



## LIVERPOOL PLAINS SHIRE COUNCIL ANTI DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY POLICY

Version	Date	Resolution No	Details
1	19 June 2002	7930	New Policy
2	24 June 2004	9079	Amalgamation
3	26 Feb 2014	723	Review
4	22 August 2018	3005	Review and conversion to new template

### POLICY OBJECTIVE

The objective of this policy is 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.

### RELEVANT LEGISLATION

NSW Anti-Discrimination Act 1977  
Racial Discrimination Act 1975  
Sex Discrimination Act 1984  
Human Rights and Equal Opportunity Commission Act 1987  
Disability Discrimination Act 1992  
Age Discrimination Act 2004

### EFFECTIVE DATE AND POLICY REVIEW

The policy shall be reviewed every four years or earlier if required by legislation, Council resolution or recommendation of the General Manager. If the policy is not reviewed within this timeframe, it remains active until such time as it is reviewed or revoked by Council.

This policy comes into effect on 5 September 2018.

Signed by General Manager

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R S (Ron) van Katywk

Date Approved      22 August 2018

## POLICY

### 1 Application of Policy

This Policy applies to employees, agents and contractors (including temporary contractors) of administrators appointed under section 256 of the *Local Government Act 1993* (NSW) members of council committees, conduct reviewers, delegates of council, work experience employees and volunteers of the Council, collectively referred to in this Policy as 'Council Officials'.

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. 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 Official's contract of employment. Nor does it form part of any other Council Official's contract for service.

### 2 EEO Laws

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

### 3 Discrimination

#### 3.1 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 will be relevant, and are listed below.

- ▶ 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
- ▶ Industrial/trade union membership, non-membership or activity
- ▶ Employer association membership, non-membership or activity
- ▶ Religious belief or activity
- ▶ Marital status, relationship status
- ▶ Homosexuality, transexuality, sexuality, sexual preference, lawful sexual activity, gender identity
- ▶ Disability, including physical, mental and intellectual disability
- ▶ Age (including compulsory retirement)
- ▶ Political belief or activity
- ▶ Criminal record

- ▶ Temporary absence from work because of illness or injury
- ▶ HIV/AIDS
- ▶ Spent convictions
- ▶ Medical record
- ▶ Defence service
- ▶ Association (i.e. association with a person who has one or more of the attributes for which discrimination is prohibited)

### 3.2 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 (ie a prohibited ground of discrimination).

*Example:* 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 Council Official harasses another person based on a ground of discrimination. Harassment is unwelcome conduct that a reasonable person would expect to offend, humiliate or intimidate.

## 4 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.

## 5 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 Council Officials can also be unlawful.

Examples of sexual harassment include, but are not limited to:

- 5.1 physical contact such as pinching, touching, grabbing, kissing or hugging
- 5.2 staring or leering at a person or at parts of their body
- 5.3 sexual jokes or comments
- 5.4 requests for sexual favours
- 5.5 persistent requests to go out, where they are refused
- 5.6 sexually explicit conversations
- 5.7 displays of offensive material such as posters, screen savers, Internet material etc
- 5.8 accessing or downloading sexually explicit material from the Internet
- 5.9 suggestive comments about a person's body or appearance
- 5.10 sending rude or offensive emails, attachments or text messages.

## **6 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. Single incidents of unreasonable behaviour can also create a risk to health and safety and may escalate into bullying. There is no requirement that bullying be intentional.

It is not bullying for a manager or supervisor to counsel a Council Official about their performance. Performance counselling is a necessary part of ensuring that Council Officials meet the 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.

## **7 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. Council Officials must not retaliate against a person who raises a complaint or subject them to any detriment.

## **8 Rights and responsibilities**

All Council Officials must:

- 1.1 understand and comply with this Policy
- 1.2 comply with the Council's Code of Conduct
- 1.3 ensure they do not engage in any unlawful conduct towards other Council Officials, customers/clients or others with whom they come into contact through work

- 1.4 ensure they do not aid, abet or encourage other persons to engage in unlawful conduct
- 1.5 follow the complaint procedure in this Policy if they experience any unlawful conduct
- 1.6 report any unlawful conduct they see occurring to others in the workplace in accordance with the complaint procedure in this Policy, and
- 1.7 maintain confidentiality if they are involved in the complaint procedure.

Council Officials should be aware that they can be held legally responsible for their unlawful conduct.

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

## **9 Breach of this Policy**

All Council Officials 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 Council Officials 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 (eg - 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.

## **10 Complaint Handling Procedure**

If a Council Official 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. The 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 the Council's Complaint Officer.

## **11 Examples of the Ways in Which a Complaint can be Dealt With**

### **11.1 Confront the Issue**

If a Council Official feels comfortable doing so, they should address the issue with the person concerned. A Council Official 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 Council Official does not feel comfortable confronting the person, or the Council Official confronts the person and the behaviour continues, the Council Official should report the issue to the Council's Complaints Officer.

If a Council Official is unsure about how to handle a situation and is also unsure if they want to make a complaint they should contact an EEO Contact Officer for support and guidance. The EEO Contact Officers aim to assist people uncertain about their rights. EEO Contact Officers are listed at the end of this EEO Policy.

### **11.2 Report the Issue**

A Council Official should report the issue to a Complaints Officer. The Complaints Officer in the Council's workplace is the Human Resources Manager.

The Complaints Officer will aim to deal with the Council Official's 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.

### **11.3 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:

- a) the Complaints Officer discussing the issue with the person against whom the complaint is made and/or
- b) the Complaints Officer 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.

### **11.4 Formal Complaint Procedure**

The formal complaint procedure involves a formal investigation of the complaint. Formal investigations may be conducted by a Complaints Officer 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 Complaints Officer 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, Council Officials 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, Council Officials will be paid their normal pay during any such period.

## 12 Confidentiality

The Complaints Officer will endeavour to maintain confidentiality as far as possible. However, it may be necessary to speak with other Council Officials 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 Council Officials involved in the complaint must also maintain confidentiality, including the Council Official who lodges the complaint. Spreading rumours or gossip may expose Council Officials to a defamation claim. Council Officials may discuss the complaint with a designated support person or representative (who is not a Council Official employed or engaged by the Council). However, the support person or representative must also maintain confidentiality.

## 13 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 Council Official and 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 Council Officials, 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:

- 13.1 training to assist in addressing the problems underpinning the complaint
- 13.2 monitoring to ensure that there are no further problems
- 13.3 implementing a new policy
- 13.4 requiring an apology or an undertaking that certain behaviour stop and/or changing work arrangements.

## 14 What to do if you are not satisfied with the outcome

### 14.1 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 Human Resources Manager. The complaint handling process and/or the outcome may then be reviewed by the Human Resources Manager. If a review is undertaken, the Human Resources Manager's decision in relation to the review will be final.

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

### 14.2 Questions

If a Council Official is unsure about any matter covered by this Policy, a Council Official should seek the assistance of Human Resources Manager.

#### **Contacts for Outside Agencies**

Australian Human Rights  
Commission

Toll Free: 1300 656 419

Anti-Discrimination Board (NSW)

Tel: 02 9268 5555

Toll Free: 1800 670 812 (rural and regional  
NSW only)