WORKPLACE HARASSMENT AND BULLYING PREVENTION Procedure 5.5.27

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Workplace Harassment and Bullying Prevention Procedure

a) Council acknowledges that we choose to come to work for a variety of reasons and that we spend many hours a week in the company of other people. Developing appropriate workplace relationships can provide positive professional and personal outcomes for all.

b) Bullying; harassment; sexual harassment; racial discrimination; stereotyping cultures or behaviour; and intimidation in the workplace, will not be tolerated under any circumstances.

c) The Workplace Harassment and Bullying Prevention Procedure provides guidance to staff, Councillors, consultants and volunteers and advice on the options available for addressing complaints in relation to bullying and harassment in the workplace.

d) Further, the following procedure defines examples of inappropriate behaviour and assists in the understanding of Council’s duty of care and legislative responsibilities.

e) Through implementation of the Workplace Harassment and Bullying Prevention Procedure, Council aims to face up to and positively address instances of inappropriate workplace behaviour to ensure a comfortable and safe working environment for staff, Councillors, consultants and volunteers.
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1 DEFINING WORKPLACE HARASSMENT AND BULLYING

1.1 What is Workplace Bullying?

a) Workplace bullying is offensive, unreasonable, humiliating or intimidating, and generally persistent or repeated behaviour that is directed at an individual or group of employees by another individual or group of employees. It undermines the employee’s dignity or performance in the workplace.

b) Bullying is a form of violence. It is aggression expressed psychologically and emotionally rather than physically, and creates a risk to health and safety. Workplace bullying can occur in any relationship.

c) Bullying behaviour is based on the misuse of power in human relationships. It includes:

   i) Verbal abuse.
   
   ii) Initiation pranks.
   
   iii) Excluding or isolating employees.
   
   iv) Giving a person the majority of an unpleasant or meaningless task that is not listed in their job description.
   
   v) Humiliation through sarcasm, or belittling someone’s opinions.
   
   vi) Constant criticism or insults.
   
   vii) Spreading misinformation or malicious rumours.
   
   viii) Setting impossible deadlines.
   
   ix) Deliberately changing work rosters to inconvenience certain employees.
   
   x) Deliberately withholding information or resources, that is vital for effective work performance.
   
   xi) Manipulating the impression of others to split the work group into taking sides.
   
   xii) Displaying written or pictorial material which may degrade or offend certain employees.

d) Bullying is not always intentional. Sometimes people do not realise that how they are treating someone can have a detrimental effect.

1.2 What is Harassment and what is Sexual Harassment?

a) Harassment is any form of behaviour that is unwelcome or uninvited which humiliates or intimidates an employee based on the attributes protected under federal and state legislation.

b) Sexual harassment is any verbal or physical conduct of a sexual nature that offends, humiliates, embarrasses, intimidates or otherwise causes
distress to any reasonable person in the same circumstances. It is behaviour that is unsolicited, unwelcome and unreciprocated. It may be explicit or implicit. It may be a single incident or occur over a period of time. To identify sexual harassment, it is the perceived impact of the behaviour rather than the intent of the behaviour that is important.

c) Both harassment and sexual harassment behaviours are unlawful during working hours and during Council related functions, whether the functions are on a social or work related basis.

d) Workplace harassment or sexual harassment is based on a "protected attribute." Protected attributes under legislation are:

i) Gender

ii) Pregnancy

iii) Race (including colour, nationality, descent or religious background)

iv) Marital status

v) Disability

vi) Homosexuality (actual or perceived)

vii) Transgender (trans-sexuality) (actual or perceived)

viii) Age or carer’s responsibility; or an individual’s relationship to or association with a person in these groups.

ix) Racial vilification

x) Homosexual vilification

xi) Vilification of people on the grounds of their HIV or AIDS status and transgender vilification is also unlawful.

e) Harassment may take the form of (but is not limited to):

i) Offensive jokes, suggestions, verbal abuse or derogatory comments that humiliate, offend, or stereotype people generally, or an individual.

ii) Offensive or obscene material (displayed or distributed publicly, sent through electronic mail systems or other computer systems or put in someone’s belongings or work space).

iii) Isolation or segregation (for example, excluding someone from work activities, functions or information, dismissing someone’s contribution in a meeting or discussion, not talking to them).

iv) Offensive gestures.

v) Unwelcome sexual or physical contact (such as touching, pinching, patting or putting an arm around someone).

vi) Sexual propositions; or sexual assault (a crime as well, under the Crimes Act).
f) Usually harassment is ongoing or a series of events. However, harassment does not need to happen more than once for it to be against the law.

g) Behaviour that neither party finds offensive is not harassment.

1.3 How does Bullying differ from Harassment?

Bullying differs from harassment in that the focus is rarely based on protected attributes as stated in the *Anti-Discrimination Act 1977*. Bullying often has a focus on competence, or an alleged/perceived lack of competence in the person being bullied.

1.4 What are the behaviours that could amount to Harassment or Bullying?

These types of behaviours could amount to bullying or harassment. If you are involved in any of these behaviours, then depending on the circumstances, your actions may result in disciplinary action being taken which may result in dismissal.

a) Verbal behaviours – such as:

i) Making fun of someone - including imitating them, teasing them, or baiting them.

ii) Putting someone down in a nasty way – especially in front of others (this includes in a formal meeting such as a Council meeting).

iii) Offensive jokes – for example, unwelcome sexual, sexist, racist, anti-gay or other such jokes.

iv) Obscene or racist, sexist, anti-gay (and so on) telephone calls.

v) The use of language that is not suitable in the workplace — for example, sexual, sexist, racist, or anti-gay language, or insulting someone in a nasty way.

vi) Sniggering or gossiping behind someone’s back in a way that is obvious to them or will get back to them.

vii) Spreading unfounded or malicious rumours about someone.

viii) Swearing at or shouting at someone – unless there is a valid emergency reason to do so.

ix) Aggressive, point-scoring, interrupting, talking over and/or putting-down type of debate

b) Non-verbal behaviours – such as:

i) Sending or showing obscene, belittling, offensive or racist, sexist, anti-gay (and so on) letters, faxes, email or SMS text messages.
ii) Displaying or circulating obscene, offensive, degrading, insulting, or any form of racist, sexist, anti-gay (and so on) cartoons or literature.

iii) Practical jokes or skylarking that is vindictive, offensive, unsafe, or unwelcome.

iv) Deliberately setting someone up to fail.

v) Taking credit for the work of another employee.

vi) Putting sexually suggestive, obscene, offensive, degrading or insulting material on Council walls, notice boards, computer screen savers, faxes, email, and so on.

c) **Physically threatening behaviours – such as:**

   i) Threatening to make someone’s work or home life difficult.

   ii) Unnecessarily leaning over someone, or standing too close to them.

   iii) Offensive or obscene hand or body gestures.

   iv) Deliberately standing in someone’s way, or deliberately blocking their path, or deliberately blocking the path of the vehicle they are driving or the equipment they are using.

   v) Deliberate pushing, shoving or jostling.

   vi) Touching anyone when you know they don’t like to be touched.

   vii) Any form of aggressive or frightening behaviour directed towards a person or group of persons.

1.5 **What behaviour is not considered Harassment or Bullying?**

   a) Bullying is not about occasional differences of opinion, conflicts and problems in work relationships. These are part of working life and every conflict does not constitute bullying or harassment. When the behaviour is unreasonable, degrading or contrary to Council policies and practices then it should be addressed.

   b) There is sometimes confusion between workplace bullying and other workplace situations that can upset or offend people. The following situations should not be confused with bullying:

      i) Differences of opinion.

      ii) Poor or bad management practices on their own.

      iii) Constructive and courteous feedback, counselling or advice about work-related behaviour or performance.

      iv) Reasonable management actions taken in a fair and equitable way.

      v) Disciplinary actions undertaken in accordance with the Award.
1.6 Management Practices

It is important to differentiate between a person’s legitimate authority at work and abuse or bullying. All employers have a legal right to direct and control how work is done, and managers have a responsibility to monitor workflow and give feedback on performance. It is not workplace bullying or harassment for:

i) A supervisor to note poor performance; suggest ways to improve performance; follow through on poor work practices; deal with complaints from others; start proceedings for unsatisfactory performance; misconduct or dismissal.

ii) An employee to point out professional difficulties they have with other employees, provided it is done in an appropriate manner.

1.7 Why is Workplace Harassment and Bullying a problem?

a) Bullying can disrupt work to the extent that action has to be taken to restore order. Each individual will react differently to bullying behaviour. The effects may include:

i) High levels of distress, anxiety, depression.

ii) Ill health, insomnia, panic attacks, impaired ability to make decisions.

iii) Loss of self esteem and confidence, feelings of social isolation.

iv) Reduced work performance, incapacity to work.

v) Deteriorating relationships with family and friends.

b) Workplace bullying can be harmful to organisations as well as individuals, resulting in:

i) High levels of absenteeism and staff turnover.

ii) Breakdown of teams and work relationships.

iii) Poor public image in terms of becoming known as a difficult place to work.

iv) Reduced efficiency, productivity and profitability.

v) Unsafe work environment.

vi) Poor morale, erosion of loyalty and commitment.

vii) Increased costs associated with counselling, mediation and compensation claims, recruitment and re-training of new staff, management time.

viii) Potential litigation and associated costs.
1.8 Consensual Relationships/Power Relationships?

a) Why might they be a problem?

In any relationship where there is a power differential there is potential for abuse of that power. It is in the interest of Council to provide clear direction and education about romantic and/or sexual relationships where a definite power differential between parties exists.

The consensual relationships that are of concern are those romantic and/or sexual relationships in which both parties appear to have consented, but where there is a definite power differential between the two parties. Specifically, consenting romantic and sexual relationships between supervisor (any person in a position of authority over another to employ and make employment or salary recommendations or oversee performance) and employee (any person working for the supervisor) have the potential for extremely serious consequences and ought to be avoided. The concern is that this situation may diminish the employee’s actual freedom of choice in an amorous or sexual relationship.

b) Potential for Abuse of Power Differential

Individuals entering into a consensual relationship in which a power differential exists must recognise that:

i) The reasons for entering such a relationship may be a function of the power differential.

ii) Where power differentials exist, even in a seemingly consensual relationship, there are limited after-the-fact defences against charges of sexual harassment.

iii) The individual with the power in the relationship may bear the burden of responsibility.

c) Conflict of Interests

Conflict of interests may arise in connection with consensual romantic and/or sexual relationships between supervisors and employees. It is a generally accepted ethical principle in our society that individuals are precluded from evaluating the work performance of others with whom they have intimate familiar relationships, or from making employment, salary or similar financial decisions concerning such persons. The same principle applies to consensual romantic and/or sexual relationships.

d) Responsibility and Risk

Supervisors and employees should understand that there are substantial risks in even an apparently consenting relationship where a power differential exists. Even if the conflict of interest issues is resolved, charges of sexual harassment may develop, even when both parties have consented to the relationship. The supervisor or other employee may, by virtue of his or her power and responsibility, bear a burden of accountability.
If a consensual romantic and/or sexual relationship develops between a supervisor and employee, the supervisor should make their Manager aware of the situation.

Should you require further information on personal relationships at work, please refer to Council’s Personal Relationships Procedure (5.5.62) or speak with your supervisor, Manager or Human Resources.

2 ADDRESSING WORKPLACE HARASSMENT AND BULLYING

2.1 Options

There are four options available to an employee, Councillor, consultant or volunteer, who feels they have been bullied or harassed in the workplace.

a) Face to Face (one on one)

The person meets face to face with the alleged offender and makes it clear to the offender that their behaviour is offensive and unacceptable. Ignoring the behaviour may often be misunderstood by the offender as approval of the behaviour.

b) Informally (with supervisor and/or team member(s))

The person chooses to have the matter dealt with either directly with the individual or through a team based intervention. This informal option is undertaken in conjunction with the Supervisor. This option provides for the issue to be dealt with in a non-threatening manner by way of education, training and/or discussions with individuals or teams.

c) Feedback for Face To Face and Informally

It should be noted that there is no formal feedback required if the matter is resolved in a face to face discussion or informally. The discussions occurring at that time constitutes ‘feedback’ and no further action is required.

d) Formally

The person can make a formal complaint in writing by lodging with their Supervisor, Manager, Director, General Manager or with Human Resources. The person should raise the matter with their immediate supervisor where that Supervisor is not involved in the matter. In the event, the Supervisor is a party to the matter the next level manager is the appropriate person to address the issue and that person should be approached. This approach accords with staff following the matter through the appropriate chain of command.

It is important for the person making the complaint to record the date(s), place(s), time(s) and witnesses, if any, of the incident of bullying or harassing behaviour. The person’s complaint will be dealt with sensitively, promptly, confidentially and without fear of reprisal. Investigations will be carried out in an impartial manner by the person responsible for conducting the investigations. This may be the Supervisor, Manager, Director, General Manager, a representative from Human Resources or another person deemed appropriate by the General Manager. Ideally, complaints should be referred to your Supervisor of Manager in the first instance. However, if for some reason this is not
appropriate, the matter may be reported to your Director, Human Resources or the General Manager.

In the event the General Manager is a party to the complaint, Human Resources will engage an external independent investigator who will provide recommendations to the Mayor.

[Note: the handling of a complaint against the General Manager or a Councillor will give consideration to Council’s obligations under the Kempsey Shire Council Code of Conduct.]

If Human Resources are a party to the complaint, the General Manager will assign appropriate responsibility for the matter to an alternate Senior Council Officer.

e) Externally

In the event these procedures have failed to settle the person’s complaint, or the person does not want to follow the internal procedure, resolution may be found through an external agency such as the Anti-Discrimination Board or the Commonwealth Human Rights and Equal Opportunity Commission. However, where possible it is recommended Council be given the opportunity to address matters utilising the Workplace Bullying and Harassment Prevention Policy and Associated Procedures.

3 RESOLUTION PROCESS

3.1 Addressing a Complaint

When receiving a complaint, it is important to:

a) Respond promptly, treating the complaint sensitively, seriously and confidentially by ensuring that the names of anyone involved in a complaint are not discussed with others except those immediately involved in the complaint.

b) Where claims of bullying and/or harassment are linked to other associated issues (ie performance management):

   i) They are to be separated where practical, and

   ii) The bullying and harassment matters are to be finalised prior to further investigation or action on the other matters where practical.

c) Discuss with the individual the courses of action available to resolve the complaint. This may include the following:

   i) Seek a personal solution by directly asking the person to stop the behaviour or writing a letter to the offender asking for certain behaviour to cease.

   ii) Adopt an informal approach to resolving complaints by conducting a private interview with the alleged offender, seeking their cooperation in finding a workable solution to the problem.
3.2 Informal Resolution

Informal options are designed to provide an avenue for resolution before the parties become entrenched in positions of bully or victim.

In an informal resolution:

a) Focus is placed on bullying behaviour rather than on personalities or individuals involved in the bullying.

b) Both parties are encouraged to take responsibility for their own behaviour and discuss resolutions.

c) A non-blaming approach is used and no disciplinary action needs to arise as a result.

More formal procedures may be necessary if the informal procedures are unsuccessful or if allegations are so serious that other approaches are inappropriate.

3.3 Confidentiality versus Duty of Care

In some instances there is a conflict between confidentiality and Council’s duty of care. Generally, no action should be taken without the consent of the complainant unless it is considered that the matter, if neglected, would endanger anyone. For example, the safety of individuals may be at risk, or there is concern that the action will not cease. Agreed action should be documented and signed by both parties.

3.4 Investigation of a Formal Complaint

When investigating a formal harassment complaint, it is important to:

a) Ensure the complaint is investigated and resolved without delay. The investigation should commence within twenty four (24) hours of receiving the complaint and no later than seven days after receiving the complaint. Timeframe for investigation and resolution of complaint may be negotiated with parties concerned, however investigation should be resolved, wherever possible, and no later than four weeks after complaint has been lodged.

b) Ensure the person involved in assisting the complainant to lodge the original complaint is not responsible for investigating the complaint. Investigations will need to be carried out by those persons delegated to do so, that is supervisors, managers, Human Resources, the General Manager or other person as deemed appropriate by the General Manager.

c) Conduct an interview with the complainant allowing a support person, if desired, such as a union/employee representative, a professional (qualified) interpreter, or another employee to be present. In the interview:

   i) Clarify the role of support person/union representative.

   ii) Clarify the events or behaviours leading to the complaint including dates, times and any witnesses of the behaviour or
event. Detailed notes should accurately reflect the perceptions of the person lodging the complaint.

iii) Advise the complainant that a full investigation will be carried out and explain procedure that will be followed.

iv) Provided the complainant with the full range of options as outlined in this Procedure

d) Conduct an interview with the alleged offender, advising of the complaint lodged against him or her. In the interview:

i) Allow a support person, if desired, such as a union/employee representative, a professional (qualified) interpreter, or another employee to be present and clarify their role at the commencement of the interview.

ii) In this interview emphasise the impartiality of person conducting the investigation and stress the importance of confidentiality.

iii) Advise the alleged offender of the kind of investigative process that has been decided on and their rights of representation or advice, that is, a union/employee representative or a professional interpreter, if desired.

iv) Provide the alleged offender with the opportunity to respond fully to the allegations within a negotiated time frame.

v) Advise the alleged offender not to approach the complainant directly or indirectly about the allegations.

e) Ensure a thorough investigation. It may be necessary to conduct interviews with those persons named as witnesses by the complainant or alleged offender, ensuring confidentiality is maintained and involvement is kept to the minimum necessary to establish facts.

f) Ensure the person conducting the investigation remains impartial and not prejudicial of the matter.

g) Maintain records throughout the investigation, including verified notes of discussions, meetings and interviews with the person lodging the complaint, the alleged offender and any witnesses.

h) Ensure that all parties involved in the making and investigation of a complaint are aware they are bound by law to observe strict confidentiality, any breach may be regarded as misconduct and the offender may be subjected to disciplinary action.

i) During the period of investigation, temporary alternative work arrangements may be made at the direction of Human Resources or the General Manager, in consultation with the Manager concerned, or will be considered at the request of the complainant or alleged offender. No employee will be disadvantaged in their employment conditions or opportunities should this occur.
4 RESOLVING A COMPLAINT

If the allegations are substantiated or admitted, a decision will be made on the most appropriate course of action. This may involve:

a) Counselling of both the complainant and/or alleged offender.

b) Mediation through conflict resolution or educational strategies.

c) Disciplinary action which may result in summary dismissal.

If the allegations are not substantiated, the reasons for the decision should be explained to all parties. However it may be necessary to:

d) Consider alternative work arrangements at the request of the complainant or alleged offender.

e) Ensure that the complainant and the alleged offender do not suffer any consequences as a result of a complaint being lodged.

f) Be explicit about, and ensure understanding of, acceptable and unacceptable work behaviour with all concerned.

If the allegations are found to be frivolous, vexatious, malicious or contrived, the complainant may:

g) Be required to undergo counselling.

h) Be subject to disciplinary action.

5 FEEDBACK

The Team Leader Human Resources and/or Manager or Supervisor should follow-up after the formal investigation has concluded to ensure that behaviour has ceased and neither party has been victimised. Retribution or “pay-back” by any staff member will not be tolerated and any allegations, if proven, will result in disciplinary action being taken.

6 OTHER SUPPORT AVAILABLE

Counselling is available to all employees by contacting Council’s provider of the Employee Assistance Program. The professional counsellors are qualified in dealing with a range of work related and personal issues, and will handle the matter in a confidential manner.

The contact number for Council’s Employee Assistance Program is 6652 2825 (McCombie Associates).

7 APPEALS PROCESS

If the complainant or the alleged offender feels the Workplace Harassment and Bullying Procedure has not been followed properly or the outcome is inappropriate, an appeal may be submitted to the General Manager.

The General Manager will look at the way the complaint was handled and the action taken. If the General Manager is of the opinion that the complaint has been handled properly and the final decision was fair, Council will take no further action. However,
if it was felt the complaint was not handled properly, the General Manager will conduct further investigations or will arrange for someone, other than the person who conducted the initial investigations, to carry out the review.

If the General Manager has been a party to the complaint then the individual may find resolution through an external agency such as the Anti-Discrimination Board or the Commonwealth Human Rights and Equal Opportunity Commission.

8 GLOSSARY OF TERMS

Alleged Offender: Person against whom a complaint has been lodged.

Bullying: Workplace bullying is offensive, unreasonable, humiliating or intimidating, and generally persistent behaviour that is directed at an individual or group of employees by another individual or group of employees that undermines the employee’s dignity or performance in the workplace.

Complainant: Person who feels they have been subjected to some form of harassment.

Confidentiality: Only those persons directly involved in lodging or investigating a complaint or those persons who have information which can assist the resolution of the complaint, will have access to information about the complaint.

Complaint: A type of problem, concern or complaint related to work or the work environment. A complaint may be about any act, omission, situation or decision that a person thinks is unfair, discriminatory or unjustified.

Defamation: Any written or verbal statement which is false or derogatory. The complainant, alleged offender and any persons directly involved in investigating or resolving a complaint are protected against any action for defamation by defence of qualified privilege. This privilege is only available when the complaint is made honestly and is not motivated by ill-will or malice; the above named persons act in accordance with established procedures; and information is provided to those persons with a legitimate right to know.

Harassment: Any unwanted, unsolicited and unreciprocated behaviour, act or statement that offends, humiliates or distresses the recipient.

Impartiality: All complaints will be investigated in a fair manner. No judgements or assumptions will be made and no action will be taken until all relevant information has been collected and considered.

Promptly: All complaints will be dealt with as quickly as possible. Every attempt will be made to resolve all complaints within four (4) weeks wherever possible unless otherwise negotiated between the concerned parties.

Sensitively: All complaints will be listened to in an unbiased, supportive and empathic manner.

Sexual Harassment: Any sexual behaviour such as a sexual advance, request for sexual favours or other conduct of a sexual nature which is unwelcomed by the recipient and that a "reasonable person" would have expected the recipient to find offensive, humiliating or intimidating.

Victimisation: Any unfavourable treatment of, or disadvantage to, a person lodging a complaint and/or person acting as a witness or assisting the complainant, as a consequence of their involvement in Council’s Workplace Bullying and Harassment
Prevention Policy and associated Procedures. The law protects the above named persons from further disadvantage or mistreatment and management will take all necessary steps to ensure victimisation does not occur.

**Vilification**: Any act that happens publicly as opposed to privately, and that could incite (encourage, urge or stir up) others to hate or have serious contempt for or severely ridicule a person, or a group of people, because of their race, homosexuality, HIV or AIDS status or transgender status. Exceptions under the law include a fair report by media, acts of vilification that are done “reasonably and in good faith” for academic, artistic, scientific, research or other purposes in the “public interest” and material in parliamentary, court or tribunal proceedings or other Government inquiries.

**VARIATION**

Council reserves the right to renew, vary or revoke this procedure which will be reviewed periodically to ensure it is relevant and appropriate.