



## Equal Opportunity and Human Rights Policy

Department/Unit	People and Culture	First Implemented	28 October 2002	Review Date	June 2024
Origin	People and Culture Advisor	Reviewed	April 2021	Version	5
Authorising Officer	For endorsement by Council	Effective From	Immediately	TRIM Reference	E513/E1533

### Purpose/Objective

The aim of this Policy is to confirm Council's commitment to considering and respecting human rights when making decisions that impact people and the community, while at the same time ensuring compatibility and compliance with the Charter of Human Rights and Responsibilities Act 2006. We must ensure all Council employees, contract employees, volunteers, and Councillors are aware of the Council's commitment to each person receiving equality of treatment and the opportunity to progress to their full potential.

### Policy Statement

Council will always act in a manner that is compatible with human rights and equal opportunity principles and objectives.

This Policy has been developed to ensure all parties have a clear understanding of Council's culture and standards in dealing with others in an equal, open and transparent manner, with freedom from discrimination, harassment and bullying. It also provides direction on the appropriate processes that are to be followed when an issue arises so that it can be handled sensitively and managed in the best possible manner.

We are bound by the provisions of the *Charter of Human Rights and Responsibilities Act 2006*, legislated in Victoria (the Charter). This includes ensuring compliance with the following principles in our policies, procedures, processes, local laws, service provision, decision making, treatment of staff, use of resources and interactions with the community.

1. Right to recognition and equality before the law
2. Right to life
3. Right to protection from torture and cruel, inhuman or degrading treatment
4. Right to freedom from forced work

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5. Right to freedom of movement
6. Right to privacy and reputation
7. Right to freedom of thought, conscience, religion and belief
8. Right to freedom of expression
9. Right to peaceful assembly and freedom of association
10. Right to protection of families and children
11. Right to take part in public life
12. Cultural rights: including recognition that human rights have a special importance for Aboriginal people in Victoria
13. Property rights
14. Right to liberty and security of person
15. Right to humane treatment when deprived of liberty
16. Rights of children in the criminal process
17. Right to a fair hearing
18. Rights of persons in criminal proceedings
19. Right not to be tried or punished more than once
20. Protection from retrospective criminal laws and penalties

## Definitions

### Discrimination

To treat someone unfairly on the basis of one or more of the following grounds:

- ▶ Age
- ▶ Disability (includes past, current and future disability, because of an existing medical condition, which includes the total or partial loss of a body part or a body function such as mobility, sight or hearing, disfigurement, mental health disorders, learning difficulties and a medical condition such as Multiple Sclerosis, HIV/AIDS or Hepatitis C)
- ▶ Employment activity
- ▶ Expunged homosexual conviction
- ▶ Industrial activity
- ▶ Lawful sexual activity (choosing or not choosing to take part in any form of sexual activity that is legal in Victoria, including legal sex work)
- ▶ Marital status, including single, married, divorced, widowed, separated, in a domestic partnership, in a de facto relationship
- ▶ Parental and carer status (parental includes biological parents, step-parents, adoptive parents, foster parents, guardians and for the care or support of another person includes a child, partner, parent, relative or friend)
- ▶ Pregnancy and Breastfeeding
- ▶ Physical features (a person's height, weight, size, shape, facial features, hair, birthmarks)
- ▶ Political belief or activity
- ▶ Race (includes colour, nationality, descent or ancestry, ethnic background, any characteristics associated with a particular race)
- ▶ Religious belief or activity
- ▶ Sex and Gender identity

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- ▶ Sexual Orientation, includes assumed sexual orientation
- ▶ Personal association with someone who has, or is assumed to have, one of these personal characteristics.

Discrimination can be direct or indirect.

### **Direct discrimination**

Direct discrimination happens when someone is treated unfavourably because of a personal characteristic protected by the law. Direct discrimination often happens because of unfair assumptions about what people with certain personal characteristics can and cannot do.

### **Indirect discrimination**

Indirect discrimination happens when there is an unreasonable requirement, condition or practice that disadvantages a person, or a group of people, because of a personal characteristic.

### **Harassment**

It is unlawful to treat a person less favourably on the basis of particular protected attributes including such as a person's sex, race, disability or age. Treating a person less favourably can include harassing a person. A one-off incident can constitute harassment.

Harassment can include behaviour such as:

- ▶ telling insulting jokes about particular racial groups
- ▶ sending explicit or sexually suggestive emails or text messages
- ▶ displaying racially offensive or pornographic posters or screen savers
- ▶ making derogatory comments or taunts about a person's disability, or
- ▶ asking intrusive questions about someone's personal life, including his or her sex life.

### **Sexual Harassment**

Sexual harassment is unwelcome sexual behaviour that causes a person to feel offended, humiliated, or intimidated, where a reasonable person could have anticipated that reaction in the circumstances.

Sexual harassment includes an unwelcome sexual advance, an unwelcome request for sexual favours or any other unwelcome conduct of a sexual nature.

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Sexual harassment can be physical, verbal or written and examples include:

- ▶ comments about someone's private life or the way they look
- ▶ sexually suggestive behaviour, such as leering or staring
- ▶ brushing up against someone, touching, fondling, or hugging
- ▶ sexually suggestive comments or jokes
- ▶ displaying offensive images or objects
- ▶ repeated requests to go out
- ▶ requests for sex
- ▶ sexually explicit emails, text messages or posts on social media
- ▶ sexual assault
- ▶ suggestive behaviour.

### **Workplace Bullying**

Workplace bullying is when an individual or group of individuals repeatedly behaves unreasonably towards a worker or a group of workers at work and the behaviour creates a risk to health and safety.

Unreasonable behaviour is behaviour that a reasonable person, having regard to the circumstances, may see as unreasonable. This would include, but is not limited to, behaviour that is victimising, humiliating, intimidating or threatening

*Risk to health and safety* includes risk to the mental or physical health of the employee. Because bullying at work is an occupational health and safety hazard, intent is not relevant to the definition.

A broad range of behaviours can be bullying, and this behaviour can be direct or indirect.

### **Victimisation**

Victimisation occurs if someone is treated badly or unfairly or suffers a disadvantage, because they have (or propose, intend or are believed to have):

- ▶ made a complaint,
- ▶ appeared as a witness,
- ▶ raised a concern or issue,
- ▶ asserted their rights, or
- ▶ helped someone else to raise a concern, complaint or assert their rights, under this Policy, equal opportunity legislation or occupational health and safety legislation.

## Scope

This policy applies to all Council employees, Councillors, contract employees, consultants, volunteers and other authorised personnel of Mansfield Shire Council.

## Responsibilities

Human rights are entitlements that belong to everyone and the *Victorian Charter of Human Rights and Responsibilities Act 2006* (the Charter) was enacted to protect and promote human rights.

It is the responsibility of management to provide a working environment free from discrimination, harassment and bullying and to exhibit a positive duty by taking reasonable and proportionate measures to eliminate discrimination, sexual harassment or victimisation. All complaints are to be treated confidentially, seriously and sympathetically.

All employees of Council, together with Council contract employees, volunteers and Councillors, have a legal and moral responsibility to treat each other and members of the public fairly, and are expected to fulfil these responsibilities throughout their employment.

Relevant disciplinary action will be taken against anyone found to have breached this policy. No employee will be penalised or disadvantaged as a result of raising concerns or complaints relating to discrimination, harassment or bullying.

Should any person feel their human rights have been breached by a public authority, their concerns can be raised with the Victorian Ombudsman, the Health Complaints Commissioner, or the Disability Services Commissioner.

All Mansfield Shire Council employees, Councillors, volunteers, and Council contract employees are responsible for adhering to and implementing this policy.

Management and employees are to be familiar with, and competent in the application of this Policy, and are accountable for the delivery of this policy.

Adherence to the Equal Opportunity and Human Rights Policy will be overseen by the People and Culture Department.

The People and Culture Department is the owner of this policy. Any reviews of this Policy must be made in consultation with the People and Culture Advisor.

## References / Related Policies

- ▶ Racial Discrimination Act 1975 (Cth)
- ▶ Sex Discrimination Act 1984 (Cth)
- ▶ Australian Human Rights Commission Act 1986 (Cth)
- ▶ Disability Discrimination Act 1992 (Cth)
- ▶ Victorian Local Government Women's Charter 1997
- ▶ Racial and Religious Tolerance Act 2001(Vic)
- ▶ Age Discrimination Act 2004(Cth)

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- ▶ Occupational Health and Safety Act 2004 (Vic)
- ▶ Charter of Human Rights and Responsibilities Act 2006 (Vic)
- ▶ Equal Opportunity Act 2010 (Vic)
- ▶ Fair Work Act 2009 (Cth)
- ▶ Gender Equality Act 2020 (Vic)
- ▶ Local Government Act 2020 (Vic)
- ▶ Mansfield Shire Council Bullying and Harassment Policy
- ▶ Mansfield Shire Council Disciplinary Policy
- ▶ Mansfield Shire Recruitment and Selection Policy
- ▶ Victorian Local Governance Association Toolkit for Local Government (refer TRIM IN19/3182)

### Implementation

This Policy is effective immediately

### Review Date

This Policy is to be reviewed by June 2024.

### Authorisation to Implement Policy

Signed:  \_\_\_\_\_

Councillor

Witnessed:  \_\_\_\_\_

Chief Executive Officer

Approval dated: 21 September 2021

**Mansfield Shire Council reserves the right to review, vary or revoke this Policy at any time.**