

Blue Mountains City Council

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EQUAL EMPLOYMENT OPPORTUNITY

Blue Mountains City Council is committed to a policy of equal employment opportunity, fair treatment and non-discrimination for all existing and future employees.

All employment practices (recruitment, selection, training and employment, promotion and transfer and all other terms and conditions of service) will be based solely on the merit of the individual against specific job requirements. Existing and future employees will not be discriminated against in their employment on the grounds of race, colour, national origin, sex, religion, marital status, age, physical and intellectual impairment, political convictions and sexual preferences.

Council will through its Equal Employment Opportunity Management Plan, ensure any discriminatory practices are progressively removed from its policies and procedures and will recognise and encourage employees on the basis of their abilities, aptitudes, qualifications and skills, through the implementation and monitoring of effective Human Resources policies and procedures.

The policy also aims to eliminate all forms of workplace harassment which are illegal.

Council believes the implementation of an EEO policy and program will create a more productive workplace and will result in better services to the community.

Purpose

The purposes of Council's EEO policy are:

- 1) To eliminate and ensure the absence of discrimination in employment on the grounds of race, sex, marital status, age, physical impairment, intellectual impairment and homosexuality, and
- 2) to promote equal employment opportunity for women, members of racial minorities and physically and intellectually impaired persons within Council.

Definitions

Equal Employment Opportunity (EEO)

Is the principle which ensures that all employees and potential employees are treated equitably and fairly, regardless of their race, sex, marital status, age, physical or intellectual impairment or sexual preferences.

Discrimination

Refers to unequal treatment or opportunities. Discrimination may be direct, indirect or systemic.

- i) **Direct Discrimination** occurs where people are treated differently because different criteria are applied when it is not necessary for them to be applied.
- ii) **Indirect Discrimination** occurs when policies, rules and practices which appear neutral or impartial adversely affect a group or individual, thus reducing opportunities. These rules and practices are discriminatory in effect, as they exclude people with suitable skills who don't meet the apparently fair rules or practices, e.g. Height requirements for certain jobs, no female toilets at certain worksites.
- iii) **Systemic Discrimination** is rules or practices which result in different patterns of access to different jobs and different access to benefits or services. It is the result of both direct and indirect discrimination.

Merit

Means assessing each person's skills and abilities against the needs of the job, and disregarding unlawful personal characteristics which are relevant to the job. Merit recognises experience gained both inside and outside formal employment.

Affirmative Action

Affirmative Action programs are designed to overcome the effects of past discrimination. This discrimination has formed barriers which exclude target groups from having access to equal employment opportunity. Affirmative action seeks to address the effects of past disadvantages and prevent future disadvantages. It is the method of achieving equal employment opportunity for target groups. This may involve, for example, the provision of selection tests with a sign language interpreter present for applicants with hearing disabilities.

EEO Groups

These groups who have been identified as experiencing high levels of discrimination and disadvantage in the workplace, and for whom EEO strategies are developed to address these disadvantages.

EEO Groups specified in the NSW Local Government Act are

- i) Women
- ii) People of Non English Speaking background (NESB)
- iii) People of Aboriginal or Torres Strait Islander descent
- iv) People with physical and mental disabilities

Sex Discrimination

Sex Discrimination refers to less favourable treatment on the grounds of a person's sex, or any characteristic of a person's sex. Sex Discrimination also covers discrimination on the grounds of marital status or pregnancy.

Race Discrimination

Race Discrimination refers to less favourable treatment on the grounds of a person's race, or characteristics of his/her race.

Aboriginal or Torres Strait Islander

Is a person of Aboriginal or Torres Strait Islander descent who identifies as Aboriginal or Islander and is accepted as such by the Aboriginal or Island community.

Non English Speaking Background (NESB)

Refers to people who were born in a country where English is not the main language spoken, or to people born in Australia with one or both parents NESB.

Physical Impairment

Is any defect or disturbance in the structure or functioning of a person's body.

Intellectual Impairment

Is any defect or disturbance of the functioning of a person's brain. This may result in learning problems.

Psychiatric Impairment

Is any condition which impairs a person's thought processes, perception of reality, emotions or judgment, or which results in disturbed behaviour.

Physical, Intellectual or Psychiatric Impairment Discrimination

Occurs when someone is treated less favourably than another person in the same or similar circumstances, because of the impairment.

Homosexual Discrimination

Occurs if a person is treated less favourably than others on the grounds of homosexuality, or their believed homosexuality.

Harassment

Any unwelcome, offensive comment or action concerning a person's race, colour, language, accent, ethnic origin, gender, marital status, pregnancy, disability, political or religious conviction. It is behaviour towards another employee which is intimidating or embarrassing and adversely affects the work environment.

JURISDICTION

The EEO policy applies to all employees. All employees are obliged to follow non-discriminatory practice in the workplace, as it is Council which is legally accountable for discrimination in employment matters as the responsible employer.

RESPONSIBILITY/ACCOUNTABILITY

*** All Staff**

- i) are responsible for upholding the EEO principles outlined in this policy, however specific responsibility lies with line managers and supervisors to prevent discrimination and promote equal opportunity in the workplace.
- ii) have the right to seek advice from the Anti-Discrimination Board.

*** Managers/Supervisors**

- i) are responsible for ensuring that the principles covered in this policy are upheld by the staff for whom they are responsible.
- ii) are responsible for ensuring equality of employment opportunity is extended to all staff, and that no unlawful discrimination occurs in employment practices.

* **The EEO Coordinator will**

- i) work with management and staff to develop and implement the EEO policy and program including guidelines and best practice standards.
- ii) research EEO matters and keep management informed of developments in EEO
- iii) provide statistical and other human resources information to allow Council to develop and monitor its EEO program.
- iv) integrate the EEO policy and practices into human resources management practice and Council programs.
- v) Advise on grievance handling procedures.

* **The General Manager will**

- i) ensure that Council's EEO policy and program is implemented within Council.
- ii) ensure all staff comply with Council's EEO policy and with legal obligations under relevant legislation.
- iii) ensure that management audits of the EEO program are undertaken on a regular basis to ensure that the EEO policy and program continue to meet their objectives.

* **The Group Managers will**

- i) ensure that Council's EEO policy and program is implemented within their Division.
- ii) ensure that all staff with supervisory responsibilities are aware of employees' rights and obligations under Council's EEO policy and relevant legislation.

* **The Human Resources Manager will**

- i) assist with the development and review of Human Resources policies and procedures.
- ii) ensure that position descriptions of all staff reflect their EEO responsibilities and accountabilities.

BREACHES OF POLICY

Breaches of the Equal Employment Opportunity policy will not be tolerated. Failure to extend equality of employment opportunity to all employees is a serious matter and will result in the appropriate disciplinary action. Serious breaches of this policy may result in termination of employment.

GRIEVANCE POLICY AND PROCEDURES

A grievance is any work related disagreement, complaint or matter which someone thinks is unfair or unjustified and which is causing that person concern or distress. Grievances can relate to almost any aspect of employment including: issues concerning transfer and promotion, rosters leave allocation, work environment, safety in the work place, performance appraisal, discrimination or harassment.

Policy Statement:

Council is committed to resolving grievances wherever possible through mediation consultation, cooperation and discussion.

- All grievances will be handled in utmost **confidentiality**. Only the people directly involved will have access to information about the complaint.
- All procedures will be **impartial**. No assumptions will be made, and no action will be taken until all relevant information has been collected, investigated and considered.
- Council is committed to ensure that **no repercussions** or victimisation occurs against anyone who makes a complaint.
- Seeking redress of a trivial, frivolous or vexatious issue through a grievance procedure will not be tolerated.
- Complaints will be dealt with in a **timely** manner.

Responsibilities:

General Manager/Group Managers: for serious and complex grievances which could involve possible fraud, corruption, physical danger or serious misconduct of a senior staff member.

Supervisors/Team Leaders: in general all supervisors/team leaders are to be the first point of receipt and will be responsible for the investigation and resolution of staff grievances.

Human Resources staff: are to provide advice and assistance and where necessary receive and investigate the grievance, particularly if the grievance relates to a discrimination, harassment or personnel/industrial matter.

Using the grievance procedure does not eliminate the right of a staff member or Council as an employer in gaining advice or assistance from unions, professional associations or any other external agency.

GRIEVANCE PROCEDURES

- In general the grievance should be first discussed with or put in writing to the supervisor/team leader for resolution. This would not apply where the issue directly relates to the activities of the supervisor/team leader.
- The relevant investigator should obtain the facts, clarify issues and then discuss findings with the staff member lodging the grievance.
- Where a Contact Officer or Investigator believes they cannot handle the grievance objectively, or where they lack the power to resolve the particular complaint, they may refer the to the Human Resources Branch.
- A written record of the complaint should be taken by the Officer responsible for investigating the complaint. This Officer would should also talk to the other person/people involved separately and impartially. Where agreement as to resolution is reached, the Officer should follow up the situation to ensure what has been agreed to actually occurs.
- If a grievance remains unresolved, it is to be taken to senior management or to a mutually agreeable third party for mediation/arbitration.
- Union, employee association or Human Resource Management assistance can be sought to assist resolution at any step in the procedure.
- Grievances should generally be resolved within 4 weeks.

Contact Officers

An independent contact officer shall be nominated in each Division using the following selection criteria:

- commitment to EEO principles
- discretion and ability to maintain confidentiality
- sound listening skills, mediation, conflict resolution and interpersonal skills
- awareness of discrimination issues
- known integrity and support for principles of social justice
- investigative ability

Qualified Privilege

A staff member who raises a grievance is protected against any action for defamation by the defence of qualified privilege, provided the grievance is raised in accordance with these procedures and does not intentionally make a malicious or substantially frivolous complaint.

A staff member who carries out grievance investigation and resolution in accordance with these procedures, or a staff member who is required to prepare a report concerning another staff member is protected against any action for defamation by the defence of qualified privilege provided that

- they act in accordance with established procedures
- they are not motivated by malice, and
- they do not publish such material to persons who have no legitimate interest in receiving it.

A Complainant has the right to

- keep notes, copy of written documents or diary record of all incidents and any responses, including date, times, witnesses and other details.

- advise his/her supervisor, Human Resources Manager or EEO Coordinator or a person at an appropriate level within the organisation
- contact their respective Union for advice
- contact the NSW Anti Discrimination Board where appropriate

A Person who is subject of a complaint has the right to

- be informed verbally of what behaviour they are being accused of
- to respond to the allegations and cite witnesses if appropriate
- to fair treatment and procedures
- to be heard by an unbiased person

The Person receiving a report/complaint should

- advise complainant that their complaint will be treated sensitively, confidentially and without victimisation
- in the case of harassment complaints, establish whether complainant has advised alleged harasser that their behaviour is unwelcome
- in the case of harassment complaints, advise the Human Resources Branch that a complaint has been made.
- ensure that a written report is obtained from the complainant, containing appropriate details, witness reports etc.
- approach the subject of the complaint or alleged harasser to seek a response to the allegations made about their behaviour. This approach should be made either in the company of the person's supervisor/team leader or Human Resources Branch Representative.
- conduct a confidential interview and seek reports from any identified witnesses.

Disciplinary procedures

Should a grievance and its subsequent investigation indicate the need for disciplinary action, the relevant Group Manager is to be advised and Council's Disciplinary Policy and Procedures is to be followed.

In the case of discrimination/harassment complaints, the following disciplinary procedures will apply:

If the behaviour is admitted

- where the behaviour is admitted and is of a single visually or auditory offensive nature (eg sexist/racist poster or language rather than a sexual proposition or a physically threatening approach) a first disciplinary interview should be conducted and written warning issued to the harasser together with a reinforcement of Council's policy.
- if the behaviour is admitted and has consisted of repeated incidents of physical approaches etc, a first and final warning should be issued.
- the admitted harasser should be cautioned that they should take no action which could be construed as victimisation, as this will lead to further disciplinary action.
- if the harasser is the complainant's immediate supervisor, the harasser's supervisor must be consulted on any decisions regarding promotion, job rotation etc involving the complainant, and should be offered counselling to avoid further incidents.
- a copy of any disciplinary letters shall be placed on the harasser's file.

if the behaviour is not admitted and there were no witnesses, the following procedures apply:

- in such cases, the "balance of probability" needs to be taken into consideration
- the alleged harasser is to be reminded of Council's policy, advised that their alleged behaviour has been perceived by the complainant as harassment and informed that their behaviour with the complainant will be monitored.
- the alleged harasser is to be cautioned that they should take no action which could be construed as victimisation towards the complainant

- the complainant will be advised of the alleged harasser denial and of their right to seek assistance from the Anti Discrimination Board
 - no notes of the allegations will be recorded on personal files.
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- any notes/reports taken in respect of a harassment complaint and the actions taken as a result will be kept in a separate confidential file in the Human Resources Branch.
 - these records may be required should a complainant choose to go to the Anti Discrimination Board.
 - breaches of confidentiality of harassment complaints are unacceptable and may be subject to separate disciplinary action

HARASSMENT

Blue Mountains City Council considers sexual, racial and other forms of harassment as an unacceptable form of behaviour which will not be tolerated under any circumstances.

Harassment refers to unwelcome, comments and/or behaviour which is intimidating, offensive or embarrassing. It includes offensive comments or action concerning a person's race, colour, language, ethnic origin, gender, marital status, disability, political or religious conviction. Behaviour which may constitute harassment includes staring, leering, touching or unwanted familiarity, taunts, insults, jokes or gestures.

Council has a legal obligation to ensure that harassment does not occur in the workplace. As well as the legal implications of harassment, it has negative implications on the workplace, including loss of productivity and morale.

Group Managers, Managers and Supervisors are required to ensure that all employees are:

- * treated fairly and equitably;
- * not subject to harassment; and
- * complainants or witnesses are not victimised in any way.

All staff will ensure that their fellow employees are:-

- * treated fairly and equitably;
- * not subject to harassment; and
- * complainants or witnesses are not victimised in any way.

Any reports of harassment will be treated seriously and sympathetically by Council, and will be investigated thoroughly and confidentially. Council's grievance policy and procedures will be followed in the case of a harassment complaint.

Disciplinary action will be taken against any Council employee found to be perpetrating harassment of other Council employees.

Information on Council's harassment policy will be included in induction and other EEO education/training programs.

WORKPLACE DISPLAY MATERIAL (adopted 7/6/94)

Blue Mountains City Council is committed to ensuring that Council workplaces present a positive public image and do not display material which is unlawfully discriminating and likely to cause offence. Council is also required to comply with legislation which makes sexual harassment and racial vilification unlawful.

As such, all material of a sexist, racist or otherwise offensive or discriminatory nature **shall not be displayed** in any Council workplace. Material could include graphics such as pictures, posters, cartoons, picture calendars, graffiti or writing such as poems, quotes, notes or jokes. Examples of such material could be calendars or posters of almost nude females or males or material which portrays a stereotypical view of a person of another race.

It is the responsibility of every supervisor and manager to ensure that their workplace does not display sexist, racist or otherwise offensive material and that any such material on display is removed. Any employee who displays such material will be asked to remove it as it is inappropriate in the workplace and against Council policy. If an employee does not remove the material, the supervisor will take the responsibility to do so and the employee will be given a written warning advising them that any future breaches of policy will result in formal disciplinary action being taken against them.

All existing and future suppliers and contractors, who wish to make available such material, will be advised of Council's policy regarding workplace display material.