



ADOPTED	
COUNCIL MEETING MIN NO	138/22
DATE:	18/05/2022

VERSION NO	7
REVIEW DATE	05/2025
FILE NUMBER	PER400056

1. Purpose

Mid-Western Regional 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, victimisation 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.

2. Commencement of Policy

This policy will commence from 18 May 2022. It replaces all other Anti-Discrimination & Equal Employment Opportunity Policies (whether written or not).

3. Application of Policy

This Policy covers all employees of the 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, volunteers, agents, consultants, and temporary staff) (collectively "workers").

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. This policy applies to verbal and written commentaries, including commentary made through social media. Equal Employment Opportunity (EEO) laws apply to all areas of employment, as well as the provision of goods and services.

This Policy does not form part of any Council employees contract of employment. Nor does it form part of any other Council employees contract for service.

4. EEO laws

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

5. Discrimination

5.1 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 that are relevant, are listed out below.

- Race (including colour, nationality, descent, ethnic, ethno-religious or national origin, immigrant status)
- Sex
- Pregnancy (including potential pregnancy)
- Religious belief or activity
- Marital status, relationship status
- Homosexuality, sexuality, sexual preference, lawful sexual activity, gender identity, asexuality, intersex, sexual orientation

- 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
- 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)

5.2 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 (i.e. - a prohibited ground of discrimination).

Example: The 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.

6. Vilification

Vilification is a public act that incites hatred, severe contempt or severe ridicule of a person or group, because of race, homosexuality, being transgender, or having HIV/AIDS.

7. Harassment

Harassment is any form of behaviour towards a person that:

- Is not wanted by the person;
- Offends, humiliates or intimidates the person; and
- Creates a hostile environment.

Harassment can occur on the same grounds as unlawful discrimination.

Harassment can be carried out in a variety of different ways, including through email or text messaging, internet chat rooms, instant messaging or other social media channels.

Harassment can often be the result of behaviour that is unintentional. However, harassment can be unlawful regardless of whether the behaviour was intentional or unintentional. In addition, harassment (including bullying) that makes the workplace unsafe contravenes work health and safety laws.

Examples of harassment include, but are not limited to:

- Telling insulting jokes about particular racial groups.
- Making derogatory comments or taunts about someone's race or religion.
- Spreading rumours based on someone's sexual preferences / pregnancy or potential pregnancy.
- Derogatory comments or jokes about a person's disability, pregnancy, sexuality, age, religion.

Examples of behaviour that is not harassment can include:

- Reasonable management action taken in a reasonable manner by council to transfer, demote, discipline, counsel, retrench or dismiss a worker.
- A decision by council, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with a worker's employment.
- Reasonable administrative action taken in a reasonable manner by council in connection with a worker's employment.
- Reasonable action taken in a reasonable manner under legislation affecting a worker.
- Reasonable comment, advice and feedback (including negative comment or feedback) from a worker's manager or supervisor in connection with a worker's work performance or work-related conduct.
- Feedback on a worker's work performance or work-related conduct that is intended to assist the worker to improve their work performance and/or the standard of their conduct.

8. Sexual harassment

Sexual harassment is any unwanted, unwelcome or uninvited 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:

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

9. 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.

10. When does EEO apply?

EEO applies to all aspects of the employment relationship. The policy seeks to establish an equitable working environment where equal employment opportunities based on merit are provided in relation to:

- access to services and information;
- transparent decision making;
- recruitment and selection;
- learning and development;
- career advancement and developmental opportunities; and
- conditions of employment.

11. Rights and responsibilities

All workers must:

- 11.1 understand and comply with this Policy;
- 11.2 comply with the Council's Code of Conduct;
- 11.3 ensure they do not engage in any unlawful conduct towards other workers, customers/clients or others with whom they come into contact through work;
- 11.4 ensure they do not aid, abet or encourage other persons to engage in unlawful conduct;
- 11.5 follow the complaint procedure in this Policy if they experience any unlawful conduct;
- 11.6 report any unlawful conduct they see occurring to others in the workplace in accordance with the complaint procedure in this Policy; and
- 11.7 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.

12. 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 you losing your position.

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.

13. 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.

They should, as appropriate, follow one of the steps set out below.

14. Examples of the ways in which a complaint can be dealt with

14.1 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 report the issue to their manager. If the manager is the alleged perpetrator, then the matter should be reported to a senior manager, to the Executive Manager People & Performance or a representative of the Human Resources team.

If a worker is unsure about how to handle a situation and is also unsure if they want to make a complaint they should contact the Executive Manager, People & Performance or a representative of the Human Resources team for support and guidance.

14.2 Report the Issue

A worker should report the issue to the Executive Manager, People & Performance or a representative of the Human Resources team.

The Executive Manager, People & Performance or a representative of the Human Resources team will aim to deal with the workers 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.

14.3 Informal Complaint

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:

- a) The manager, Executive Manager, People & Performance or a representative of the Human Resources team discussing the issue with the person against whom the complaint is made; and/or
- b) The manager, Executive Manager, People & Performance or a representative of the Human Resources team facilitating a meeting between the parties in an attempt to resolve the issue and move forward.

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

14.4 Formal Complaint

A formal complaint involves a formal investigation of the complaint. Formal investigations may be conducted by the Executive Manager, People & Performance or a representative of the Human Resources team 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 Executive Manager, People & Performance, a representative of the Human Resources team 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. *Refer to clause 37, Disciplinary Procedures, of the Local Government (State) Award 2020.*

15. Confidentiality

The Executive Manager, People & Performance or a representative of the Human Resources team will endeavour to maintain confidentiality as far as reasonably practicable. 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.

16. 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 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 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 the loss of their 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:

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

16. Questions

If a worker is unsure about any matter covered by this Policy, they should seek the assistance of the Executive Manager, People & Performance or a representative of the Human Resources team. Assistance can also be sought from an external agency such as the Australian Human Rights Commission and the Anti-Discrimination Board NSW.

Variations

The Council reserves the right to vary, replace or terminate this policy from time to time.

References & Legislation

- Anti-Discrimination Act 1977 (NSW)
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984
- Disability Discrimination Act 1992
- Australian Human Rights Commission Act 1986
- Work Health & Safety Act 2011 (NSW)
- Local Government (State) Award
- Local Government Act 1993

Relevant Council documents

- Workplace Bullying Policy
- Code of Conduct
- Workplace Environment Statement
- Social Media Acceptable Use Procedure