

137-139 Oberon Street  
PO Box 84  
Oberon NSW 2787

Telephone: (02) 6329 8100  
Fax: (02) 6329 8142  
Email: [council@oberon.nsw.gov.au](mailto:council@oberon.nsw.gov.au)



# ***Attachments for Staff Reports***

***Ordinary Meeting***

***Tuesday 16 October 2012***

***5.30pm Oberon Council Chambers***



# ***Attachments for Report***

**12.01.04 POLICY REVIEW / NEW  
POLICY AND PROCEDURES  
ANTI-BULLYING and  
HARASSMENT FREE  
WORKPLACE**





***Policy and Procedures***

**POSITIVE WORKING RELATIONSHIPS for an  
ANTI-BULLYING AND HARASSMENT FREE WORKPLACE**

DRAFT

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## 1. Background

Workplace bullying, harassment, sexual harassment, racial discrimination, stereotyping cultures or behaviour and intimidation are all behaviours that need to be positively addressed.

It is the responsibility of everyone who is part of, or associated with Council to eliminate such behaviours to create a positive and constructive culture for all to enjoy at work.

## 2. Intent of Policy

The intent of this policy is to provide information and set boundaries for Employees, Councillors, Volunteers, Contractors, and Visitors in terms of appropriate and acceptable behaviour in the workplace.

The intent is also to creating a positive, respectful and productive working environment. It is important that we expend time and energy on building teams and creating an effective organisation. Yet we must also be alert to those systems and behaviours that create barriers between Employees.

## 3. Management Commitment

Council management are committed to leading the development of a bullying free culture, by fostering the right attitudes and behaviour throughout the organisation. Council will commit adequate resources to ensure all employees are adequately educated in their rights and responsibilities to implement the policy.

## 4. Scope of Policy

This policy applies to all Employees, Councillors, Volunteers, Contractors, and Visitors.

The policy **expects** that each of us will make a commitment to the following **Core Values**:

- Respect the opinions of other employees, and recognise our different roles.
- Encourage the reporting of bullying or harassment.
- Support each other through teamwork and cooperation.
- Positive communications between all employees
- Effective complaints handling procedures.
- Commitment to maintaining healthy and safe workplaces.
- Trust each other and work together to improve services for our Community.

**THESE VALUES WILL BE INCLUDED WITH EVERY POSITION DESCRIPTION**

**THESE VALUES WILL BE DISPLAYED AT WORKSITES**

**THESE VALUES FORM THE BASIS OF A RESPECTFUL WORKPLACE CHARTER**

#### 4a. Relative Council Policies and Documents

- Code of Conduct
- EEO policy
- Work Health and Safety (WHS) policy
- Drugs and Alcohol policy
- Smoke Free Workplace policy

#### 4b. Relative Legislation and other Documents

- *Workplace Health and Safety Act 2011* and relevant regulations
- *NSW Anti-discrimination Act 1977*
- *Local Government Act 1993*
- *Human Rights and Equal Opportunity Commission Act 1986*
- *Disability Discrimination Act 1992*
- *NSW Local Government Award 2010*

### 5. Definitions

#### 5a. What is Workplace Bullying?

Workplace bullying is offensive, unreasonable, humiliating and generally persistent behaviour that is directed at an individual or group of employees by another individual or group of employees. It undermines the employee's dignity or performance in the workplace. Bullying is a form of violence. It is aggression expressed psychologically and emotionally rather than physically and creates a risk to health and safety.

Bullying behaviour is based on the misuse of power in human relationships. It includes:

- Verbal abuse
- Initiation pranks
- Excluding or isolating employees
- Giving a person the majority of an unpleasant or meaningless task, that is not listed in their job description
- Humiliation through sarcasm, or belittling someone's opinions
- Constant criticism or insults
- Spreading misinformation or malicious rumours
- Setting impossible deadlines
- Deliberately changing work rosters to inconvenience certain employees
- Deliberately withholding resources, that are vital for effective work performance
- Manipulating the impression of others to split the workgroup into taking sides and/or
- Displaying written or pictorial material which may degrade or offend certain employees.

Bullying is not always intentional. Sometimes people do not realise that *HOW* they are treating someone can have a detrimental effect.



## **5b. What is Harassment?**

Harassment is any form of behaviour that is unwelcome or uninvited, which humiliates or intimidates an employee based on the attributes protected under federal and state legislation. This behaviour is unlawful during working hours and during Council related functions, social or work related.

Protected attributes under legislation are:

Sex, pregnancy, race (including colour, nationality, descent or religious background), marital status, disability, homosexuality (factual or perceived), transgender (transexuality actual or perceived), age or carer's responsibility, or an individual's relationship to or association with a person in these groups. Racial vilification, homosexual vilification, vilification of people on the grounds of their HIV or AIDS status and transgender vilification is also unlawful.

Workplace harassment or sexual harassment is based on a protected attribute and may take the form of (but is not limited to):

- Offensive jokes, suggestions, verbal abuse or derogatory comments that humiliate, offend, or stereotype people generally, or an individual
- Offensive or obscene material (displayed or distributed publicly, sent through electronic mail systems or other computer systems or put in someone's belongings or work space)
- Isolation or segregation (for example excluding someone from work activities, functions or information, dismissing someone's contribution in a meeting or discussion, not talking to them).
- Offensive gestures
- Unwelcome sexual or physical contact (such as touching, pinching, patting or putting an arm around someone).
- Sexual propositions or
- Sexual assault (a crime under the Crimes Act).

Usually harassment is ongoing or a series of events. However, harassment does not need to happen more than once for it to be against the law. Behaviour that neither party finds offensive is not harassment.

## **5c. What is Sexual Harassment?**

Sexual harassment is any verbal or physical conduct of a sexual nature that offends, humiliates, embarrasses, intimates or otherwise causes distress to any reasonable person in the same circumstances. It is behaviour that is unsolicited, unwelcome and unreciprocated. It may be explicit or implicit. It may be a single incident or occur over a period of time. To identify sexual harassment, it is the perceived impact of the behaviour rather than the intent of the behaviour that is important. This behaviour is unlawful during working hours and during Council related functions, whether social or work related. Examples of sexual harassment are provided above.

## 6. Behaviours that amount to Bullying or Harassment

The following types of behaviours could amount to bullying or harassment. If you are involved in any of these behaviours, depending on the circumstances your actions may result in disciplinary action being taken under the Disciplinary Procedures and may result in dismissal.

### Verbal behaviours such as:

- Making fun of someone – including imitating them, teasing them or baiting them
- Putting someone down in a nasty way – especially in front of others (this includes in a formal meeting such as a Council meeting)
- Offensive jokes – for example unwelcome sexual, sexist, anti-gay or other such jokes
- Obscene or racist, sexist, anti-gay (and so on) telephone calls
- The use of language that is not suitable in the workplace – for example, sexual, sexist, racist, or anti-gay language, or insulting someone in a nasty way
- Sniggering or gossiping behind someone's back
- Spreading rumours about someone
- Swearing or shouting at someone
- Aggressive, point-scoring, interrupting, taking over and/or putting-down type of debate

### Non-verbal behaviours such as:

- Sending or showing obscene, belittling, offensive or racist, sexist, anti-gay (and so on) letters, faxes, email or SMS text messages
- Displaying or circulating obscene, offensive, degrading, insulting, or any form of racist, sexist, anti-gay (and so on) cartoons or literature
- Practical jokes or skylarking that is vindictive, offensive, unsafe, or unwelcome
- Deliberately setting someone up to fail
- Taking credit for the work of another employee
- Putting sexually suggestive, obscene, offensive, degrading or insulting material on Council walls, notice boards, computer screen savers, faxes, email and so on.

### Physically threatening behaviours – such as:

- Threatening to make someone's work or home life difficult
- Unnecessarily leaning over someone, or standing too close to them
- Offensive or obscene hand or body gestures
- Deliberately standing in someone's way, or deliberately blocking their path, or deliberately blocking the path of the vehicle they are driving or the equipment they are using
- Deliberate pushing, shoving or jostling
- Touching anyone when you know they don't like to be touched
- Any form of aggressive or frightening behaviour directed towards a person or group of persons

## 7. Behaviour that is not considered Bullying or Harassment

Bullying is not about occasional differences of opinion, conflicts and problems in work relationships – these are part of working life and every conflict does not constitute bullying or harassment. When the behaviour is unreasonable, degrading or contrary to Council policies and practices then it should be addressed.

## 8. Management Practices

It is important to differentiate between a person's legitimate authority at work and abuse or bullying. All employers have a legal right to direct and control how work is done, and Managers have a responsibility to monitor workflow and give feedback on performance.

It is **not** workplace bullying or harassment for:

- A Supervisor to note poor performance, suggesting how to improve performance, follow through on poor work practices, deal with complaints from others, start proceedings for unsatisfactory performance, misconduct or dismissal in accordance with Council's Management Policies or procedures.
- An employee to point out professional difficulties they have with other employees, provided it is done in an appropriate manner.

## 9. Why Bullying and Harassment is a problem

Bullying can disrupt work to the extent that action has to be taken to restore order. Each individual will react differently to bullying behaviour, and the effects may include:

- High levels of distress, anxiety, depression
- Ill health, insomnia, panic attack, impaired ability to make decisions
- Loss of self esteem and confidence, feeling of social isolation
- Reduced work performance, incapacity to work
- Deteriorating relationships with family and friends.

Workplace bullying can be harmful to organisations as well as individuals, resulting in:

- High levels of absenteeism and staff turnover
- Breakdown of teams and work relationships
- Poor public image in terms of becoming known as a difficult place to work
- Reduced efficiency, productivity and profitability
- Unsafe work environment
- Poor morale, erosion of loyalty and commitment
- Increased costs associated with counselling, mediation and compensation claims, recruitment and re-training of new staff, management time and
- Potential litigation and associated costs

## 10. Conflict of interest

Conflicts of interest may arise in connection with consensual romantic and/or sexual relationships between Supervisors and employees. It is a general accepted ethical principle in our society that individuals are precluded from evaluating the work performance of others with whom they have intimate relationships, or from making employment, salary or similar financial decisions concerning such persons. The same principle applies to consensual romantic and/or sexual relationships.

### Responsibility and Risk

Supervisors and employees should understand that there are substantial risks in even an apparently consenting relationship where a power differential exists. Even if the conflict of interest issues are resolved, charges of sexual harassment may develop, even when both parties have consented to the relationship. The Supervisor or other employee, may, by virtue of his or her power and responsibility, bear a burden of accountability.

If a consensual romantic and/or sexual relationship develops between a Supervisor and employee, the Supervisor should make their Manager aware of the situation.

## 11. Who is responsible for implementing this policy?

The General Manager and Executive Management Team have a strong leadership role in demonstrating acceptable workplace behaviour and are responsible for ensuring the endorsement, support and implementation of the policy and procedures. They are also responsible for:

- Providing a safe place of work
- Making sure that Council meets its obligations with respect to anti-bullying and harassment prevention
- Ensuring that Council meets its commitment to this policy
- Fostering the development of a culture within Council that is respectful of individual employees, and discouraging bullying and harassment of any sort
- Acting in a manner that provides an example of good workplace behaviour
- Ensuring that all Managers and Supervisors are committed to ensuring the workplace is free from bullying and harassment.

Managers and Supervisors are responsible for ensuring that all employees understand that harassment or bullying is not acceptable behaviour in the workplace and that all complaints will be taken seriously and dealt with in accordance with the procedures. They are also responsible for:

- Making sure they model appropriate behaviour and do not bully, harass or victimise anyone
- Making sure that this policy is communicated and implemented within any teams they are responsible for.
- Making sure that new employees receive appropriate information about their responsibilities and rights under this policy during their induction.
- Preventing all forms of bullying, harassment and victimisation from happening in any area of Council business they are responsible for.

- Dealing appropriately with all forms of bullying, harassment and victimisation that happen, or appear to be happening. It is a breach of this policy to ignore any such bullying, harassment or victimisation.
- Ensuring confidentiality and complete privacy is maintained in all matters
- Being available to discuss any complaints that may be lodged with those persons lodging the complaints, those being complained against and other appropriate people.
- Ensuring the policy and complaint procedure is strictly adhered to.
- Communicating to all persons concerned their rights and responsibilities.
- Ensuring all resources are provided to facilitate resolution of the complaint.
- Continually monitor harassment complaints that have been resolved to make sure that the negotiated outcomes have been implemented and that an assessment of the effectiveness of the negotiated strategies is conducted.
- Contacting the human resources officer for assistance in resolving cases, if uncertain, when the manager or supervisor can not provide an unbiased decision, or they feel they do not possess the authority or expertise to deal with a particular complaint.
- Providing continual workplace education to increase the awareness of this policy and what constitutes acceptable behaviour in the workplace to assist in the ongoing prevention of harassment and bullying.

Council's Human Resources Officer is responsible for assisting reconciliation between the parties and to investigate complaints whether written or verbal. It is the responsibility of the Human Resources Officer to:

- Make sure that this policy and information is made available to all employees.
- Be available to managers, supervisors and other persons to answer enquiries about harassment and bullying to assist in the resolution of harassment and bullying complaints if requested.
- Ensure confidentiality and complete privacy is maintained in all matters.
- Determine whether a complaint should be handled by Council or by an outside agency.
- Act as a mediator when requested, ensuring that mediation meetings are fair, that all parties are heard without bias, and that all known facts of the complaint are given the opportunity to be brought forward.

Employees are responsible for respecting the rights of other persons and to never encourage or condone harassment or bullying. If an employee believes that a fellow colleague is being harassed, he or she can help prevent further incidents of harassment occurring by offering support to the person being harassed.

This can be done by:

- Informing them that he or she is willing to act as witness if the person being harassed decides to lodge a complaint.
- Refusing to join in with any harassing activity.
- Supporting the person being harassed to say no.
- Advising the person of the availability of a complaints procedure.

It is not the responsibility of the person witnessing the harassment to say anything to the offender or to spread rumours about someone. If a person participates in spreading rumours, he or she may be subject to a defamation act.

## **12. What are my options?**

### **Complaints procedure**

There are four options available to an employee who feels they have been bullied or harassed in the workplace.

#### **a) One-to-one option**

The employee meets face to face with the alleged perpetrator and makes it clear to the offender that their behaviour is offensive and unacceptable. Ignoring the behaviour may often be misunderstood by the offender as approval of the behaviour.

#### **b) Informal option**

The employee chooses to have the matter dealt with either directly with the individual or through a team based intervention. This informal option is undertaken in conjunction with the supervisor. This option provides for the issue to be dealt with in a non-threatening manner by way of education, training and/or discussions with individuals or teams.

#### **c) Formal option**

The employee can make a formal complaint by lodging with their Supervisor, Manager or Human Resources Officer. The employee should record the dates, places, times and witnesses, if any, of the incident or incidences of bullying or harassing behaviour.

The employee's complaint will be dealt with sensitively, promptly, confidentially and without fear of reprisal. Investigations will be carried out in an impartial manner by the person responsible for conducting the investigations. This may be the Supervisor, Manager, Human Resources Officer, or another person deemed appropriate by the General Manager.

In the event the General Manager is a party to the complaint, the Human Resources Officer will engage an external independent investigator who will provide recommendations to the Mayor.

#### **d) External option**

In the event the internal complaints procedure has failed to settle the employee's complaint, or the employee does not want to follow the internal procedure, resolution may be found through an external agency such as the Anti-Discrimination Board or the Commonwealth Human Rights and Equal Opportunity Commission.

### **13. How will my options be addressed?**

#### **Dealing with a complaint**

When receiving a complaint, it is important to:

- Respond promptly, treating the complaint sensitively, seriously and confidentially by ensuring that the names of anyone involved in a complaint are not discussed with others except those immediately involved in the complaint.
- Discuss with the individual the options/courses of action available to resolve the complaint. This may include the following
  - Seek a personal solution by directly asking the person to stop the behaviour or writing a letter to the offender asking for certain behaviours to cease.
  - Adopt an informal approach to resolving complaints by conducting a private interview with the alleged offender, seeking their cooperation in finding a workable solution to the problem.

#### **Informal options (Options 1 and 2 above)**

Informal options are designed to provide an avenue for resolution before the parties become entrenched in positions of bully or victim. In an informal resolution:

- Focus is placed on bullying behaviour rather on personalities or individuals involved in the bullying
- Both parties are encouraged to take responsibility for their own behaviour and discuss resolutions, and
- A non-blaming approach is used and no disciplinary action needs to arise as a result.

More formal procedures may be necessary if the informal procedures are unsuccessful or if allegations are so serious, that other approaches are inappropriate.

#### **Confidentiality versus Duty of Care**

In some incidences there is a conflict between confidentiality and Council's duty of care. Generally, no action should be taken without the consent of the complainant unless it is considered that the matter, if neglected, would endanger anyone (for example, the safety of individuals may be at risk, or there is concern that the action will not cease). Agreed action should be documented and signed by both parties.

#### **Investigation a Formal Complaint**

When investigating a formal harassment complaint, it is important to:

- Ensure the complaint is investigated and resolved without delay. The investigation should commence within twenty four (24) hours of receiving the complaint and no later than seven days after receiving the complaint. Timeframe for investigation and resolution of complaint may be negotiated with parties concerned, however investigation should be resolved, wherever possible and no later than four weeks after the complaint has been lodged.

- Ensure the person involved in assisting the complainant to lodge the original complaint is not responsible for investigating the complaint. Investigations will need to be carried out by those persons delegated to do so, that is supervisors, managers or the human resources officer or other person as deemed appropriate by the general manager.
- Conduct an interview with the complainant allowing, if desired, a union/employee representative, a professional (qualified interpreter, or other employee to be present. In the interview:
  - Clarify the events or behaviours leading to the complaint including dates, times and any witnesses of the behaviour or event. Detailed notes should accurately reflect the perceptions of the person lodging the complaint.
  - Advise the employee that a full investigation will be carried out and explain procedures that will be followed.
  - Provide the complainant with the full range of options outlined in the Complaints Procedures.
- Conduct an interview with the alleged offender, advising of the complaint lodged against him or her. In this interview:
  - Emphasise the impartiality of person conducting the investigation and stress the importance of confidentiality
  - Advise the alleged offender of the kind of investigative process that has been decided on and their rights of representation or advice, that is a union/employee representative or a professional interpreter if desired
  - Provide the alleged offender with the opportunity to respond fully to the allegations within a negotiated time frame
  - Advise the alleged offender not to approach the complainant directly or indirectly about the allegations.
- Ensure a thorough investigation. It may be necessary to conduct interviews with those persons named as witnesses by the complainant or alleged offender, ensuring confidentiality is maintained and involvement is kept to a minimum necessary to establish facts.
- Ensure the person conducting the investigation remains impartial and not prejudicial of the matter.
- Maintain records throughout the investigation, including verified notes of discussions, meetings and interviews with the person.
- Ensure that all parties involved in the making and investigation of a complaint are aware they are bound by law to observe strict confidentiality, any breach may be regarded as misconduct and the offender may be subjected to disciplinary procedure.

During the period of investigation, temporary alternative work arrangements may be made at the direction of the general manager. No employee will be disadvantaged in their employment conditions or opportunities should this occur.

#### **14. Resolving a complaint**

- a) If the allegations are substantial or admitted, a decision will be made on the most appropriate course of action. This may involve:
- Counselling of both the complainant and/or alleged offender
  - Mediation through conflict resolution or educational strategies



- Application of Council's disciplinary procedure which may result in summary dismissal
- b)** If the allegations are not substantiated, the reasons for the decision should be explained to all parties. However it may be necessary to:
- Consider alternative work arrangements at the request of the complainant or alleged offender
  - Ensure that the complainant and the alleged offender do not suffer any consequences as a result of a complaint being lodged
  - Be explicit about and ensure understanding of acceptable and unacceptable work behaviour with all concerned
- c)** If the allegations are found to be frivolous vexatious, malicious or contrived, the complainant may:
- Be required to undergo counselling
  - Be subject to Council's disciplinary procedure
  - The complaint officer and/or manager/supervisor should follow up after the investigation has concluded to ensure that behaviour has ceased and neither party has been victimised

**15. Other support available**

Counselling is available to all employees through Council's Employee Assistance Program (EAP). The professional counsellors are qualified in dealing with a range of work related and personal issues, and will handle the matter in a confidential manner.

**16. Appeals process**

If the complainant or the alleged offender feels the complaints procedure has not been followed properly or the outcome is inappropriate, an appeal may be submitted to the General Manager.

The General Manager will look at the way the complaint was handled and the action taken. If they feel the complaint has been handled fairly and the final decision was fair, Council will take no further action. However, if it is felt the complaint was not handled properly, the General Manager will conduct further investigations or will arrange for someone, other than the person who conducted the initial investigations, to carry out the review.

If the General Manager has been a party to the complaint then the individual may find resolution through an external agency such as the Anti-discrimination Board or the Commonwealth Human Rights and Equal Opportunity Commission.

Approving Authority	Oberon Council
Contact	
Approval Date	
Date for revision	
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