

POLICY NO AND TITLE	<b>1.2.1</b>	<b>Conditions of employment policy</b>
PROCEDURE	1.2.1(ad)	Harassment and bullying
VERSION AND DATE ADOPTED	1	
RESPONSIBLE OFFICER		Manager Human Resources

### Introduction

The Council believes that all people have the right to work in an environment which is free from intimidation, threat, bullying and humiliation. Council also recognises that this is extended to customers of Council in the course of receiving goods and services. Harassment, in any form, is unacceptable behaviour and will not be tolerated under any circumstances. *It includes bullying and discrimination.*

Harassment may be related to any of the grounds covered by the *Anti-Discrimination Act 1977*: race, sex, marital status, age, physical and intellectual impairment, homosexuality and HIV/AIDS vilification. Harassment is a form of discrimination and it is unlawful. It also contravenes Council's Equal Employment Opportunity policy.

The OHS Act 2000 and the Regulation 2001 require an employer to ensure the health, safety and welfare of their employees whilst at work. Stress associated with all forms of harassment is unacceptable and identified as an occupational hazard by WorkCover NSW. Failure to protect employees from such sources of stress would be a failure of duty of care under the workplace laws.

Managers and other supervisors of staff are required to ensure that all employees and customers of Council are treated fairly and equitably and are not subjected to harassment. They will also ensure complainants and witnesses are not victimised in any way.

Any reports of harassment will be treated seriously and sympathetically by the organisation, and will be investigated thoroughly and confidentially. Disciplinary action will be taken against anyone found to be guilty of harassing a co-worker or customer of Council.

### Definition of Harassment & Bullying

Harassment, in general, is unsolicited and unwelcome behaviour which may cause offence or distress to its recipients, and which creates an intimidating, hostile or offensive work environment. Bullying is a form of aggressive behaviour that intimidates, humiliates or undermines a person or group. Bullying can be defined as the repeated less-favourable treatment of a person by another or others in the workplace, which is considered unreasonable and inappropriate workplace behaviour. Acts or behaviour which may appear to be humorous and/or significant to one person may be disturbing and distracting to another. Harassment occurs when the behaviour and/or language in question is found to be offensive. Behaviour that neither party finds offensive is not harassment. Bullying is not likely when workplace behaviour is consistent, reasonable and appropriate.

Harassment in the workplace may take the form of, but is not limited to:

- coercive behaviour used to control, influence or affect the career or job of a person;

- offensive jokes, suggestions or derogatory comments about another workers racial or ethnic background, sex, sexual preference, age, disability or physical appearance;
- display or distribution of pictures and posters which are offensive and/or obscene;
- derogatory or offensive material sent through electronic mail systems or other computer systems;
- expressing stereotyping, that is, assumptions about individuals' group behaviour, values, culture or abilities;
- physical contact such as frequent brushing against a person, pinching or patting or putting an arm around someone when it is unwelcome;
- intimidation, abuse or assault.

Bullying in the workplace may take the form of, but is not limited to:

- yelling, screaming, shouting, using abusive language, inappropriate gestures
- constantly criticising
- ignoring, isolating, or intimidating
- not providing appropriate information, training or reasonable assistance
- using threatening body language
- allocating a disproportionate amount of mundane tasks
- creating unfair work pressure by setting tasks with unrealistic deadlines
- using one's position or power to put a person(s) down
- deliberate under valuing of another's opinions, ideas or concerns

Those in authority who knowingly tolerate such behaviour are also guilty of misconduct and could be held legally liable in the case of harassment or bullying occurring in Council.

## Responsibility for Harassment/Bullying Prevention

### Management

Directors and managers are responsible for implementing the harassment/bullying prevention policies and procedures in their department or section. They should:

- create a work environment in which harassment/bullying is not tolerated and in which employees feel able to make complaints of harassment without fear of recriminations;
- ensure all their staff are informed of, and trained in relation to Council's Harassment/ prevention policy and procedures and that they are aware that harassment/bullying will not be tolerated;
- take action, during staff meetings etc, in cases where harassment/ bullying is identified but no complaint has been made;
- ensure that support is provided to the person making the complaint'
- monitor the workplace to ensure that no victimisation is occurring as a result of a person making a complaint;
- assist with any investigation that is undertaken, either internally or externally;
- support staff who hold **Contact Officer positions** by allowing them the necessary time off the job.

## Supervisors

An important role of Supervisors is in maintaining a productive work environment and proper standards of conduct. Monitoring and dealing with harassment/bullying amongst their staff is clearly part of this role. They should:

- ensure all their staff are informed of, and trained in relation to Council's harassment and bullying prevention policy and procedures and that they are aware that harassment/bullying will not be tolerated;
- ensure that their staff are aware of the behaviour that is considered appropriate and acceptable;
- inform their employees of the name and location of **Council's Contact Officers** and HR manager;
- take early corrective action to deal with behaviour which may be offensive or intimidating to some employees;
- monitor the work site for any behaviour which may seem intimidating or victimising and other common signs of workplace harassment, such as unexplained absences from work or excessive sick leave;
- have a role in hearing a grievance or referring it to the relevant person and ensuring confidentiality is not breached.

## Employees

All Council employees have a responsibility to:

- not harass, bully or victimise other members of staff or the public;
- be aware of Council's policies and procedures for harassment prevention and act appropriately;
- to provide support and advice to a fellow worker who has a complaint of Harassment/bullying, and to inform the person of the names of **Council's Contact Officers**;
- in cases where an employee is aware of harassment or bullying by fellow employee/s, they should bring it to the attention of management so that general action relating to a work site can be taken. This should not be done lightly. The information should be passed on without making specific allegations or giving information which could identify the individuals concerned.

**Contact Officers** have a responsibility to:

- Be the first point of contact for someone experiencing harassment
- Provide confidential information and support to people with a grievance relating to discrimination
- Educate and informing staff on Anti-discrimination policies
- **not** place judgement, advocate and mediate
- **not** directly resolve the complaint

## Harassment/Bullying Grievance Procedure

### Option 1 - Internal Informal Procedure

Often complaints of harassment or bullying can be quickly and effectively resolved through informal procedures. Informal action could involve any of the following options:

- a) **Self help;** the individual wants to resolve it themselves;
- b) **Intervention by a third party;** the individual may require support and advice either by Management or a Contact Officer;
- c) **Independent management action;** a Manager may take action if inappropriate behaviour is observed, but no complaint has been made by an individual.

**a) Self Help**

Self help involves the person who has been harassed approaching the harasser or bully themselves with a request that the unwelcome behaviour cease. This may be done either verbally or in writing. The self help option should only be pursued if the complainant is confident enough to confront the harasser or bully directly. They must also want to resolve their complaint in this way. The complainant may ask their manager, supervisor or **Contact Officer** to accompany them if they require support.

If the self help option is not successful the complainant is to be advised on the alternative complaint procedures available.

**b) Intervention by a Third Party**

If the complainant does not wish to approach the alleged harasser or bully themselves, but is reluctant to lodge a formal complaint, a third party may informally intervene on their behalf. This would involve a manager, supervisor or **Contact Officer** approaching the alleged harasser or bully and explaining the nature of the complaint.

Assessments on the merits of the complaint should not be made at this stage. The third party is merely conveying information from the complainant to the alleged harasser/bully. The person to whom the complaint is made may make an informal approach to the alleged harasser's manager, supervisor or **Contact Officer** with a request that they speak to the person concerned about the allegations.

If the allegations are denied, informal intervention ceases. The complainant should be informed that the allegations are disputed. It is then up to them to decide whether they want an investigation to proceed through the Organisation's formal procedures. If the alleged harasser or bully admits to the behaviour, then possible resolutions can be suggested, discussed and relayed to the complainant. An undertaking should be obtained from the harasser/bully that the behaviour in question will not continue.

**c) Independent Management Action**

A manager/supervisor may be faced with a situation where they observe, overhear or are informed of inappropriate conduct or comments. They may decide to take some informal action to address this, even if no complaint has been made. This could include discussing standards of conduct at a staff meeting, re-circulating the organisation's sexual harassment policy or arranging awareness-raising sessions.

**Option 2 - Formal Internal Procedure**

Formal complaint procedures may be required where:

- the complainant wishes to pursue this course of action from the outset;
- the allegations are serious and informal procedures would be inappropriate;

- the harassment or bullying has continued despite informal intervention;
- the alleged harasser or bully has denied the allegations and further investigation is therefore necessary.

Proceeding with a formal complaint will always require the consent of the person complaining, particularly as witnesses or senior management may become involved.

After a complainant has approached either their manager, supervisor or **Contact Officer** and consented to lodge a formal internal complaint the following steps are to be taken.

### **Step 1: Initial Interview with the Person Complaining**

- The person who has complained is to be privately interviewed by the HR manager;
- If so desired a support person, union delegate or interpreter may accompany them to the interview;
- Confidentiality is to be respected and the complainant is not to be victimised in any way for complaining;
- A written statement is to be taken using the complainants own words. As much information as possible should be obtained about the allegations. This should include details such as specific incidents, times, dates, places, frequency of occurrence, names of possible witnesses. Copies of any notes, diary entries or records the complainant may have kept should be examined.
- The complainant is to nominate what they are seeking from the complaint.

### **Step 2: Initial Interview with the Alleged Harasser/Bully**

- The alleged harasser/bully is to be privately interviewed by the HR manager;
- If so desired a support person, union delegate or interpreter may accompany them to the interview;
- Confidentiality is to be respected and the alleged harasser/bully is not to be victimised in any way;
- The HR manager is to inform the alleged harasser/bully of the allegations which have been made;
- A written statement is to be taken of the response using the alleged harassers own words. As much information as possible should be obtained about the allegations. This should include details such as specific incidents, times, dates, places, frequency of occurrence, names of possible witnesses. Copies of any notes, diary entries or records the alleged harasser//bully may have kept should be examined;
- The alleged harasser/bully is to be advised that the complaint will be formally investigated and witnesses may be interviewed.

### **Step 3: Investigation**

- If the allegations are disputed the HR manager may need to interview other employees to determine whether the complaint has substance;
- If potential witnesses have been identified they are to be interviewed privately. Witnesses are not to discuss the complaint with any other staff members.
- Performance appraisal reports, leave records, overtime records are to be examined for any unexplained or sudden changes/inconsistencies in the complainant's work patterns.

- It is to be determined whether any sexual harassment complaints have been made against the alleged harasser/bully on other occasions.

#### **Step 4: Additional Interviews with the Parties**

- Once the investigation is complete the parties are to be advised of the outcome;
- If witnesses have requested that they not be identified, evidence in support of the complaint is to be conveyed to the parties in general terms;
- The parties are to be given the opportunity to respond to any recommendation the HR manager intends to make in respect of the complaint;
- The HR manager is to forward the report to the General Manager for a decision.

#### **Step 5: Resolution**

The option chosen will depend on the wishes of the complainant, the seriousness of the allegations, whether the complaint has substance, and the nature of the working relationship between the parties. Possible outcomes could include, but should not be limited to:

- a written or verbal apology;
- removal of the harasser from the complainant's work environment;
- transfer, demotion or dismissal;
- an undertaking that the behaviour will cease;
- a formal warning;
- probationary period or suspension from duties or counselling on attitudes; The resolution decided upon is not to disadvantage the complainant in any way.

#### **Step 6: Record Keeping**

- Where a person approaches a manager, supervisor or HR manager for discussion or advice but decides to take no action, notes should not contain names, but a brief account of the interview and the date are to be made.
- In the case of an Informal complaint where the matter looks like being able to be resolved quickly and easily a diary note is to be kept of the date the complaint was made, name of the person/s complaining, the substance of the allegations, and the outcome of the informal complaint. It is necessary to keep these records in the event that the matter is on-going and a Formal complaint is lodged.
- In the case of a Formal complaint all interviews undertaken with the complainant/s, alleged harasser/s, witnesses or other contributing staff are to be recorded as near as possible using their own words. All parties involved in the complaint are to be given the opportunity to peruse, correct and endorse their record of interview and should be provided with a copy of the interview if they request;
- If a complaint is made, investigated, appears to have substance, and the offender has been disciplined, their personnel file is to contain a summary of the nature of the complaint, the outcome and the action taken against them.
- The full record of the information obtained in a Formal investigation and of the Disciplinary interview is to be kept in a separate confidential file. This file is to be kept under lock and key with only two keys available for access; one by the HR manager and one by the General Manager. Access to the file is limited to a "need to know" basis.

#### **Step 7: Follow Up**

- After a complaint has been resolved, the situation is to be monitored to ensure the behaviour has ceased and neither party is victimised.
- Separate follow up interviews are to take place with the HR manager and the parties six weeks after the complaint has been resolved to ensure no further problems have arisen.

### Option 3: Formal External

At any time through the complaints procedure, or if the matter cannot be resolved to the satisfaction of the complainant they may choose to lodge a formal external complaint either under Commonwealth or State Legislation.

#### Commonwealth Legislation

- **Sex Discrimination Act 1984**

Under this Act the Sex Discrimination Commissioner is required to investigate complaints and, where possible, attempt to resolve them through conciliation. If the complaint cannot be settled in this way, it may be referred to a public hearing of the Human Rights and Equal Opportunity Commission where a determination is made. Determinations are registered with the Federal Court and automatically become enforceable Orders after 28 days if the respondent has not applied for a review of the decision.

- **Industrial Relations Reform Act 1993**

This Act provides protection for people who are unfairly dismissed from work because of their race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin. If a person thinks they have been unfairly dismissed, they can only use the Federal Industrial Relations Reform Act if there is "no adequate alternative remedy" available. Remedies under the Anti-Discrimination Act or the NSW Industrial relations Act may be seen as adequate alternative means. However the Federal Industrial Relations Reform Act covers more types of discrimination than are covered by either State or Federal anti-discrimination laws.

#### State Legislation

- **NSW Anti-Discrimination Act 1977**

Under the NSW Anti-Discrimination Act certain types (or 'grounds') of discrimination, or unfair treatment, are against the law. These are; sex (including pregnancy), race, marital status, sexual preference, intellectual impairment, physical impairment, age (in relation to compulsory retirement). The Anti-Discrimination Board is responsible for the investigation and conciliation of formal complaints of discrimination or harassment. If the complaint is not conciliated the matter is referred to the Equal Opportunity Tribunal. This Tribunal hears arguments and evidence and makes a judicial decision that must be obeyed.

- **Occupational Health & Safety Act 2000**

Under this Act it is the responsibility of the Employer to (Part 1(a)) secure the health, safety and welfare of people at work. Proceedings for an offence against this Act or the Regulations will be dealt with summarily either before a Local Court constituted by a Magistrate sitting alone or before the Industrial Court.

Employers must ensure the health, safety, and welfare of their employees. Harassment, bullying and discrimination are major causes of workplace stress. Stress

is a recognised a workplace hazard that can result in psychological injury. The implementation of management practices which reduce stress in the workplace is a part of the employers' responsibility under duty of care.