



## **District Council Of Elliston**

### **Procedure**

# **Equal Opportunity**

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## 1 Aim

The aim of this EO procedure is to ensure that the principle of EO is achieved within the District Council of Elliston, and that a system is in place to assist in the reporting and resolution of complaints of discrimination.

To assist employees in raising grievances, employees should be able to select either an informal or formal set of procedures to follow. The procedures should ensure that grievances are dealt with promptly and properly.

To provide an environment where employees have confidence to raise concerns and complaints related to equal opportunity, strong commitment of Management and the Council is needed. Employees raising concerns or complaints will be taken seriously and have their complaint resolved in a fair and prompt manner.

## 2 Discrimination

### 2.1 Confidentiality

In the instance of a discrimination complaint being raised, it is the responsibility of all those concerned in resolving the matter, to maintain the necessary high level of confidentiality and any policy or procedure should clearly stress this.

### 2.2 Resolving Complaints

Where an employee has made a complaint and requested assistance to resolve the matter, as mentioned above, employees will be able to elect to follow either an **Informal Complaint Resolution** or **Formal Complaint Resolution** process. The following is an example:-

### 2.3 Informal Complaint Resolution

Where an employee considers that they have been discriminated against by a decision made in the workplace, they should discuss the matter in the first instance with their Manager/Supervisor.

- The Manager/Supervisor must ensure that the employee is given a fair and reasonable opportunity to present their case and this information should then be given reasonable consideration;
- If the Manager/Supervisor needs to ascertain further information, in light of what the aggrieved party has conveyed to them, they should undertake to do so as soon as possible. They should arrange to meet with the aggrieved person as soon as they have additional information;
- At this point, should the Manager/Supervisor believe the complaint can be resolved to the satisfaction of the complainant, they should endeavour to do so, and agree on an outcome acceptable to all parties;
- It is expected that most complaints will be able to be resolved in this informal manner;
- If the complainant is not satisfied with the proposed resolution and the Manager/Supervisor does not believe they will be able to resolve the complaint to the satisfaction of the complainant, the complainant should be referred to the formal procedures in these guidelines;
- If submitted to the Departmental Manager, the Chief Executive Officer needs to be advised and kept informed of progress towards resolution of the complaint.

### 2.4 Formal Complaint Resolution

If a complaint cannot be satisfactorily resolved through the informal process outlined above, or if a complainant wishes to initiate the complaint resolution process formally, they should submit a written request for the complaint to be investigated to the appointed Equal Opportunity Officer.

The EO Officer (appointed by the Chief Executive Officer) will undertake formal investigation.

Such investigations will again endeavour to achieve a speedy resolution to the complaint and the aggrieved employee will be kept informed of the investigation's progress.

## 2.5 Investigation

Any investigation that involves interviewing employees will need to be done discreetly, confidentially and with appropriate formality.

Any employee interviewed should be advised of the purpose of the interview beforehand and given the opportunity to have a Union representative or other nominated person present. The purpose of an interview should be to establish the substance of the complaint and achieve a resolution.

## 2.6 Record Keeping

Once a complaint has been resolved, all documentation should be forwarded to Council's EO Officer. Records should be kept confidential and secure in accordance with necessary time frames that coincide with the employee's entitlement to lodge a complaint with the Equal Opportunity Commission.

The EO Officer should also examine the facts of each complaint, to determine whether the matter raised has organisational implications, e.g. further education, training, workplace culture, etc.

## 2.7 Resolutions

Resolutions to some complaints of discrimination may have implications for a number of decision-making processes or for practices across the operations of a Department or the Council as a whole.

Employees at all times have the right to seek advice on a possible case of discrimination, or be represented by their Union in presenting their case on their behalf, and seeking resolution.

Similarly, employees have the right to seek advice from, or lodge a complaint with, the Equal Opportunity Commission. Time limits for the lodgement of complaints apply.

# 3 PART 2: EQUAL OPPORTUNITY – SEXUAL HARASSMENT

## 3.1 Sexual Harassment

Everyone has a right to work with others in a safe and lawful environment. Apart from the fact that sexual harassment is unlawful, it is also very distressing for the person being harassed and has the potential to place Council at risk.

Sexual harassment and victimisation can also be a form of discrimination.

Sexual harassment is to be prevented because:

- It adversely affects the person being harassed. The person may feel anything from annoyance to severe distress.
- Work relationships and performance usually deteriorate, along with the confidence, self-esteem and health of the person being harassed.
- Employee morale is lowered if someone has reported sexual harassment and no action has been taken to address it.
- *If harassment is occurring at least two people are not working effectively.*
- *All forms of harassment are unnecessary, unwelcome and unprofessional.*

### 3.2 Management of Sexual Harassment

The management of all sexual harassment issues and complaints needs to ensure that due care and respect in an environment that provides fairness and appropriate outcomes will occur.

The following practices and principles will be observed in the management of sexual harassment matters:

- Education and training programs aimed at raising the awareness of employees and Elected Members, regarding sexual harassment issues and preventative measures may be an ongoing training initiative.
- All complaints will be taken seriously and dealt with fairly, under the principle of natural justice. All parties will be given the opportunity to seek advice, be represented and present their case.
- To give protection to all parties involved in a complaint of sexual harassment, complaints should be dealt with confidentially. Access to information regarding allegations and investigations of sexual harassment will be restricted to those, who as part of their duties, need to know.
- All complaints will be dealt with promptly to minimise anxiety and distress.
- Dependent upon the particular circumstances, complaints will be addressed, where appropriate, in a way that provides for conciliation and education. In some cases, employees experiencing problems may simply be looking for support to deal with the problem without making a complaint
- Disciplinary measures may be an option depending upon the severity of the matter. However this is an aspect to be determined by Management once investigation of a complaint is finalised.
- Complainants will be kept informed of the progress of investigation into their complaint.
- Consistent with policy and associated procedures and guidelines, complainants will be able to determine their preferred method of resolving a complaint and will not be pressured into taking action they do not wish to take.

### 3.3 Sexual Harassment Complaint Procedure

If an employee believes they have been sexually harassed they can take one of two options. In some cases, an employee who feels they are having difficulties around issues of sexual harassment may wish to simply seek support from the EO Officer. In this case, the EO Officer will provide assistance and guidance to help an employee formulate strategies they are comfortable with to remedy the situation. In other cases, employees may wish to take either informal or formal action in which case the EO Officer will provide support and assistance.

### 3.4 Taking Action

The major thrust of this procedure is to ensure that unwelcome behaviour in the workplace is prevented and that effective working relationships between all parties are maintained.

Dependent upon the severity of the case, disciplinary measures always remain an option in dealing with an offender. However, this is an aspect to be determined by Management when the investigation of a complaint is finalised.

If an employee considers that they have been sexually harassed and they wish to take action, one of the following steps can be undertaken:

- seek advice and attempt to stop the unwelcome incidents recurring
- to assist in stopping the unwelcome incidents, seek help from another person ie undertake informal intervention
- seek help from a responsible Officer and follow the formal grievance procedural steps provided in this procedure, ie follow formal intervention

There are also a number of people and Departments who should be available to assist:

- a Manager or Supervisor
- an Equal Opportunity Officer
- a Union Representative
- the Equal Opportunity Commission
- the Police (in cases of serious sexual assault)

All reasonable steps must be taken throughout the resolution process to ensure that confidentiality for all persons involved in any sexual harassment matter is of the utmost importance and is maintained at all times. This applies equally to those who may be approached for assistance and/or sought for advice in resolving a matter.

It is also important that any incident of alleged sexual harassment is documented, i.e. the exact behaviour, time, date, place, witnesses, etc.

### ***Self Help - Steps That Can Be Taken By An Employee***

An employee is able to seek advice regarding sexual harassment without necessarily making a formal complaint. Advice and support is available from our EO Officer.

Often early intervention will cause the offending behaviour to cease immediately. Sometimes employees are not aware that they have offended and will voluntarily stop the offending behaviour once they have been advised of the effect of their actions.

An employee may approach the person who has caused the offence, in a number of ways as outlined below:

- 1) speak to them directly;
  - 2) write to them;
  - 3) ask someone else to speak to them or assist in writing a letter to them.
- Note: - When speaking to the person who has caused the offence, it is useful to consider the following points. Clearly state in a factual way the behaviour that is objected to. Try to avoid emotive language. Be as specific as possible so that the other person knows exactly what it is that is objected to.
  - Inform the offender of the personal effects of their behaviour.
  - Inform the offender to immediately cease behaving in this manner. It can also be asked of the offender to rectify the situation (eg. removal of offensive posters) or a request for an apology can be sought.
  - The intended action of the complainant if the behaviour does not cease (eg. this may be formally writing to them, or that a formal complaint will be lodged if the behaviour does not stop).

### ***Informal Intervention***

If the self-help option does not stop the harassment or is not a suitable option for a complainant, it may be appropriate to ask someone to intervene on their behalf.

A request for formal intervention can be made to the EO Officer who is able to take effective action, or perhaps an appropriate Manager/Supervisor.

### ***Formal Intervention***

In making a formal complaint, an employee is entitled to:

- have their complaint taken seriously and be acted upon fairly and impartially;

- have their complaint kept;
- have their complaint dealt with as quickly as possible.

In resolving the complaint the following shall also apply:

- all parties to the complaint shall have the opportunity to put their case separately;
- all parties to the complaint shall have the assurance of a fair investigation and conciliation process;
- all parties to the complaint shall have the right to representation;
- all parties to the complaint will be advised of the outcome of the investigation.

### **Managers and Supervisors**

Managers and Supervisors are responsible for ensuring that the work environment is safe and this includes being free from sexual harassment. They are also responsible for investigating and resolving complaints, and to provide assistance to employees in dealing with sexual harassment matters, although this will often be with the assistance of the delegated EO Officer.

### **Equal Opportunity Officer**

The EO Officer who has formal responsibility for Equal Opportunity matters including being able to advise and assist in relation to dealing with any sexual harassment issues, will usually have received EO training and will have an extensive knowledge of the procedure.

### **External Sources**

An employee who does not wish to discuss the matter with Manager/Supervisor or EO Officer may seek advice or assistance from:

- an appropriate Union; or
- the Equal Opportunity Commission;
- the Police (in cases of serious sexual assault)

### **Complaints of Victimisation**

As discussed earlier victimisation relates to any duress applied by one person to another as a result of involvement in a complaint of sexual harassment.

If an employee believes they have been subjected to victimisation, the principles and procedures discussed earlier in these guidelines are equally applicable and should be followed in dealing with any instances of victimisation.

## **PART 3: RESPONSIBLE OFFICERS**

All employees and Elected Members have a responsibility to comply with EO legislation, principles and practices.

Specific responsibilities lie with CEOs, Managers and Supervisors to prevent discrimination, identify and eliminate discriminatory practices, and actively promote an environment of EO within their workforce.

Council policy, procedures and guidelines provide a complainant with the opportunity to have their complaint resolved through referring the matter to either the Equal Opportunity Officer or a responsible Officer usually defined in a policy.

### **Responsible Officers**

There should be three categories of Responsible Officers who can handle the resolution of a complaint. This enables the flexibility of having a complaint investigated and resolved within the formal organisational reporting structure, or to utilise an independent person such as the Equal Opportunity Officer to undertake that role.

### **Chief Executive Officer**

The Chief Executive Officer has overall responsibility for ensuring the implementation of any policy and in this case includes the legal responsibility to take reasonable steps to ensure that sexual harassment does not occur and also holds the responsibility for effectively dealing with issues and complaints relating to sexual harassment.

### **Managers and Supervisors**

The responsibility for ensuring sexual harassment does not occur, is largely achieved through the effective human resource management of such issues, by Managers and Supervisors.

In resolving complaints, Managers and Supervisors have a duty of care, to:

- ensure their familiarity and understanding of policies;
- set the standard for professional conduct in the workplace;
- be sensitive to any unacceptable behaviour taking place and make it clear that sexual harassment will not be tolerated;
- take appropriate action to stop the behaviour if it is apparent that sexual harassment is occurring in the workplace, even if a complaint has not been made;
- ensure that all complaints of sexual harassment are treated seriously, confidentially and are acted upon promptly;
- take appropriate action in regard to any instances of victimisation, and follow with lodging a complaint of sexual harassment if deemed necessary;
- support any initiatives of Council aimed at reducing the incidence of sexual harassment in the workplace;
- refer employees for counselling where necessary;
- handle the investigation process if an employee has elected to refer their complaint to them, and to advise the EO Officer of the complaint and its resolution.

### **Equal Opportunity Officer**

The Manager Financial Services has been delegated with the role of Equal Opportunity Officer for the purposes of complaint investigation and resolution.

The Equal Opportunity Officer has the responsibility to:

- implement and monitor the operation of these guidelines;

- arrange appropriate training and awareness-raising for, Elected Members, Managers, Supervisors and employees on sexual harassment matters;
- provide appropriate and necessary advice, support and assistance to any employee involved in a sexual harassment matter;
- maintain confidential records on sexual harassment complaints;
- conciliate, mediate and/or investigate sexual harassment complaints or issues;
- advise the Chief Executive Officer of sexual harassment complaints, the progress of investigations or attempts at resolution, and their outcome;
- take whatever other action is deemed necessary to provide for a sexual harassment free work place;
- consult with Council's Consultative Committee on policy and/or procedural matters of organisational significance.

### ***Union Representation***

Nothing in these guidelines shall preclude or inhibit a Union Member seeking assistance from their Union. In seeking to resolve any complaints of sexual harassment, Unions are encouraged to support their members to seek resolution through the procedures in these guidelines.

### ***Victimisation***

Victimisation is defined as any duress placed on a person, as a result of their involvement in a complaint of sexual harassment. This could be the complainant, witnesses, Union representatives or investigating officers.

Victimisation is illegal and any complaints of victimisation should be dealt with in the same way as complaints of sexual harassment.

### **Complaints of Defamation**

Defamation is a statement, written (libel) or verbal (slander) that injures another person's reputation without good reason or justification, and is made to a third party.

Such a statement may give rise to the aggrieved person taking legal action against the person who made the statement.

A complaint of sexual harassment made in good faith in accordance with these guidelines will protect the complainant from such an action.

Complaints made to the Equal Opportunity Commission in good faith are expressly protected against defamation action.

### **Complaint Resolution through Equal Opportunity Commission**

Nothing in these guidelines prevents an individual lodging a complaint with the Commission under State or Federal Legislation at any stage of the procedures in these guidelines.

Under State law, a complaint must be lodged with the Commission within six (6) months of the incident having occurred.

Under Federal law, (The Sex Discrimination Act, 1984), a complaint must be lodged with the Human Rights and Equal Opportunity Commission within twelve (12) months of the incident having occurred.

When a complaint is lodged, the Commissioner is required to investigate and seek to conciliate a resolution. If this is unsuccessful, the complaint may be referred to a Tribunal hearing.