complaint procedure outlined in this policy if they experience any bullying, harassing, discriminatory or violent behaviours.
6. Reporting any bullying, harassing, discriminatory or violent behaviours they see happening to others in the workplace, or connected with the workplace, in line with the complaint procedure in this policy.
7. Keeping information confidential if involved in any investigation of bullying, harassment, discrimination or workplace violence.

These standards of conduct are intended to operate in addition to, and in conjunction with, Council's Code of Conduct.

5.2 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;



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- be prepared to stand up against discrimination, harassment or bullying at work or to support colleagues who are being subjected to inappropriate behaviours; and
- 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.

5.3 Bullying Behaviour

Bullying is repeated, unreasonable behaviour directed towards a worker or group of workers that creates a risk to health and safety and is unlawful.

Repeated behaviour refers to the persistent nature of the behaviour and may involve a range of behaviours over time. Repeated behaviour may under some circumstances be represented by a one off event, where the event is sustained and also meets the unreasonable test below.

Unreasonable behaviour means behaviour a reasonable person, having regard for the circumstance, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating, or threatening.

Examples of bullying may reasonably include (but are not limited to):

- a manager or supervisor using a management style that is harsh, involves shouting, constant criticism or humiliation of an employee, or group of employees, in private or in front of their peers;
- an employee being treated less favourably by another employee or group of employees in the workplace, including actions such as intimidation, forcing an employee to participate in an “initiation” process, the playing of practical jokes or forcing an employee to undertake demeaning tasks;
- sniggering or gossiping behind someone’s back where the intent is clearly to embarrass the person or to share a secret that is not yours to share.
- laughing at someone in the workplace that is intended to make them feel uncomfortable or distressed



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- a manager setting unreasonable timelines or constantly changing the deadlines for an employee to meet, or setting tasks that are unreasonably below or beyond a person's skill level; and / or
- continuously and deliberately excluding someone from workplace activities including ignoring them and keeping them isolated from relevant communications about work issues.

5.3 What is not Bullying Behaviour

Fair and reasonable management action taken in order to counsel an employee for instances of underperformance, investigating complaints made against employees, discipline for misconduct and other work directions in line with the business needs of Council do not constitute bullying.

5.4 Harassment

Harassment may involve intimidating, offensive or humiliating physical or verbal conduct towards a person based on a protected characteristic (see Discrimination above) and ranges from unacceptable comments through to physical violence any of which could reasonably be expected to make a person feel offended, humiliated or intimidated.

5.5 Sexual Harassment

Sexual harassment is unwelcome sexual advances, requests for sexual favours, inappropriate and unrequested touching, sexually loaded comments and jokes that are unwelcome and of a sexual nature that could be expected to make a person feel embarrassed, belittled, offended, humiliated or intimidated.

5.6 Discrimination

Discrimination is behaviour directed toward a person or a group of people that treats them unfairly or less favourably than others because they have a particular characteristic, or they belong to a particular group of people.

Protected traits include race, colour, sex, sexual orientation, gender identification, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

Discrimination may include behaviours such as stereotyping, isolating, making fun of, mimicking, mocking, or some bullying behaviours especially where they are based on a person's identity, characteristic or group



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5.7 Violence

Workplace violence is any incident where a person is abused, threatened or assaulted in circumstances relating to their work.

Examples of work-related violence include but are not limited to:

- biting, spitting, scratching, hitting, kicking;
- throwing objects;
- pushing, shoving, tripping, grabbing;
- verbal threats;
- armed robbery;
- sexual assault (which includes inappropriate touching or groping); and
- attacking with knives, guns, clubs, or any other weapon.

6. Breach of Policy

All those individuals covered by this policy are expected to adhere to the standards of behaviour contained herein at all times. Any employee who is found to have breached this policy will be disciplined accordingly which may include any appropriate management action including termination of employment.

If a contractor of Council is found to have breached this policy, their contract stands to be terminated, or may not be renewed in future, where the claim against them is substantiated.

If any claim of a breach of this policy is significant, the Chief Executive Officer may choose to suspend the employee or contractor, pending the outcomes of the investigation. Suspension of an employee will be considered in line with the provisions of the Local Government (State) Award 2020. Suspension of a contractor will be considered in line with the contract they have signed with Council.

7. Complaint Management

All individuals covered by this policy who believe they have been subject to, or witnesses, behaviours that constitute bullying, harassment, discrimination or violence, should act as quickly as possible to follow the procedures set out below.



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7.1 Reporting inappropriate behaviour

Amicable Resolution

Amicable resolution applies only to those behaviours that do not constitute violence. Workplace violence is a far more serious behaviour and will be dealt with either as a formal investigation or by directing any criminal behaviours directly to the police.

In the first instance, the aggrieved employee should, wherever practicable, and if they feel comfortable to do so, attempt to amicably resolve the matter with the employee(s) or manager(s) or otherwise who are alleged to have engaged in bullying, harassing or discriminatory behaviours.

When confronting the issue, the individual should clearly state the offensive behaviour experiences, explain the behaviour is unwelcome and offensive and ask the behaviour to cease.

The person displaying the behaviour may not be aware their behaviour or conduct was causing offence or was unwelcome.

This is not a compulsory part of the complaint procedure, and if an employee does not wish to confront the person directly, or does not feel safe to do so, then they may bypass Amicable Resolution.

Where the alleged behaviour involves the employee's direct manager and it may not be practical for them to directly resolve the matter, they must immediately notify their Director who, with the employee's approval will endeavour to investigate and resolve the matter on an informal basis in the first instance and in accordance with the procedures set out below.

Where the alleged behaviour is that of the CEO the Deputy CEO may be contacted.

Where the alleged behaviour is that of the Mayor or Councillors, the CEO may be contacted.

Informal reporting

All those covered by this policy must report instances of bullying, harassment or discrimination to their Overseer or Manager. The Manager will handle the complaint as set out below.

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 unable to approach the individual concerned in order to reach an Amicable Resolution, you may approach your Overseer, Manager or the Human Resource Co-ordinator for assistance. 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.



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- You may wish to discuss the matter with your Manager or the Human Resource Co-ordinator 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).

An informal complaint process includes a range of alternatives which may be applied in a flexible manner to address different complaints and in consideration of the relevant circumstances.

The information complaint process is intended to be used for less serious allegations of bullying, harassment or discrimination and instances which do not generally warrant disciplinary action being taken. An individual who is unsure whether to make a formal or informal complain, may make an informal complaint first and decide if they want to escalate the complaint to a formal process after speaking with their Overseer / Manager.

Different options for handing informal complaints may include, but are not limited to:

- the overseer / manager having a conversation with the alleged offender about the behaviour complained of; and / or
- the overseer / manager having a meeting with the individuals concerned to attempt to reach a resolution.

It is expected a File Note of the above actions will be kept on the employee's Personnel File.

If you feel an informal approach would be inappropriate, or these options have been unsatisfactory previously, you should proceed to lodge a formal complaint. Prior to lodging a formal complaint you are encouraged to seek advice from the Human Resource Co-ordinator, 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; and / or
- the inappropriate behaviour persists.

To commence a formal complaint, you are expected to lodge a written complaint. The complaint must be lodged with your Manager, or where the complaint is about your Manager, address to your Director or to the Chief Executive Officer (CEO).



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Where you are unsure where to address your formal complaint to, or should you require assistance in writing the formal complaint, please contact Council's Human Resource Co-ordinator.

The written complaint should include at minimum:

- 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.

Formal investigations may be conducted by the Deputy CEO, the CEO or an external person appointed by the CEO.

Regardless of who or how the investigation is carried out, the investigator will acknowledge the complaint via written notification outlining the process to be following within five working days of receiving the formal complaint. If the investigator feels it is appropriate and in the interests of health and safety of the employees concerned, and/or the efficiency of the investigation process, the investigator may recommend to the CEO that the employee(s) be requested to refrain from attending work for a period of time whilst the investigation is underway. Alternatively, employees may be given different duties or work to perform whilst the investigation is being conducted. Employees who are requested to do either of these will be paid their normal rate of pay during the investigation period.

Where it becomes apparent the complaint made relates to conduct which constitutes misconduct or otherwise warrants disciplinary action, the investigator will refer the matter to the Chief Executive Officer including recommendations regarding the disciplinary action to be taken.

7.2 Investigating complaints

All formal reports of inappropriate behaviour will be investigated.

Where possible 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 Chief Executive Officer 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:



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- interviewing the complainant, the accused and any witnesses, all of whom have the right to be accompanied by a support person;
- recording of all interviews. Interviewees will be asked to agree and sign statements made to confirm it is a true and accurate record of the interview; and
- 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.

7.3 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 relating to this decision including why the complaint was not upheld.
- The Director of Corporate Services may decide 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 will refer the matter to the CEO to decide upon disciplinary action.
- If it has been found 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 CEO 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.

7.4 Follow Up

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

7.5 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.



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The person investigating the complaint will endeavour to preserve the confidentiality of the complainant and the person complained of. It may however be necessary to speak with other workers, witnesses, or people involved to determine what happened and to maintain the integrity of the investigation process.

Where potentially unlawful conduct has occurred, Council will alert the appropriate authorities.

All who are involved in the complaint (including the complainant, witnesses, the person of whom the complaint is made, etc) are also under a duty to maintain confidentiality and display a commitment to uphold the integrity of the investigation process.

If anyone being interviewed by an investigator chooses to bring a support person with them to any meetings, they too are bound by confidentiality.

Gossiping and/or the spreading of rumours as a result of, or in connection with, an investigation process under this policy will not be tolerated under any circumstances and may lead to disciplinary action.

7.6 Outcomes

The outcomes of an informal or formal complaint procedure, will depend on the nature of the complaint, its severity and what is deemed appropriate in the relevant circumstances.

Where the results of an investigation procedure suggest an individual is guilty of bullying, harassment, discrimination or violence, appropriate disciplinary procedures will be followed in line with relevant policies, procedures and guidelines. The disciplinary action will depend on the nature and severity of the behaviour and may include termination of employment, which may include instant dismissal where serious misconduct or unlawful conduct are deemed to have occurred.

Where the complaint involves a contractor or agent of Council and an investigation process reveals that person has engaged in unlawful conduct or other behaviour, which is prohibited by this policy, those concerned may face termination of their contract immediately, or they may not be renewed in the future.

Other action which may be deemed necessary to remedy the behaviour complained of include, but is not limited to:

- providing training to employees regarding the inappropriate behaviours identified;
- requiring employee(s) who have breached this policy to apologise to appropriate person(s);
- adjusting working arrangements where appropriate;
- providing counselling to employees (complainant and the person complained of);
- placing employees on performance improvement plans to ensure improved behaviour occurs; and / or



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- providing coaching and mentoring.

7.7 Appeals Procedure (Internal)

If any parties involved in an investigation are unhappy with the outcomes, or the way the complaint handling procedure was managed by their overseer / manager or the Director Corporate Services, they may contact the Chief Executive Officer to discuss their concerns.

Where the CEO is the subject of the complaint and the Mayor or Deputy CEO has investigated the complaint, the aggrieved person may take their complaint to the Fair Work Ombudsman.

Once notified, the CEO will conduct a review of the procedure followed, the outcome issued and make a final determination on the issue. Once the determination is made, the person who has made the appeal will be notified of the outcome and this determination will be final.

7.8 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

7.9 Support

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

8. RELATED LEGISLATION, POLICIES AND STRATEGIES

8.1 Legislation and external guidelines

Work Health and Safety Act 2011

Work Health and Safety Regulations 2011

Fair Work Act 2009

NSW Anti-Discrimination Act 1977

Disability Discrimination Act 1992

Sex Discrimination Act 1984

Local Government (State) Award 2010



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8.2 Council policies and guidelines

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

9. RECORDS MANAGEMENT

All Records must be kept in accordance with Council's Records Management Policy (currently under development) and destroyed as per the General Retention and Disposal Authority: Local Government Records (GA39).

10. REVIEW AND EVALUATION

This policy (procedure) will be evaluated and reviewed at least once every four (4) years as per Council's Governance Policy (currently under development) or as required.

11. DOCUMENT AVAILABILITY

This policy will be available for inspection at Council's principal office during ordinary business hours as per the requirements of section 18 (c) of the *Government Information (Public Access) Act 2009* and section 167 of the *Local Government Act 1993*.

Access to the policy in digital format is free and is available on Council's website <https://www.berriganshire.nsw.gov.au/>

Printed copies of the document are available at Council's principal office (address noted below) and are subject to Council's Fees and Charges.

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12. VERSION CONTROL

Version Number	Date	Summary	Responsible Officer
1.0	21.05.2014	New Policy	Enterprise and Risk Manager
2.0	19.10.2022	Significant Changes made to original document	Chief Executive Officer