



## **Policy No. 2015- 34**

# **Harassment and Discrimination Policy**

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# Harassment and Discrimination Policy and Procedures

This Policy outlines Central Highlands Council's policy regarding harassment and discrimination within the workplace. Central Highlands Council considers that our workers are entitled to be treated fairly and with respect in the workplace. Our goal is to provide prompt and reasonable management of workplace issues to assist our workers and work together to achieve a healthy and safe work environment.

This policy should be read in conjunction with applicable, appropriate and associated policies, procedures, legislation, codes of practice, guidelines and best practice models.

## 1. WHO THIS POLICY APPLIES TO

This policy applies to all Councillors, Committee Members, employees, consultants, volunteers, work placement/work experience participants and contractors of Central Highlands Council.

Places of work include attending training, work related events, 'off site', and other worksites of which you are undertaking Central Highlands Council business.

## 2. PRINCIPLES

- All workers are entitled to make a complaint if they believe that they are not being treated fairly or with respect in the workplace;
- Options that restore productive work practices (including conciliation and/or mediation) are the preferred approach within the complaint resolution process;
- Where this is not successful both parties may discuss a process to reach an acceptable outcome; and
- Management may decide to undertake a formal investigation.

Central Highlands Council will endeavour to maintain the confidentiality of complaints however there may be a need to provide information where required by law or where a third party is involved or where we are required to defend an action.

*Sexual harassment and victimisation is unlawful under the Sex Discrimination Act 1984 (Cth) as well as anti-discrimination legislation operating in every State and Territory.*

Under the Tasmanian Anti-Discrimination Act 1998, two types of discrimination are recognised; direct and indirect. Both forms of discrimination are outlined separately.

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### 3. DISCRIMINATION OR HARASSMENT

Discrimination generally occurs when someone is treated less favourably than others because they have a particular characteristic or belong to a particular group of people. Harassment generally involves unwelcome behaviour that intimidates, offends or humiliates a person because of a particular personal characteristic such as race, age, gender, disability, religion or sexuality.

A worker may feel bullied, harassed and discriminated against at the same time.

Discrimination and harassment are dealt with separately to bullying under anti-discrimination, industrial relations and human rights laws. If a worker believes they are experiencing discrimination or harassment in the workplace then should talk with their manager or senior management.

### 4. WHAT IS HARASSMENT?

Harassment can include a wide range of conduct that causes another person to feel offended, humiliated, intimidated, hurt, insulted, frightened or ridiculed and may cause damaging stereotyping.

This could be a deliberate act or unintentional, however it involves the exertion of power by one person over another.

Workers may find it extremely difficult when they are not in a position to deal with their harasser on equal terms. Power does not necessarily imply authority - it can be informal or derived, for instance, from membership of a culturally dominant group or physical strength.

The Tasmanian Anti-Discrimination Act 1998 outlines certain conduct and sexual harassment which is not acceptable. It states:

*“A person must not engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of gender, marital status, pregnancy, breastfeeding, parental status or family responsibilities in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, insulted or ridiculed.”*

It should be noted that any form of harassment which occurs in the workplace – even if it is not specifically referred to in the Act as being unlawful, will nevertheless, if proven, be treated as a breach of this policy. If the behaviour is unwelcome, uninvited, unreciprocated and usually repeated then it may be classed as harassment or bullying.

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## 5. SEXUAL HARASSMENT

The Tasmanian Anti-Discrimination Act 1998 specifically states:

No-one should engage in any conduct which offends, humiliates, intimidates, insults or ridicules another person on the basis of an attribute or 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.

- A person must not sexually harass another person;
- Sexual harassment takes place if a person –
  - ✚ subjects another person to an unsolicited act of physical contact of a sexual nature; or
  - ✚ makes an unwelcome sexual advance or an unwelcome request for sexual favours to another person; or
  - ✚ makes an unwelcome remark or statement with sexual connotations to another person or about another person in that person's presence; or
  - ✚ makes any unwelcome gesture, action or comment of a sexual nature; or
  - ✚ 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.

## 6. INTIMIDATORY HARASSMENT

Intimidatory harassment involves the thoughtless or intentional use of physical or organisational power to coerce a person to perform a particular action or to instil in the person a feeling of humiliation or intimidation.

Intimidatory harassment should not be confused with legitimate comment and advice (including relevant negative comment or feedback) from Management, on work performance or work related behaviour, delivered in a reasonable manner.

The practical example of determining harassment is to look at whether a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be unreasonably offended, humiliated, insulted or ridiculed.

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## 7. WHAT IS DISCRIMINATION?

Direct discrimination takes place if an individual treats another person, on the basis of any prescribed attribute, less favourably than a person without that attribute or characteristic.

Some of the more common attributes of discrimination include:

- Race;
- Age;
- Sexual orientation;
- Lawful sexual activity;
- Gender;
- Marital status;
- Pregnancy;
- Breastfeeding;
- Parental status;
- Family responsibilities;
- Disability;
- Industrial activity;
- Political belief or affiliation;
- Political activity;
- Religious belief or affiliation;
- Religious activity;
- Irrelevant criminal record;
- Irrelevant medical record; or
- Association with a person who has or is believed to have any of these attributes.

For direct discrimination to take place it is not necessary to show that the attribute is the sole reason for the unfavourable treatment. It is also not necessary that the person who discriminates has any motive. All that has to be shown is the person's attribute was at least a partial reason for the treatment of the other person.

Indirect Discrimination takes place if a person imposes a condition, requirement or practice which is unreasonable in the circumstances and has the effect of disadvantaging a member of a group of people who:

- Share, or are believed to share, a prescribed attribute; or

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- Share, or are believed to share, any of the characteristics of that attribute more so than a person who is not a member of that group.

For indirect discrimination to be proven, it is not necessary that the person who discriminates is aware that the condition or characteristic exists neither does there need to be an actual disadvantage to the person or group of people.

## **8. WHAT IS VICTIMISATION?**

Victimisation takes place if a person subjects, or threatens to subject another person or an associate of that other person to any disadvantage. For example, a person must not victimise another person because that other person made, or intends to make a complaint under the Anti-Discrimination Act 1998; or gave, or intends to give evidence or information in connection with any proceedings under the Anti-Discrimination Act 1998.

## **9. PROCESS FOR MAKING A COMPLAINT**

If a worker believes they are subject to discrimination, bullying or harassment, there are a number of options available for resolving a complaint. Workers are required to work with Central Highlands Council to progress through the options in a way that will provide a satisfactory outcome with the least anguish for all persons concerned as well as other workers in the work area.

To assist in the resolution of issues refer to the Grievance Process.

## **10. GRIEVANCE PROCESS FOR DEALING WITH COMPLAINTS**

If a worker has an issue at work, there are a number of options available for resolving their complaint. Workers are required to work with Central Highlands Council to progress through the options and respond to any questions personally and honestly.

To assist in the resolution of issues the following process should be undertaken:

- 1) Speak to the person(s) involved directly to see if you can settle the issue;
- 2) Seek assistance from your Manager/Supervisor – a written statement often assists in clarifying issues alternatively your Manager/Supervisor will take notes of your meeting;

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- 3) Seek assistance from the General Manager if you have not received a response from the Manager/Supervisor in 10 business days; and
- 4) Notify your Manager/Supervisor or General Manager if you would like conciliation and/or mediation (appointed in consultation between Management and the worker).

Workers may request a support person to attend meetings during the grievance process.

At any discussion or meeting the worker is required to discuss the issues and personally answer any questions raised by the employer or their representative.

All parties are able to take actions with Fair Work or other jurisdictions as determined.

If the behaviour is likely to amount to a criminal act or is serious in nature, the complaint should be referred to the General Manager who will decide if the matter is to be referred to the police or other entity.

Any worker involved in a complaint may be suspended, at the General Manager's discretion, during the investigation and decision making processes.

Where a workplace matter is a criminal matter, the investigations may be managed separately and a decision relating to employment will be made separate to any criminal prosecution.

**The process for managing allegations is undertaken through the grievance process.**

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