

Administrative Instruction

ANTI - BULLYING, SEXUAL HARASSMENT, AND DISCRIMINATION

Intent Cairns Regional Council is committed to providing a safe and healthy work environment in which all workers are treated fairly, with dignity and respect.

The purpose of this policy is to outline Council's position on discrimination, bullying, sexual harassment and vilification.

Scope Applies to Councillors and all employees, employed by or engaged with Cairns Regional Council, including contractors and volunteers who are acting on Council's behalf.

This policy covers all behaviour considered bullying, discrimination, sexual harassment or vilification within, and external to, the workplace.

PROVISIONS

Discrimination, bullying, sexual harassment and vilification are 'outside the circle' risks to the health and safety of employees and contractors in the workplace or during the course of an employees' employment (e.g. during work hours, at Council related functions, etc.). Conduct of this nature is unacceptable and will not be tolerated by Council.

These behaviours breach the conduct standards outlined in the Council's *Code of Conduct*, in particular, section 4.1 - 'Integrity and Impartiality'. It is the responsibility of all Councillors and Council staff, including senior managers, supervisors and employees, to ensure that individuals are not subjected to any form of bullying, sexual harassment, discrimination or vilification.

VICARIOUS LIABILITY

Instances of bullying, sexual harassment, discrimination or vilification leaves Council as an employer, as well as senior managers, exposed to liabilities through legal action for negligence in vicariously exposing employees to an unsafe/unsatisfactory working environment, unless Council can show it has taken reasonable steps to prevent it. Council has a duty of care to employees to provide a safe work environment.

Managers and supervisors therefore must ensure that all employees are treated fairly and are not subject to any of these behaviours. They must also ensure that people who make complaints, or who are witnesses, are not victimised in any way.

Any reports of discrimination, victimisation, sexual harassment or vilification will be treated seriously and investigated promptly, confidentially and impartially.

BULLYING

Bullying is repeated, unreasonable behaviour, directed towards a worker or a group of workers, which creates a risk to health and safety.

‘Repeated behaviour’ refers to the persistent nature of the behaviour, and can refer to a range or pattern of behaviours over a period of time.

‘Unreasonable behaviour’ means behaviour that a reasonable person, having regard to all circumstances, would expect to victimise, humiliate, undermine or threaten another person.

Examples of bullying include:

- Language or comments which are abusive, insulting or offensive;
- Unjustified criticism or complaints;
- Deliberately excluding someone from workplace activities;
- Not sharing important information that a person needs to work effectively;
- Setting unreasonable timelines or constantly changing deadlines;
- Setting tasks that are unreasonably below or beyond a person’s skill level;
- Spreading misinformation or malicious rumours;
- Changing rosters or leave to deliberately inconvenience someone.

A person’s intention is irrelevant when determining whether bullying has occurred.

A single incident of unreasonable behaviour does not constitute bullying; however, it may constitute inappropriate conduct and therefore will not be tolerated by Cairns Regional Council.

SEXUAL HARASSMENT

Sexual harassment is unwelcome or unwanted sexual attention which makes a person feel humiliated, offended or intimidated. It does not have to be repeated or ongoing.

Sexual harassment includes:

- Unwelcome physical touching;
- Sexual or suggestive comments, jokes or taunts;
- Unwelcome requests for sex;
- The display of sexual material (e.g. photos or pictures);
- Sexual reading material or communications (e.g. emails, text messages or letters).

DISCRIMINATION

Discrimination can be direct or indirect. Direct discrimination occurs when a person with an identified attribute (such as their race, sex or pregnancy) is treated less favourably than a person without that attribute in the same or similar circumstances.

Indirect discrimination occurs when an unreasonable policy or condition, which applies to everyone, has an unfair impact on a person or group of persons because of a certain attribute.

An example of indirect discrimination could be:

A requirement for a job is that all applicants have ten years' experience in the field. (*A young person could be well qualified but is ineligible for the job.*)

Legislation prohibits discrimination on the basis of a number of identified attributes, including:

- Sex;
- Relationship status;
- Pregnancy;
- Parental status;
- Breastfeeding;
- Age;
- Race;
- Impairment;
- Religious belief or religious activity;
- Trade union activity;
- Lawful sexual activity;
- Gender identity;
- Sexuality;
- Family responsibilities; and
- Association with, or relation to, a person identified on the basis of any of these attributes.

Discrimination can occur in all aspects of the workplace. Employees have rights to equal employment opportunities, and to be treated fairly as they go about their daily duties, irrespective of their association with an identified attribute.

VILIFICATION

Vilification involves publicly inciting hatred, serious contempt or severe ridicule of someone because of their race, religion, sexuality or gender identity. Vilification is an offence if it includes actual or threatened physical harm to someone or their property.

It can include:

- Writing letters to the public;
- Speaking in a public place;
- Putting up notices;
- Posts on the internet or social networking sites; and
- Publicly wearing or displaying clothing, signs, emblems or insignias in order to vilify.

LIMITATIONS

This procedure does not cover situations where a worker has a grievance about reasonable management actions, taken in a reasonable way.

It is important to differentiate between a person's legitimate authority at work, and bullying. As set out in Council's Code of Conduct, all employers have a legal right to direct and control how work is done, and managers, coordinators, supervisors have a responsibility to monitor workflow and give feedback on performance, so long as the management action is undertaken in a reasonable manner.

Reasonable management action can include:

- Setting reasonable performance goals, standards and deadlines;
- Informing a worker of their unsatisfactory performance;
- Deciding not to select a worker for promotion where a reasonable process was followed;
- Informing a worker of their inappropriate behaviour in an objective and confidential way;
- Injury and illness processes;
- Rostering and allocating working hours where the requirements are reasonable;
- Transferring a worker for operational reasons;
- Implementing organisational changes or restructuring; and
- Taking disciplinary action, including stand down or termination of employment, when warranted.

COMPLAINT PROCESS

If an employee feels that they have been discriminated against, bullied, sexually harassed, or vilified, they should not ignore it.

The grievance process is detailed in Administration Instruction – *Grievance Procedure Dispute Settlement*.

Council encourages employees to try to resolve the matter with the person involved in the first instance. However, Council acknowledges that employees may not always feel confident with this approach. Where an employee feels they cannot address the matter directly with the person involved, or they have done so and this has not stopped the behaviour, they can make a complaint to their supervisor, manager, general manager, the CEO or Human Resources.

Nothing in this procedure prevents a complaint of discrimination, bullying, sexual harassment or vilification from being raised with the relevant Union, and allowing the complainant being represented by an officer of that Union.

If an employee or contractor witness discrimination, bullying, sexual harassment or vilification in the workplace they should encourage the other person to speak up or seek support. Otherwise, the person witnessing the incident could also make a complaint.

All complaints will be dealt with confidentially, and all participants must maintain confidentiality. However, the complainant should be aware that once a supervisor, manager or HR are aware of your concerns, they are compelled by their duty of care to act on behalf of Council to prevent the behaviour from continuing or reoccurring.

No employee or contractor will be subject to adverse actions or victimisation as a result of making a complaint.

Anytime during this process, Council encourages employees to contact the Employee Assistance Program (EAP) or a Council Connector for support. Information regarding Council's Connectors can be found on staff notice boards, the intranet, or by contacting Human Resources.

All complaints of workplace harassment, sexual harassment, and discrimination made against another person within Council will be viewed with the utmost seriousness. Depending on the circumstances surrounding the complaint, it may be necessary for Council to conduct an investigation into incidents and/or allegations. Investigations will be conducted by an appropriate officer (e.g. Human Resource Advisor or other duly appointed officer) in line with Council's *Workplace Investigations Administration Instruction*.

If either party to the complaint or grievance feels the grievance procedure has not been followed properly, or the outcome is inappropriate, an appeal may be submitted to the CEO. The CEO will look at the way the grievance was handled and any resulting outcomes. If the grievance has been handled properly and the final decision was fair, the CEO will take no further action. However, if the CEO determines the grievance was not handled properly, then the CEO will conduct further investigation or will arrange for someone, other than the original person or team who conducted the initial investigations, to carry out an independent review of the grievance.

Employees and contractors can also make a complaint and seek remedies or orders from an external organisation, depending on the specifics of their matter. External complaints can be directed to:

- Queensland Industrial Relations Commission (QIRC);
- Work Health and Safety Queensland;
- Anti-Discrimination Commission Queensland;
- Australian Human Rights Commission; and
- The Police.

Related Administration Instructions:

- *Grievance Procedure Dispute Settlement Administration Instruction*
- *Discipline Procedures Administration Instruction*
- *Workplace Investigations Administration Instruction*

Relevant Legislation Includes:

- *Industrial Relations Act 2016*
- *Anti-Discrimination Act 1991 (Qld)*
- *Work Health and Safety Act 2011 (Qld)*
- *Local Government Act 2009*
- *Sex Discrimination Act 1984 Cth*
- *Age Discrimination Act 2004 Cth*
- *Racial Discrimination Act 1975 Cth*
- *Disability Discrimination Act 1992 Cth*
- *Australian Human Rights Commission Act 1986 Cth*
- *Local Government Regulations 2012*
- *Public Service Ethics Act 1994*



This Administrative Instruction is to remain in force until otherwise determined by the Chief Executive Officer.

Manager Responsible for Review: General Manager HR & Organisational Change

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John Andrejic
Chief Executive Officer