



George Town Council

DRAFT WORKPLACE BEHAVIOUR POLICY

Policy No. 37

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DRAFT

AUTHORITY AND OTHER INFORMATION

Date of approval	
Source of approval	Executive Management Team
Date of commencement	
Source of authority	General Manager
<p>Related Legislation</p> <p>Council and Workers have legal obligations to comply with the requirements of the related Legislation. Breaches of the related Legislation are unlawful and may subject the infringing individual entity to fines, penalties, requirements for specific performance, and imprisonment depending on the circumstances. Breaches also make Council vicariously liable for some conduct of some persons.</p>	<ul style="list-style-type: none"> • <i>Local Government Act 1993</i> (Tasmania) in particular section 63 (1) and (2) • <i>Fair Work Australia Act 2009</i> (Commonwealth) • <i>Industrial Relations Act 1984</i> (Tasmania) • <i>Anti-Discrimination Act 1998</i> (Tasmania) • <i>Equal Employment Opportunity Act 1984</i> (Commonwealth) • <i>Sex Discrimination Act 1984</i> (Commonwealth) • <i>Racial Discrimination Act 1975</i> (Commonwealth) • <i>Human Rights and Equal Opportunity Commission Act 1986</i> (Commonwealth) • <i>Workplace Health & Safety Act 2012</i> (Tasmania) • <i>Workplace Relations Act 1996</i> (Commonwealth) • <i>Disability Discrimination Act 1992</i> (Commonwealth) • <i>Age Discrimination Act 2004</i> (Commonwealth) • <i>Equal Opportunity for Women in the Workplace Act 1999</i> (Commonwealth) • <i>Workers Rehabilitation and Compensation Act 1988</i> (Tasmania) • Associated Regulations (if any of the above) • Successors of any of above
Related Council Documents	<ul style="list-style-type: none"> • George Town Council Employment and Recruitment Policy No. 1 • George Town Council Occupational Health & Safety Policy No. 6 • George Town Council Customer Service Charter Policy No. 8 • George Town Council Risk Management Policy No. 33 • George Town Council Code of Conduct - Councillors • George Town Council Enterprise Bargaining Agreement (current) • George Town Council Grievance Resolution Policy & Procedures
Delegations	General Manager, Directors
Strategic Plan Reference	Goal 1 – Organisational Accountability
Date of review	January 2016
Previous Policies withdrawn or amended	George Town Council – Anti Discrimination Harassment Policy No. 37
Department responsible for implementation	Governance
Department responsible for Policy	Governance
Publication of Policy	Available on Council intranet and in hard copy form at sites where Workers do not have internet access.

<p>Definitions</p>	<p>Officers means:</p> <ul style="list-style-type: none"> (a) an officer within the meaning of section 9 of the <i>Corporations Act</i> 2001 of the Commonwealth other than a partner in a partnership; (b) an officer of the Crown within the meaning of section 247; or (c) an officer of a public authority other than an elected member of a local authority acting in that capacity. <p>Others at the Workplace means any person who is not a Worker and includes visitors and job applicants.</p> <p>Policy/ies means approved Policies of Council.</p> <p>Procedure/s means approved Procedures of Council.</p> <p>Workers means a Worker if the person carries out work in any capacity for a person conducting a business or undertaking, including work as:</p> <ul style="list-style-type: none"> (a) an employee; (b) a contractor or subcontractor; (c) an employee of a contractor or subcontractor; (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking; (e) an outWorker; (f) an apprentice or trainee; (g) a student gaining work experience; (h) a volunteer; or (i) a person of a prescribed class. <p>Workplace means a place where work is carried out for a business or undertaking and includes any place where a Worker goes, or is likely to be, while at work. (may include conferences, social media, Christmas parties etc)</p>
<p>Amendment</p>	<p>Council retains the sole discretion to reasonably terminate, replace or vary this Policy from time to time.</p>

1: PURPOSE AND BACKGROUND

This Policy seeks to:

- a) communicate Council's intention to take all reasonable steps to ensure that Workers and Others the Workplace understand their obligations and do not engage in discrimination, harassment, bullying, sexual harassment, victimisation, vilification, prohibited conduct or inappropriate behaviour;
- b) demonstrate Council is committed to ensuring that the principles of equity and equal opportunity are reflected in Councils Policies and Procedures that relate to Workers and their employment;
- c) confirm Council will not tolerate discrimination, harassment, bullying, sexual harassment, victimisation, vilification prohibited conduct or inappropriate behaviour in the Workplace; and
- d) confirm behaviour/conduct which is determined to be discrimination, harassment, bullying, sexual harassment, victimisation, prohibited conduct or vilification will be a breach of the Policy and if it also breaches the applicable legislations will be against the law and may subject the individual fines, penalties and potentially imprisonment.

2: APPLICATION

This Policy applies to:

- a) all Workers, and Others at the Workplace;
- b) is considered a broad, overarching Policy that incorporates or overlaps some elements of other Policies;
- c) can extend to conduct outside of the Workplace or working hours if the actions, omissions or behaviour has the potential to bring Council into disrepute, or otherwise has a connection between the conduct and the Work/Workplace; and
- d) operates in conjunction with the legal and regulatory requirements of applicable legislation and Council's applicable Policies, Procedures and rules.

3: POLICY

3.1 Equal Employment Opportunity:

- a) Council is committed to the principle of Equal Opportunity, that is, the application of merit when making decisions that affect people in the Workplace.
- b) The application of equal opportunity (also referred to as the merit principle) means that recruitment, remuneration, promotion and access to training and development will be determined on the basis of relevant skills, experience, qualifications, knowledge, aptitude, and the potential for future development of the individual. This precludes the consideration of any personal characteristics or attribute that is not directly relevant to the inherent requirements of the job.

3.2 Discrimination:

- a) discrimination is the behaviour that favours one particular individual or group over others and can be either direct or indirect;
- b) direct discrimination is where an individual or group is treated less favourably due to a particular attribute or personal characteristic;
- c) indirect discrimination occurs where a Policy or practice, which appears to be fair and neutral, by its operation results in discrimination against an individual or group; and
- d) direct or indirect discrimination within the Workplace based on any of the following attributes or personal characteristics will be breach this Policy:
 - i. race;
 - ii. age;
 - iii. sexual orientation;
 - iv. lawful sexual activity;
 - v. gender;
 - vi. marital status;
 - vii. relationship status;
 - viii. pregnancy;
 - ix. breastfeeding;
 - x. parental Status;
 - xi. family responsibilities;
 - xii. disability;
 - xiii. industrial activity;
 - xiv. political belief or affiliation;
 - xv. political activity;
 - xvi. religious belief or affiliation;
 - xvii. religious activity;
 - xviii. irrelevant criminal record;
 - xix. irrelevant medical record;
 - xx. gender identity;
 - xxi. intersex; and
 - xxii. association with people who has, or is believed to have, any of these attributes.

3.3 Harassment:

- a) Workplace harassment is conduct which offends, humiliates, intimidates, insults or ridicules another person in the Workplace on the basis of gender, marital status, relationship status, pregnancy, breastfeeding, parental status or family responsibilities in circumstances which a reasonable person would have anticipated the other person would be offended, humiliated intimidated, insulted or ridiculed.

3.4 Workplace Bullying (Hazard):

- a) Workplace Bullying is repeated, unreasonable behaviour directed towards a Worker or a group of Workers, that creates a risk to health and safety;
- b) 'repeated behaviour' refers to the persistent nature of the behaviour and can refer to a range of behaviours over time; and
- c) 'unreasonable behaviour' means behaviour that a reasonable person, having regard for the circumstances, would see as victimising, humiliating, undermining or threatening.

Direct or Indirect Bullying

Bullying can occur face-to-face, over the phone, via e-mail, instant messaging or using mobile phone technologies including text messaging. Bullying can involve many different forms of unreasonable behaviours, which can be obvious (direct) or subtle (indirect).

Intentional or Unintentional Bullying

- a) Bullying can be intentional, where the actions are intended to humiliate, offend, intimidate or distress, whether or not the behaviour did have that effect.
- b) Bullying can be unintentional, where the actions which, although not intended to humiliate, offend, intimidate or distress, cause and should reasonably have been expected to cause that effect. Sometimes people do not realize that their behaviour can be harmful to others. In some situations, behaviours may unintentionally cause distress and be perceived as bullying.
- c) Bullying can be directed at a single Worker or a group of Workers and be carried out by one or more Workers. Bullying can be:
 - i. **downwards** from Directors/Managers to Workers – for example, an immediate Supervisor/Manager in a position of power may have a management style that seems to be unreasonably strict or disciplinary when in fact it is bullying;
 - ii. **sideways** between Workers or Co-Workers – for example, a Co-Worker seeking to enhance their position or sense of power in the Workplace; or
 - iii. **upwards** from Workers to immediate Supervisors/Managers to try and drive them from the Workplace.

What is not considered to be Workplace bullying?

- a) Many things that happen at work are generally not considered to be bullying, although some experiences can be uncomfortable for those involved. Differences of opinion, performance management, conflicts and personality clashes can happen in any Workplace, but usually they do not result in bullying.
- b) A single incident of unreasonable behaviour is not bullying, although it may have the potential to escalate into bullying.
- c) Reasonable management action, carried out in a fair way, is not bullying. Managers have a right to direct the way work is carried out and to monitor and give feedback on performance, but the way that is done is a risk factor in determining the likelihood of bullying occurring.

Examples of reasonable management action include:

- i. setting reasonable performance goals, standards and deadlines in consultation with Workers and after considering their respective skills and experience;
- ii. allocating work to a Workers in a transparent way;
- iii. fairly rostering and allocating working hours;
- iv. transferring a Worker for legitimate and explained operational reasons;
- v. deciding not to select a Worker for promotion, following a fair and documented process;
- vi. informing a Worker about unsatisfactory work performance in a constructive way and in accordance with any Workplace;
- vii. informing a Worker about inappropriate behaviour in an objective and confidential way;
- viii. implementing organisational changes or restructuring; and
- ix. performance management processes.

Discrimination and harassment is not Bullying

- a) Unlike bullying, discrimination and harassment do not have to be repeated.
- b) It is possible for a person to be bullied, harassed and discriminated against at the same time.

Workplace conflict is not Bullying

Workplace conflict is generally not considered to be Workplace bullying. Not all conflict is negative nor does it always pose a risk to health & safety. When conflict is at a low level and task based, it can generate debate and new ideas, and innovative solutions. A single incident of unreasonable behaviour is not bullying, although it may have the potential to escalate to bullying. Single incidents can still create risk to health and safety but are considered to be inappropriate Workplace behaviour as distinct from bullying.

Workplace Violence

- a) Work related violence occurs when a person is abused, threatened or assaulted in circumstances relating to their work. Unlike bullying, an action does not need to be repeated to be considered violent.
- b) Threats to harm someone, violence and damage to property are criminal matters that should be referred to the Police.
- c) You can also report work related violence to WorkSafe Tasmania.

Discriminatory, coercive or misleading conduct due to raising/acting on WHS issues is not Bullying

3.5 Sexual Harassment

There are specific protections against, unwelcome or uninvited behaviour of a sexual nature, which makes an individual or group of people feel humiliated, intimidated or offended.

Sexual harassment takes place if a person-

- a) subjects another person to an unsolicited act of physical contact of a sexual nature;
- b) makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person;
- c) makes an unwelcome remark or statement with sexual connotations to another person or about another person in that person's presence;
- d) makes any unwelcome gesture, action or comment of a sexual nature; or
- e) engages in conduct of a sexual nature in relation to another person that is offensive to that person,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.

Sexual harassment can be a one-off occurrence and intent or motive is irrelevant. The impact and nature of the behaviour will be assessed in complaints of sexual harassment.

3.6 Victimization:

Victimization occurs when a person who has made a complaint/grievance or who acts as a witness or support person for a person who has made a complaint/grievance is threatened or harassed by others involved in the complaint/grievance, or others who are associated with the person against who, the complaint/grievance is made.

3.7 Vilification:

- a) Vilification is conduct that incites physical harm, hatred, serious contempt or severe ridicule towards a person or group of people on the basis of race, sexuality, disability or religion. It can take many forms, including hate-speech, graffiti, websites, and distribution of propaganda or other forms of offensive literature.
- b) Vilification is conduct which occurs in a public place. Workers must understand that the Workplace is a Workplace that relates to race, sexuality, disability or religion could amount to vilification and will not be tolerated by Council.

3.8 Prohibition of certain conduct

A Worker or Other Person at the Workplace must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of an attributes of:

- a) race;
- b) age;
- c) sexual orientation;
- d) lawful sexual activity;
- e) gender;
- f) gender identity;
- g) intersex;
- h) marital status;
- i) relationship status;
- j) pregnancy;
- k) breastfeeding;
- l) parental status;
- m) family responsibilities; or
- n) disability,

in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.

Inappropriate Workplace Behaviour:

- a) Even where behaviour or conduct does not fit into any of the previous categories it can still amount to what is collectively known as inappropriate Workplace behaviour.
- b) Inappropriate Workplace behaviour is any behaviour which is not appropriate Workplace behaviour or not reasonably acceptable in the Workplace. This will vary from case to case.
- c) Appropriate Workplace behaviour is that behaviour/conduct which is consistent and conforms to the Code of Conduct.
- d) Inappropriate Workplace behaviour is subject to the same grievance Procedures as any of the previous matters and will be dealt with depending on the seriousness of the matters.

4: RESPONSIBILITIES

Everyone at the Workplace has a duty to ensure that discrimination, harassment, bullying, sexual harassment, victimisation, vilification and inappropriate behaviour does not occur.

4.1 Person conducting a business or undertaking (PCBU):

Council has primary duty to ensure, so far as is reasonably practicable, that the health and safety of Workers and Others at the Workplace are not put at risk from discrimination, harassment, bullying, sexual harassment, victimisation, vilification, prohibited conduct and inappropriate Workplace behaviour by seeking reasonably:

- a) provide and maintain a safe work environment;
- b) provide and maintain safe systems of work;
- c) monitor the health and safety of Workers and the conditions at the Workplace to ensure injuries and illnesses are prevented;
- d) provide appropriate information, instruction, training and supervisions to Workers and others; and
- e) provide appropriate grievance resolution Procedures.

4.2 Directors and Officers

Directors and Officers must exercise due diligence to ensure the business complies with its obligations. An Officer must keep up to date with work health and safety matters take reasonable steps to ensure the business has appropriate resources and ensure Council has processes for complying with their obligations.

4.3 Workers

Workers have a duty to:

- a) take reasonable care for their own health and safety;
- b) take reasonable care that they don't affect the health and safety of others; and
- c) comply, so far as is reasonably practicable with any reasonable instructions given by the Council such as cooperating with reasonable Policies and Procedures.

4.4 Other persons at the Workplace

Others at the Workplace have a duty to take reasonable care for their own health and safety, and ensure their conduct does not affect the health and safety of others and comply with any reasonable instructions from Council.

5: PROCEDURE

Where a Worker has a genuine complaint or grievance that relates to any of the matters discussed in this Policy they are encouraged to ask the offending person to stop the behaviour or refer to the Council's Grievance Resolution Policy and Procedures which sets out the Council's Policy and Procedures for making internal complaints.

5.1 Support:

If a Worker is subjected to, or observes discrimination, harassment, bullying, sexual harassment, victimisation, vilification, prohibited conduct and inappropriate Workplace behaviour as outlined in this Policy and require advice or support the following can assist:

- a) your immediate Manager or Supervisor;
- b) Human Resources Officer;
- c) Contacts Officer/s;
- d) Employee Assistance Provider (EAP);
- e) Office of Anti-Discrimination (Discrimination); or
- f) WorkSafe Tasmania (WST).

6: BREACH OF POLICY

Breaches of the Policy, or any related legislation or other applicable law may result in a range of administrative actions which depending on the nature and extent of the breach may be subject to disciplinary action and/or civil/criminal proceedings.

7: ACKNOWLEDGEMENT – WORKPLACE BEHAVIOUR POLICY

I have read, understand and agree to comply with the foregoing Policies, rules, guidelines and conditions in respect of any form of unlawful Workplace bullying, discrimination, prohibited conduct and harassment in the Workplace. I understand that any violation of this Policy may subject me to disciplinary action, including termination from my employment and/or civil/criminal proceedings. I further understand that I have a personal responsibility to ensure a working environment which is free from Workplace bullying, discrimination, prohibited conduct and harassment.

Furthermore, I understand that this Policy can be amended at any time and that any amendment will be communicated accordingly.

I confirm that I have had time to read and fully understand the above Policy. I hereby agree to the above conditions.

Name: _____
(please print name)

Signature: _____

Date: ____/____/____

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