

ADMINISTRATION POLICIES



SEXUAL HARASSMENT POLICY

Objective:

The purpose of this policy is to:

- Ensure compliance with the required employer duties under the *Work Health and Safety Act 2011* regarding the provision of a safe workplace;
- Highlight that sexual harassment is unlawful and constitutes misconduct, and that it undermines the integrity of the employment relationship and the reputation of Council;
- Provide an avenue of redress in cases where sexual harassment occurs.

Scope

This policy applies to all employees, councillors, volunteers and contractors of Council.

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.

Policy

Sexual harassment is unsolicited and unwelcome sexist or sexual behavior or practice which may cause offence or distress to the recipients and which creates an intimidating, hostile or offensive work environment. Acts or behavior which may appear to be humorous or insignificant to one person may be disturbing and intimidating to another. Harassment occurs when the behaviour or language in question is found to be offensive by the person to whom it is directed. Behaviour that neither party finds offensive is not harassment as defined under legislation.

In 'Sexual Harassment in the Workplace', the Human Rights Commission listed the following as examples of sexual harassment in the workplace:

- Personally offensive verbal comments;
- Sexual or smutty jokes;
- Repeated comments or teasing about a person's alleged sexual activities or private life;
- Persistent, unwelcome social invitations or telephone calls from workmates at work or at home;
- Being followed home from work;
- Offensive hand or body gestures;
- Physical contact such as patting, pinching, touching or putting an arm around another person's body at work;
- Provocative posters with a sexual connotation;
- Sexual assault and rape.

Workplace sexual harassment may occur:

- Between co-workers at a workplace;
- Between supervisor and subordinate, where one tries explicitly or implicitly to exercise some form of influence or 'control' over the other;
- Between an employee and a member of the public;
- Between an employee and a Councillor.

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In cases where the offender is an employee, disciplinary action may be needed if informal resolution is inappropriate or has been unsuccessful.

In cases where the offender is a Councillor, disciplinary action may be needed if informal resolution is inappropriate or has been unsuccessful.

In cases where the offender is a member of the public, it may be necessary to involve the police, but only as a last resort.

Protecting the complainant

Complainants will be given as much protection as possible.

If the investigation results in the transfer or relocation of an employee or employees, the complainant will not be relocated or transferred without his or her agreement.

If it is found that an employee has been sexually harassed in the workplace or in a way associated with the workplace, the employee's employment status with Council shall not be disadvantaged in any way.

If an employee found to have been sexually harassed in the workplace, needs treatment or leave of absence for the benefit of their physical or mental health, Council (or its agents for such purposes) will provide appropriate treatment and/or allow the employee to take leave from their accumulated sick leave.

Maintaining confidentiality

Council will maintain confidentiality for complaints, in order to protect both parties, in order to minimise risk of instigating a defamation or similar action and to protect them.

Procedure:

Lodging a complaint

Any complaint of sexual harassment may be lodged with one of the following:

- The Immediate Supervisor;
- The Departmental Manager;
- The Human Resources Manager;
- The General Manager.

In-house investigators and redress in cases of sexual harassment should be regarded as alternatives to formal legal investigations or processes. If the allegation(s) are reported for formal external investigation it may be inappropriate for in-house procedures to continue.

Responsibilities of the person who receives the complaint

The person who receives the complaint of sexual harassment has the following responsibilities:

- To discuss the allegation with the complainant in order to decide, with the complainant's agreement, whether or not the matter can be resolved at the immediate workplace level;
- To assure the complainant that the nature and content of the complaint will remain confidential and will not be disclosed outside the investigation process.

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Responsibilities of the person assigned to handle the complaint

The person who handles the complaint (not necessarily the person who received the complaint) has the following responsibilities:

- To discuss the allegation(s) with the complainant and assure them that the matter will be treated confidentially;
- To inform the alleged offender that a complaint has been received in writing, the kind of investigative process that has been decided upon and their rights of representation or advice;
- To advise the alleged offender not to approach the complainant directly or indirectly about the allegation(s);
- To assure the alleged offender that no prejudicial action, or action which could be interpreted as disciplinary, will be instigated without their having the opportunity to be heard;
- To assure the alleged offender that the nature and content of the complaint will be treated confidentially and will not be disclosed outside the investigation process;
- To keep factual notes of discussions, meetings and interviews with the complainant and the alleged offender.

Resolution process

Informal discussions at the workplace

A complaint may be resolved at the workplace level as a result of informal discussion. Usually this means that the offender has promised to behave better. The complainant may also need to do this.

Under these circumstances no further action is warranted. Documentation, usually only the notes of discussions, will be held under confidential cover and access will be restricted to the General Manager and duly-authorized agent, such as the Human Resources Manager.

Formal investigation

If the complaint cannot be resolved informally at the workplace level, or if the alleged offender disputes the allegation(s), or if the allegation involves serious or aggravated harassment, a formal internal investigation process must be initiated without delay.

The General Manager may choose to nominate a person or panel to investigate the matter, to facilitate a resolution and to recommend remedial action. In making this choice, the General Manager should take into account procedural risks relating to protection and confidentiality. If the General Manager decides in favour of a panel, it should comprise:

- The General Manager's representative, who will chair the panel;
- A nominee of the complainant;
- A nominee of the alleged offender.

The investigation process, whether conducted by a single person or by a panel, should be guided by the following:

- Meetings will be held only in camera (which means that the meetings will be held in private and all spectators are excluded);
- The complainant will be required to appear and may be questioned;
- The alleged offender will be required to appear and may be questioned;
- Statements may be taken - Information from sources believed to be relevant may be sought;

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- Relevant inquiries may be made;
- Confidentiality outside the investigative process will be guaranteed to anyone who is interviewed or who provides information.

Support services

Council will provide the necessary support services to the formal investigation process.

Responsibilities of investigation process

The major responsibilities of the formal investigation process, whether conducted by an individual or by a panel, are to:

- Consider the facts and determine whether or not the allegations have been substantiated;
- Facilitate a resolution by conciliation or agreement;
- Indicate, if appropriate, formal actions necessary to bring about resolution;
- Recommend to the general manager actions, as appropriate, which will eliminate or minimise the prospect of recurrence.

Documentation, including the report of the investigation, must be held under confidential cover, with access restricted to the General Manager and also a duly-authorized agent, such as the Human Resources Manager.

Alternative work arrangements during the investigation process

During the period of investigation, alternative work arrangements will be made at the direction of the General Manager or will be considered at the request of the complainant or the alleged offender.

Results

Substantiated allegations

If the allegations are substantiated or admitted, the General Manager will determine the appropriate course of action (refer to Performance and Misconduct Policy for a range of penalties), taking into account any recommendations made during the investigation process.

Unsubstantiated allegations

If the allegations are not substantiated, no further action will be taken (see also unfounded allegations below). However, at the request of the complainant or the alleged offender, alternative work arrangements may be considered by the General Manager.

Unfounded allegations

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

- Be required to undergo counselling by a person nominated by the General Manager;
- Be subject to disciplinary action.

ASSOCIATED DOCUMENTS

- Walcha Council Code of Conduct
- Performance and Misconduct Policy
- Harassment, Anti-Discrimination and Workplace Bullying Procedure

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- Harassment, Anti-Discrimination and Workplace Bullying Policy
- Equal Employment Opportunity Policy

POLICY ADMINISTRATION

This policy is administered by the Human Resources Manager and will be reviewed every two years and updated where applicable. Council reserves the right to vary or revoke this policy.

POLICY VERSION AND REVISION INFORMATION

Policy Authorised by Council

Current Version: 1

Adoption Date: 13 February 2019 – Resolution: 119/20182019

Review Date: October 2020