



Central Darling Shire Council

Title of Policy	Anti-Discrimination & Equal Employment Opportunity		
This applies to	<p>All Employees of Central Darling Shire Council (whether full time, part time or casual) and all persons performing work at the direction of, in connection with, or on behalf of the Council (for example contractors, subcontractors, agents, consultants, and temporary staff). All these are collectively referred to as "workers".</p> <p>This Policy is not limited to the workplace or work hours. This Policy extends to all functions and places that are work related. For example, work lunches, conferences, Christmas parties and client functions. Equal Employment Opportunity (EEO) laws apply to all areas of employment, as well as the provision of goods and services.</p> <p>This Policy does not form part of any Council employee's contract of employment. Nor does it form part of any other Council employees contract for service.</p>		
Author	Michael Boyd	Date approved:	
Position of Author	General Manager	Authorised by:	
Legislation, Australian Standards, Code of Practice	<p>Local Government Act 1993 (NSW) Local Government (General) Regulation 2005 (NSW) Anti-discrimination Act 1977 (NSW) Age Discrimination Act 2004 (Cwth) Disability Discrimination Act 1992 (Cwth) Human Rights & EEO Act 1986 (Cwth) Racial Discrimination Act 1975 (Cwth) Sex Discrimination Act 1984 (Cwth) Workplace Relations Act 1996 (Cwth) NSW Local Government (State) Award</p>		
Related Policies/Procedures	<p>Workplace Bullying Policy Code of Conduct</p>		

PURPOSE

Central Darling Shire Council ('the Council') aims to provide an environment where employees and others in the workplace are treated fairly and with respect, and are free from unlawful discrimination, **harassment, vilification and bullying.**

The Council aims to ensure that when employment decisions are made, they are based on merit, not on irrelevant attributes or characteristics that an individual may possess. The Council also aims to create a work environment which promotes good working relationships.

EQUAL EMPLOYMENT OPPORTUNITY (EEO) LAWS

Under EEO laws, discrimination, vilification, sexual harassment, bullying and victimisation are unlawful and strictly prohibited.

TERMS DEFINED

DISCRIMINATION

Direct discrimination

Direct discrimination in employment occurs when a person is treated less favourably than another in their employment because of a reason or ground which is prohibited by law. The prohibited grounds of discrimination are set out in the Federal, State and Territory laws and include sex, race, age etc. A full list of the grounds of discrimination which operate federally and in NSW will be relevant, and are set out below:

- Race (including colour, nationality, descent, ethnic, ethno-religious or national origin, immigrant status)
- Sex
- Pregnancy (including potential pregnancy)
- Carers' responsibilities, family responsibilities, carer or parental status, being childless
- Breastfeeding
- Industrial/trade union membership, non-membership or activity
- Employer association membership, non-membership or activity
- Temporary absence from work because of illness or injury
- HIV/AIDS
- Spent convictions
- Religious belief or activity
- Marital status, relationship status
- Homosexuality, transexuality, sexuality, sexual orientation, lawful sexual activity, gender identity, transgender,
- Intersex status
- Disability, including physical, mental and intellectual disability
- Age (including compulsory retirement)
- Political belief or activity
- Criminal record
- Medical record
- Defence service
- Association (i.e. association with a person who has one or more of the attributes for which discrimination is prohibited)

Indirect discrimination

Indirect discrimination may occur when an employer imposes a policy, requirement or condition which applies to everyone equally but it in fact operates to disadvantage a particular group because of a characteristic of that group, such as their sex, age, race (ie - a prohibited ground of discrimination).

Example: A Council imposes a height restriction on all applicants for the position of 'Parking

Officer', that is, an applicant must be over 185cm (6 feet) tall in order to be successfully considered for the position. This requirement at first glance appears fair because it applies to all applicants irrespective of gender. However, in practice this requirement will disadvantage women as a group because statistically, women are naturally shorter than men. So, the effect is to disadvantage women because of their sex.

Discrimination also includes the situation where a worker harasses another person based on a ground of discrimination. Harassment is unwelcome conduct that a reasonable person would expect to offend, humiliate or intimidate.

VILIFICATION

Vilification is a public act which incites hatred, severe contempt or severe ridicule of a person or group, because of race, homosexuality, transgender, transexuality or HIV/AIDS. Vilification is a particularly serious breach of EEO laws and will be dealt with accordingly.

SEXUAL HARASSMENT

Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated. Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person. However, conduct will not be sexual harassment if a reasonable person, having regard to all the circumstances, would not have anticipated that the conduct would offend, humiliate or intimidate the other person. Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a hostile working environment for other workers can also be unlawful.

Examples of sexual harassment include, but are not limited to:

- physical contact such as pinching, touching, grabbing, kissing or hugging
- staring or leering at a person or at parts of their body
- sexual jokes or comments
- requests for sexual favours
- persistent requests to go out, where they are refused
- sexually explicit conversations
- displays of offensive material such as posters, screen savers, Internet material etc
- accessing or downloading sexually explicit material from the Internet
- suggestive comments about a person's body or appearance
- sending rude or offensive emails, attachments or text messages.

BULLYING

Bullying is repeated, unreasonable behaviour directed towards an individual or group that creates a risk to health and safety. Unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten. Single incidents of unreasonable behaviour can also create a risk to health and safety and may escalate into bullying. There is no requirement that bullying be intentional.

It is not bullying for a manager or supervisor to counsel a worker about their performance. Performance counselling is a necessary part of ensuring that workers meet the Council's standards of work and behaviour. Also, other reasonable managerial actions such as disciplinary action, work directions and orders, and allocation of work in compliance with business needs and systems do not constitute bullying.

VICTIMISATION

Victimisation is where a person is retaliated against or subjected to a detriment because they have lodged a complaint, they intend to lodge a complaint or they are involved in a complaint of unlawful conduct. Workers must not retaliate against a person who raises a complaint or subject them to any detriment.

RIGHTS AND RESPONSIBILITIES

All workers must:

- understand and comply with this Policy;
- comply with the Council's Code of Conduct;
- ensure they do not engage in any unlawful conduct towards other workers, customers/clients or others with whom they come into contact through work;
- ensure they do not aid, abet or encourage other persons to engage in unlawful conduct;
- follow the complaint procedure in this Policy if they experience any unlawful conduct;
- report any unlawful conduct they see occurring to others in the workplace in accordance with the complaint procedure in this Policy; and
- maintain confidentiality if they are involved in the complaint procedure.

Workers should be aware that they can be held legally responsible for their unlawful conduct. Workers, who aid, abet or encourage other persons to engage in unlawful conduct, can also be legally liable.

BREACH OF THIS POLICY

All workers are required to comply with this Policy at all times. If an employee breaches this Policy, they may be subject to disciplinary action. In serious cases this may include termination of employment. Agents and contractors (including temporary contractors) who are found to have breached this Policy may have their contracts with the Council terminated or not renewed. For other workers a breach of this Policy could result in loss of position.

If a person makes an unfounded complaint or a false complaint in bad faith (eg - making up a complaint to get someone else in trouble or making a complaint where there is no foundation for the complaint), that person may be disciplined and may be exposed to a defamation claim.

COMPLAINT HANDLING PROCEDURE

If a worker feels that they have been subjected to any form of unlawful conduct contrary to EEO laws this Policy or the Council's Code of Conduct, they should not ignore it. This should be reported immediately to the Council's Director Business Services.

Examples of the ways in which a complaint about discrimination can be dealt with:

CONFRONT THE ISSUE

If a worker feels comfortable doing so, they should address the issue with the person concerned. A worker should identify the offensive behaviour, explain that the behaviour is unwelcome and offensive and ask that the behaviour stop. It may be that the person was not aware that their behaviour was unwelcome or caused offence.

This is not a compulsory step. If a worker does not feel comfortable confronting the person, or the worker confronts the person and the behaviour continues, the worker should inform the Director Business Services.

The Director Business Services is available to provide support and guidance to affected workers.

REPORT THE ISSUE

A worker should report the issue to the Director Business Services who will aim to deal with the worker's complaint in accordance with this Policy. There are two complaint procedures that can be used: informal and formal (detailed further below). The type of complaint procedure used will be determined by the nature of the complaint that is made.

Informal Complaint Procedure

Under the informal complaint procedure there is a broad range of options for addressing the complaint. The procedure used to address the issue will depend on the individual circumstances of the case. Possible options include, but are not limited to:

- the Director Business Services discussing the issue with the person against whom the complaint is made; and/or
- the Director Business Services facilitating a meeting between the parties in an attempt to resolve the issue and move forward.

The informal complaint procedure is more suited to less serious allegations that if founded, would not warrant disciplinary action being taken.

Formal Complaint Procedure

The formal complaint procedure involves a formal investigation of the complaint. Formal investigations may be conducted by the Director Business Services or a person from outside the Council, appointed by the Council.

An investigation generally involves, collecting information about the complaint and then making a finding based on the available information as to whether or not the alleged behaviour occurred. Once a finding is made, the Director Business Services or the external investigator will make recommendations about resolving the complaint.

If the Council considers it appropriate for the safe and efficient conduct of an investigation, workers may be required not to report for work during the period of an investigation. The Council may also provide alternative duties or work during the investigation period. Generally, workers will be paid their normal pay during any such period.

CONFIDENTIALITY

The Director Business Services will endeavour to maintain confidentiality as far as possible. However, it may be necessary to speak with other workers in order to determine what happened, to afford fairness to those against whom the complaint has been made and to resolve the complaint. If a complaint is raised and it appears that unlawful conduct has potentially occurred, the Council will endeavour to take appropriate action in relation to the complaint.

All workers involved in the complaint must also maintain confidentiality, including the worker who lodges the complaint.

Spreading rumours or gossip may expose workers to a defamation claim. Workers may discuss the complaint with a designated support person or representative (who is not a worker employed or engaged by the Council). However, the support person or representative must also maintain confidentiality.

POSSIBLE OUTCOMES

The possible outcomes will depend on the nature of the complaint and the procedure followed to address the complaint. Where an investigation results in a finding that a person has engaged in unlawful conduct, breach of this Policy or breach of the Code of Conduct that person may be disciplined. The type and severity of disciplinary action will depend on the nature of the complaint and other relevant factors. Where the investigation results in finding that the person complained against has engaged in serious misconduct, this may result in instant dismissal. Any disciplinary action is a confidential matter between the affected worker and the Council.

Agents and contractors (including temporary contractors) who are found to have engaged in unlawful conduct and/or breached this Policy or the Council's Code of Conduct, may have their contracts with the Council terminated or not renewed. For other workers, a breach of this Policy or the Council's Code of Conduct could result in loss of position.

The Council may take a range of other non-disciplinary outcomes to resolve a complaint, depending on the particular circumstances. Examples include, but are not limited to:

- training to assist in addressing the problems underpinning the complaint;
- monitoring to ensure that there are no further problems;
- implementing a new policy;
- requiring an apology or an undertaking that certain behaviour stop; and/or
- changing work arrangements.

QUESTIONS

If a worker is unsure about any matter covered by this Policy, they should seek the assistance of the Manager Human Resources.