



# Policies, Procedures and Guidelines

## ANTI DISCRIMINATION & EQUAL OPPORTUNITY POLICY

CSG002

### ANTI – DISCRIMINATION & EQUAL EMPLOYMENT OPPORTUNITY PROTOCOL

Lachlan Shire 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.

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. Council also tries to create a work environment which promotes good working relationships.

### COMMENCEMENT OF PROTOCOL

This Protocol will commence from 1 May 2011. It replaces all other Anti-Discrimination & Equal Employment Opportunity Policies (whether written or not).

### APPLICATION OF PROTOCOL

This Protocol applies to employees, agents and contractors (including temporary contractors) of Council, collectively referred to in this Protocol as 'workplace participants'.

This Protocol is not limited to the workplace or work hours. This Protocol 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.

This Protocol does not form part of any employee's contract of employment. Nor does it form part of any other workplace participant's contract for service.

### EEO LAWS

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

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## DISCRIMINATION

Discrimination in employment occurs when a person is treated less favourably in their employment because of a ground of discrimination. Grounds of discrimination are set by law (Federal, State and Territory laws) and include sex, race, age etc.

A full list of the grounds of discrimination which operate Australia wide are set out below. Those that operate federally and in the State and/or Territories in which workplace participants undertake their work for Council will be relevant.

- Race (including colour, nationality, descent, ethnic, ethno-religious or national origin)
- Sex
- Pregnancy (including potential pregnancy)
- Carers' responsibilities, family responsibilities, carer or parental status, being childless
- Breastfeeding
- Physical features (VIC only)
- Industrial/trade union membership, non-membership or activity
- Employer association membership, non-membership or activity
- Transexuality, transgender and gender identity
- HIV/AIDS
- Spent convictions
- Association (i.e. association with a person who has one or more of the attributes for which discrimination is prohibited)
- Religious belief or activity
- Marital status, relationship status
- Homosexuality, transexuality, sexuality, sexual preference, lawful sexual activity
- Disability, including physical, mental and intellectual disability
- Age
- Profession, trade, occupation or calling (ACT only)
- Political belief or activity
- Compulsory retirement
- Criminal record
- Medical record
- Defence service

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Discrimination also includes the situation where a workplace participant 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 workplace participants 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.

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**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.

It is not bullying for a manager or supervisor to counsel a workplace participant about their performance. Performance counselling is a necessary part of ensuring that workplace participants meet 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. Workplace participants must not retaliate against a person who raises a complaint or subject them to any detriment.

**RIGHTS AND RESPONSIBILITIES**

All workplace participants must:

- ensure they do not engage in any unlawful conduct towards other workplace participants, 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 Protocol 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 Protocol; and
- maintain confidentiality if they are involved in the complaint procedure.

Workplace participants should be aware that they can be held legally responsible for their unlawful conduct.

Workplace participants, who aid, abet or encourage other persons to engage in unlawful conduct, can also be legally liable.

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**BREACH OF THIS PROTOCOL**

All workplace participants are required to comply with this Protocol at all times. If an employee breaches this Protocol, 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 Protocol may have their contracts with Council terminated or not renewed.

If a person makes an unfounded complaint or a false complaint in bad faith (e.g. 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 workplace participant feels that they have been subjected to any form of unlawful conduct contrary to EEO laws or this Protocol, they should not ignore it. Council has a complaint procedure for dealing with these issues. The complaint procedure has numerous options available to suit the particular circumstances of each individual situation. The manner in which a complaint will be handled is solely at the discretion of Council's Complaint Officer.

**EXAMPLES OF THE WAYS IN WHICH A COMPLAINT CAN BE DEALT WITH****Confront the Issue**

If a workplace participant feels comfortable doing so, they should address the issue with the person concerned. A workplace participant 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 workplace participant does not feel comfortable confronting the person, or the workplace participant confronts the person and the behaviour continues, the workplace participant should report the issue to their Supervisor/Director or Manager – Human Resources.

If a workplace participant is unsure about how to handle a situation and is also unsure if they want to make a complaint they should contact the EEO Contact Officer for support and guidance. The EEO Contact Officer's aim is to assist people uncertain about their rights. EEO Contact Officer is Council's Manager – Human Resources.

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**Report the Issue**

A workplace participant should report the issue to their Supervisor/ Director or Manager People and Organisational Development.

The Supervisor/Director or Manager Human Resources will aim to deal with the workplace participant's complaint in accordance with this Protocol. 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 Supervisor/Director discussing the issue with the person against whom the complaint is made; and/or
- the Supervisor/Director 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 General Manager, Manager People and Organisational Development or a person from outside Council, appointed by 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 General Manager, Manager People and Organisational Development or the external investigator will make recommendations about resolving the complaint.

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

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**CONFIDENTIALITY**

The Supervisor/Director or Manager People and Organisational Development will endeavour to maintain confidentiality as far as possible. However, it may be necessary to speak with other workplace participants 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, Council will endeavour to take appropriate action in relation to the complaint.

All workplace participants involved in the complaint must also maintain confidentiality, including the workplace participant who lodges the complaint. Spreading rumours or gossip may expose workplace participants to a defamation claim. Workplace participants may discuss the complaint with a designated support person or representative (who is not a workplace participant employed or engaged by 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 or breach of this Protocol, 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 a 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 workplace participant and Council.

Agents and contractors (including temporary contractors) who are found to have engaged in unlawful conduct and/or breached this Protocol may have their contracts with Council terminated or not renewed.

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/Protocol;
- requiring an apology or an undertaking that certain behaviour stop; and/or

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- changing work arrangements.

**WHAT TO DO IF YOU ARE NOT SATISFIED WITH THE OUTCOME****Review**

If any of the parties are not satisfied with the way the complaint was handled or the outcome of the complaint process they can contact the Manager People and Organisational Development. The complaint handling process and/or the outcome may then be reviewed by the General Manager. If a review is undertaken, the General Manager's decision in relation to the review will be final.

Council's goal is to resolve issues in-house wherever possible. Workplace participants can seek the assistance of an outside agency if they feel that their complaint has not been adequately addressed.

**QUESTIONS**

If a workplace participant is unsure about any matter covered by this Protocol, a workplace participant should seek the assistance of Manager - People and Organisational Development..

**CONTACTS FOR OUTSIDE AGENCIES**

*Australian Human Rights Commission*

*Anti-Discrimination Board (NSW)*

Toll Free: 1300 656 419

Toll Free: 1800 670 812

**VARIATIONS**

*Council reserves the right to vary, replace or terminate this Protocol from time to time.*

Robert Hunt

**GENERAL MANAGER**

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**WORKPLACE PARTICIPANT ACKNOWLEDGEMENT**

*I acknowledge:*

- *receiving the Council Policy;*
- *that I should comply with the Policy; and*
- *that there may be disciplinary consequences if I fail to comply, which may result in the termination of my employment.*

Your name:

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Signed:

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Date:

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