

POLICY REGISTER

EQUAL EMPLOYMENT POLICY

Policy adopted: 27th September 2018 Minute No. 214.9.18

Reviewed:

File Ref: P13-1, S12-2.4

DOCUMENT CONTROL

Issue	Prepared/Revised By and Date	Action/Amendment Description	Approved By and Date
1.0		First Edition	Council Minute No. 214.9.18 (27th September 2018)

Policy Objective

Warren Shire Council aims to provide an environment where employees and others in the workplace are treated fairly and with respect, and are free from unlawful discrimination, harassment, vilification and bullying.

The Council aims to ensure when employment decisions are made, they are based on merit, not on irrelevant attributes or characteristics that an individual may possess. The Council also tries to create a work environment which promotes good working relationships.

Policy Scope

This Policy applies to employees, agents and contractors (including temporary contractors), administrators appointed under section 256 of the *Local Government Act 1993* (NSW) members of council committees, conduct reviewers, delegates of council, work experience employees and volunteers of the Council, collectively referred to in this Policy as 'Council Officials'.

This Policy is not limited to the workplace or work hours. This Policy extends to all functions and places that are work related. For example, work lunches, conferences and client functions. Equal Employment Opportunity (EEO) laws apply to all areas of employment, as well as the provision of goods and services.

Policy Statement

The purpose of this EEO Policy and the EEO Management Plan is to achieve the following outcomes:

- a workplace culture displaying fair workplace practices and behaviours,
- a diverse and skilled workforce, and
- improved employment access and participation by EEO groups.

EEO groups are people affected by past or continuing disadvantage or discrimination in employment. As a result, they may be more likely to be unemployed or working in lower paid jobs.

These groups are:

- women
- Aboriginal people and Torres Strait Islanders
- members of racial and ethnic minority groups, and
- people with a disability.

The EEO objectives are designed to create a benchmark for future planning and workplace interaction and provide Warren Shire Council with a mechanism to measure our progress in achieving our goals in relation to EEO.

In developing the goals and outcomes contained in the EEO Management Plan, consideration has been given to the National Framework for Women in Local Government. The ongoing evaluation of the Plan will also take into account the content of the Framework.

This EEO Policy and EEO Management Plan are prepared in accordance with the requirements of the Local Government Act 1993.

Legislation

Under EEO laws, discrimination, vilification, sexual harassment, bullying and victimisation are unlawful and strictly prohibited. Warren Shire Council has a legal obligation to make sure the workplace is free from discrimination, harassment and bullying as required by the following legislation:

- **Anti-Discrimination Act (NSW) 1977** - specifies that Council is “to eliminate discrimination or harassment in employment on the grounds of Race, (including colour, nationality and national or ethnic origin), sex (including pregnancy), marital status, disability, homosexuality, age (compulsory retirement only), transgender, carer's responsibility. Other unlawful conduct includes sexual harassment; vilification on the basis of race, homosexuality, transgender and HIV/AIDS status.
- **Local Government Act (NSW) 1993** - Section 344 of this legislation states that Council is “to promote equal employment opportunity for women, members of racial minorities and physically handicapped persons in councils”.

In accordance with Section 345 of this Act, Council is also obliged to “prepare and implement an equal employment opportunity management plan.” This legislation is further supported by the National Framework for Women in Local Government which aims to increase women’s participation in local government decision-making.

- Other laws relating to EEO include:
 - Age Discrimination Act 2004
 - Disability Discrimination Act 1992
 - Disability Services Act 1993
 - Equal Opportunity for Women in the Workplace Australia 1999
 - Human Rights and Equal Opportunity Commission Act 1992
 - Human Rights (Sexual Conduct) Act 1994
 - Racial Discrimination Act 1975
 - Racial Hatred Act 1995
 - Sex Discrimination Act 1984
 - Occupational Health and Safety Act 2000
 - Privacy and Personal Information Protection Act 1998
 - Carers Recognition Act 2010, and
 - Local Government (State) Award 2017
- Council has a moral obligation to ensure its employees are not subjected to other forms of harassment. All staff members are expected to uphold the organisation’s values and to treat each other with consideration and respect at all times in accordance with section 3.6 of the Code of Conduct.

1. DISCRIMINATION

A. Direct Discrimination

Direct discrimination in employment occurs when a person is treated less favourably than another in their employment because of a reason or ground which is prohibited by law. The prohibited grounds of discrimination are set out in the Federal, State and Territory laws and include sex, race, age, etc. A full list of the grounds of discrimination which operate Federally and in NSW will be relevant, and are listed out below.

<ul style="list-style-type: none"> ▪ Race (including colour, nationality, descent, ethnic, ethno-religious or national origin) 	<ul style="list-style-type: none"> ▪ Religious belief or activity
<ul style="list-style-type: none"> ▪ Sex 	<ul style="list-style-type: none"> ▪ Marital status, relationship status
<ul style="list-style-type: none"> ▪ Pregnancy (including potential pregnancy) 	<ul style="list-style-type: none"> ▪ Homosexuality, transexuality, sexuality, sexual preference, lawful sexual activity, gender identity
<ul style="list-style-type: none"> ▪ Carers' responsibilities, family responsibilities, carer or parental status, being childless 	<ul style="list-style-type: none"> ▪ Disability, including physical, mental and intellectual disability
<ul style="list-style-type: none"> ▪ Breastfeeding 	<ul style="list-style-type: none"> ▪ Age (including compulsory retirement)
<ul style="list-style-type: none"> ▪ Industrial/trade union membership, non-membership or activity 	<ul style="list-style-type: none"> ▪ Political belief or activity
<ul style="list-style-type: none"> ▪ Employer association membership, non-membership or activity 	<ul style="list-style-type: none"> ▪ Criminal record
<ul style="list-style-type: none"> ▪ Temporary absence from work because of illness or injury 	<ul style="list-style-type: none"> ▪ Medical record
<ul style="list-style-type: none"> ▪ HIV/AIDS 	<ul style="list-style-type: none"> ▪ Defence service
<ul style="list-style-type: none"> ▪ Spent convictions 	<ul style="list-style-type: none"> ▪ Association (i.e. association with a person who has one or more of the attributes for which discrimination is prohibited)

B. Indirect discrimination

Indirect discrimination may occur when an employer imposes a policy or requirement which applies to everyone equally but it in fact operates to disadvantage a particular group because of a characteristic of that group, such as their sex, age, race (ie - a prohibited ground of discrimination).

Example: The Council imposes a height restriction on all applicants for the position of 'Parking Officer', that is, an applicant must be over 185cm (6 feet) tall in order to be successfully considered for the position. This requirement at first glance appears fair because it applies to all applicants irrespective of gender. However, in practice this requirement will disadvantage women as a group because statistically, women are naturally shorter than men. So the effect is to disadvantage women because of their sex. The criteria for the position should be replaced with a focus on outcomes and performance.

Discrimination also includes the situation where a Council Official harasses another person based on a ground of discrimination. Harassment is unwelcome conduct that a reasonable person would expect to offend, humiliate or intimidate.

2. VILIFICATION

Vilification is a public act which incites hatred, severe contempt or severe ridicule of a person or group, because of race, homosexuality, transgender, transsexuality or HIV/AIDS. Vilification is a particularly serious breach of EEO laws and will be dealt with accordingly.

3. SEXUAL HARASSMENT

Sexual harassment is unwelcome conduct of a sexual nature, which makes a person feel offended, humiliated or intimidated. Conduct can amount to sexual harassment even if the person did not intend to offend, humiliate or intimidate the other person.

However, conduct will not be sexual harassment if a reasonable person, having regard to all the circumstances, would not have anticipated that the conduct would offend, humiliate or intimidate the other person. Sexual harassment does not have to be directed at a particular individual to be unlawful. Behaviour which creates a hostile working environment for other Council Officials can also be unlawful.

Examples of sexual harassment include, but are not limited to:

- physical contact such as pinching, touching, grabbing, kissing or hugging
- staring or leering at a person or at parts of their body
- sexual jokes or comments
- requests for sexual favours
- persistent requests to go out, where they are refused
- sexually explicit conversations
- displays of offensive material such as posters, screen savers, internet material etc
- accessing or downloading sexually explicit material from the internet
- suggestive comments about a person's body or appearance
- sending rude or offensive emails, attachments or text messages.

4. BULLYING

Bullying is repeated, unreasonable behaviour directed towards an individual or group that creates a risk to health and safety. Unreasonable behaviour means behaviour that a reasonable person, having regard to all the circumstances, would expect to victimise, humiliate, undermine or threaten. Single incidents of unreasonable behaviour can also create a risk to health and safety and may escalate into bullying. There is no requirement that bullying be intentional.

It is not bullying for a manager or supervisor to counsel a Council Official about their performance. Performance counselling is a necessary part of ensuring Council Officials meet the Council's standards of work and behaviour. Also, other reasonable managerial actions such as disciplinary action, work directions and orders, and allocation of work in compliance with business needs and systems do not constitute bullying. However, unreasonable management actions can constitute bullying if the content, delivery and expectation of the management action are unreasonable.

5. VICTIMISATION

Victimisation is where a person is retaliated against or subjected to a detriment because they have lodged a complaint, they intend to lodge a complaint or they are involved in a complaint of unlawful conduct. Council Officials must not retaliate against a person who raises a complaint or subject them to any detriment.

Responsibilities in Relation to EEO

The overall responsibility for monitoring the effectiveness of the EEO Policy and Management Plan and for implementing on-going programs of action to make the plan fully operational lies with Council's Executive Management Team (MANEX). However, Council recognises EEO is the responsibility of everyone in the Council, and as such will ensure advice on EEO matters is available on an on-going basis to all.

The co-ordination of the EEO Management Plan is primarily the responsibility of the Corporate and Finance Directorate. Corporate and Finance has responsibility for:

- Compilation of EEO statistics;
- Distribution and maintenance of the EEO Management Plan;
- Provision of EEO information to other Directors and the General Manager;
- Ensuring EEO Management Plan is in accordance with and meets the obligations of the Local Government Act 1993;
- Identification and coordination of EEO training to meet Council's EEO goals; and
- Evaluation of EEO training.

Other people within Council have responsibilities for ensuring the implementation of EEO as follows:

Individual Employees - have a responsibility to:

- Understand and comply with this Policy;
- Understand and comply with the Council's Code of Conduct;
- Be aware of their rights and responsibilities under Council's policy and the law;
- Treat all work colleagues equally and in a non-discriminatory manner, and with consideration and respect at all times
- Ensure they do not engage in any unlawful conduct towards other employees, Council Officials, customers/clients or others with whom they come into contact through work;
- Follow the complaint procedure in this Policy if they experience any unlawful conduct;
- Report any unlawful conduct they see occurring to others in the workplace in accordance with the complaint procedure in this Policy;
- Maintain confidentiality if they are involved in the complaint procedure;
- Promote harmonious working relationships with other members of staff in all circumstances;
- Undertake EEO training provided by Council; and
- Align personal behaviour with Council's values.

The General Manager and Executive Team - have additional responsibility to:

- Promote the aims and objectives of the EEO Policy and Management Plan and associated practices and procedures;
- Ensure employees act in a non-discriminatory manner, free of harassment and bullying;
- Identify EEO needs;
- Consider amendments to the EEO Policy and Management Plan;
- Ensure all employees participate in corporate EEO training as required; and
- Ensure Managers fulfil their responsibilities under EEO.

Managers/Supervisors/Coordinators/Team Leaders - have additional responsibility to:

- Identify EEO needs;
- Consider amendments to the EEO Policy Management Plan, and make suggestions where appropriate;
- Ensure employees act in a non-discriminatory manner, free of harassment and bullying;
- Ensure employees treat each other with consideration and respect at all times;
- Ensure employees are aware of Council's EEO Management Plan;
- Ensure new employees on commencement undertake corporate and workplace inductions and participate in Council's induction training program;
- Ensure all employees have equal access to employment and training opportunities subject to individual, directorate and corporate priorities;
- Ensure recruitment and selection procedures within their area of responsibility are not discriminatory; and
- Ensure employees under their supervision, fulfil their responsibilities in regard to EEO.

Breach of this Policy

All Council Officials are required to comply with this Policy at all times. If an employee breaches this Policy, they may be subject to disciplinary action. In serious cases this may include termination of employment. Agents and contractors (including temporary contractors) who are found to have breached this Policy may have their contracts with the Council terminated or not renewed. For other Council Officials a breach of this Policy could result in you losing your position.

In some cases, behavior and actions which result in breaching this policy may also be a breach of legislation i.e. illegal and individuals involved may be prosecuted.

Warren Shire Council will fully support any external agency in any investigation into activity which is identified as breaching this policy.

If a person makes an unfounded complaint or a false complaint (e.g. - making up a complaint to get someone else in trouble or making a complaint where there is no foundation for the complaint), that person may be disciplined and may be exposed to a defamation action.

Complaint handling procedure

If a Council Official feels they have been subjected to any form of unlawful conduct contrary to EEO laws this Policy or the Council's Code of Conduct, they should not ignore it. The Council has a complaint procedure for dealing with these issues.

The complaint procedure has numerous options available to suit the particular circumstances of each individual situation. The manner in which a complaint will be handled is solely at the discretion of the General Manager.

Examples of the ways in which a complaint can be dealt with

A. Confront the Issue

If a Council Official feels comfortable doing so, they should address the issue with the person concerned. A Council Official should identify the offensive behaviour, explain the behaviour is unwelcome and offensive and ask the behaviour stop. It is important the person is aware their behavior is unacceptable. It may be that the person was not aware that their behaviour was unwelcome or caused offence.

This is not a compulsory step. If a Council Official does not feel comfortable confronting the person, or the Council Official confronts the person and the behaviour continues, the Council Official should report the issue to the Work Health and Safety Officer (WH&S) or the Divisional Manager.

If a Council Official is unsure about how to handle a situation and is also unsure if they want to make a complaint they should contact the WH&S Officer for support and guidance. The WH&S Officer will aim to assist people uncertain about their rights and options.

B. Report the Issue

A Council Official should report the issue to their Supervisor or the WH&S Officer.

The Supervisor or WH&S Officer will aim to deal with the Council Official's complaint in accordance with this Policy. There are two complaint procedures that can be used being informal and formal (detailed further below). The type of complaint procedure used will be determined by the nature of the complaint that is made.

C. Informal Complaint Procedure

Under the informal complaint procedure there is a broad range of options for addressing the complaint. The procedure used to address the issue will depend on the individual circumstances of the case. Possible options include, but are not limited to:

- a) the Supervisor or WH&S Officer discussing the issue with the person against whom the complaint is made; and/or
- b) the Supervisor or WH&S Officer facilitating a meeting between the parties in an attempt to resolve the issue and move forward.

The informal complaint procedure is more suited to less serious allegations that if founded, would not warrant disciplinary action being taken.

D. Formal Complaint Procedure

The formal complaint procedure involves a formal investigation of the complaint. Formal investigations may be conducted by the Divisional Manager or a person from outside the Council, appointed by the Council.

An investigation generally involves, collecting information about the complaint and then making a finding based on the available information as to whether or not the alleged behaviour occurred. Once a finding is made, the Divisional Manager or the external investigator will make recommendations about resolving the complaint.

If the Council considers it appropriate for the safe and efficient conduct of an investigation, Council Officials may be required not to report for work during the period of an investigation. The Council may also provide alternative duties or work during the investigation period. Generally, Council Officials will be paid their normal pay during any such period.

If a complaint is against the Divisional Manager, then the complaint will be investigated by the General manager or an external party appointed by Council. If a complaint is made about the General manager, then the Mayor shall seek assistance from and External party appointed by Council.

Confidentiality

All staff will endeavour to maintain confidentiality as far as possible. However, it may be necessary to speak with other Council Officials in order to determine what happened, to afford fairness to those against whom the complaint has been made and to resolve the complaint. If a complaint is raised and it appears that unlawful conduct has potentially occurred, the Council will endeavour to take appropriate action in relation to the complaint.

All Council Officials involved in the complaint must also maintain confidentiality, including the Council Official who lodges the complaint. Spreading rumours or gossip may expose Council Officials to a defamation claim. Council Officials may discuss the complaint with a designated support person or representative (who is not a Council Official employed or engaged by the Council). However, the support person or representative must also maintain confidentiality.

Possible outcomes

The possible outcomes will depend on the nature of the complaint and the procedure followed to address the complaint. Where an investigation results in a finding that a person has engaged in unlawful conduct, breach of this Policy or breach of the Code of Conduct that person may be disciplined.

The type and severity of disciplinary action will depend on the nature of the complaint and other relevant factors. Where the investigation results in a finding that the person complained against has engaged in serious misconduct, this may result in instant dismissal. Any disciplinary action is a confidential matter between the affected Council Official and the Council.

Agents and contractors (including temporary contractors) who are found to have engaged in unlawful conduct and/or breached this Policy or the Council's Code of Conduct, may have their contracts with the Council terminated or not renewed. For other Council Officials, a breach of this Policy or the Council's Code of Conduct could result in the loss of their position subject to Award requirements.

The Council may take a range of other non-disciplinary outcomes to resolve a complaint, depending on the particular circumstances. Examples include, but are not limited to:

- training to assist in addressing the problems underpinning the complaint;
- monitoring to ensure that there are no further problems;
- implementing a new policy;
- requiring an apology or an undertaking that certain behaviour stop; and/or
- changing work arrangements.

What to do if you are not satisfied with the outcome

If any of the parties are not satisfied with the way the complaint was handled or the outcome of the complaint process they can contact the General Manager. The complaint handling process and/or the outcome may then be reviewed by the Council's Internal Auditor. The General Manager's or Internal Auditor's decision in relation to the review will be final.

The Council's goal is to resolve issues in-house wherever possible. Council Officials can seek the assistance of an outside agency if they feel their complaint has not been adequately addressed. Council supports the assistance of union or employee associations to assist in resolving issues under this policy or to provide support through the process.

Reporting Harassment, Discrimination or Bullying

All employees of Council Officials have a legal and moral responsibility to treat each other fairly and are expected to fulfil these responsibilities as a condition of employment.

Where Council Officials believe they have been the subject of discrimination, harassment or bullying on any grounds, they are encouraged to report the matter using Council's Grievance Policy.

Assistance is also available from:

(a) **Employee Assistance Program**

The EAP provides employees with access to counselling services to identify and resolve problems influencing their well-being and effectiveness at work.

(b) **Human Resources Officer and WHS Officer**

The HR and WHS Officers can also give advice to staff members, supervisors, managers and executive officers regarding harassment issues and grievance resolution procedures.

(c) **Unions**

Unions may be able to assist their members and can be contacted at any stage. They can support members in bringing a complaint to the attention of management and monitoring responses to ensure that appropriate action is taken.

(d) **Anti-Discrimination Board of NSW**

Staff members can contact the Anti-Discrimination Board (ADB) at any stage for confidential advice. Employees may choose to lodge a formal complaint with the ADB if they are not satisfied with the way in which their grievance is being handled internally. The ADB will refer you to a more appropriate agency, such as the Human Rights and Equal Opportunity Commission, where necessary.

Definitions

Council Official within this policy collectively refers to employees, agents and contractors (including temporary contractors) of administrators appointed under section 256 of the *Local Government Act 1993* (NSW) members of council committees, conduct reviewers, delegates of council, work experience employees and volunteers of the Council.

Equal Employment Opportunity (EEO) is the principle that ensures that all employees and potential employees are treated equitably and fairly, regardless of their race, sex, marital status, age, physical or intellectual impairment, or sexual preference.

EEO Groups are groups that have been identified as experiencing high levels of discrimination and disadvantage in the workplace and for whom EEO strategies are needed to be developed to address these disadvantages. These groups are:

- Women
- People of non-English speaking backgrounds (NESB)
- People of Aboriginal or Torres Strait Islander descent
- People with physical disabilities

Contacts for Outside Agencies

Australian Human Rights Commission
Toll Free: 1300 656 419

Anti-Discrimination Board (NSW)
Tel: 02 9268 5555
Toll Free: 1800 670 812 (rural and regional NSW only)

Exceptions

None

Legislation

Anti-Discrimination Act (NSW) 1977
Local Government Act 1993
Sex Discrimination Act 1984
Racial Discrimination Act 1975
Disability Discrimination Act 1992

Related Documents

Code of Conduct
Grievance Policy

Review

Warren Shire Council reserves the right to vary, replace or terminate this policy at any time. This policy will be reviewed every 4 years or following an ordinary election of council, or earlier if there are relevant statutory or State Government policy changes.

Council official acknowledgement

I acknowledge and confirm:

- *receiving a copy of Council’s Anti-Discrimination and Equal Employment Opportunity Policy;*
- *I will comply with the Policy; and*
- *I understand there may be disciplinary consequences if I fail to comply the Anti-Discrimination and Equal Employment Opportunity Policy, including up to termination of my employment.*

Your name: _____

Signed: _____

Date: _____