

Equal Opportunity and Human Rights Policy

Department <i>Executive Services</i>	Effective From: <i>Immediate</i> Reviewed: <i>March 2017</i> Version: <i>4</i> Trim Reference: <i>E513/E1533</i> Policy Implementation Date: <i>24 February 2015</i>	Origin: Responsible Officer: <i>Governance Co-ordinator</i> Authorising Officer: <i>Endorsed by Council on 21 March 2017</i>
Governance Use Only Action / Status: <ul style="list-style-type: none"> • First implemented: <i>July 2011</i> • Consultation process not required (this Policy is a statutory requirement) • Reviewed by Councillors: <i>scheduled for March Council meeting</i> • Endorsed by Council: <i>21 March 2017</i> 		

PURPOSE/OBJECTIVES

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, contractors, 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.

Note1: The term "employee/s" for the purpose of this policy will include unpaid staff such as volunteers, together with community representatives involved in Council advisory committees, steering committees, working groups, etc, whether in a voluntary or remunerated capacity.

Note2: A copy of the Charter of Human Rights and Responsibilities for Local Government can be found in TRIM file **IN117/6052**.

SCOPE

This policy applies to all Mansfield Shire Council employees, Councillors, volunteers and contractors.

DEFINITIONS

VEOHRC

Victorian Equal Opportunity and Human Rights Commission



Discrimination

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

- Gender (male/female)
- Age
- Race (includes colour, nationality, descent, ethnicity, ethno-religious background)
- Religious belief/activity
- Impairment or disability (includes past, current and future disability such as physical, neurological, psychiatric, intellectual disability and the presence in the body of disease causing organisms)
- Marital status
- Family responsibilities - parental or carer status (includes step-parent, adoptive parent, foster parent, guardian)
- Pregnancy or potential pregnancy
- Breastfeeding
- Physical features (a person's height, weight, size or other bodily characteristics)
- Political belief/activity
- Industrial activity
- Sexual orientation and/or lawful sexual activity (gay, lesbian, bi-sexual trans and intersexual or heterosexual persons)
- Expunged homosexual conviction
- Personal association with someone who is identified by reference to any of the above attributes
- Employment activity
- Irrelevant criminal conviction

Harassment

Harassment is any unwelcome, uninvited practice or behaviour that can reasonably make a person feel offended, humiliated, intimidated or uncomfortable. A situation is deemed to constitute harassment on the basis of:

- the nature of the behaviour or conduct
- the behaviour being unwelcome and unsolicited
- the response to the behaviour, that is, if the 'recipient' was offended, humiliated or intimidated by the behaviour in question and that it was reasonable to feel that way.

Sexual Harassment

A person sexually harasses another person if he or she:

- Makes an unwelcome sexual advance, or unwelcome request for sexual favours, or
- Engages in any other unwelcome conduct of a sexual nature in relation to the other 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 or intimidated.



Sexual harassment under that Act defines 'conduct' of a sexual nature to include:

- Subjecting a person to any act of physical intimacy,
- Making any remark or statement with sexual connotations to a person or about a person in his/her presence whether orally or written,
- Making any gesture, action or comment of a sexual nature in a person's presence.

Sexual harassment can be physical, verbal or visual and may include statements or transmissions by phone, fax, video conference, internet and e-mail.

Workplace Bullying

Workplace bullying is repeated, unreasonable behaviour directed to an employee, or group of employees 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 the other person.

Behaviour includes actions of individuals or a group, and may involve using a system of work as a means of victimising, humiliating, undermining, punishing 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.

Examples of direct forms of bullying include:

- verbal abuse
- putting someone down
- spreading rumours or innuendo about someone
- interfering with someone's personal property or work equipment.

Examples of indirect bullying include:

- unjustified criticism or complaints
- deliberately excluding someone from workplace activities
- deliberately denying access to information or other resources
- withholding information that is vital for effective work performance
- setting tasks that are unreasonably above or below an employee's ability
- deliberately changing work arrangements, such as rosters and leave to inconvenience a particular employee or employees
- setting timelines that are very difficult to achieve
- excessive scrutiny at work.



Victimisation

Victimisation occurs if someone is treated badly 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.

POLICY STATEMENT

Council always act in a manner that is compatible with human rights and equal opportunity principles and objectives. We will also consider human rights and equal employment issues when developing and implementing local laws, policies, procedures, making decisions and delivering services.

Discrimination, harassment and bullying is unacceptable and unlawful in accordance with state and federal legislation and various Occupational Health & Safety and Human Rights legislation. Council's approach to human rights and equal opportunity is to encourage participation, access, development and opportunity for the community and for the organisation.

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.

Equal Opportunity (EO)

As an Equal Opportunity employer the Council is committed to providing a work environment free of discrimination for all Council representatives including Councillors, employees, volunteers, contract workers, visitors and members of the public.

In all policies and practices of the Council there shall be no discrimination relating to sex, gender identity, age, marital status, parental status, carer status or family responsibilities, lawful sexual activity or orientation, race, irrelevant criminal conviction, disability, religious or political belief or activity, employment activity, physical features, industrial activity, pregnancy, breastfeeding and personal association.

In addition the Council will take into account all circumstances and give serious consideration to accommodating requests for flexible working arrangements from employees with family responsibilities and make reasonable adjustments for an employee with a disability or impairment.



Discrimination, Harassment and Bullying

Everyone has the right to work in an environment free from harassment, bullying and discrimination and, in turn, has a responsibility not to discriminate, harass or bully another in the workplace or while representing the Council (this may include functions, conferences, social gatherings and other workplace related activities). Furthermore, anyone representing Council is required to provide services in a non-discriminatory manner.

Discrimination, harassment or bullying in the workplace will not be tolerated and Council will provide a confidential process for anyone to be heard who feels they have been discriminated against, harassed or bullied. This does not remove the right of any individual to consult or complain to the VHREOC, or other appropriate external body.

Human Rights

The Council is required to act in a way that is compatible with the *Victorian Charter of Human Rights and Responsibilities Act 2006* and to give consideration to the charter when formulating a local law or policy, or in planning service delivery. The Charter sets out 20 basic human rights that are protected under the Act which relate to Freedom, Respect, Equality and Dignity:

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
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 charged with a criminal offence
19. Right not to be tried or punished more than once
20. Protection from retrospective criminal laws and criminal penalties

The Charter requires Council to ensure that all local laws and Council Policies protect the political, civil and cultural rights of people in Victoria. The Charter does not over-ride existing Local Laws or Policies, however Council and all Council employees must still make decisions and undertake actions in compliance with the Charter.



RESPONSIBILITIES

It is the responsibility of management to provide a working environment free from discrimination, harassment and bullying and 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 contractors, volunteers and Councillors, have a legal and moral responsibility to treat each other and members of the public fairly, and are expected to fulfill these responsibilities as a condition of 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 an employee, Council contractor or volunteer feel they are being bullied, harassed, victimised or discriminated against, they should refer to Council's Bullying and Harassment Policy for details on the procedures for lodging a complaint. Councillors should refer to the Mansfield Shire Council Councillor Code of Conduct and Councillor Charter 2017 for the appropriate procedures.

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

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

Adherence to the Equal Opportunity and Human Rights Policy will be overseen by Executive Services Department, with any associated procedures implemented by the Governance Unit in consultation with the Human Resources Department.

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.

The Executive Services Department is the owner of this policy. Any reviews of this Policy must be made in consultation with the Chief Executive Officer and Governance Unit staff.

REFERENCES

- *Victorian Charter of Human Rights and Responsibilities 2006*
- *Human Rights and Equal Opportunity Commission Act 1986*
- *Local Government Act 1989*
- *Equal Opportunity Act 2010*
- *Racial and Religious Tolerance Act 2001*
- *Sex Discrimination Act 1984*
- *Racial Discrimination Act 1975*
- *Disability Discrimination Act 1992*
- *Age Discrimination Act 2004*
- *Fair Work Act 2009*
- *Mansfield Shire Council Bullying and Harassment Policy*



- Mansfield Shire Council Disciplinary Policy
- Mansfield Shire Recruitment and Selection Policy

IMPLEMENTATION

This policy is effective immediately.

REVIEW DATE

This Policy is to be reviewed by 31 March 2019.

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

AUTHORISATION TO IMPLEMENT POLICY

Signed: _____

Councillor

Witnessed: _____

Chief Executive Officer

Approval dated: 21 March 2017