

RESPECT IN THE WORKPLACE (BULLYING, HARASSMENT & DISCRIMINATION) POLICY

Policy Number:	2.1.4
Approved by:	CEO
Date Approved:	May 2024
Date of Next Review:	May 2026
Applicable to Unit(s):	Whole Organisation
Responsible Officer:	Manager People and Capability
Related Policies:	<i>Discipline and Performance Management Policy Sexual Harassment Policy Equal Opportunity and Discrimination Policy</i>
Related Documents:	<i>Employee Code of Conduct Councillor Code of Conduct</i>
Statutory Reference:	<i>Equal Opportunity Act 2010 Local Government Act 2020 Accident Compensation Act 1985 Charter of Human Rights & Responsibilities Act 2006 Fair Work Act 2009 Protected Disclosure Act 2012 The Sex Discrimination Act 1984 Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Act 2022 (Cth) Occupational Health and Safety Act 2004</i>

OVERVIEW

Wellington Shire Council is committed to providing a safe and positive workplace where everyone is treated with respect and inappropriate workplace behaviour including bullying, harassment, sexual harassment, unlawful discrimination, victimization, or violence will not be tolerated.

That means we all need to:

- Treat customers, colleagues, and others with dignity, courtesy, and respect;
- Do the right thing, be fair and honest;
- Listen, learn, and respond appropriately to the views and concerns of others;
- Consider how everything we say and do might impact others.

Council is equally committed to providing a safe environment that is free from risks to health and safety and are consistent with the principles of justice and conform to the spirit and intent of equal opportunity, anti-discrimination and occupational health and safety legislation.

The purpose of this policy is to:

- Explain the definitions of inappropriate workplace behaviour;
- Make clear that no form of inappropriate workplace behaviour will be tolerated;
- Outline the strategies and programs in place to build a positive and respectful workplace culture and prevent inappropriate workplace behaviour;
- Ensure that all reported incidents of inappropriate workplace behaviour are appropriately investigated and addressed;
- Ensure that support is provided to anyone in our workplace who may be experiencing inappropriate workplace behaviour.

This policy sets out the legal responsibilities for Wellington Shire Council and its employees and others.

Definitions

In this policy:

- 'Employee' is defined inclusively to include employees of Wellington Shire Council (including employees covered by the Wellington Shire Council Enterprise Agreement No. 11 and Executive Officers as well as persons seeking employment, contract workers, consultants, agency on-hire staff, students and volunteers. The legislation and instruments mentioned in this policy may apply to particular categories of staff.
- 'Councillors' is defined to include the elected representatives (Councillors) democratically voted for by the residents and ratepayers of Wellington Shire.
- 'Client' is defined inclusively to include all persons to whom services are provided by Wellington Shire Council.
- 'Individuals' is defined as employees, volunteers, labour hire workers, Councillors, any Wellington Shire Council Committee members and clients of Wellington Shire Council.
- 'Members of the public' means any other individual not described above, which includes ratepayers, customers, independent contractors, vendors, suppliers and/or any parties involved in a business relationship with Wellington Shire Council.

THE POLICY

Wellington Shire Council strives to achieve a respectful and safe workplace and takes reasonable and proportionate measures to prevent workplace bullying, harassment, sexual harassment, unlawful discrimination, victimization, and violence. Wellington Shire Council is committed to educating all employees and relevant persons as to the nature, effects and individual rights and responsibilities associated with all forms of inappropriate workplace behaviour as outlined above.

All employees are bound by this policy and must comply with relevant legislation listed above. Failure to do so may result in disciplinary action as per the "*Discipline and Performance Management Policy*".

This policy applies at all times when an individual is representing Council, engaging in work on behalf of Council, and pertains to, and is not limited to, Council premises or off-site work locations. Off-site work locations include working from home, business trips, seminars or conferences and working at customer sites. It applies to meetings, events, interactions and functions that are organised by Council, or which are attended on behalf of Council either during or after hours.

INAPPROPRIATE WORKPLACE BEHAVIOURS

Creating an inclusive workplace and looking after the health and wellbeing of our employees, Councillors, clients, and members of the public is of great importance. This means that it is not acceptable for any of us to engage in the following types of behaviours in our workplace:

Bullying

Bullying is repeated unreasonable behaviour directed towards a person, or a group of people, that poses a risk to their mental wellbeing or physical health and safety. Unreasonable behaviour means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable including behaviour that is victimising, humiliating, intimidating or threatening. Employees must not engage in behaviour that constitutes bullying and/or harassing towards other staff or clients, including physical, visual, verbal, and non-verbal behaviour.

Bullying may include behaviours such as:

- Verbal abuse, insults or name-calling;
- Making jokes about a person, or singling out one person for remarks more often than others in a group;

- Personal attacks, threats, intimidation and misuse of power;
- Unjustified criticism or excessive scrutiny of work;
- Exclusion or isolation;
- Deliberately withholding information from someone where that information is essential to their ability to perform their work effectively;
- Deliberately altering work rosters to inconvenience someone;
- Assigning someone meaningless or impossible tasks, or setting tasks that are unreasonably above or below someone's ability;
- Removal of responsibilities or deliberately overloading someone with work; or
- Deliberate and willful reputational damage.

Bullying occurs when an individual in the workplace is repeatedly exposed to unreasonable behaviour by an individual or group, and that behaviour creates a risk to health and safety. It is possible for bullying behaviour to occur concurrently with other inappropriate behaviours such as discrimination or sexual harassment.

HOW CAN WORKPLACE BULLYING AND/OR HARASSMENT OCCUR?

Workplace bullying behaviour can be carried out in a variety of ways including during team meetings, in the work areas, in the breakout areas, through email or text messaging, internet chat rooms, instant messaging or other social media channels. Workplace bullying or harassment can be directed at a single worker or a group of workers and be carried out by one or more workers.

It can occur between:

- co-workers
- managers and employees
- WSC employees and non WSC employees.

Workplace bullying or harassment can be directed at or perpetrated by other people at the workplace such as customers and members of the public.

What isn't bullying and harassment?

A single incident of unreasonable behaviour is not considered to be workplace bullying; however, it may be repeated or escalate and should not be ignored. When dealing with a single incident of unreasonable behaviour, employees should firstly consider talking to the person who displayed this behaviour. If employees do not wish to speak directly to the person displaying the behaviour, they should consider talking to a Equal Employment Opportunity (EEO) Contact Officer, their manager and/or Human Resources.

Reasonable Management Action versus Bullying

It is important to understand that direction, guidance or other reasonable actions by supervisors or managers, carried out in a reasonable way, is not bullying.

Examples of reasonable management action includes:

- Informing an employee about unsatisfactory work performance in an honest, fair, and constructive way;
- Informing an employee about inappropriate behaviour in an appropriate way;
- Setting reasonable performance goals, standards and deadlines;
- Providing reasonable and lawful directions to an employee.
- Rostering and allocating working hours and work;
- Setting performance goals or standards;
- Performance management or disciplinary action conducted in accordance with Council policies and processes;
- Following up on work progress;
- Implementing organisational changes; and
- Deciding not to select someone for a promotion or work opportunity.

Workplace conflict

Differences of opinion and disagreements are generally not workplace bullying and/or harassment. People can have differences and disagreements in the workplace without engaging in repeated, unreasonable behaviour that creates a risk to health and safety. However, in some cases, conflict that is not managed, may escalate to the point where it becomes workplace bullying and/or harassment. If workplace conflict is affecting an employee, they should in the first instance speak to the person with whom the conflict occurred. If employees do not wish to speak to the person with who the conflict has occurred, they should speak to their manager, an Equal Employment Opportunity (EEO) Contact Officer and/or People and Capability.

Harassment (Including sexual harassment)

Harassment is any unwanted behaviour that might humiliate, offend, embarrass or intimidate another person. Even if the behaviour is not meant deliberately, it can still be harassment where a reasonable person would conclude that it would humiliate, offend, intimidate or cause a person unnecessary hurt or distress. In the case of sexual harassment, it need only be shown that a reasonable person would anticipate the possibility that the behaviour would offend, humiliate or intimidate.

This can include:

- offensive or demeaning comments or jokes, even if the other person doesn't seem to mind and even if it is not intended to offend;
- requesting, sending or showing sexual or offensive pictures or messages (including by phone or on social media);
- unwelcome comments or questions about a person's appearance, sexual activities or private life;
- unwelcome physical contact, such as shoulder massages or invading someone's personal space;
- persistently asking someone on a date after previous refusals;
- inappropriate pictures or signs in the workplace.

Please refer to Council's '*Sexual Harassment Policy*' for further guidance specifically relating to harassment of a sexual nature.

Unlawful harassment occurs when an employee or group of employees is made to feel intimidated, insulted or humiliated because of their protected trait, or some other characteristic specified under human rights legislation and some workplace legislation, and that it is likely that a reasonable person would expect that behaviour to offend, humiliate or intimidate. It can be obvious or indirect, physical, or verbal, repeated or one-off. It does not matter that the harassment was not intended. Unlawful harassment can also happen if someone is working in a 'hostile work environment'.

A hostile work environment can be caused by, for example, the harassment of other colleagues or offensive remarks made generally in the workplace. Examples of behaviour that may be considered as harassment may include, but are not limited to:

- persistent and unjustified criticism
- humiliation through sarcasm
- offensive gossip and defamatory remarks
- exclusion from conversations and events
- imposing unreasonable deadlines or withholding information needed to complete work.

Impact of Workplace Bullying and/or Harassment

Workplace bullying and/or harassment can be harmful to the person experiencing it and to those who witness it. It can also adversely impact people not directly involved such as family and friends, and coworkers of the person affected.

The effects will vary depending on individual characteristics as well as the situation and may include one or more of the following:

- distress, anxiety, panic attacks or sleep disturbance
- physical illness, for example muscular tension, headaches, fatigue and digestive problems
- reduced work performance, concentration and decision-making ability
- loss of self-esteem and self confidence
- feelings of isolation
- deteriorating relationships with colleagues, family and friends
- depression
- thoughts of suicide.

If a person is experiencing any of the above, they can contact the Employee Assistance Program (EAP) on 1300 687 327. The EAP is available 7 days a week, 24 hours a day.

Workplace bullying and/or harassment can also have a negative impact on Wellington Shire Council as a whole. It can hinder performance, adversely impact the culture and reflect badly on the organisation.

Unlawful discrimination

Discrimination means treating someone less favourably because of a protected attribute. Examples of treating someone less favourably include limiting access to training or other benefits, not promoting someone, or ending someone's employment.

Examples of protected attributes include:

- gender, marital or relationship status, pregnancy, breastfeeding, parental status, carer's or family responsibilities;
- sexual orientation, gender identity, intersex status, or gender expression;
- race, colour, descent, nationality, national origin, ethnicity or religion;
- disability;
- age.

For more information, please refer to the Equal Opportunity and Anti-Discrimination Policy.

Victimisation

Victimisation means treating someone negatively because they have made or have been involved in a complaint. At Wellington Shire Council we encourage our employees to report unacceptable and inappropriate behaviour and victimisation for doing so is not acceptable. It is also unacceptable to disadvantage someone because they have raised concerns or asked questions about their job or pay, or because they plan to or are taking leave or using other entitlements.

Violence

Workplace violence and aggression is when a person is abused, threatened or assaulted at the workplace or while they're working. It can cause both physical and psychological harm, making it a risk to health and safety.

This can include:

- punching, pushing, fighting or other physical violence
- threats of violence to employees, clients, and members of the public– as well as any of their family or friends.

ROLES AND RESPONSIBILITIES

Individual Responsibilities

Wellington Shire Council will not tolerate bullying, harassment or discrimination against an individual or group. Individuals are expected to:

- Behave in accordance with the organisation's *Code of Conduct*;

- Treat everyone in the workplace and work-related activities such as other staff, Councillors, customers and visitors with respect, courtesy and dignity;
- Not engage in bullying, harassing or discriminatory behaviour;
- Report any inappropriate workplace behaviour that you may witness or experience, to a Manager, the Coordinator Human Resources, the Manager People and Capability or an Equal Employment Opportunity (EEO) Contact Officer;
- Participate in any corporate training on workplace bullying and harassment, equal employment opportunity and human rights; and
- Co-operate with any investigation of complaints.

Responsibilities for Managers and Supervisors

Managers and Supervisors have additional obligations to those outlined above. As a Manager or Supervisor, Council expects you to lead by example and exhibit positive attitudes and behaviour:

- Ensure employees in your business unit or team understand their obligations under the *Code of Conduct* and this policy;
- Provide leadership to the organisation by demonstrating appropriate attitudes and behaviour at all times and ensure others in the workplace model these behaviours;
- Where inappropriate workplace behaviour is observed or reported by others, take appropriate action even if there is no formal complaint;
- Encourage employees in your business unit or team to treat each other with dignity, courtesy and respect;
- Treat all complaints seriously and confidentially; and
- In the event that unacceptable behaviour is witnessed and/or reported, contact People and Capability for guidance and assistance.

Responsibilities for People & Capability

People & Capability will:

- take any complaint of bullying or harassment seriously;
- provide information about available support services, for example, Employee Assistance Program;
- undertake prompt action to ensure all employees concerned feel safe in the workplace;
- conduct informal/formal investigations into any matter reported (or engage with suitable external parties to undertake investigations where appropriate);
- protect the confidentiality of those who report and/or have experienced harassment or bullying to the extent possible;
- afford principles of natural justice to all relevant parties;
- facilitate mediation or professional counselling where appropriate;
- make recommendations to facilitate prompt resolution of all complaints of bullying and/or harassment.

Responsibilities for Equal Employment Opportunity (EEO) Contact Officers

Wellington Shire Council has a network of Equal Employment Opportunity (EEO) Contact Officers whose role is to:

- listen to an employee's concerns about bullying and/or harassment
- not form a view about the merit of any allegations but not diminish or seek to excuse bullying or harassing behaviour
- provide information about the internal complaint process
- advise the employee that in some situations where serious allegations are raised, for example, that may expose the Wellington Shire Council to legal liability or where there is a serious risk to the health of an employee, the issue may need to be reported to management and dealt with as a formal complaint
- where appropriate, provide support for a person if he or she wants to try and resolve the issue personally

- provide information about available support services, for example, Employee Assistance Program
- raise awareness in the workplace about Wellington Shire Council's policies and procedures in relation to inappropriate workplace behaviour including bullying and/or harassment.

GUIDANCE FOR MAKING A COMPLAINT

Wellington Shire Council will not tolerate any form of inappropriate workplace behaviour including bullying, harassment, sexual harassment, unlawful discrimination, victimization, or violence in the workplace.

Wellington Shire Council strongly encourages employees who believe they have experienced inappropriate workplace behaviour or have witnessed it happen to someone else to consider the following actions (subject to the Wellington Shire Council complaints policy and procedure):

- Talk to the person directly - This should be done only if the individual feels comfortable and safe doing so (noting this approach may suit some situations and people but not others); and
- Make an informal or formal complaint - Employees are encouraged to approach and inform their direct line manager in the first instance. However, if the employee feels that it is not appropriate, they may contact People & Capability for assistance;
- Consider mediation - With the assistance of their manager or People & Capability. Employees affected by inappropriate workplace behaviour will be supported in carrying out the above actions.
- People & Capability will listen to and work with employees to ensure their safety and well-being as required by the Occupational Health and Safety Act 2004.
- In cases of assault, employees will be encouraged to make a report to the police. Employees will also be encouraged to report the incident to their direct manager or People & Capability regardless of whether a report is made to the police or not.

Process

Complaints of inappropriate workplace behaviour including bullying, harassment, sexual harassment, unlawful discrimination, victimization, or violence will be considered by the Manager People and Capability unless an external investigator is required. Processes will be undertaken in line with relevant industrial instruments and organisational policies and procedures, where applicable. Managers are required to contact People & Capability for assistance if they receive a complaint under this policy.

Informal process

In some instances, it may be that an informal approach is appropriate, such as conducting or facilitating discussions to address the behaviour, or refresher training for the general work area on the requirements of this policy. This training should support the regular training that is provided for employees regarding respectful workplace behaviour and other related people and culture matters.

Formal process

In other cases, a more formal approach may be appropriate. Formal processes typically involve investigating the complaint, making a finding as to whether the inappropriate behaviour occurred, and deciding on an appropriate outcome. Such process will be undertaken in line with relevant organisational policies, procedures and industrial instruments. Depending on the nature of the concerns raised and the parties implicated, it may be necessary or appropriate to temporarily change operations within a team to ensure a safe workplace and maintain the integrity of any review process.

Working with People & Capability, a number of temporary changes could be considered including:

- operational change to reporting lines and team composition;
- change to seating arrangements;
- change to physical work location;
- taking periods of approved leave; or

- suspension.

It will not be presupposed that the temporary change will involve the complainant.

The complainant should be consulted before any decision relating to temporary change involving them or the respondent is finalised. It is important that the measures do not result in any detriment to the complainant (as this may amount to victimisation, which is unlawful).

Any operational change should only be enacted in collaboration with People & Capability to ensure it is an appropriate and proportionate response to the matter and approved at the necessary delegate level (if required). People & Capability can assist with conducting discussions with affected staff about any operational changes. Disclosure of information or making a complaint can be very difficult for the affected staff member/s. Managers should take necessary welfare steps, such as letting staff members go home for the day, ensuring they have safe transport, connecting them with a support person and with the EAP or equivalent.

Misconduct

The process for managing misconduct is found under the Discipline and Performance Management Policy. A substantiated complaint of inappropriate workplace behaviour including bullying, harassment, sexual harassment, unlawful discrimination, victimization, or violence in the workplace may result in several outcomes against an employee, including termination of employment.

The standard contracts of employment for executives notes that an executive shall conform to, observe and comply with the directions and restrictions, regulation of the employer and comply with all legal requirements.

Natural justice and procedural fairness

Both the complainant and respondent are to be afforded natural justice and procedural fairness. This will allow relevant evidence to be examined in a procedurally fair way. Relevant evidence might include manager reports, emails, witness reports of the alleged conduct, text messages or the complainant's personal records.

When considering the report of inappropriate workplace behaviour including bullying, harassment, sexual harassment, unlawful discrimination, victimization, or violence the complainant and respondent will be:

- treated fairly and respectfully; and
- allowed the opportunity to respond to any allegations made against them before any report is finalised and a final decision is made.

Bystander intervention

Bystanders, including colleagues, who witness or are aware of inappropriate workplace behaviour, can play an important role in preventing it from occurring in the workplace. When grounded in behaviours of integrity and respect, action taken by colleagues can positively impact on defining workplace culture.

Bystanders that are aware of any form of inappropriate workplace behaviour including bullying, harassment, sexual harassment, unlawful discrimination, victimization, or violence are encouraged to:

- provide support to the colleague who is being subjected to the behaviour
- formally or informally challenge concerning behaviour; and
- report the behaviour to their manager or Human Resources.

The standard that people walk past is the standard that people accept. In some situations, a witness may wish to remain anonymous and where appropriate, anonymity will be provided. However, it may not be possible in all circumstances to keep the identity of a person, or people providing information, confidential. In some situations, it may be the case that a respondent may need to be provided with the

full details of allegations when consideration of procedural fairness and natural justice are taken into account.

What happens if this policy is breached?

Council will consider disciplinary action against any individual or group in breach of this policy. Depending on the outcome of an internal or external investigation and the severity of the breach, disciplinary action may range from provision of training or counselling through to verbal or written warning or termination of employment / engagement with Council.

A person who commits a serious breach of this policy may also be in breach of the *Occupational Health and Safety Act 2004* and the *Crimes Act 1958 (Vic)*. This may result in prosecution of the person and a possible fine, intervention order or jail sentence. Where there is an alleged breach of this policy, all information must be treated confidentially, to the extent possible, by all parties involved.

Where a complaint is serious and disciplinary action needs to be taken, information will be disclosed only to those people who need to know about the complaint. The obligation of confidentiality does not prevent Council from using or disclosing any information necessary to initiate or defend any legal proceedings, or to make any submissions in relation to any inquiry or complaint, or to refer a matter to the Victoria Police.

It is unlawful to victimise a person for making a legitimate complaint of workplace bullying. Furthermore, an individual reporting a legitimate complaint will not be disadvantaged or subject to negative treatment by Council.

EXTERNAL COMPLAINTS

Employees have the right to make an application to the Fair Work Commission for an order to stop the bullying. If the complaint also concerns breaches of Equal Opportunity and Sexual Harassment laws, please refer to our Equal Employment Opportunity and Anti-Discrimination Policy and Sexual Harassment Policy located in the Council Policy Manual.

COUNCILLORS

Councillors are encouraged to speak to the CEO in the first instance.

Councillors have full access to the Employee Assistance program. In the event that the CEO feels that other resources could be required for support, the General Manager Corporate Services and/or the Mayor can assist in handling the process internally.

Where the allegation/dispute cannot be resolved, Councillors have the ability to commence an external mediation process which is facilitated by an external and independent mediator engaged by the CEO and failing that, commencement of the internal arbitration process which involves an independent arbiter.

Councillors also have the option to contact The Victorian Civil and Administrative Tribunal (VCAT). For further details see the Councillor Code of Conduct.

SUPPORT OPTIONS

A range of options are available to Councillors and employees that provide support in regards to inappropriate workplace behaviour including bullying, harassment, sexual harassment, unlawful discrimination, victimization, or violence.

The Wellington Shire Council's primary contacts include Manager People and Capability, HR support, and General Manager Corporate Services.

Employee Assistance Program

The Wellington Shire Council provides an EAP, which is a short-term, confidential, counselling service designed to offer a problem-solving, solution-oriented approach to support employees with personal or work-related issues. The EAP is staffed by independent qualified practitioners. All employees (and their immediate family) have access to the EAP, which provides for a limited number of counselling sessions at no cost to the employee, and can be provided over the phone or face-to-face. Managers and supervisors can access Manager Assist through the EAP, to help with workplace issues.

The Wellington Shire Council's EAP provider is Converge International 1300 687 327.

HUMAN RIGHTS

Wellington Shire Council is committed to upholding the Human Rights principles as outlined in the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* and referred to in Council's Human Rights Policy. The Human Rights Checklist has been completed and this policy accords with Council's policy commitment to uphold human rights principles.

This policy is approved by the Chief Executive Officer on 29 May 2024



DAVID MORCOM
Chief Executive Officer

REVISION HISTORY

VERSION	DATE	MAJOR / MINOR UPDATE	SUMMARY OF CHANGES
1.0	May 2024	New Council Policy	Policy converted from Employee Policy to Council Policy. Formatting changes. policy application was amended to reference 'others' rather than 'volunteers, labour hire workers, Councillors and clients' and definition of 'individuals' included, being defined as employees, volunteers, labour hire workers, Councillors, any Wellington Shire Council Committee members and clients of Wellington Shire Council. Addition of 'working from home' as an off site work location