



NORTHERN MIDLANDS COUNCIL

POLICY MANUAL

WORKPLACE BEHAVIOUR AND EMPLOYEE CODE OF CONDUCT POLICY

Originated Date:	Adopted 19 August 2024 – Min. Ref. 24/0279 Replacing Human Resources Policies: 1) Workplace Behaviour Policy 2) Employee Code of Conduct Policy
Amended Date/s:	
Applicable Legislation:	<i>As Listed</i>
Administration:	Governance and Corporate Services
Review Cycle/Date:	This Policy is to be reviewed every four (4) years or as required by legislation changes

1. PURPOSE

The aims of this Policy are to:

- a) Ensure that Workers and Other Persons at the Workplace understand their obligations and do not engage in Infringing Workplace Behaviour;
- b) Confirm expectations regarding appropriate behaviours and is clear in stating that Council will not tolerate Infringing Workplace Behaviour;
- c) Provide a framework for Workers and Other Persons at the Workplace to make decisions and engage in behaviours that are ethical and appropriate for Council and its Workers;
- d) Support Council's commitment to identifying and effectively managing Psychosocial Hazards and Psychosocial Risks as to ensure a safe, healthy and supporting Workplace for Workers and Other Persons at the Workplace;
- e) Reflect Council's commitment to the highest standards of honesty and integrity in meeting the needs of Council and the community it serves;
- f) Ensure that Workplace Requirements (e.g. recruitment, remuneration, promotion and access to training and development) are determined on the basis of relevant skills, experience, qualifications, knowledge, aptitude and the potential for future development of the individual and is reflected in policies and procedures that relate to Workers and their employment or engagement;
- g) Provide a broad, overarching Policy that incorporates or overlaps some elements of other policies; and
- h) Ensure Council, its Workers and Other Persons at the Workplace operate with any Applicable Laws or policies and procedures.
- i) Comply with Applicable Laws through implementing:
 - i. appropriate plans, policies, procedures and programs to support and implement this Policy;
 - ii. measurable safety performance objectives and targets;
 - iii. training on health and safety matters relevant to Council work;
 - iv. induction programs;
 - v. consultation, cooperation and coordination processes;
 - vi. adequate resources;
 - vii. monitoring, reviewing and verification of Council systems; and
 - viii. corrective action where it is identified that the acts or omissions of persons are putting themselves or others at risk.



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2. DEFINITIONS & INTERPRETATION

2.1 Definitions

xvii.	Adverse Action	Mas the meaning given in Schedule 2 , Item 2.
xviii.	Applicable Laws	Means all laws in connection with the carrying out of work or the Workplace including: <ul style="list-style-type: none"> • <i>Age Discrimination Act 2004</i> (Cth) • <i>Anti-Discrimination Act 1998</i> (Tas) • <i>Asbestos Related Diseases (Occupational Exposure) Compensation Act 2011</i> (Tas) • <i>Australian Human Rights Commission Act 1986</i> (Cth) • <i>Children and Youth Safe Organisations Act 2023</i> (Tas) • <i>Disability Discrimination Act 1992</i> (Cth) • <i>Fair Work Act 2009</i> (Cth) • <i>Local Government Act 1993</i> (Tas) • <i>Long Service Leave Act 1976</i> (Tas) • <i>Racial Discrimination Act 1975</i> (Cth) • <i>Sex Discrimination Act 1984</i> (Cth) • <i>Work Health & Safety Act 2012</i> (Tas) • <i>Work Health & Safety Regulations 2022</i> (Tas) • <i>Workers (Occupational Diseases) Relief Fund Act 1954</i> (Tas) • <i>Workers Rehabilitation & Compensation Act 1988</i> (Tas)
xix.	Bully or Bullying	Has the meaning in Schedule 2 , Item 5.
xx.	Confidential Information	Any information, with the exception of information in the public domain other than as a result of a breach by the Worker, disclosed, or communicated to the Worker by, or on behalf of, Council that: <ol style="list-style-type: none"> a) is marked or designated as ‘confidential’ b) would at law be considered secret or ‘confidential’ information of Council c) the Worker might reasonably expect Council to regard as confidential; or d) which comes into the Worker’s possession, or is learnt, accessed or generated by the Worker, in the course of the Worker’s employment or engagement, whether or not the information was originally supplied by the Council; and e) relates to Council dealings, customer or client lists, financial position and arrangements, funding, transaction, general affairs, contracts entered into, program planning and consultant’s advice, promotional information, planning information, equipment and techniques used or any of the above matters for Council’s business; f) without limiting the generality of the above, relates to internal Council management, the structure of Council, information about Workers, policies, marketing programs, strategies, plans, investments or aspects of its future operations; or g) relates to internal Council management, the structure of the business of Council, Council personnel, marketing.
xxi.	Conflict of Interest	An actual or perceived conflict between duties or work or services provided to Council and private interests of a Worker, in which the Worker has private ‘interests’ which could improperly influence the performance of work, duties or services provided to Council by that Worker.
xxii.	Control Measure	In relation to risk to health and safety, means a measure to eliminate or minimise the risk.



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xxiii.	Council	Northern Midlands Council.
xxiv.	Council Property	Any real or tangible property (e.g. cash, motor vehicles, plant and equipment), and any intangible property (e.g. intellectual property and goodwill) owned by Council or in Council's possession or control.
xxv.	Councillor	An elected member of Council known as Councillor or Alderman or otherwise meeting the definition of Councillor as defined under section 3 of the <i>Local Government Act 1993</i> (Tas).
xxvi.	Discriminate or Discrimination	has the meaning given in Schedule 2 , Item 1.
xvii.	Employee	A person who carries out work for the Council as an employee of the Council.
xxviii.	Employee Assistance Program ("EAP")	A confidential and free counselling service offered to Employees who may require help with personal or work-related problems.
xxix.	General Manager	The General Manager of Council as appointed under section 61 of the <i>Local Government Act 1993</i> (Tas).
xxx.	Harass or Harassment	Has the meaning given in Schedule 2 , Item 3.
xxxi.	Inappropriate Workplace Behaviour	Has the meaning given in Schedule 2 , Item 9.
xxii.	Infringing Workplace Behaviour	Any act or omission, which amounts to a breach of any Council policy, contractual obligation or misconduct at common law.
xxiii.	Manager/ Supervisor	A person at the Workplace who is appointed to a position that has management/supervisory responsibility for others or their appropriately nominated or authorised delegate.
xxiv.	Officer	Means: a) an officer within the meaning of section 9 of the <i>Corporations Act 2001</i> of the Commonwealth other than a partner in a partnership; or b) an officer of the Crown within the meaning of section 247 of the <i>Work Health and Safety Act 2012</i> (Tas); or c) an officer of a public authority within the meaning of section 252 of the <i>Work Health and Safety Act 2012</i> (Tas) – other than a Councillor/elected member of a local authority acting in that capacity.
xxv.	Other Persons at the Workplace	Any person at the Workplace who is not a Worker, including visitors, Councillors, and ratepayers.
xxvi.	Policy	This Policy including the 'Authority and Application'.
xvii.	Privileged Information	Any information which is subject to legal professional privilege.



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xviii.	Psychosocial Hazard	A hazard within the meaning of regulation 55A of the <i>Work Health and Safety Regulations 2022</i> (Tas), being one that: <ol style="list-style-type: none"> a) arises from, or relates to – <ol style="list-style-type: none"> i. The design or management of work; or ii. A work environment; or iii. Plant at a work environment; or iv. Workplace interactions or behaviours; and b) may cause psychological harm (whether or not it may also cause physical harm).
xix.	Psychosocial Risk	A risk to the health and/or safety of a Worker or Other Person at the Workplace arising from a Psychosocial Hazard.
xl.	Sensitive Information	Personal information or an opinion relating to personal information about individuals: <ul style="list-style-type: none"> • Racial or ethnic origin; or • Political opinion; or • Membership of a political association; or • Religious beliefs or affiliations; or • Philosophical beliefs or; • Membership of a professional or trade association; or • Membership of a trade union; or • Sexual preferences or practices; or • Criminal record; and • Health information about an individual.
xli.	Sexually Harass or Sexual Harassment	Has the meaning given in Schedule 2 , Item 4.
xlii.	Victimise or Victimisation	Has the meaning given in Schedule 2 , Item 6.
xliii.	Vilify or Vilification	Has the meaning given in Schedule 2 , Item 7.
xliv.	Worker	A person who carries out work in any capacity for the Council, including work as: <ol 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 at Council; e) An outworker; f) An apprentice or trainee; g) A student gaining work experience; or h) A volunteer.
xlv.	Workplace	A place where work is carried out for, or by, Council.
xlvi.	Workplace Violence	Has the meaning given in Schedule 2 , Item 8.



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2.2 Interpretation

- a) The singular includes the plural and vice versa.
- b) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacement or re-enactments of any of them.
- c) A reference to policy or procedure means any approved policies or procedures of Council unless otherwise stated.
- d) "Including" and similar expressions are not words of limitation.
- e) A reference to a document (including this document) is to that document as amended, novated or replaced unless otherwise stated.
- f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that work or expression have a corresponding meaning.
- g) Examples used in the Policy are for illustrative purposes only and are not intended to be exhaustive and depending on the circumstances, may or may not amount to Infringing Workplace Behaviour.
- h) Unless expressly provided for, this Policy is not in any way incorporated as part of any Enterprise Agreement and does not form part of any Employee's contract of employment and any applicable Enterprise Agreement or contract of employment will prevail over this Policy to the extent of any inconsistency.
- i) It is not intended that this Policy impose any obligations on Council or those covered by it that are unreasonable or contrary to the operation of Applicable Laws. Any obligation, direction, instruction or responsibility imposed by this Policy must be carried out in a manner that an objective third party would consider fair and reasonable taking into account and in the context of all the relevant Applicable Laws, operational and personal circumstances.
- j) Questions relating to the interpretation, application or enforcement of this Policy should be directed to a person's Manager/Supervisor, Work, Health & Safety Officer or the People & Culture Business Partner.

3. COVERAGE

3.1 Workers

This Policy covers and applies to all Workers at the Workplace in relation to:

- a) Behaviour at the Workplace;
- b) The performance of work for or in connection with Council; and
- c) Conduct outside the Workplace or working hours if the acts or omissions:
 - i. Are likely to cause serious damage to the relationship between Council and Workers or Other Persons at the Workplace; or
 - ii. Are incompatible with a Worker's duty to Council or their employment relationship or engagement; or
 - iii. Damage, or are likely to damage, Council's interests or reputation;

AND

3.2 All Other Persons at the Workplace

This Policy covers and applies to all Other Persons at the Workplace, including visitors, Councillors and ratepayers, with the exception of Clause 5 (Employee Code of Conduct) in relation to:

- a) Behaviour at the Workplace;
- b) The performance of work for or in connection with Council; and
- c) Conduct outside the Workplace or working hours if the acts or omissions:



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- i. Are likely to cause serious damage to the relationship between Council and Workers or Other Persons at the Workplace; or
- ii. Are incompatible with a Worker's duty to Council or their employment relationship or engagement; or
- iii. Damage, or are likely to damage, Council's interests or reputation.

4. OBLIGATIONS

4.1 General

- a) Workers and Other Persons at the Workplace must comply with this Policy and all Applicable Laws, and must not directly or indirectly engage in, or encourage, behaviour in breach of this Policy or Applicable Laws.
- b) Without limiting the generality of clause 4.1, Council, Workers and Other Persons at the Workplace have a duty to ensure that Discrimination, Harassment, Bullying, Sexual Harassment, Victimisation, and Inappropriate Workplace Behaviour does not occur.
- c) Workers and Other Persons at the Workplace must not:
 - i. Unlawfully Discriminate against other Workers and Other Persons at the Workplace;
 - ii. Engage in unlawful Adverse Action;
 - iii. Harass other Workers or Other Persons at the Workplace;
 - iv. Sexually Harass other Workers or Other Persons at the Workplace;
 - v. Bully other Workers or Other Persons at the Workplace;
 - vi. Victimise other Workers or Other Persons at the Workplace;
 - vii. Vilify other Workers or Other Persons at the Workplace;
 - viii. Engage in Workplace Violence;
 - ix. Engage in Inappropriate Workplace Behaviour;
 - x. Engage in Infringing Workplace Behaviour.
- d) Where a Worker or Other Person at the Workplace reasonably suspects that another Worker or Other Person in the Workplace has engaged in or are engaging in behaviour in breach of this Policy, they must make a report in accordance with clause 4.4(a) (Reporting) and thereafter follow Council's Issue Resolution Policy.
- e) Managers/Supervisors are required to take reasonable steps to:
 - i. Promote this Policy within their area of responsibility;
 - ii. Identify any reasonably foreseeable Psychosocial Hazards and implement and effectively maintain appropriate Control Measures to, so far as is reasonably practicable, eliminate Psychosocial Risks in the Workplace, or where elimination is not reasonably practicable, minimise Psychosocial Risks as far as is reasonably practicable;
 - iii. Regularly review, and where necessary revise, Control Measures to ensure they remain sufficient to maintain, so far as reasonably practicable, a Workplace that is without Psychosocial Risk.
 - iv. Ensure that any potential breaches of this Policy are identified, taken seriously and acted upon appropriately.
- f) Prior to implementing Control Measures in accordance with clause 4.1(e)(ii), Managers/Supervisors are to have regard to all relevant matters, including those in regulation 55D of the *Work Health and Safety Regulations 2022* (Tas), and consult with Workers.
- g) Workers and Other Persons at the Workplace are required to:
 - i. Take reasonable care for their own psychological health and safety, and health and safety of others in the Workplace who may be affected by their actions or omissions.
 - ii. Report known Psychosocial Hazards to their Manager/Supervisor, the Work Health & Safety Officer or the People & Culture Business Partner.



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4.2 Training and Resources

- a) Council will ensure that Managers/Supervisors have adequate and appropriate resources to eliminate or minimise risks in the Workplace.
- b) Council will provide all persons covered by this Policy with appropriate information, instruction and/or training so they are made aware of their responsibilities and obligations under the Policy.

4.3 Breach of Policy

- a) Persons covered under clause 3 (Coverage) who engage in Infringing Workplace Behaviour in relation to this Policy may (as is appropriate and as applicable) be subject to:
 - i. Disciplinary action in accordance with Council's Disciplinary Policy and Disciplinary Procedure (Employees);
 - ii. Termination of services (Workers, other than Employees).
 - iii. Removal from the Workplace (Workers and Other Persons at the Workplace, including Councillors).
 - iv. Prevention from attending the Workplace (Workers and Other Persons at the Workplace, including Councillors).
 - v. A complaint, and subsequent investigation pursuant to Division 3A Subdivision 3 of the *Local Government Act 1993* (Tas) (Councillors) including any sanctions considered necessary by the relevant authority under that Act including:
 - (a) a caution;
 - (b) a reprimand;
 - (c) a requirement to make an apology;
 - (d) a requirement to attend counselling or training;
 - (e) a suspension from performing and exercising the functions and powers of their office as a councillor for a period not exceeding 3 months.
 - vi. A referral to WorkSafe Tasmania for failure to comply with a health and safety duty (Workers, Employees, and Other Persons at the Workplace, including Councillors).
- b) Where necessary, Council can take any lawful action it can take to protect the health and safety of its Workers and Other Persons at the Workplace including, but not limited to:
 - i. Issuing lawful and reasonable directions:
 - (a) to block emails being received by an affected Worker from another person (including Councillors) who has engaged in Infringing Workplace Behaviour against them;
 - (b) for an affected Worker to not have contact with another person (including Councillors) who has engaged in infringing Workplace Behaviour against them; and
 - ii. enable an affected Worker to apply to the Fair Work Commissions for a stop bullying order against a person (including Councillors) who has engaged in workplace bullying against them.
- c) Infringing Workplace Behaviour may also amount to breaches of Applicable Laws:
 - i. Exposing individuals (including Councillors) to legal proceedings;
 - ii. Exposing individuals (including Councillors) to criminal charges (for example, where a person uses a communication service such as internet and telephone to make abusive, harassing, threatening and menacing communications); and
 - iii. Making Council vicariously liable for the conduct of others.

4.4 Reporting

- a) Persons covered under clause 3 (Coverage) must reasonably report Infringing Workplace Behaviour or reasonably suspected Infringing Workplace Behaviour in accordance with this clause 4.4.
- b) Where a person who has engaged in Infringing Workplace Behaviour, or is reasonably suspected of having engaged in Infringing Workplace Behaviour, is:



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- i. A Worker (other than the General Manager) or Other Person at the Workplace (excluding a Councillor) – a report is to be made to the reporter’s Manager/Supervisor and/or as otherwise required or permitted by Applicable Laws.
 - ii. The General Manager – a report is to be made to the Mayor (or if the Mayor is unavailable, the next appropriately delegated Councillor) and/or as otherwise required or permitted by Applicable Laws.
 - iii. A Councillor – a report is to be made to the General Manager, or a complaint may be made pursuant to Division 3A Subdivision 3 of the *Local Government Act 1993* (Tas).
- c) Where the Infringing Workplace Behaviour is considered to constitute a criminal offence (i.e. using a carriage service to menace, harass, cause offence, or to make a threat):
- i. the General Manager (or Mayor where the General Manager has engaged in the relevant Infringing Workplace Behaviour) may report the Infringing Workplace Behaviour to Police as necessary if they believe that the circumstances warrant it.
 - ii. in circumstances where such conduct has been carried out against a person, that person may report the Infringing Workplace Behaviour to Police if they believe that the circumstances warrant it.

4.5 Amendment

- a) Council retains the sole discretion to vary, terminate or replace this Policy from time to time. Council will consult before amendments are made and will notify and provide appropriate information, instruction and/or training to those persons who the amendments apply to.

5. EMPLOYEE CODE OF CONDUCT

- a) All Workers must comply with the Council’s Employee Code of Conduct in **Schedule 1** to this Policy.
- b) Council encourages Workers to speak with their Manager/Supervisor and/or the People & Culture Business Partner to discuss the interpretation and application of the Employee Code of Conduct.
- c) While all final decisions regarding the interpretation, application and enforcement of the Employee Code of Conduct remain with Council, Workers are encouraged, when determining the appropriateness or otherwise of a proposed action or omission, to consider:
 - i. Would other Workers, including their Manager/Supervisor, consider the act or omission appropriate?
 - ii. The potential consequences of the act or omission on other Workers, Council ratepayers, the Worker’s family, and the wider community.
 - iii. Who will benefit from the act or omission? Will that benefit be fair to Council, other parties involved, and the Worker?
 - iv. Whether they could adequately defend the act or omission to their Manager/Supervisor?
 - v. How they would feel if they were on the receiving end of the act or omission?
 - vi. Whether they would act in the same way if it was their money, time, or equipment?
 - vii. Whether they would be comfortable if the act or omission was reported in the media?

6. RELATED DOCUMENTS

This Policy should be read in conjunction with the new Work, Health and Safety and Employee Wellbeing Policy.



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SCHEDULE 1 EMPLOYEE CODE OF CONDUCT

1. Honesty and Integrity

- (a) Acting with honesty and integrity will maintain the respect and confidence in Council. Workers **must**:
- (i) Treat Workers and Other Persons at the Workplace with honesty, respect and courtesy.
 - (ii) Not take improper advantage of their positions in order to obtain a benefit for others or themselves.
 - (iii) Report dishonest, unethical, fraudulent or corrupt behaviour or maladministration by Workers or Other Persons at the Workplace.
 - (iv) Not seek or accept any type of unauthorised compensation, fee/payment (i.e. monetary or non-monetary), commission or gratuity from a third party in connection with the operation of Council.
 - (v) Not offer or accept any hospitality or other financial/non-financial benefit on behalf of or in connection with the operation of Council without the prior written approval of the General Manager.
 - (vi) Not make or take any bribes, kickbacks, inducements or other illegal payments of any kind for the benefit of any person or party in connection with obtaining orders or favourable treatment or for any other purpose in connection with the operations of Council.
 - (vii) Report in writing to the General Manager with full details of any gifts, hospitality, or other financial/non-financial benefit received by the Worker.
 - (viii) Encourage and support good faith reporting of breaches of this Policy without retribution.

2. Professionalism

- (a) Professionalism is conduct that fosters and preserves the reputations of individuals and of Council. To demonstrate professionalism, Workers **must**:
- (i) Not engage in, encourage, or tolerate Infringing Workplace Behaviour.
 - (ii) Support the decisions of Council and, except where authorised by the *Fair Work Act 2009* (Cth), refrain from publicly criticising the decisions of Council.
 - (iii) Not undermine or bring Council's integrity and reputation into disrepute.
 - (iv) Work cooperatively as a team and treat Workers and Other Persons at the Workplace with respect and dignity.
 - (v) Exercise diligence, best endeavours and sound judgment when carrying out their duties or providing services.
 - (vi) Maintain a professional relationship with third parties when engaged as a Worker.
 - (vii) Provide levels of service that they are competent and authorised to provide.
 - (viii) Not make unauthorised statements or commitments on behalf of Council.

3. Laws, Policies and Procedures

- (a) Workers **must**:
- (i) Familiarise themselves with and comply with all relevant laws, policies and procedures.
 - (ii) Comply with all lawful and reasonable directions from authorised persons.
 - (iii) Only act within their authority.
 - (iv) Take care to avoid or minimise the possibility of theft or misuse of Council Property, and otherwise protect Council Property.
 - (v) Only use Council Property for Council purposes and in accordance with the appropriate authorisations.
 - (vi) Not use Council Property for private purposes unless authorised by their Manager or Supervisor.
 - (vii) Comply with delegations and other authorisations as directed.

4. Conflicts of Interest

- (a) Workers **must not**:
- (i) Take on personal business or financial or private interests that compete or conflict with Council's interests.



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- (ii) Use or take advantage of any Council Property or information belonging to Council for personal benefit or for the benefit of another person.
 - (ii) Engage directly or indirectly in any outside business activity involving commercial contact with Council, or work for the benefit of Council commercial customers, suppliers or competitors without the prior written consent of the General Manager.
- (b) **Workers must:**
- (i) Disclose to their Manager/Supervisor situations that may create a Conflict of Interest before a conflict arises, or if a conflict does occur, immediately on becoming aware of the existence of the conflict.
 - (ii) Declare any Conflict of Interest that could occur through shareholdings, ownership of real estate, or being the trustee or beneficiary of a trust.
 - (iii) Disclose to the General Manager ownership of shares in a listed entity which deals with or competes with Council.
 - (iv) Comply with Applicable Laws regarding declaration of any financial interest they or a close associate of theirs may have regarding any matter in which they provide advice, make a decision or determination or make a recommendation to Council about.
 - (v) Obtain written approval from their Manager/Supervisor before taking up other employment or engagement outside of their position with Council, where such employment or engagement may create a Conflict of Interest.

5. Privacy and Use of Information

- (a) **Workers must:**
- (i) Not disclose Confidential Information to any person or entity without the prior written consent of the General Manager.
 - (ii) Not improperly use or disclose to any person or entity without the prior written consent of the General Manager, information that is part of a 'closed' Council or Committee meeting or derived from Council business referred to in sections 338A and 339 of the *Local Government Act 1993* (Tas).
 - (iii) Comply with all relevant provisions of the *Personal Information Protection Act 2004* (Tas).
 - (iv) Where required by law to disclose Confidential Information, Sensitive Information or Privileged Information (e.g. by a Court or Tribunal order), advise the nominated Council delegate and awaiting confirmation of disclosure from the nominated Council delegate prior to the disclosure being made.
 - (v) Not use Confidential Information, Sensitive Information or Privileged Information for the purposes of directly or indirectly obtaining a personal gain or another benefit.
 - (vi) Only access Confidential Information, Sensitive Information or Privileged Information for authorised work-related tasks.
 - (vii) Not encourage others to disclose Confidential Information, Sensitive Information and/or Privileged Information
 - (viii) Ensure that Confidential Information, Sensitive Information and Privileged Information is collected, stored and disposed of securely, regardless of its medium, in accordance with Council's Information Management Policy.

6. Corporate and Personal Responsibility

- (a) Council is committed to service excellence and aims to maintain public confidence and respect.
- (b) **Workers must:**
- (i) Commit to taking reasonable care to avoid acts and omissions that may adversely affect themselves, Workers and Other Persons at the Workplace.
 - (ii) Aim to be socially, financially and environmentally responsible in the use of Council resources.
 - (iii) Report any corrupt or fraudulent conduct or any maladministration.



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SCHEDULE 2

WORKPLACE BEHAVIOUR

1. Discrimination

What is Discrimination?

- a) Discrimination is behaviour that favours one particular individual or group over others based on an attribute, whether known, imputed or assumed, and can be either direct or indirect. Discrimination at the Workplace can occur (by way of example):
 - (i) When determining who should be offered work;
 - (ii) In the terms and conditions of the work that is offered;
 - (iii) In failing or refusing to offer work;
 - (iv) In failing or refusing to grant, or limiting, access to opportunities for promotion, transfer, training or other benefit to the Worker;
 - (v) In dismissing a Worker; and
 - (vi) By treating another person less favourably.
- b) There may be genuine occupational reasons based on the inherent requirements of the role that means Discrimination is not unlawful.
- c) For example, it will not be unlawful to terminate employment- if:
 - (i) Disability prevents a Worker from being able to perform the inherent requirements of their position; or
 - (ii) Performance of the inherent requirements would require services, facilities or reasonably adjustments that would impose an unjustifiable hardship to Council.

What is Direct Discrimination?

- d) Direct Discrimination is where an individual or group is treated less favourably due to a particular attribute or personal characteristic or a characteristic imputed to that attribute. For example, if Council decided:
 - (i) Not to employ or promote a person because of their:
 - (a) Nationality; or
 - (b) Sexuality; or
 - (c) Pregnancy
 - (ii) To terminate an Employee because they took personal leave (because disability includes illness and is a protected attribute), carer's leave or parental leave (because family responsibilities is a protected attribute).

What is Indirect Discrimination?

- e) Indirect Discrimination occurs if a person imposes a condition, requirement or practice which is unreasonable in the circumstances (even if it appears to be fair and neutral) and has the effect of disadvantaging a member of a group of people who:
 - (i) Share, or are believed to share, a prescribed attribute; or
 - (ii) Share, or are believed to share, any of the characteristic imputed to that attribute;
 - (iii) More than a person who is not a member of that group.
- f) For indirect Discrimination to take place, it is not necessary that the person who Discriminates is aware that the condition, requirement or practice disadvantages the group of people.
- g) For example:
 - (i) Offering training opportunities to staff members only at limited and rigid times which prevented staff with parental responsibilities from attending the training;



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- (ii) Not reasonably providing somewhere for a breast-feeding Worker to express milk while at work; or
- (iii) Not providing reasonable equipment to allow a Worker with a back injury to stand and still do computer work.

What are the protected attributes or personal characteristics?

- h) Direct or indirect Discrimination within the Workplace based on any of the following attributes or personal characteristics will breach this Policy:
 - (i) Gender (male, female and intersex) and gender identity;
 - (ii) Marital status;
 - (iii) Relationship status;
 - (iv) Pregnancy;
 - (v) Family responsibilities;
 - (vi) Race;
 - (vii) Skin colour;
 - (viii) National or ethnic origin;
 - (ix) Religion;
 - (x) Physical, intellectual, psychiatric or learning disability;
 - (xi) Impairment (including HIV/aids status);
 - (xii) Parental status;
 - (xiii) Breastfeeding;
 - (xiv) Age;
 - (xv) Sexual orientation;
 - (xvi) Lawful sexual activity;
 - (xvii) Industrial activity;
 - (xviii) Political belief or affiliation;
 - (xix) Political activity;
 - (xx) Irrelevant criminal or medical record;
 - (xxi) Being associated with a person who has (or is believed to have) any of these attributes.

2. Adverse Action

What is Adverse Action?

- a) Any unlawful Adverse Action will breach this policy.
- b) Unlawful Adverse Action can occur where a person engages in Adverse Action (or threatens, organises or coerces other to take Adverse Action) against a person because that person:
 - (i) Has a workplace right (or has exercised or proposed exercising their workplace right or not done so or to prevent a Worker from doing so); or
 - (ii) Engages (has engaged, proposes to engage or not to engage) in industrial activity or is (or is not) an officer or member of an industrial association.

Types of Adverse Action

- c) Dismissal or termination of contract (e.g. terminating employment or a contractor's services).
- d) Injuring the Worker in relation to their employment or terms and conditions of contract (e.g. offering a salary or fee for services that is less than would otherwise be offered).
- e) Alter the position of the Worker to their prejudice (e.g. removing status or areas of responsibility from an Employee or providing a damaging recommendation in relation to a contractor to other service users).



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- f) Discriminates between a Worker and other Workers and other prospective Workers (e.g. preferring applications for annual leave from a non-union member Employee or using contractors with non-union enterprise agreements).
- g) A Worker or Union takes industrial action against Council (e.g. stop work meeting).

Types of Workplace Rights, Relevant Attribute or Industrial Activity

- h) Workplace Rights
 - (i) An entitlement under an award or enterprise agreement or a workplace law (e.g. entitlement to make a Worker's compensation claim).
 - (ii) A role or responsibility under a workplace law or enterprise agreement or award (e.g. to act as a bargaining representative)
 - (iii) Ability to initiate or participate in a process or proceedings under a workplace law or enterprise agreement or award (e.g. making a request for flexible working arrangements or participating in a consultation process regarding redeployment in a redundancy situation).
 - (iv) Ability to make a complaint or inquiry to seek compliance with a workplace law or enterprise agreement or award or generally in relation to a person's employment (e.g. making a complaint to the Anti-Discrimination Commissioner or making an inquiry about their classification or salary level).
- i) Relevant Attributes
 - (i) Race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
 - (ii) Can initiate or participate in a process or proceeding under a workplace law or enterprise agreement (e.g. making an individual flexibility arrangement, appointing a bargaining representative or acting as a witness for another Employee in a Fair Work Commission hearing).
- j) Industrial Activity
 - (i) Is or is not an officer or member of an industrial association.
 - (ii) Engages or does not engage in industrial activity (e.g. promoting, encouraging or participating in an activity on behalf of an industrial association such as an on-site meeting).

3. Harassment

What is Workplace Harassment?

- a) Workplace Harassment will breach this Policy.
- b) Workplace Harassment is any conduct which:
 - (i) Offends;
 - (ii) Humiliates;
 - (iii) Intimidates;
 - (iv) Insults; or
 - (v) Ridicules

another person on the basis of protected attributes 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.

- c) Workplace Harassment can be a one-off occurrence and a specific intent or motive is not necessary.

What are the protected attributes for Workplace Harassment?

- d) Protected attributes include:
 - (i) Race;



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- (ii) Age;
- (iii) Sexual orientation;
- (iv) Lawful sexual activity;
- (v) Gender;
- (vi) Gender identity;
- (vii) Intersex;
- (viii) Marital status;
- (ix) Relationship status;
- (x) Pregnancy;
- (xi) Breastfeeding;
- (xii) Parental status;
- (xiii) Family responsibilities; or
- (xiv) Disability.

What are examples of Workplace Harassment?

- e) Examples of Workplace Harassment include:
 - (i) telling a joke about a homosexual person, which may offend someone who is homosexual;
 - (ii) sending an email to workmates ridiculing a colleague because they have taken carer's leave to look after a sick child, which may be humiliating and offensive;
 - (iii) putting a sign on the door of a room where a Worker is expressing breast milk unnecessarily advertising the activity the Worker is engaging in, which may be humiliating;
 - (iv) telling a Worker who is pregnant that they are getting fat or must be having twins, which is offensive;
 - (v) telling a Worker she is 'just a young girl and could not be expected to cope in the Workplace'.

4. Sexual Harassment

What is Sexual Harassment?

- a) Sexual Harassment is unlawful.
- b) Sexual Harassment is any unwanted or unwelcome conduct which:
 - (i) is of a sexual nature in that there is a sexual element, overtone or implication, which may not in isolation appear to be sexual in nature, but may become so because of the surrounding circumstances (e.g. unsolicited act of physical contact of a sexual nature, unwelcome sexual advance or request for sexual favours, unwelcome gesture, action or comment of a sexual nature); and
 - (ii) is unreasonable in the circumstances; and
 - (iii) a reasonable person having regard to all the circumstances would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.
- c) Sexual Harassment can be a one-off occurrence and a specific intent or motive is not necessary.

What are examples of Sexual Harassment?

- d) Examples of Sexual Harassment include:
 - (i) Offensive or sexually orientated email or text messages, voice mail messages, screen savers (words and images), telephone calls;
 - (ii) Deliberate and unnecessary physical contact such as patting, pinching, fondling or deliberately brushing against another body, attempts at kissing;
 - (iii) Constant requests for drinks or dates, especially after prior refusal;
 - (iv) Request for sexual favours, gestures or body movements of a sexual or intimidating nature;
 - (v) Crude or sexually orientated jokes, comments and suggestions; or



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- (vi) Innuendo, including sexually provocative remarks, suggestive or derogative comments about a person's physical appearance, inferences of sexual morality or tales of sexual performance.

5. Bullying

What is Bullying?

- a) Bullying is repeated, unreasonable behaviour directed towards a Worker or a group of Workers (or Other Persons at the Workplace), that creates a risk to health and safety.
 - (i) 'Repeated behaviour' refers to the persistent nature of the behaviour and can refer to a range of behaviours over time.
 - (ii) 'Unreasonable behaviour' means behaviour that a reasonable person (i.e. objective test), having regard for the circumstances, would see as unreasonable (e.g. Victimising, Humiliating, undermining or threatening).
 - (iii) 'Risk to health and safety' can refer to physical or psychological injury that may occur as a result of the repeated, unreasonable behaviour.

How does Bullying occur?

- b) Workplace Bullying can be:
 - (i) direct (obvious) or indirect (subtle); or
 - (ii) intended or unintended; or
 - (iii) upwards, downwards or sideways.

What is Direct or Indirect Bullying?

- c) Bullying can involve many different forms of behaviour and can occur face-to-face, over the phone, via email, instant or text messaging or using social media technologies.
- d) Examples of potential *direct* Bullying may include:
 - (i) aggressive and abusive or threatening language;
 - (ii) yelling and invading personal space;
 - (iii) finger pointing, eye rolling and scowling;
 - (iv) inappropriate emails containing unjustified criticism delivered bluntly; and
 - (v) delivering negative feedback in front of co-workers.
- e) Examples of potential *indirect* Bullying may include:
 - (i) spreading rumours or lies;
 - (ii) displaying degrading or offensive material in the Workplace;
 - (iii) deliberately excluding, isolating or marginalising a person;
 - (iv) deliberately withholding information that is vital to do a job;
 - (v) deliberately setting unrealistic deadlines and tasks that are unreasonably above or below a person's skill or experience; and
 - (vi) deliberately changing work arrangements to cause stress.

What is Intentional or Unintentional Bullying?

- f) Bullying can be intentional, where the actions are intended to humiliate, offend, intimidate or distress, whether or not the behaviour did have that effect. Indirect Bullying will often occur intentionally.
- g) Bullying can also be unintentional, where actions which, although not intended to humiliate, offend, intimidate or distress, do so and would be reasonably likely to do so. Sometimes people do not realise that their behaviour can be harmful to others because that is how they would like to be treated. Direct Bullying



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may occur unintentionally where the intentions can even be good but the impact is harmful and the behaviour is not reasonable in the circumstances.

How can Bullying be carried out?

- h) Bullying can be directed at a single person or a group of people and be carried out by one or more persons. Organisationally, Bullying can be:
 - (i) **downwards** from Managers/Supervisors to their team members – for example, an immediate Manager/Supervisor may have a management style that is unreasonably domineering, they may stand over Employees when they speak to them or speak to Employees rudely or in a demanding or unreasonably loud manner that is disrespectful;
 - (ii) **sideways** between Workers– for example, a Worker unreasonably seeking to enhance their position or sense of power in the Workplace may make a co-worker perform the duties that are less likely to be recognised, blame others for mistakes or fail to pass on instructions from a Manager/Supervisor so the co-worker makes mistakes; or
 - (iii) **upwards** from team members to immediate Managers/Supervisors - for example, Workers may Bully their immediate Manager/Supervisor to try and unreasonably drive them from the Workplace or prevent them from effectively doing their job by spreading misinformation or malicious rumours about them or criticising them or complaining about them without justification.

What is the difference between Bullying and Harassment?

- i) Discrimination, Harassment and Adverse Action:
 - (i) do not have to be repeated and can be one off behaviour; and
 - (ii) must be linked to a protected characteristic (e.g. personal attributes, workplace rights or industrial activity).
- j) Bullying requires repeated unreasonable behaviour (i.e. cannot be one off behaviour) but there does not need to be any link to protected attributes or protected actions (i.e. it is no defence to treat everyone equally unreasonably).
- k) It is possible for a person to be Bullied, Harassed and Discriminated against at the same time.

What is not considered to be Bullying?

- l) Many things that happen at the Workplace are generally not considered to be Bullying, although some experiences can be uncomfortable.
- m) A single incident of unreasonable behaviour is not Bullying, although it may have the potential to escalate into Bullying. A single incident of unreasonable behaviour can create a risk to health and safety and can be considered to be Inappropriate Workplace Behaviour as distinct from Bullying.
- n) Differences of opinion, performance management, conflicts and personality clashes do happen in any workplace but do not, without more, amount to Bullying.
- o) Reasonable management action, which is carried out in a reasonable manner, is not Bullying.

Workplace Conflict is not Bullying

- p) Workplace conflict by itself does not amount to Bullying.
- q) Not all conflict is negative, nor does it always pose a risk to health and safety. When conflict is at a low level and task based, it can generate debate and lead to new ideas and innovative solutions. For example, collaborating on a project requires a robust exchange of ideas to be effective.



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- r) Conflict may be negative and undesirable but still not amount to Bullying or even Inappropriate Workplace Behaviour. For example, Workers may have a 'personality clash' and not like each other but still behave in a professional and respectful way to each other.

Reasonable management action carried out in a reasonable manner is not Bullying.

- s) Reasonable management action (i.e. 'what') carried out in a reasonable manner (i.e. 'how') is not Bullying. Managers/Supervisors have a right to direct the way work is carried out and to monitor and give feedback on performance.
- t) Examples of reasonable management action relating to performance management include:
- (i) setting reasonable performance goals, standards and deadlines in consultation with Workers and after considering their respective skills and experience.
 - (ii) allocating reasonable work to a Worker in a transparent way.
 - (iii) deciding not to select a Worker for promotion, following a fair and documented process.
 - (iv) informing a Worker about unsatisfactory or unacceptable work performance in a constructive way and in accordance with policies and procedures.
 - (v) informing a Worker about unacceptable conduct or behaviour in accordance with policies and procedures.
- u) Examples of reasonable management action relating to operational matters include:
- (i) fairly rostering and allocating working hours;
 - (ii) transferring a Worker for genuine operational reasons;
 - (iii) implementing organisational changes or restructuring;
 - (iv) decisions regarding accessing leave entitlements based on genuine operational requirements.
 - (v) providing access to training or employment benefits based on genuine operational requirements and merit.

6. Victimisation

What is Victimisation?

- a) Victimisation occurs when a person subjects, or threatens to subject, another Worker or an associate of that other Worker or Other Person at the Workplace to any detriment because they:
- (i) made or intend to make a complaint;
 - (ii) gave, or intend to give, evidence or information in connection with any proceedings;
 - (iii) allege or intend to allege that any person has committed an act which would amount to a contravention of Applicable Laws;
 - (iv) refused or intend to refuse to do anything that would amount to a contravention of Applicable Laws;
- or
- (v) have reasonably reported a breach of this Policy or utilised the Issue Resolution Policy.
- b) Victimisation under Applicable Law is unlawful.

What are examples of Victimisation?

- c) Examples of Victimisation include:
- (i) refusing to employ another person;
 - (ii) terminating or threatening to terminate employment;
 - (iii) prejudicing or threatening to prejudice a person in their employment (refusing to provide a favourable reference);
 - (iv) intimidating or coercing (excluding from Workplace discussions);



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- (v) imposing any pecuniary penalty or other penalty (withholding wages); or
- (vi) taking disciplinary action (e.g. giving an Employee a written warning).

7. Vilification

What is Vilification?

- a) Vilification is conduct that incites physical harm, hatred, serious contempt or severe ridicule towards a Worker or group of Workers (or Other Persons at the Workplace) 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. The Workplace is a public place and discussions or jokes in the Workplace that relate to race, sexuality, disability or religion could amount to Vilification.
- c) Vilification is unlawful.

What are examples of Vilification?

- d) Examples of Vilification include:
 - (i) Speaking about a person's race, disability, sexual orientation, religious belief in a way that could make other people hate or ridicule them.
 - (ii) Publishing claims that a racial, disabled, sexually orientated or religious group is involved in serious crimes without any proof.
 - (iii) Encouraging violence against people who have a particular race, disability, sexual orientation, religious belief, or damaging their property.
 - (iv) Encouraging people to hate a person or group with a particular race, disability, sexual orientation, religious belief, using flyers, stickers, posters, a speech or publication, or using websites or email.

8. Workplace Violence

What is Workplace Violence?

- a) Work related violence occurs when a Worker or Other Person at the Workplace abuses, threatens or assaults another Worker or Other Person at the Workplace, in circumstances relating to their work or the Workplace. Unlike Bullying, an action does not need to be repeated.
- b) Threats to harm someone, violence and damage to property are breaches of Applicable Laws that should be referred to the Police, and any other appropriate authority.

What are examples of Workplace Violence?

- c) Examples of Workplace Violence include:
 - (i) Threatening to kill or hurt a person or their family.
 - (ii) Assault.
 - (iii) Throwing implements at another person.

9. Inappropriate Workplace Behaviour

What is Inappropriate Workplace Behaviour?

- a) Inappropriate Workplace Behaviour is any behaviour by Workers or Other Persons at the Workplace that Council reasonably considers is not appropriate Workplace Behaviour or is unacceptable in the Workplace. It is behaviour inconsistent with Council's policies and procedures, expectations and way of doing things, which means it will vary from case to case.



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- b) Unreasonable Behaviour (as is required with Bullying) will also amount to Inappropriate Workplace Behaviour. However, behaviour does not have to be unreasonable in the circumstances to be considered Inappropriate Workplace Behaviour. For example, 'over sharing' of personal information by a Manager/Supervisor with a direct report may be welcomed by the Employee in the circumstances but still be considered inappropriate behaviour by Council for not meeting the communicated expectations of a professional Manager/Supervisor.
- c) Inappropriate Workplace Behaviour may also fit into any of the categories of unlawful behaviour under this Policy. Even if it does not, it still amounts to Infringing Workplace Behaviour. Therefore, if you are unsure as to what the standards are, ask your Manager/Supervisor or the People & Culture Business Partner or other appropriate person in the circumstances.

What are examples of Inappropriate Workplace Behaviour?

- d) Examples of Inappropriate Workplace Behaviour include:
 - (i) Treating people rudely, disrespectfully or without dignity are examples of what is considered Inappropriate Workplace Behaviour.
 - (ii) At the 'high' or serious end of the scale, it is behaviour that may also constitute serious misconduct at common law.
 - (iii) At the 'low' or less serious end of the scale, it may be behaviour that is inappropriate but not unreasonable (e.g. Manager/Supervisor privately makes crude jokes with a direct report in the Workplace which are based on protected attributes. This may not be unlawful in the circumstances in that the Employee welcomes the behaviour and no-one overheard or was likely to but is still considered inappropriate behaviour because it amounts to poor judgment and is below what is expected of a Manager/Supervisor.