

## EQUAL OPPORTUNITY, ANTI-DISCRIMINATION AND HARASSMENT

|                                 |   |
|---------------------------------|---|
| <b>Policy Number:</b>           | 2.1.1   |
| <b>Approved by:</b>             | Chief Executive Officer   |
| <b>Date Approved/Effective:</b> | 3 December 2019   |
| <b>Date of Next Review:</b>     | December 2020   |
| <b>Related Policies:</b>        | Occupational Health & Safety<br>Equal Opportunity<br>Anti-Discrimination and Bullying & Harassment Procedure<br>Workplace Grievance process (EBA No 8)<br>Discipline and Performance Management process   |
| <b>Applicable to Unit(s):</b>   | Whole Organisation  |
| <b>Responsible Officer:</b>     | Manager People and Excellence   |
| <b>Statutory Reference:</b>     | <i>Equal Opportunity Act 2010</i><br><i>Local Government Act 1989</i><br><i>Occupational Health and Safety Act 2004</i><br><i>Accident Compensation Act 1985</i><br><i>Charter of Human Rights and Responsibilities Act 2006</i><br><i>Fair Work (Commonwealth Powers) Act 2009</i><br><i>Public Interest Disclosure Act 2012</i><br><i>Sex Discrimination Act 1984</i> |

### OVERVIEW

The purpose of this policy is to ensure that Wellington Shire Council effectively maintains an organisation that is committed to the ethos of equal opportunity and to the prevention of unlawful discrimination and harassment.

### THE POLICY

Wellington Shire Council is committed to the principles of equal opportunity which are central to the core values of the organisation that celebrates the diversity and inclusion of its people. As such, Council advocates equal opportunity for all council stakeholders including employees, Councillors, contractors, visitors, volunteers, work experience/vocational students and customers.

This policy applies at all times when an individual is representing Council, engaging in work on behalf of Council, and pertains to, but is not limited to, Council premises or off-site work locations. Off-site work locations include business trips, seminars or conferences and working at customer sites. It applies to meetings, events, interactions and functions that are organised by Council, or which are attended on behalf of Council with during or after hours.

#### ***Equal Opportunity Act 2010***

The *Equal Opportunity Act 2010* contains a number of features which are applicable to Council:

- it makes discrimination and treatment of an individual on the basis of a personal characteristic unlawful;
- it prohibits discrimination in a range of settings ;
- an obligation on organisations;
- a duty to provide reasonable adjustments for people with disabilities;

- an obligation for employers to accommodate the responsibilities of a parent or carer;
- protection of employees, volunteers and unpaid workers;
- to further promote and protect the right to equality as set out in the *Charter of Human Rights and Responsibilities Act 2006*;
- to eliminate discrimination, sexual harassment and victimisation to the greatest possible extent.

## Discrimination

Discrimination is regarded as unfavorable treatment of a person in public life due their one of their personal characteristics or on the basis of a 'Protected Attribute' as per the *Equal Opportunity Act 2010*, the *Local Government Act 1989 – Schedule 6, Section 96*; and *Occupational Health and Safety Act 2004*.

Protected Attributes are defined as:

- age;
- breastfeeding;
- disability or impairment;
- employment activity;
- gender identity (transsexual or transgender);
- industrial activity or union membership;
- lawful sexual activity;
- marital status;
- parental status or status as a carer;
- physical features;
- political belief/activity;
- pregnancy;
- race (including colour, nationality, ethnicity and ethnic origin);
- religious belief or activity;
- sex (male, female or intersex);
- sexual orientation (gay, lesbian, bisexual, queer, heterosexual, etc);
- an expunged homosexual conviction;
- personal association (whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes .

**Direct discrimination** occurs if a person treats or proposes to treat a person with an attribute unfavorably because of that attribute.

Some examples of direct discrimination include:

- not offering training to an older employee because of their age;
- not inviting a coworker to a social event because they have children;
- excluding a work colleague from a work-related event because they are pregnant.

**Indirect discrimination** occurs if a person imposes, or proposes to impose, a requirement, condition or practice.

- a) That has, or is likely to have, the effect of disadvantaging persons with an attribute; and
- b) That is not unlawful when the rule of policy is reasonable, having regard to the circumstances of the case.

Some examples of indirect discrimination are:

- Scheduling team meetings before the start of working hours as parents who have childcare responsibilities may not be able to attend;
- Holding a team building event at a sporting venue that does not permit access or participation by an employee with a disability.

Unlawful discrimination can occur even if you do not intend to discriminate

### **Equal Employment Opportunity**

Wellington Shire Council advocates for equal employment opportunity to enhance workplace diversity and embed a culture that maximises the contribution for all employees.

Council takes all reasonably practicable steps to provide a safe workplace environment that is free from unlawful discrimination, victimisation and harassment including:

- Annual staff training in Equal Opportunity, Human Rights and the prevention of discrimination and/or harassment
- Promoting the benefits of diversity and maintaining an inclusive workplace
- Maintain equal opportunity for promotion, recruitment and selection of employees
- Maintain an Equal Employment Opportunity (EEO) Committee and provide EEO Contact Officers
- Regular reviews of internal and external complaint handling and grievance processes

### **Equal Opportunity for Promotion, Recruitment and Selection**

Wellington Shire Council makes decisions about the promotion, recruitment and selection of staff on the basis of merit in fair and open competition according to the skills, qualifications, knowledge, attitude and behaviors relative to the position involved.

Further to this, Council is committed to attracting and retaining the best people for the job regardless of age, gender, ethnicity, race, religion, sexual orientation or identity.

All applicants for positions at Council are made aware of our commitment to Equal Employment Opportunity at pre-employment selection, staff induction and through ongoing annual training for all employees.

### **Equal Employment Opportunity (EEO) Committee**

The role of the EEO committee is to provide a forum for the promotion and discussion of EEO and human rights at Wellington Shire Council including:

- undertaking the duties of EEO contact officers including the provision of information to staff in relation to discrimination and/or bullying and harassment;
- promoting a workplace free of discrimination, victimisation and harassment, where each person has the opportunity to progress to the full extent of their ability;

- reviewing EEO employment policies and relevant practices;
- providing input into staff EEO training and development;
- generating awareness of the Victorian Charter of Human Rights and Responsibilities and its implications for Wellington Shire Council including related access and inclusion matters;
- ensure that any relevant access and inclusion matters are considered and addressed such as reasonable adjustments for people with disabilities (as per *Disability Discrimination Act 1992*).

### **Definitions of Harassment**

Council takes a zero-tolerance approach to harassment, sexual harassment, victimisation and racial or religious vilification.

These terms are explained in more detail below.

### **Harassment**

Harassment is considered to be repeated unreasonable behavior directed towards a person or a group of people that poses a risk to their mental wellbeing or physical health and safety.

Unreasonable behavior is defined as behavior that a reasonable person, having regard to all the circumstances, would victimise, humiliate, undermine or threaten an individual.

Some examples of sexual harassment are:

- verbal abuse, insults or name-calling;
- continually making jokes about a person, or singling out one person for remarks more often than others in a group;
- personal attacks, threats, intimidation and misuse of power;
- unjustified criticism or excessive scrutiny of work.

### **Sexual Harassment**

Sexual harassment is another type of harassment and is any unwanted or unwelcome sexual behavior, which offends, humiliates or intimidates an individual regardless of gender. Sexual harassment can take many different forms; it can be obvious or indirect, physical or verbal, repeated or one-off and perpetrated by males and females against people of the same or opposite sex.

Sexual harassment may include:

- staring or leering;
- unnecessary familiarity, such as deliberately brushing up against the person or unwelcome touching;
- suggestive comments or jokes;
- insults or taunts of a sexual nature;
- intrusive questions or statements about your private life;
- displaying posters, magazines or screen savers of a sexual nature;
- sending sexually explicit emails or text messages;
- making, orally or in writing, any remark or statement with sexual connotations to a person or about a person in his or her presence;
- inappropriate advances on social networking sites;

- accessing sexually explicit internet sites;
- requests for sex or repeated unwanted requests to go out on dates;
- behavior that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

### **Racial or Religious Vilification**

Racial or religious vilification is defined as conduct that incites hatred against, serious contempt for, or revulsion or severe ridicule of, a person or group of persons on the basis of their race or religious belief. Serious racial or religious vilification involves a threat to harm another person or their property and is a criminal offence.

Some examples of racial or religious vilification are:

- sending an email to your workmates which ridicules indigenous Australians;
- making threats to harm a work colleague because he/she is of another faith (serious religious vilification).

### **Victimisation**

Victimisation means subjecting or threatening to subject a person to some form of detriment because they have:

- lodged, or are proposing to lodge, a complaint of discrimination or harassment;
- provided information or documents to an internal investigation or an external agency;
- attended a conciliation conference;
- reasonably asserted their rights, or supported someone else's rights, under federal anti-discrimination laws;
- made an allegation that a person has acted unlawfully under federal anti-discrimination laws.

Some examples of victimisation are:

- dismissing an employee because she has made a complaint about unlawful discrimination in the workplace;
- excluding or isolating a workmate because he has made a complaint of sexual harassment against one of your friends at work.

### **Responsibilities for Managers and Supervisors**

Council expects Managers and Supervisors to lead by example and exhibit positive attitudes and behavior in line with Council values to:

- ensure employees in their business unit or team understand their obligations under this policy;
- provide leadership to the organisation by demonstrating appropriate attitudes and behavior at all times and ensure others in the workplace model these behaviours;
- take appropriate action to investigate observations or reports of unlawful discrimination, victimisation or harassment, even if there is no formal complaint;
- encourage employees in your business unit or team to treat each other with dignity, courtesy and respect;
- treat all complaints seriously and confidentially.

## What happens if this policy is breached?

Council will consider disciplinary action against any individual or group in breach of this policy. Depending on the outcome of an internal or external investigation and the severity of the breach, disciplinary action may range from provision of training or counselling through to verbal or written warning or termination of employment/engagement with Council.

An individual who commits a serious breach of this policy may also be in breach of the *Equal Opportunity Act 2010*, *Occupational Health and Safety Act 2004* and the *Crimes Act 1958* (Vic). This may result in individual prosecution of the person and a possible fine, intervention order or jail sentence. Where there is an alleged breach of this policy, all information must be treated confidentially, to the extent possible, by all parties involved.

Where a complaint is serious and disciplinary action needs to be taken, information will be disclosed only to those people who need to know about the complaint. The obligation of confidentiality does not prevent Council from using or disclosing any information necessary to initiate or defend any legal proceedings, or to make any submissions in relation to any inquiry or complaint, or to refer a matter to the Victoria Police.

It is unlawful to victimise a person for making a legitimate complaint of workplace bullying. Furthermore, an individual reporting a legitimate complaint will not be disadvantaged or subject to negative treatment by Council.

## HUMAN RIGHTS

Wellington Shire Council is committed to upholding the Human Rights principles as outlined in the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and referred to in Council's Human Rights Policy. The Human Rights Checklist has been completed and this policy accords with Council's policy commitment to uphold human rights principles.

## Related Documents

| Type:                    | Details:  |
|--------------------------|---|
| Procedures or Guidelines | Equal Opportunity, Anti-discrimination and Harassment Policy<br>Anti-Discrimination and Bullying & Harassment Procedures;<br>Enterprise Agreement Equal Employment Opportunity, Part 4.6<br>Enterprise Agreement Prevention and Settlement of Disputes, Part 4.7. |
| Strategy                 | Nil   |