



Policy: Human Resources

**ANTI-DISCRIMINATION,
HARASSMENT AND
WORKPLACE BULLYING**

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Policy Statement

Blue Mountains City Council is committed to providing a safe, flexible and respectful environment for its workers, an environment that is free from all forms of discrimination, harassment and bullying.

Blue Mountains City Council workers are required to treat each other with dignity, respect and courtesy.

By effectively implementing this policy, Council will attract and retain talented staff and create a positive work environment for all staff.

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Version	Adoption Date	Reason for Change
2013	23 April 2013	Periodic update.
2018	27 November 2018	Periodic update.
2019	25 September 2019	Periodic update.

Definitions

Term	Definition
the Act	<i>Local Government Act 1993 (NSW)</i>
Code of Conduct	The current <i>Code of Conduct</i> as adopted by Blue Mountains City Council.
the Regulation	<i>Local Government (General) Regulation 2005 (NSW)</i>
Award	<i>Local Government (State) Award 2017</i>
Discrimination	Unlawful workplace discrimination occurs when an employer takes adverse action against a worker or potential worker based on a personal attribute.
Harassment	Harassment occurs when a person is treated less favourably on the basis of certain personal characteristics. A one-off incident can constitute harassment.
Bullying	Repeated, unreasonable behavior directed towards a worker or group of workers, which creates a risk to health and safety.
Union representative	<i>An employed representative of a union which represents Council employees</i>
Support person	A person who provides emotional support to a worker during a meeting. A support person may be a Union representative, family member, or colleague. A support person is not the worker's advocate and does not participate in the meeting.
Australian Human Rights Commission (AHRC)	An independent statutory organization which reports to the federal Parliament and is responsible for leading the promotion and protection of human rights in Australia
Worker/Employee	Paid employees of Council, volunteers, contractors and labour-hire staff.
EAP	Employee Assistance Program

Related Documents

This document should be read in conjunction with:

- Blue Mountains City Council, *Code of Conduct*
- Blue Mountains City Council *Discipline Policy and Procedure*
- Blue Mountains City Council *Employee Assistance Program Policy*
- Blue Mountains City Council *Grievance Resolution Policy and Procedure*
- Blue Mountains City Council *Equal Employment Opportunity Policy*
- Blue Mountains City Council *Public Interest Disclosures Internal Reporting Policy*
- *Local Government Industry Guidelines on Workplace Investigations*

Related Legislation:

- *Local Government Act 1993 (NSW)*
- *Local Government (General) Regulation 2005 (NSW)*
- *Local Government (State) Award 2017 (NSW)*

- *Anti-Discrimination Act 1997*
- *Sex Discrimination Act 1984 (Cth)*
- *Racial Discrimination Act 1975 (Cth)*
- *Disability Discrimination Act 1992 (Cth)*
- *Age Discrimination Act 2004 (Cth)*
- *Australian Human Rights Commission Act 1986 (Cth)*
- *Work Health and Safety Act 2011*
- *Work Health and Safety Regulation 2017*
- *Privacy and Personal Information Protection Act 1998 (NSW)*
- *Public Interest Disclosures Act 1994 (NSW)*
- *Fair Work Act 2009*

Policy details and information

Unacceptable Workplace Conduct

Discrimination, harassment and bullying are unacceptable at Blue Mountains City Council, and are unlawful under the following legislation:

- *Sex Discrimination Act 1984 (Cth)*
- *Racial Discrimination Act 1975 (Cth)*
- *Disability Discrimination Act 1992 (Cth)*
- *Age Discrimination Act 2004 (Cth)*
- *Australian Human Rights Commission Act 1986 (Cth)*
- *Work Health and Safety Act 2011*
- *Work Health and Safety Regulation 2017*

Council workers, including Managers, found to have engaged in such conduct will be subject to the provisions of Council's *Discipline Policy*. Severe or repeated breaches which are assessed as serious misconduct may lead to formal disciplinary outcomes, up to and including termination of employment. Serious matters of harassment or bullying involving assault may also constitute criminal activity and may also be referred to external authorities.

Definitions

Unlawful Workplace Discrimination

Unlawful workplace discrimination occurs when an employer takes adverse action against an worker or potential worker based on one of the following attributes:

- Race
- Colour
- Sex
- Sexual orientation
- Age
- Physical or mental disability
- Marital status
- Family or carer responsibilities
- Pregnancy
- Religion
- Political opinion
- National extraction or origin – a person's place of birth, ancestry or foreign origin.

Source – Fair Work Ombudsman (www.fairwork.gov.au)

Adverse action taken by an employer includes doing, threatening or organising any of the following:

- Dismissing a worker;
- Injuring an worker in connection with their employment;
- Altering an worker's position to their detriment;
- Discriminating between one worker and other workers;
- Refusing to employ a prospective worker;
- Discriminating against a prospective worker on the terms and conditions in the offer of employment/engagement.

What is not considered unlawful discrimination?

Treating somebody differently is not necessarily unlawful discrimination. Some different treatment such as general performance management may not be an unlawful discrimination issue. In terms of the Fair Work Act, an action is only considered adverse action if it occurs due to one or more of the abovementioned attributes. If this is not the basis of the action, it may not be considered an act of unlawful discrimination.

Source – Fair Work Ombudsman (www.fairwork.gov.au)

Harassment

Harassment can be against the law when a person is treated less favourably on the basis of certain personal characteristics, such as race, sex, pregnancy, marital status, breastfeeding, age, disability, sexual orientation, gender identity or intersex status. A one-off incident can constitute harassment. Harassment can include behaviour such as:

- Telling insulting jokes about particular racial groups;
- Sending explicit or sexually suggestive emails or text messages;
- Displaying racially offensive or pornographic posters or screensavers;
- Making derogatory comments or taunts about someone's race;
- Asking intrusive questions about someone's personal life, including their sex life.

Sexual harassment is an unwelcome sexual advance, unwelcome request for sexual favours or other unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where a reasonable person would anticipate that reaction in the circumstances. Some examples of sexually harassing behaviour include:

- Unwelcome touching
- Staring or leering
- Suggestive comments or jokes
- Sexually explicit pictures or posters
- Unwanted invitations to go out on dates
- Requests for sex
- Intrusive questions about a person's private life or body
- Unnecessary familiarity, such as deliberately brushing up against a person
- Insults or taunts based on sex
- Sexually explicit physical contact
- Sexually explicit emails or text messages

The above lists are not exhaustive.

Source – Australian Human Rights Commission (www.humanrights.gov.au)

Bullying

Workplace bullying is defined as “repeated, unreasonable behavior, directed towards a worker or group of workers, that creates a risk to health and safety”. Examples of potential unreasonable behavior include:

- Offensive language or comments;
- Unjustified criticism;
- Deliberately excluding somebody from workplace activities;
- Withholding information that is needed for work.

Source – SafeWork NSW (www.safework.nsw.gov.au)

Sometimes at work, things will occur which make a worker feel uncomfortable, however not everything which a worker does not like at work will constitute bullying. Reasonable management action taken in a reasonable way is not bullying. For example:

- Undertaking a disciplinary process when a worker’s work performance or conduct is unsatisfactory;
- Providing corrective feedback to a worker who is not following the correct procedure;
- Denying a request for training, where the training is deemed to not be a requirement of the role;
- A decision by Council that an internal applicant for a role is not the best applicant, based on the information provided throughout the recruitment process;
- Denying a request by a worker if, in granting the request, business needs would be compromised.

Victimisation

It is unlawful to victimise another worker because that worker has complained or intends to complain about discrimination or harassment. Victimisation occurs when someone is treated, or threatens to treat another worker unfairly or causes a detriment, because they:

- Have complained, or intended to complain to the employer or another person; or
- Have complained, or intended to complain to the NSW Anti-Discrimination Board, Australian Human Rights Commission or other external agency to which Council workers have a right to complain or report; or
- Have supported someone who has made a complaint of discrimination or harassment, or acted as a witness in a discrimination or harassment matter.

Gossip

It is unacceptable for Council workers to talk with other workers, residents or suppliers about any complaint of discrimination, harassment or bullying. Support is available to workers who may be experiencing or witnessing discrimination, harassment or bullying through:

- The Human Resources Team
- Managers and Supervisors
- Union representatives
- Council’s Employee Assistance Program

Breaching the confidentiality of a formal complaint investigation or inappropriately disclosing personal information obtained in a professional role is a serious breach of this policy and may be dealt with under Council's policies or relevant legislation.

Expectations and Responsibilities

Council has expectations and places responsibilities on all parties involved in the prevention of, and resolution of instances of discrimination, harassment and workplace bullying, as outlined below.

General Manager is expected to:

- Support Managers and Supervisors to lead workers, either directly or indirectly in their understanding of and compliance with all Council policies, procedures and the Code of Conduct;
- Support Managers/Supervisors in the management of complaints in regard to discrimination, harassment and workplace bullying.

Managers and Supervisors are expected to:

- Role model appropriate conduct and performance, in addition to leading workers in their understanding and compliance with Council policies, procedures and the Code of Conduct;
- Not engage in, or enable others to engage in, behavior which could be interpreted as unlawful discrimination, harassment or bullying;
- Raise any concerns with workers about inappropriate conduct as they arise;
- Ensure all records relating to performance or disciplinary discussions are accurate and are promptly placed on personnel files;
- Provide advice and support to their workers.
- Provide oversight of issues to Human Resources and;
- Request the assistance of a Human Resources representative, where required, during conduct or performance-related meetings, to act as an observer or witness, and to ensure a fair process is followed;

Workers are expected to:

- Treat others, and be treated, with respect and in accordance with Council's values and policies;
- Not engage in, or enable others to engage in, behavior which could be interpreted as unlawful discrimination, harassment or bullying.

Workers can expect to:

- Have concerns in relation to discrimination, harassment or workplace bullying treated seriously and managed in a timely, confidential and impartial manner, with a focus on maintaining work relationships;
- Be provided with information on the progress of their complaint, and on any decision which may impact them;
- Be protected against victimisation as a result of lodging a complaint.

Human Resources will:

- Provide support and procedural advice to workers and Managers/Supervisors in relation to the resolution of complaints regarding discrimination, harassment or workplace bullying, and specific policies where required;
- Become the Grievance Handler/Investigator in specific circumstances;
- Ensure thorough assessment/investigation is conducted, ensuring matters are assessed or investigated without bias, adhering to the principles of procedural fairness and confidentiality;
- Uphold the rights and responsibilities of all parties involved in the investigation and resolution processes.

Union Representation:

- Employees are entitled to request the presence of a union representative and/or the involvement of their union at any stage during the grievance resolution process, including attendance at meetings;
- Union delegates will be provided with reasonable time without loss of pay to represent members who have raised concerns with regard to discrimination, harassment or workplace bullying at the local level, provided prior approval is sought from the Supervisor/Manager. Such approval shall not be unreasonably withheld.

Support Person:

- Workers who do not make use of a union representative may utilise a support person at any stage of a complaint process. A support person may be a friend, colleague or family member. The selection of a support person is subject to pre-approval by HR, which will assess confidentiality and conflict of interest considerations;
- The role of the support person is to accompany the worker to meetings and provide emotional support and to witness the process;
- The support person should not actively participate in the discussion, and should not act as an advocate for the worker.

Confidentiality

Workers may need to discuss the basis for their grievance with somebody they trust, such as a family member, union representative or a colleague who is not involved in the grievance. Council expects that these people will respect the confidentiality of all parties involved. Management or Human Resources may refuse certain support people if a conflict of interest or potential for breach of confidentiality exists.

Supervisors/Managers who are managing a grievance may seek assistance from more senior managers, or Human Resources. These conversations should take place in private, and all parties should understand that the conversation is confidential. Information regarding a grievance should be shared only on a “need to know” basis. This means that others in the workplace, and other Supervisors/Managers who have no involvement in the grievance will not be told about it.

Throughout the investigation process, the grievance should be treated as confidential. However, in some cases, it may be necessary to provide details of the grievance to other workers in order that the matter can be properly investigated. If this occurs, the complainant should be informed.

Complaints of discrimination, harassment or bullying may be assessed and managed as grievances, including but not necessarily through workplace investigations. Workers who are considering making complaints may also consider doing so via Council's *Public Interest Disclosures Internal Reporting Policy* or *Code of Conduct*.

Employee Assistance Program

Council encourages employees who have experienced or witnessed discrimination, harassment, bullying or victimisation to seek support via Council's Employee Assistance Program. Contact details for Council's EAP can be found on the intranet, or obtained via Supervisors/Managers or the HR Team.

Raising and Resolving Complaints of Discrimination, Harassment, Bullying or Victimisation

Council strongly encourages workers who believe they have been subjected to or witnessed discrimination, harassment, bullying or victimisation to take appropriate action by:

- Raising their concerns with their Supervisor or Manager;
- Raising their concerns with the HR Team;
- Lodging a workplace grievance in accordance with Council's *Grievance Resolution Policy and Procedure*.

Complaints of discrimination, harassment, bullying or victimisation will be confidentially assessed and managed through Council *Grievance Resolution Policy and Procedure*, or *Discipline Policy and Procedure*, as appropriate.

Nothing in this Policy prevents workers from raising complaints of discrimination, harassment, bullying or victimisation with external bodies.
