



Policy Owner: Human Resources

Direction: 5. Our Civic Leadership

1. STATEMENT OF INTENT

North Sydney Council is committed to respecting and promoting equal opportunity, cultural inclusion, safety and security and an environment which is free from harassment and discrimination. Council will not tolerate such unreasonable behaviour at work. The organisation has an expectation that staff standards of conduct and proper behaviour towards each other as well as customers will be demonstrated by dignity and respect, communicating in a professional manner and resolving any conflict that may arise according to process.

Council aims to ensure that when employment decisions are made, they are based on merit. Council also aims to create a work environment which promotes good working relationships.

Council will assist employees in reaching their full potential by maintaining a workplace that is free from discrimination, harassment, vilification and bullying, and by treating people equitably and valuing diversity.

Council aims to:

- create a working environment which is free from discrimination and harassment where all staff are treated with dignity, courtesy and respect
- provide an effective procedure for complaints, based on the principles of natural justice
- treat all complaints in a sensitive, fair, timely and confidential manner
- promote appropriate standards of conduct at all times
- ensure staff behave in a way that is consistent with our corporate values

2. SCOPE

This policy applies to:

- all staff, including full-time, part-time or casual, temporary or permanent staff; job candidates; student placements, apprentices, contractors, sub-contractors and volunteers (“workplace participants”)
 - interactions with customers and the provision of services
 - all aspects of employment, recruitment and selection; conditions and benefits; training and promotion; task allocation; shifts; hours; leave arrangements; workload; equipment and transport allocation
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- on-site, off-site or after-hours work; work-related social functions; conferences – wherever and whenever staff may be as a result of their Council duties
 - staff treatment of other staff, of customers, and of other members of the public encountered in the course of their Council duties.

3. UNACCEPTABLE WORKPLACE CONDUCT

Discrimination, harassment, vilification and bullying are unacceptable at Council and are also unlawful under the following legislation:

- *Racial Discrimination Act 1975* (Cth)
- *Anti-Discrimination Act 1977* (NSW)
- *Sex Discrimination Act 1984* (Cth)
- *Sex Discrimination and Fair Work Amendment Bill (respect at work) 2021*
- *Australian Human Rights Commission Act 1986* (Cth)
- *Disability Discrimination Act 1992* (Cth)
- *Age Discrimination Act 2004* (Cth)
- *Fair Work Act 2009* (Cth)
- *Work Health and Safety Act 2011* (Cth)
- *Work Health and Safety Act 2011* (NSW)

Staff found to have engaged in such conduct will be counselled, warned or formally disciplined which may include dismissal.

If a person makes an unfounded grievance or a false grievance in bad faith (e.g., making up a grievance to get someone else in trouble or making a grievance where there is no foundation for the grievance), that person may be disciplined and may be exposed to a defamation claim.

4.1 Discrimination

Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by the law, such as sex, age, race or disability.

Discrimination can occur:

- **Directly**, when a person or group is treated less favourably than another person or group in a similar situation because of characteristic protected by law (see list below).

*For example, a worker is harassed and humiliated because of their race
or*

A worker is refused promotion because of their age

- **Indirectly**, 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 protected by law (see list below).

For 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 equitably 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.

Protected personal characteristics under Federal and NSW discrimination law include:

- a disability, disease or injury, which may be physical, intellectual, psychiatric, sensory, neurological, learning disability, physical disfigurement or the presence in the body of disease carrying organisms. It also includes work-related injury
- parental status or status as a carer, for example, because they are responsible for caring for children or other family members
- race, colour, descent, national origin, or ethnic background
- age, whether young or old, or because of age in general
- sex
- industrial activity, including being a member of an industrial organisation like a trade union or taking part in industrial activity, or deciding not to join a union
- religion or religious belief, activity or conviction
- pregnancy and breastfeeding
- sexual orientation, sexual preference, intersex status or gender identity, including gay, lesbian, bisexual, transsexual, transgender, queer, questioning and heterosexual
- marital status, whether married, divorced, unmarried or in a de facto relationship or same sex relationship
- political opinion
- social origin
- medical record

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- an association with someone who has, or is assumed to have, one of these characteristics, such as being the parent of a child with a disability.

It is also against the law to treat someone unfavourably because you assume, they have a personal characteristic or may have it at some time in the future.

Discrimination includes the situation where a workplace participant harasses another person based on any of the grounds above.

4.2 Harassment

Harassment is any unwelcome conduct that a reasonable person would expect to offend, humiliate or intimidate.

4.3 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 sexually hostile working environment for other workplace participants can also be unlawful.

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

- physical contact such as pinching, touching, grabbing, kissing or hugging
 - staring or leering at a person or at parts of their body
 - sexual jokes, comments or innuendo
 - requests for sexual favours
 - persistent requests to go out, where they are refused
 - sexually explicit conversations
 - displays of offensive material such as posters, screen savers, etc.
 - suggestive comments about a person's body or appearance
 - sending rude or offensive emails, attachments or text messages
 - posting sexually explicit posts on social networking sites
 - intrusive questions or statements about a person's private life
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- behaviour that may also be considered to be an offence under criminal law, such as physical assault, indecent exposure, sexual assault, stalking or obscene communications.

It is unlawful to harass a person on the grounds of their sex.

Council recognises that comments and behaviour that do not offend one person can offend another. This policy requires all workplace participants respect other people's limits.

4.4 Stop Harassment Order

A stop sexual harassment order aims to prevent a worker from being sexually harassed at work by an individual or a group of individuals.

4.5 Vilification

Vilification is a public act that could incite or encourage hatred, serious contempt or severe ridicule towards people because of a particular attribute.

In NSW it is generally against the law to vilify people because of their:

- race, colour, nationality, descent, ethnic, ethno-religious or national origin
- homosexuality (actual or presumed)
- HIV or AIDS status (actual or presumed)
- Transgender status (actual or presumed).

4.6 Workplace bullying

Workplace bullying is repeated, unreasonable behaviour directed towards a workplace participant or group of workplace participants that creates a risk to health and safety.

Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

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

Workplace bullying behaviour does not need to be based on a ground of discrimination. A person can be bullied for any reason. It may simply be that someone does not like them.

Some examples of behaviour that may be considered workplace bullying, if it is unreasonable, repeated and creates a risk to health and safety, include:

- physical assaults or threats
 - abusive, insulting or offensive language or comments, including name calling
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- malicious teasing or being made the brunt of pranks/practical jokes
 - belittling opinions or constant unconstructive criticism
 - setting tasks that are unreasonably below or beyond a person's level of skill
 - excluding or isolating workplace participants
 - rumours, gossip and innuendo
 - withholding information or equipment that is vital to effective work performance
 - setting unreasonable timelines or constantly changing deadlines
 - encouraging other workplace participants to participate in the bullying behaviour
 - coercion
 - inappropriate blaming
 - ganging up
 - unreasonable refusal of requests for leave, training or other workplace benefits.

4.7 What is not workplace bullying

Low level workplace conflict is unlikely to constitute workplace bullying. Equally, reasonable management action taken in a reasonable way will not constitute workplace bullying. Reasonable management action may include:

- giving work direction and allocating work in accordance with business needs
- counselling a workplace participant about their unsatisfactory work performance or conduct when undertaken in a reasonable manner
- setting reasonable performance goals, standards and deadlines
- rostering and allocating working hours where the requirements are reasonable
- implementing organisational changes or restructuring
- informing a workplace participant about inappropriate behaviour in an objective and confidential way
- transferring a worker for operational reasons.

4.8 Victimization

Victimization is subjecting or threatening to subject someone to a detriment because they have asserted their rights under equal opportunity law, made a complaint, helped someone else make a complaint, or refused to do something because it would be discrimination, sexual harassment or victimisation.

It is also victimisation to threaten someone (such as a witness) who may be involved in investigating an equal opportunity concern or complaint.

Victimization is a serious breach of this policy and is likely (depending on the severity and circumstances) to result in formal discipline against the perpetrator which may include dismissal.

5. RESOLVING ISSUES AT COUNCIL

Council strongly encourages any workplace participant who feels that they (or a colleague) have been subjected to any form of inappropriate conduct contrary to this policy to take action by following Council's grievance procedure. All grievances will be dealt with in accordance with the Grievance and Dispute Procedure in the *Local Government (State) Award*.

Workplace participants who do not feel safe or confident to take such action may seek assistance from Human Resources or an EEO Contact Officer for advice and support. EEO Contact Officers are listed at the end of this Policy.

5.1 Confront the issue

If a workplace participant feels comfortable doing so, they should address the issue with the person concerned. A workplace participant 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 workplace participant does not feel comfortable confronting the person, or the workplace participant confronts the person and the behaviour continues, the workplace participant should report the issue.

5.2 Report the issue

A workplace participant should notify their supervisor, or a Grievance Officer of any grievance or dispute and the remedy sought, in writing. The Grievance Officers at Council are the Manager Human Resources and the Human Resources Advisor.

A supervisor or Grievance Officer will aim to deal with the workplace participant's grievance in accordance with this Policy. There are two grievance procedures that can be used: informal and formal (detailed further below). The type of grievance procedure used will be determined by the nature of the grievance that is made.

5.3 Informal grievance procedure

Under the informal grievance procedure there is a broad range of options for addressing the grievance. 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 supervisor or Grievance Officer discussing the issue with the person against whom the complaint is made; and/or
- a supervisor or Grievance Officer facilitating a meeting between the parties in an attempt to resolve the issue and move forward.

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

5.4 Formal grievance procedure

The formal grievance procedure involves a formal investigation of the grievance. The aggrieved workplace participant(s) should submit a formal written grievance to a Grievance Officer. Formal investigations may be conducted by a Grievance Officer or a person from outside the Council, appointed by the Council.

An investigation generally involves, collecting information about the grievance and then making a finding based on the available information as to whether or not the alleged behaviour occurred. Once a finding is made, a Grievance Officer or the external investigator will make recommendations about resolving the grievance.

If the Council considers it appropriate for the safe and efficient conduct of an investigation, workplace participants may be required not to report for work during the period of an investigation. Council may also provide alternative duties or work during the investigation period. Generally, workplace participants will be paid their normal pay during any such period.

5.5 Possible outcomes

The possible outcomes will depend on the nature of the grievance and the procedure followed to address the grievance. Where an investigation results in a finding that a person has participated, initiated or supported inappropriate conduct in relation to discrimination and harassment that person may be disciplined. The disciplinary action taken may range from formal warnings to dismissal depending on the circumstances.

Any disciplinary action is a confidential matter between the affected workplace participants and the Council.

5.6 Employee assistance program

Council staff are entitled to a certain amount of free, professional counselling from our employee assistance program. To access the employee assistance program, contact Benestar on 1300 360 364.

Employee assistance program counselling is confidential, and nothing discussed with a counsellor will be communicated back to Council.

Employee assistance program counselling is available free to Council staff regardless of whether the issue is related to a workplace problem or some other issue for the staff member.

6. STAFF RIGHTS AND RESPONSIBILITIES

All **workplace participants** are entitled to:

- recruitment and selection decisions based on merit
- work free from discrimination, harassment, vilification and bullying
- the right to raise issues or to make an enquiry or grievance in a reasonable and respectful manner without being victimised
- reasonable flexibility in working arrangements, especially where needed to accommodate their family responsibilities, disability, religious beliefs or culture.

All **workplace participants** must:

- treat each other with respect and ensure that their conduct complies with this policy
- comply with Council's Code of Conduct
- ensure they do not engage in any inappropriate conduct towards other workplace participants, customers/clients or others with whom they come into contact through work
- ensure they do not aid, abet, support or encourage other persons to engage in inappropriate conduct
- follow the grievance procedure if they experience any inappropriate conduct
- report any inappropriate conduct they see occurring to others in the workplace in accordance with the grievance procedure
- maintain confidentiality if they are involved in the grievance procedure.

6.1. Additional responsibilities of managers and supervisors

Managers and supervisors must also:

- model appropriate standards of behaviour
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- take steps to educate and make staff aware of their obligations under this policy and the law
 - intervene quickly and appropriately when they become aware of inappropriate behaviour
 - act equitably to resolve issues and enforce workplace behavioural standards, making sure relevant parties are heard
 - help staff resolve grievances informally
 - refer formal grievances about breaches of this policy to the Manager Human Resources or Human Resources Advisor for investigation
 - ensure staff who raise an issue or grievance are not victimised
 - ensure that recruitment decisions are based on merit
 - consider requests for flexible work arrangements.

7. RELATED POLICIES/DOCUMENTS/LEGISLATION

- Local Government (State) Award
- Racial Discrimination Act 1975 (Cth)
- Anti-Discrimination Act 1977 (NSW)
- Sex Discrimination Act 1984 (Cth)
- Sex Discrimination and Fair Work Amendment Bill (respect at work) 2021
- Australian Human Rights Commission Act 1986 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Age Discrimination Act 2004 (Cth)
- Fair Work Act 2009 (Cth)
- Work Health and Safety Act 2011 (Cth)
- Work Health and Safety Act 2011 (NSW)
- Disciplinary and Misconduct Policy
- Code of Conduct
- EEO Management Plan
- Disability and Inclusion Action Plan
- Workplace Adjustments Policy
- Work Health & Safety Policy.

8. VERSION HISTORY

Version	Date Approved	Author / Approved by	Reason for Review / Change.	Review Date
1	5/3/2018	MANEX	New Policy	
2	28/9/2020	Manager Human Resources	Review	Every 2 years, or as required
3	15/12/2021	Manager Human Resources	Review in line with new legislation & updated EEO Contact Officers	

EEO CONTACT OFFICERS

Name	Job Title	Location	Ext	Work Mobile (if applicable)
Lester Lualua	Parking Services Officer	Ranger & Parking Services, Central Depot		0466 395 626
Yasmin Greenhalgh	Collections Development Librarian	Stanton Library	8449	
Gigi Huang	Document Management Officer	DMS, Ground Floor, Council Chambers	8157	

Please note staff don't have to contact someone from their own department or division.

Their pledge:

- ✓ do their best to be available to you
- ✓ listen and help you to determine what steps could be taken to stop the harassment or bullying and provide you with information of what options/assistance are available
- ✓ maintain your confidentiality
- ✓ provide ongoing support if required