

Appropriate Workplace Behaviours Policy

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1. PURPOSE

Greater Dandenong City Council (**Council**) values fair, collaborative, inclusive and respectful workplaces, and the benefits this brings to all through greater job satisfaction, more productive teams, and harmonious relationships. The purpose of this policy is to promote a professional, inclusive, safe, and productive workplace.

The policy seeks to ensure that our workplace is safe, healthy, flexible, and respectful and free from all forms of unlawful behaviours (such as Discrimination, Bullying Sexual Harassment, and Occupational Violence and Aggression) and other inappropriate workplace behaviours (such as disrespectful behaviour) that, while not unlawful, can have a similarly harmful effect on another person or persons.

Inappropriate behaviour from members of the public such as customers or clients is a risk to all employees but particularly those in customer-facing roles. Council does not accept the premise that this risk is 'just part of the job' and commits to taking all reasonable steps to minimise such risk from third parties and to support those who may experience such behaviour.

This policy:

- outlines the relevant obligations, requirements and expectations of Council's employees and other Workplace Participants (as defined) about appropriate behaviour in the workplace; and
- references relevant Council policies and legislative or common law requirements, some of which may arise as a result of Council's local government status.

This document does not operate to the exclusion of any other Council policies and procedures or any legal rights of an affected Council person.

Council's Workplace Behavioural Concerns Resolution Policy and Procedure and Workplace Investigations Procedure provides information about what can be done to address inappropriate workplace behaviours.

2. BACKGROUND

Code of Conduct and REACH Council has built its commitment to providing a safe, flexible, and respectful environment for employees, contractors, volunteers, Councillors, and the community based upon values contained within Council's Code of Conduct and REACH characteristics.

The shared values and REACH characteristics underpin Council's vision for its workplace, including how we treat each other, our customers, and our stakeholders.

'REACH' stands for Respectful, Engaged, Accountable, Creative and Honest.

Council expects its Workplace Participants to:

- treat our customers, the community and each other with equality, respect, and dignity; and
- act with integrity in having honest and professional conversations that place responsible and respectful behaviours and attitudes at the centre of all our dealings with each other.

Diversity, Access, and Equality

The principles contained in Council's Diversity, Access & Equity Policy also outline Council's commitment to providing equity of opportunity for all.

Greater Dandenong City Council Enterprise Agreement	Successive Enterprise Agreements state: <i>The parties are committed to upholding the principles of Equal Employment Opportunity (EEO) in all Greater Dandenong City Council activities and will actively encourage all employees to ensure all opportunities to improve equity are identified and addressed. The workplace will be free from any form of discrimination and harassment whatsoever.</i>
Victorian Charter of Human Rights and Responsibilities	The Charter of Human Rights and Responsibilities enshrines the basic Human Rights that are the entitlement of all Victorian people to enjoy. The Charter requires that all public authorities in Victoria take Human Rights into account when they are providing services and making decisions. For further information and advice about your rights and responsibilities under the Charter, contact Manager People, Culture and Innovation or the Team Leader Organisational Development. Further information is also available from the Victorian Ombudsman at www.ombudsman.vic.gov.au.
(VAGO) Report into Sexual Harassment in Local Government 2020	Recommendations and actions arising from the Victorian Auditor-General's Office (VAGO) Report into Sexual Harassment in Local Government have been incorporated into this and related policies and procedures.

3. SCOPE

3.1 Who is covered?

- All Council employees, regardless of:
 - o employment status, including full-time, part-time, permanent, temporary, casual; or
 - o position, including Directors, Managers, Team Leaders, Coordinators and Supervisors; and
- other Workplace Participants, as defined.

While Councillors are not employees of Council, they are bound to appropriate behaviours under the Councillor Code of Conduct and also bound to appropriate workplace behaviours as Workplace Participants.

3.2 When the policy applies

This policy applies:

- to behaviours that occur where a person is carrying out any functions in relation to their employment, occupation, business, trade, or profession when representing or doing work for or on behalf of Council, whether on Council premises or off-site.
- when attending after hours work or work-related events or social functions such as team lunches and parties, client premises, business trips, conferences or where a person can be readily identifiable as a representative of Council; and
- in our treatment of other employees and Workplace Participants, of clients, customers and other members of the public encountered in the course of our Council duties.

3.3 When the policy does not apply

This policy does not apply to issues or complaints relating to:

- safety breaches, other than workplace Bullying or Occupational Violence or Sexual Harassment (refer to the Health and Safety Policy).
- discipline for poor work performance or other behavioural matters not outlined in the scope of this policy (refer to the Policy & Procedure for Performance and Behavioural Issues).
- workplace processes, management decisions, matters covered by [Council's Enterprise Agreement](#) ('Agreement') or similar (refer to the [Staff Grievance Resolution Policy](#) or the Dispute Resolution procedure in the Agreement; or
- complaints that fall under the *Protected Disclosures Act 2012 (Vic)* (formerly 'whistleblowing'. Refer to the Disclosures under the [Protected Disclosures Policy](#) or the Independent Broad-based Anti-Corruption Commission (IBAC).

3.4 Relationship to Council's Enterprise Agreement

This policy is not intended to replace the Dispute Resolution procedure in the Council's Enterprise Agreement (the Agreement).

The Agreement Dispute Resolution Procedure excludes disputes arising about Equal Employment Opportunity, Occupational Health and Safety, Discrimination or WorkCover. These matters will be dealt with under this policy and Council's [Workplace Behavioural Complaints Resolution Policy & Guidelines](#).

However, if the Dispute Resolution Procedure in the Agreement applies, and a part of it is inconsistent with a part of this policy, then the applicable part of the Dispute Resolution procedure will apply.

4. DEFINITIONS

Unless otherwise specified within this policy, the following words and phrases are defined to mean the following in terms of this policy.

Appropriate Workplace Behavioural (AWB) Contact Representatives	AWB Contact Representatives are employees trained to provide confidential and impartial information and support to help you make an informed decision about options to resolve your complaint. They are often the first point of contact for staff wishing to discuss how to deal with a complaint under this policy and the associated Workplace Behavioural Complaints Resolution Policy & Guidelines. AWB Contact Representatives will not solve the problem for you but are able to provide assistance to help you reflect on your situation, provide a new perspective, and help you make a practical and effective decision that meets your needs. Details of AWB Contact Representatives can be found in The Source or on noticeboards.
Complainant	A person who makes a formal, informal (or anonymous) complaint or raises a concern about 'inappropriate workplace behaviour'.
Disclosure report	or Information provided by a Workplace Participant about an experience or incident. The report may be made by the Workplace Participant or by a bystander. It could be an anonymous report or disclosure.

Equal Opportunity (EO) Officer	The person within Council who has been nominated to handle complaints made under this policy. Council's designated EO Officer is the Team Leader Organisational Development.
False, malicious, or vexatious complaint	A complaint made in bad faith and where the complainant knows there is no basis or substance to the accusation or makes the accusation with the intention of causing another person, party or the organisation harm or damage. It is a serious breach of this policy to lodge a complaint you know to be false, malicious, or vexatious. If it is found the complaint is false, malicious, or vexatious, Council may take disciplinary action as per the Policy & Procedure for Performance and Behavioural Issues.
Positive Duty	Under the <i>Equal Opportunity Act, 2010 (EO Act)</i>, Council has a positive duty to eliminate Discrimination, Sexual Harassment, and Victimisation as far as possible. This duty also extends to putting measures in place to ensure complaints are responded to swiftly and appropriately when they arise. (Refer Workplace Behavioural Concerns Resolution Policy & Guidelines for more information).
Procedural Fairness & Natural Justice	The following principles are commonly understood to explain the process of natural justice and they inform the handling of complaints at Council (based on the principles identified by the Victorian Human Rights and Equal Opportunity Commission). • The Respondent who is the subject of the complaint must be treated as innocent (during the completion of the appropriate processes). • The Respondent must be told of all the allegations in relation to their behaviour. • The Respondent must have a full opportunity and a reasonable time period in which to explain their version of events. • All parties to the complaint must have the right to be heard. • All relevant submissions and evidence must be considered. • Council must only take into account matters that are relevant. • If the complaint is substantiated, then any disciplinary action that is taken by Council needs to be commensurate with the seriousness of the matter. Mitigating factors should be taken into account when assessing what form of discipline will be implemented. Mitigating factors can include an employee's disciplinary and work history, work performance and relevant personal circumstances.
Respondent	The person about whom the complaint is made.
Witness	A person who may have knowledge or further information about a particular matter under investigation.
Workplace Participants	Council employees and others engaged directly with and by Council including Councillors, contractors, agency staff, volunteers, and students.

5. POLICY

‘Inappropriate workplace behaviour’ can result in irreparable damage to a person’s health, safety, and wellbeing, destroy workplace relationships and lead to increased costs through reduced productivity, increased absenteeism, and litigation.

Along with Council’s REACH Characteristics, the following principles underpin this policy:

- Everyone is responsible for creating and maintaining a respectful and courteous workplace free of inappropriate behaviours.
- Everyone is respected and valued.
- Our leaders value and promote diversity and inclusion at work and will model respectful behaviour and call out instances of ‘inappropriate workplace behaviours’.
- Behaviour that amounts to ‘inappropriate workplace behaviour’, both unlawful or other, will not be tolerated, will be taken seriously and may result in performance and disciplinary action.

Council will not tolerate ‘inappropriate workplace behaviour’ and will hold to account anyone where it is found they have engaged in ‘inappropriate workplace behaviour’.

Council also has a zero-tolerance approach to victimisation or reprisals towards complainants or others involved in any complaints or resolution process. Again, anyone found to have engaged in such behaviour will be held to account.

As well as disrespectful workplace behaviour, the term ‘inappropriate workplace behaviour’ also applies to unlawful:

- Discrimination
- Bullying
- Sexual Harassment
- Occupational Violence and Aggression
- Racial or Religious Vilification
- Victimisation

Refer to Appendix A for further information.

5.1 Motive or intent

For unlawful conduct, it is irrelevant whether a person intended to discriminate against, bully, sexually harass another person.

Consumption of alcohol at work functions or at a work-related event outside the usual workplace and hours of work is also not an excuse for ‘inappropriate workplace behaviour’.

Staff should regulate their own behaviour and consumption of alcohol (noting that some workplaces may have a zero-tolerance approach to alcohol) to ensure their behaviour does not adversely impact others. Employees should be mindful that in those situations, they continue to be subject to Council’s Code of Conduct and REACH standards.

For further information about expectations and support, please refer to Council’s [Drug and Alcohol Policy](#).

5.2 Consequences

Any person employed by Council who has engaged in inappropriate behaviour may be counselled or warned in accordance with Council policies. Serious or persistent breaches can lead to formal discipline up to and including dismissal.

Disciplinary action may also be taken against any person employed by Council who makes a false or vexatious complaint.

Further, Council will take appropriate action against any Workplace Participant who breaches this policy.

5.3 Reports to police or external agencies

Some forms of Sexual Harassment, Work-Related Violence or serious Bullying will be criminal offences. As such, Council may also refer these matters to the police for investigation.

Matters which may be referred to the police include but are not limited to:

- stalking.
- physical molestation or assault.
- indecent exposure.
- sexual assault.
- obscene communications, including online interactions such as telephone calls, letters, text messages, posts on social media.
- physical assault including sexual assault; and
- threats to kill or threats to otherwise harm someone.

Council may also be required to report allegations to IBAC, the Victorian Ombudsman or WorkSafe, depending on the conduct which is alleged to have occurred.

5.4 Support

Support can be obtained directly from:

- Council's Employee Assistance Program (EAP) service;
- your Supervisor, Department Manager or any Director (if approaching a Director for support this can also be done in conjunction with the Chief Executive Officer);
- Appropriate Workplace Behaviours Contact Representative (AWB Contact Representatives).
- Union Representative.
- Team Leader Organisational Development (Council's designated EO Officer).
- Your work group's designated Health & Safety Representative, in relation to issues of Bullying or Occupational Violence and Aggression only. If it is not feasible to seek advice and support or lodge a complaint with your work group's designated Health and Safety Representative you may choose to speak to any other Health and Safety Representative. Their details are displayed on noticeboards and on The Source.

5.5 Confidentiality

All parties involved with any complaint under this policy must observe strict confidentiality about the complaint. This means the complaint should not be raised or discussed with any other staff member, except for Organisation Development and the person's chosen support person or AWB Contact Representative, if any.

This does not mean that information imparted during an investigation will be kept confidential, as this information may need to be put to all or some of the people involved in the complaint such as witnesses or the respondent for their response.

Council may take disciplinary action against any staff member who breaches the confidentiality of a complaint investigation or inappropriately discloses personal information obtained in a professional role (for example, as a manager).

5.6 Contacting an external authority

Nothing in this policy prevents further information being sought, or a complaint being lodged, with the relevant external agency.

Council encourages anyone who intends to refer a matter externally to first report the matter internally, except in an emergency. Council would appreciate the opportunity to try to resolve the issue internally, and to be able to offer support to people affected by an issue in the workplace.

<u>Australian Human Rights Commission</u>	Discrimination, Sexual Harassment	Level 3, 175 Pitt Street, SYDNEY NSW 2000 GPO Box 5218, SYDNEY NSW 2001 Phone: (02) 9284 9600 / Fax: (02) 9284 9611 National Information Service: 1300 656 419 General enquiries and publications: 1300 369 711 TTY: 1800 620 241 / www.humanrights.gov.au
<u>Fair Work Commission</u>	Unfair Dismissal, general protections including Adverse Action and Discrimination	Level 4/11 Exhibition Street, Melbourne Vic 3000 PO Box 1994, Melbourne, Vic 3001 Phone: (03) 8661 7777 / 1300 799 675 Fax: (03) 9665 0401 / Email: melbourne@fwc.gov.au Translating and Interpreting Service (TIS) on 131 450. Speak and listen users (speech-to-speech) can call 1300 555 727 / TTY (teletypewriter) users can call 133 677. National Relay Service website to make an internet relay call / www.fwc.gov.au
<u>Independent Broad-based Anti-Corruption Commission</u>	Corruption	Level 1, North Tower, 459 Collins Street, Melbourne Vic 3000 / GPO Box 24234, Melbourne Vic 3001 Phone: 1300 735 135 (request TIS service if you need it) Fax: (03) 8635 6444 Translating and Interpreting Service (TIS) 1300 655 028 - request a translation service Email: info@ibac.vic.gov.au / www.ibac.vic.gov.au
<u>Victoria Police</u>	Sexual Harassment, sexual assault or molestation, stalking, indecent exposure, obscene communications, assault, serious Bullying or threatening or Violent behaviour	Emergency response (24 hours): 000 www.police.vic.gov.au
<u>Victorian Equal Opportunity and Human Rights Commission</u>	Discrimination, Sexual Harassment, Racial or Religious hatred	Level 3, 204 Lygon Street, Carlton Vic 3053 Phone: 1300 891 848 / Fax: 1300 891 858 Enquiry service: 1300 292 153 Email: information@veohrc.vic.gov.au TTY: 1300 289 621 / Interpreters: 1300 152 494 www.humanrightscommission.vic.gov.au

<u>Worksafe Victoria</u>	Bullying, Work-Related Violence	Ground Floor, 222 Exhibition Street, Melbourne Vic 3000 Phone: (03) 9641 1555 / Fax: (03) 9641 1222 Serious workplace emergencies - 24-hour emergency response 13 23 60 Advisory service – during business hours interpreter automatically connected – 1800 136 089 or (03) 9641 1444 Email: info@worksafe.vic.gov.au www.worksafe.vic.gov.au
<u>Victorian Civil & Administrative Tribunal</u>	Equal Opportunity cases including unlawful Discrimination, Sexual Harassment, Victimisation, or Vilification	Phone: 1300 018 228 www.vcat.vic.gov.au

5.7 More information

If you have a query about this policy or need more information, please contact the Team Leader Organisational Development on 8571 5228 or 0478 880 678.

For more information on the specific topics covered by this policy, refer to the Appendices on pages 14-25.

6. RESPONSE TO THE OVERARCHING GOVERNANCE PRINCIPLES OF THE LOCAL GOVERNMENT ACT 2020

Section 9 of the *Local Government Act 2020* states that a Council must in the performance of its role give effect to the overarching governance principles. Although this is an internal policy only, it responds to the relevant overarching governance principles as follows:

- Decisions and actions are made in accordance with all relevant laws (referred to in ‘References and Related Documents’ below).
- The policy aims to promote and maintain a healthy, safe, and productive workforce which will in turn affect the economic sustainability of council and limit the extent to which unproductive workplace behaviours affect the ongoing financial viability of Council
- Responds to Council’s strategic objectives of ‘A creative city that respects and embraces diversity’ and ‘A diverse and growing economy’.
- Provides for review mechanisms which can provide for continuous improvement of our response to workplace concerns
- Has taken into consideration recent reviews and reports including:
 - WorkSafe Victoria – Workplace Bullying – A guide for employers, March 2020
 - the Victorian Auditor General’s Office Report into Sexual Harassment in Local Government.
 - Victorian Equal Opportunity and Human Rights Commission’s Guideline – Preventing and Responding to Sexual Harassment.
 - Victorian Public Sector Model Policy for the Prevention of Sexual Harassment in the Workplace; and
 - Commission for Gender Equality in the Public Sector Guidance Note – Sexual Harassment definition, reporting instructions and data measures, June 2021.

7. CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 – COMPATIBILITY STATEMENT

Council, Councillors, and members of Council staff are a public authority under the *Charter of Human Rights and Responsibilities Act 2006* and, as such, are all responsible to act in accordance with the *Victorian Charter of Human Rights and Responsibilities 2006* (the Charter). The Charter is founded on the following principles:

- Human Rights are essential in a democratic and inclusive society that respects the rule of law, human dignity, equality, and freedom.
- Human Rights belong to all people without discrimination, and the diversity of the people of Victoria enhances our community.
- Human Rights come with responsibilities and must be exercised in a way that respects the Human Rights of others.
- Human Rights have a special importance for the Aboriginal people of Victoria, as descendants of Australia's first people, with their diverse spiritual, social, cultural, and economic relationship with their traditional lands and waters.

The *Charter of Human Rights and Responsibilities Act 2006* has been considered in the preparation and review of this policy. It is compatible with relevant rights enshrined in the Charter in that it is designed to:

- provide equal and effective protection against discrimination in raising and handling of workplace concerns and complaints (including but not limited to on the bases of disability, race, religious belief, culture, gender, or membership of a trade union).
- ensure all parties have a right to a fair hearing.
- prevent any party to a workplace behavioural concern or complaint from being treated in a cruel, inhuman, or degrading way.
- protect each person's right to privacy and to not have their reputation unlawfully attacked.
- not restrict freedom of expression or any person's right to think, feel and believe in what they want or to publicly share these thoughts and beliefs.

8. RESPONSE TO THE GENDER EQUALITY ACT 2020

The *Gender Equality Act 2020* came into operation on 31 March 2020. It requires that councils take positive action towards achieving workplace gender equality and promote gender equality in their policies, programs, and services.

The *Gender Equality Act 2020* has been considered in the preparation of this policy. The policy is purely administrative in nature and is unlikely to influence broader social norms and gender roles.

Although it is an internal policy and there is no requirement to conduct a gender impact assessment, significant consideration has been given to several recent reviews and reports as follows:

- 'Report into Sexual Harassment in Local Government', Victorian Auditor-General's Office, December 2020
- 'Preventing and Responding to Sexual Harassment - Guideline', Victorian Equal Opportunity & Human Rights Commission
- 'Model Policy for the Prevention of Sexual Harassment in the Workplace', Victorian Public Sector Commission, 2018
- Preventing Discrimination in Recruitment – a step-by-step approach, Victorian Equal Opportunity & Human Rights Commission.

The contents of the policy were checked using the online gender decoder tool at www.gender-decoder.katmatfield.com. The tool calculates the relative proportion of masculine-coded and feminine-coded words to reach an overall verdict on the gender-coding of the document. This document was assessed as “**strongly feminine-coded**”.

9. CONSIDERATION OF CLIMATE CHANGE AND SUSTAINABILITY

One of the overarching governance principles of the *Local Government Act 2020* is that the economic, social, and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted.

In January 2020, this Council joined a growing number of cities around Australia and declared a “Climate and Ecological Emergency” and committed this Council to emergency action on climate change. Council has developed a Climate Change Emergency Strategy and Action Plan 2020-30 to help the City of Greater Dandenong become a resilient, net zero carbon emission city with an active community prepared for the challenges of changing climate. You can find the strategy and action plans at the following link:

This policy has no impact on Council’s Declaration on a Climate and Ecological Emergency, Council’s Climate Change Emergency Strategy 2020-2030, or the requirements of the *Local Government Act 2020* in relation to the overarching governance principle on climate change and sustainability.

It is purely administrative in its nature and will be delivered in an electronic format. Records pertaining to any resolution process or investigation are kept electronically.

10. RIGHTS AND RESPONSIBILITIES

10.1 Rights

All people employed or engaged by or with Council are entitled to:

- recruitment and selection decisions based on merit and not affected by irrelevant personal characteristics.
- work free from ‘inappropriate behaviour or conduct’, including from third parties such as members of the public, customers, clients, patrons.
- reasonable flexibility in working arrangements, especially where needed to accommodate their family and carer responsibilities, disability, religion, or culture.
- raise issues or concerns or make an inquiry or complaint in a reasonable and respectful manner and without being victimised.
- inform others that their behaviour is unacceptable and against Council policy and/or against the law and that it must be stopped to request that the behaviour cease and without reprisal or being victimised.
- offer support to persons who experience ‘inappropriate behaviour or conduct’, including providing information about how to make a complaint and without reprisal or being victimised.
- report any ‘inappropriate behaviour or conduct’ you witnessed to the relevant manager, team leader, supervisor or the Team Leader, Organisation Development (Council’s designated Equal Opportunity Officer). You may be held partially liable if you fail to by omitting to take action or notify management if you are aware of incidents of ‘inappropriate workplace behaviours’ in the workplace.

10.2 Responsibilities

Everyone covered by this policy must:

- follow the standards of conduct and behaviour outlined and ensure they do not:
- engage in 'inappropriate behaviour or conduct' towards others including employees, managers, team leaders, customers, clients, or contractors; or
- aid, assist or encourage others to engage in 'inappropriate behaviour or conduct'.
- respect the confidentiality of investigation or complaint resolutions procedures or actions, and not engage in gossip in relation to these matters.
- attend and actively engage in Council's appropriate workplace behaviours training and awareness sessions and positively support efforts to reduce and prevent 'inappropriate workplace behaviours'.

All people leaders must:

- take steps to ensure that the work environment is free from 'inappropriate behaviour or conduct'.
- model appropriate standards of conduct and behaviour.
- take steps to educate and make staff aware of their obligations under this policy and the law.
- intervene quickly and appropriately when they become aware of inappropriate behaviour.
- take steps to ensure that staff who raise an issue or make a complaint are not victimised.
- take steps and act fairly to help staff resolve complaints informally, where this is appropriate. Alternatively, promptly refer formal complaints about alleged breaches of this policy to the appropriate complaints handling officer for investigation, such as the Team Leader Organisational Development.
- seriously consider requests for flexible working arrangements; and
- ensure that recruitment and selection decisions are based on merit and that no discriminatory requests for information are made.

11. REPORTING, MONITORING AND REVIEW

This review of the Appropriate Workplace Behaviours Policy incorporates recommendations arising from the findings of the Victorian Auditor-General's Report into Sexual Harassment in Local Government, 2020.

Council, through the Manager People, Culture, and Innovation, commits to reviewing and analysing complaint information, data, and trends to monitor behavioural concerns and cultural issues and will conduct periodic surveys to gather employee experiences. This will include analysis of data gathered as part of Council's gender equality program to ensure inequalities created through gender prejudice and stereotyping are identified and addressed.

The success of the policy relies heavily on educative and training initiatives to ensure Workplace Participants remain aware of their rights and responsibilities and to understand the importance of reporting concerns and the support Council will provide to support complainants.

This policy is reviewed every four years and is submitted.

12. REFERENCES AND RELATED DOCUMENTS

Legislation

Victorian and Commonwealth legislation as amended or replaced from time-to-time including:

- *Age Discrimination Act 2004*
- *Australian Human Rights Commission Act 1986*
- *Charter of Human Rights & Responsibilities Act 2006*
- *Crimes Act 1958*
- *Disability Discrimination Act 1992*
- *Equal Opportunity Act (EO) 2010*
- *Fair Work Act 2009*
- *Gender Equality Act 2020*
- *Local Government Act 2020*
- *Occupational Health & Safety Act 2004*
- *Protected Disclosures Act 2012*
- *Racial Discrimination Act 1975*
- *Racial and Religious Tolerance Act 2001*
- *Sex Discrimination Act 1984*
- *Work Health & Safety Act 2011*

Related Council and Other Policies, Procedures, Strategies, Protocols, Guidelines

Greater Dandenong City Council:

- Appropriate Workplace Behaviours Policy
- Behavioural Concerns Resolution Pathways
- Child Safe Policy
- Code of Conduct – Staff / Code of Conduct - Councillors
- Complainant Prompt Template
- Council Plan
- Disability Policy
- Disability Action Plan
- Diversity, Access, and Equity Policy
- Flexible Work Options Policy
- Greater Dandenong City Council Enterprise Bargaining Agreement
- Occupational Health and Safety Policy
- OHS Responsibility Procedure
- OD Fact Sheet – Cooperative Conversations
- OD Fact Sheet – Facilitated Discussions/Mediation
- OD Fact Sheet - Investigations
- Position Descriptions
- Policy & Procedure for Performance and Behavioural Issues
- OHS Prevention of Bullying and Violence in the Workplace Administrative Procedure
- Protected Disclosures Act Policy
- Reasonable Adjustments Policy
- Recruitment Policy
- Social Media Policy
- Staff Grievance Resolution Policy
- Position Descriptions
- Privacy & Personal Information Policy

13. APPENDIX A – DEFINITIONS OF UNLAWFUL CONDUCT AND FURTHER INFORMATION

13.1 Discrimination/Equal Opportunity in Recruitment

What is Discrimination? Discrimination is treating, or proposing to treat, someone unfavourably because of a personal characteristic protected by the law ('Protected Attributes').

This includes Discrimination on the basis:

- that a person has that attribute or had it at any time (whether or not the person had it at the time of the Discrimination).
- of a characteristic that a person with that attribute generally has.
- of a characteristic that is generally imputed to a person with that attribute; or
- that a person is presumed to have that attribute or to have had it at any time.

Under the *EO Act*, Council has a positive duty to eliminate Discrimination, Sexual Harassment, and Victimisation as far as possible and to create an environment where unfair treatment and problem behaviour is unlikely to happen in the first place.

This means positive action should be taken to prevent these behaviours, regardless of whether someone has made a complaint.

Protected Attributes

Relevant Protected Attributes are:

- Age, whether young or old, or because of age in general.
- Breastfeeding.
- Disability, impairment, disease, or injury including work-related injury.
- Employment activity, for example because they ask questions or raise concerns about their rights or entitlements at work.
- Gender identity.
- Industrial activity, including being a member of an industrial organisation like a trade union or taking part in industrial activity, or deciding not to join a union;
- Lawful sexual activity.
- Marital or relationship status, whether married, divorced, unmarried or in a de facto relationship or same sex relationship.
- Parental status or status as a carer.
- Physical features, such as height, weight, size, hair, or birthmarks.
- Political belief or political activity;
- Pregnancy.
- Race, colour, descent, national origin, or ethnic background.
- Religious belief or taking part in religious activity, or not holding a religious belief.
- Sex, intersex status, or gender identity.
- Sexual orientation, including gay, lesbian, bisexual, transsexual, transgender, queer, and heterosexual.
- expunged homosexual conviction.
- Personal association with someone who has, or is assumed to have, one of the above personal characteristics, such as being the parent of a child with a disability.
- Irrelevant criminal record.

What is direct Discrimination? If a person treats, or proposes to treat, a person or group with a Protected Attribute unfavourably because of that Protected Attribute.

Direct Discrimination often happens because of unfair assumptions about what people with certain personal characteristics can and cannot do.

For example, a worker is harassed and humiliated because of their race, or a worker is refused promotion because they are 'too old'.

It is irrelevant whether or not the person is aware that their conduct is discriminatory, or they intended to discriminate.

A person is not required to compare how they are treated to how others are treated to establish direct Discrimination. They only need to show that they were treated unfavourably because of a protected attribute.

What is indirect Discrimination?

If a person imposes, or proposes to impose, an unreasonable requirement, condition or practice that has, or is likely to have, the effect of disadvantaging persons with a Protected Attribute.

For example, team meetings are always held at 7.00 o'clock in the morning, making it difficult for people with carers' responsibilities to attend.

It is irrelevant whether or not the person is aware that their conduct is discriminatory, or they intended to discriminate.

Are there any exceptions to the law?

There are some exceptions in the *EO Act* that mean it is not against the law to discriminate in particular circumstances. For example, Discrimination is not against the law if there is a real risk to someone's health, safety, or property.

Equal Opportunity in recruitment

Equal Opportunity in recruitment is the principle that a candidate's suitability for a role is assessed on merit and is free from Discrimination or the influence of irrelevant factors. Council's [Recruitment Policy](#) has been developed in line with Equal Opportunity requirements.

Access to Equal Opportunity in employment is an essential right which everybody should be able to enjoy. However, Discrimination based on attributes such as gender, age, race, disability and parental or carer status can prevent a person from gaining employment, even if they are the best person for the job. Discrimination can happen at different stages of the recruitment process, such as advertising, short-listing, or interviewing.

It is unacceptable and may be against the law to ask job candidates questions, or to in any other way seek information, about their personal characteristics, unless this can be shown to be directly relevant to a genuine requirement of the position.

13.2 Bullying

What is Bullying?

Workplace Bullying is repeated, negative or 'unreasonable behaviour' directed toward a person or group of people that creates a risk to health and safety. Risk to health and safety includes a risk to the mental or physical health of the person.

Within this definition, '**unreasonable behaviour**' is behaviour that a reasonable person, having regard to all the circumstances, would regard as unreasonable, including behavior that victimises, humiliates, undermines, or threatens.

A broad range of behaviours can be Bullying.

Examples of Workplace Bullying include repeated:

- verbal abuse, insults, name-calling or shouting.
- deliberately excluding or isolating a person.
- sarcasm, putting someone down and other forms of demeaning language.
- spreading gossip or malicious rumours or innuendo.
- psychological harassment.

- coercion.
- ganging up.
- threats, intimidation, or misuse of power.
- interfering with someone's personal property or work equipment.
- inappropriate blaming, constant unconstructive or unjustified criticism or complaints.
- social isolation or deliberately excluding someone from workplace activities.
- deliberately denying access to information or other resources.
- deliberately withholding information or equipment that a person needs to do their job or access their entitlements.
- giving employees impossible assignments.
- assigning meaningless tasks unrelated to the job.
- deliberately changing work arrangements, such as rosters and leave, to inconvenience a particular employee or employees.

What is *not* Bullying?

This policy is not intended to, and does not diminish, a manager's managerial prerogative to direct and control how work is done in their business unit, other than in terms of ensuring, so far as is reasonably practicable, the health and safety of employees. Bullying is not the legitimate and reasonable exercise of managerial direction. *For example:*

- legitimate and reasonable performance management processes.
- genuine and reasonable instructions.
- informing an employee about 'inappropriate behaviour' in an objective and confidential way.
- legitimate comments, constructive feedback, or advice on standards of work.
- deciding not to select someone for a promotion or work opportunity where a reasonable process is followed and documented.
- reasonable grievances.
- disciplinary action in accordance with Council's Policy & Procedure for Performance and Behavioural Issues.
- rostering or allocation of work in compliance with approved systems and processes.
- justified termination of employment; and
- business processes, such as implementation of organisational change restructuring or downsizing.

Further examples:

Conflict at work

From time-to-time people may have occasional differences of opinion and these are a normal part of working life. Disagreements can leave people feeling upset, but they should not be confused with Bullying behaviours. However, if it's left unresolved, conflict may develop into a Bullying situation.

Single acts

If a person is subject to a single incident of 'unreasonable behaviour', it's not Bullying. However, the incident shouldn't be ignored as it may have the potential to escalate into Bullying. Addressing the behaviour before it is repeated is the best way to manage the situation.

How is Bullying carried out?

Workplace Bullying can be carried out in a variety of ways including in person, but also through email, text messaging, and social media channels. In some cases, workplace Bullying may occur outside normal working hours.

What about electronic communications?

Electronic communication tools are provided primarily for Council business use. Nothing should be sent electronically that would not be appropriate in other work communications.

Electronic communication messages should not include:

- any communication which fits the Bullying behaviour described above.
- comments or images that would offend a person on the basis of his or her gender, age, sexual orientation, religion, or political beliefs; or
- exhibition, copying or transmission of obscene or sexually explicit images or actions on Council equipment or networks.

Forgery or attempted forgery of electronic communications; attempts to read, delete, copy, or modify electronic communications of other users; obscene and/or threatening electronic communications of other users; attempts at sending harassing, obscene and/or threatening electronic communications and any accessing, viewing, or passing on of child pornography is strictly prohibited.

All forms of electronic communication are covered by this policy.

Refer to Council's [Social Media Policy](#) and Code of Conduct - Staff for further information about the appropriate use of electronic communications.

Can I be bullied by people who are not employed by Council?

Whilst Bullying usually comes from a source inside the workplace such as:

- an employee Bullying another employee.
- a supervisor Bullying an employee or group of employees.
- a group of employees Bullying an individual (including a manager or supervisor) or another group of employees.

the behaviours of clients, customers, contractors, patrons, members of the public and service providers may also be deemed to be Bullying in some circumstances.

Can Bullying be a form of Discrimination?

If someone is being bullied because of a Protected Attribute, it is also a form of unlawful Discrimination or Sexual Harassment.

Bullying-type behaviour does not have to be repeated to be Discrimination or Sexual Harassment. It may be a one-off event.

What is 'serious Bullying'?

Serious Bullying is covered under the stalking provisions in the *Crimes Act 1958*.

Serious Bullying is often characterised by a course of conduct that can include threats and abusive and offensive words or conduct. Serious Bullying may also include conduct or behaviour that is intended, or could reasonably be expected, to cause the victim of the Bullying to engage in suicidal thoughts or thoughts or actions that involve self-harm.

Victims of serious Bullying may apply for the protection of a stalking intervention order. Serious Bullying can attract a jail term of up to 10 years.

13.3 Sexual Harassment

Council has a Positive Duty (page 4) to provide a safe workplace and to take all reasonable steps to prevent Sexual Harassment at work. This means that positive action should be taken to prevent these behaviours – regardless of whether someone has made a complaint.

Sexual Harassment is unwelcome sexual behaviour that could reasonably be expected to make a person feel offended, humiliated, or intimidated. It can be a symptom of gender inequality and most often – but not always – affects women. Sexual Harassment may be physical, spoken or written (including through online spaces and social media platforms) and can be directed at, and perpetrated by, persons of any sex or gender including male, female, transgender, or gender diverse.

It can happen at work, at work-related events, between people sharing the same workplace or between colleagues outside of the standard workplace or regular working hours. Sexual Harassment can also be carried out by third parties including clients, patrons, customers, and members of the public.

Sexual Harassment can be a single incident or repeated behaviour, a suggestive comment, or an offensive joke.

Sexual Harassment does not need to be physical, or a criminal offence, to have negative impacts on an individual. The impact of frequent low-level Sexual Harassment can build up over time and make the recipient feel unsafe at work. For this reason, Council encourages anyone experiencing any form of Sexual Harassment to act on their concerns, even if they don't feel the behaviour is serious enough to warrant a report.

It doesn't matter what the intention is, **Sexual Harassment is against the law and will not be tolerated.**

What does the law say? Sexual Harassment is a specific and serious form of harassment that is unlawful and prohibited by both Victorian and Commonwealth legislation.

Victorian legislation

The *EO Act* requires Council to take reasonable and proportionate steps to eliminate Sexual Harassment in the workplace as far as practicable.

A person sexually harasses another person:

- if they make an unwelcome sexual advance, or an unwelcome request for sexual favours, to the other person.
- if they engage in any other unwelcome conduct of a sexual nature in relation to the other person; 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, or intimidated.

Section 94 of the *EO Act* prohibits Sexual Harassment in common workplaces (i.e., places that are the workplace of both people involved whether or not they have the same employer).

Conduct of a 'sexual nature' includes:

- subjecting a person to any act of physical intimacy.
- making, verbally or in writing, any remark or statement with sexual connotations to a person or about a person in their presence.
- making any gesture, action, or comment of a sexual nature in a person's presence.

Commonwealth legislation

Section 28A of the *Sex Discrimination Act 1984* provides that a person sexually harasses another person (the "person harassed") if:

- the person makes an unwelcome sexual advance, or an unwelcome request for sexual favours, to the person harassed; or
- engages in other unwelcome conduct of a sexual nature in relation to the person harassed.
- in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated the possibility that the person harassed would be offended, humiliated, or intimidated.

The relevant circumstances to be considered may include, but are not limited to, the following:

- the sex, age, sexual orientation, gender identity, intersex status, marital or relationship status, religious belief, race, colour, or national or ethnic origin, of the person harassed.

- the relationship between the person harassed and the person who made the advance or request or who engaged in the conduct.
- any disability of the person harassed.
- any other relevant circumstance.

‘Conduct of a sexual nature’ includes making a statement of a sexual nature to a person, or in the presence of a person, whether the statement is made orally or in writing, including electronic communications.

Section 28B provides that it is unlawful for:

- a person to sexually harass an employee of the person, or a person who is seeking to become an employee of the person.
- an employee to sexually harass a fellow employee or a person who is seeking employment with the same employer.
- a person to sexually harass a commission agent¹ or contract worker of the person, or a person who is seeking to become a commission agent or contract worker of the person.
- a commission agent or contract worker to sexually harass a fellow commission agent or contract worker.
- a Workplace Participant to sexually harass another Workplace Participant at a place that is a workplace of either or both of those persons.

Examples of Sexual Harassment

Sexual Harassment occurs in circumstances when the **conduct is unwelcome** and where a **reasonable person**, having regard to all the circumstances, would have **anticipated** that the other person would be **offended, humiliated, or intimidated**.

It includes:

- an unwelcome sexual advance and/or an unwelcome request for sexual favours.
- any other unwelcome conduct of a sexual nature.

Sexual Harassment may be physical, spoken or written and may include, but is not limited to:

- Sexually suggestive behaviour, such as leering or staring or offensive gestures of a sexual nature that makes someone feel intimidated or uncomfortable.
- Sexual comments or jokes that makes someone feel uncomfortable or offended, including about their body and/or clothes, or the angle of their camera in a video meeting.
- Intrusive or offensive questions of a sexual nature about someone’s private life or physical appearance that makes them feel uncomfortable.
- Unwelcome physical contact - e.g., brushing up against someone, touching, fondling, hugging, kissing, or blocking someone’s way.
- Pressuring or pestering someone to go out on a date.
- Making unwelcome sexual requests or pressure to engage in sexual activity.
- Sharing personal images of a sexual nature on social media without the person’s consent.
- Displaying sexually offensive screen savers, photos, calendars, or objects.
- Sending unwanted sexually explicit content or images by email, text, or social media and/or posting on social networking sites.
- Cat calling, wolf whistling or making other provocative sounds towards someone that make them feel uncomfortable.
- Unwanted displays or declarations of affection.
- Making unwelcome requests to share sexual images of themselves or someone else and/or requests to talk about sex.

¹ The *Sex Discrimination Act 1984* defines a commission agent as “a person who does work for another person as the agent of that other person and who is remunerated, whether in whole or in part, by commission.”

	• <i>Sexual</i> assault, indecent exposure, rape and stalking of a sexual nature (which are also criminal offences). • Actions or comments of a sexual nature in a person's presence (even if not directed at that person.)
Could it be Sexual Harassment?	The Victorian Equal Opportunity & Human Rights Commission has an online 'Sexual Harassment Support and Response Tool' that: • may help you understand when something at work crosses the line into Sexual Harassment. • shares information and advice on how to respond to help you weigh up options; and • provides a directory of support services. Access the tool at www.humanrights.vic.gov.au/resources/respond-to-sexual-harassment. Alternatively, you may wish to discuss your concerns with one of the people mentioned under Support on page 9.
What isn't Sexual Harassment?	Sexual or romantic interaction that is entered into freely and is reciprocated between consenting employees, is not a form of Sexual Harassment. This includes sexual interaction, flirtation, attraction, or friendship which is invited, mutual, consensual, or reciprocated action.
Who is protected under the law?	The law protects a wide range of workers including paid staff, contractors, trainees, apprentices, interns, volunteers, unpaid workers, and job applicants. Workers are protected at work and in many work-related situations, including if Sexual Harassment happens at work-related events and during travel, between people sharing the same workplace or between colleagues outside of the standard workplace or regular working hours. Workers are also protected from third-party Sexual Harassment – that is, harassment by customers, clients, suppliers, or other people they encounter in the workplace or carrying out work in relation to their employment.
Employees at greater risk of Sexual Harassment	Anyone can be sexually harassed; however, certain groups are shown to experience disproportionately high rates of Sexual Harassment including: • Women • Aboriginal and Torres Strait Islander Peoples • People with disabilities • People in insecure work (such as contractors, freelancers, and casual workers) • Migrant workers including workers on visas sponsored by the employer • Volunteers • Young people or junior workers (between 18-34) • People who are new to the workplace • Workers who do not speak English as a first language • Women of multicultural and multifaith backgrounds • Lesbian, gay, bisexual, transgender, gender diverse, intersex, queer, questioning and asexual (LGBTIQA+) people.
Consent	Just because a person does not object to 'inappropriate behaviour' at the time, it should not be assumed they are giving their consent to the behaviour then nor consenting for the behaviour to continue or occur at another time. Consent only exists where clear and unmistakable consent has been freely given and continues to be given.

Motive and intent	It doesn't matter what the intention is: Sexual Harassment is against the law. Sexual Harassment occurs even when a harasser does not intend it. The intention of the perpetrator and the gender and/or sexual orientation of the perpetrator or victim is irrelevant. It is how the behaviour is received by the other person that is relevant. Sometimes people accused of Sexual Harassment say they were only joking. But jokes can still be insulting, threatening and unwelcome. Council will not excuse Sexual Harassment which was intended as a joke if it meets the legal definition of Sexual Harassment.
What is a Workplace?	Section 94 of the <i>Equal Opportunity Act 2010</i> provides that a workplace is the place a person attends for the purpose of carrying out functions in relation to their employment. It does not need to be the person's principal place of business or employment. For the purposes of Sexual Harassment law, a workplace is any place a person attends to carry out functions in connection with, or in the course of their employment (or in the course of their prospective employment). The workplace includes remote work locations (i.e., at home), in client's homes, parks and gardens, sportsgrounds, youth spaces and facilities, etc. The workplace is not confined to the actual physical location used by the employees. It also extends to common areas such as lifts, entrances, vehicles, reception areas, corridors, kitchens, and toilets of the premises. With many workplaces operating more online or remotely, experiences of sexism and Sexual Harassment in the workplace, and actions taken in response, are also changing² Sexual Harassment still occurs when working remotely and can take place through different behaviours such as comments, jokes or put-downs via email, instant messenger, or social media among other platforms. Beyond the workplace and outside working hours Behaviour constituting Sexual Harassment can occur beyond the usual workplace and outside normal working hours. For example, workplace Sexual Harassment can occur where there is a link to employment including (but not limited to): • at social functions sponsored and paid for by Council. • at social functions in connection with the team/workplace but not sponsored or paid by Council. • in vehicles while on the way to work functions or meetings. • at after-parties to such events (regardless of their location). • in accommodation (including hotel rooms) associated with or provided by Council. • online via use of technology and social media; and • any other location in situations where the conduct commenced in the workplace and continued outside the workplace and vice-versa.
Use of social media, technology, and Sexual Harassment	Where there is a link to employment, employees are subject to the same rules about Sexual Harassment in the virtual world as they are in the real world. Sexual Harassment can occur through electronic means (such as emails, group chats, short messaging services or other text messages or by viewing pornographic websites) and through social media, regardless of whether the post was made during work hours or not.

² ² VicHealth and Behavioural Insights Team (2019) 'Take Action: Empowering bystanders to act on sexist and sexually harassing behaviours', Victorian Health Promotion Foundation, Melbourne.

Employees must use technology and social media responsibly in the workplace and in relation to anything or anyone associated with the workplace. This extends to the use of technology and social media outside the workplace where there is a strong connection to the employment relationship (for example, between colleagues where the foundation of the relationship is a common workplace).

Council's [Social Media](#) and [Mobile Device](#) policies outline expectations around the use of social media and acceptable use of mobile devices.

13.4 Occupational Violence and Aggression

What is Occupational Violence and Aggression?

Occupational Violence and Aggression is when a person is abused, threatened, or assaulted in a situation related to their work. It might come from anywhere – clients, customers, the public or co-workers.

According to Worksafe:

'This definition covers a broad range of actions and behaviours that can create a risk to the health and safety of employees. It includes behaviour often described as acting out, challenging behaviour and behaviours of concern...Work-Related Violence can cause physical and/or psychological injuries, and sometimes be fatal.'

Occupational Violence and Aggression could look like this:

- eye rolling and sneering
- yelling, swearing, calling names
- standing over someone
- spitting, shoving, tripping, grabbing, hitting, punching
- threats of violence, threats with weapons
- sexual assault

Work-Related Violence can be perpetrated by:

- a co-worker (including a supervisor, manager, or employer).
- a customer, client, contractor, or service provider.
- a person known to the organisation or employee; or
- a stranger (intruder).

It can occur in a number of settings, including the usual workplace and off-site situations where you are there because of work, such as attendance at training courses or in a client's home.

Some acts of Occupational Violence may be reported to Police.

What you can do about Occupational Violence

- Identify and report all incidents of Violence and Aggression to your employer. This is important, so your employer knows about it and can take steps to better prevent and manage it in the future. Your employer can also provide you and your colleagues with appropriate support.
- Work with your employer on managing risks of Violence and Aggression. For example, do training and follow work procedures.
- Follow work procedures that have been put in place to reduce the risk of Occupational Violence and Aggression incidents occurring.
- If you are affected by Occupational Violence and Aggression, seek support from your manager or your workplace Employee Assistance Program (EAP) provider.

13.5 Victimisation

People should be able to stand up for their rights, or help others do so, without being treated badly in return. Sometimes people don't speak out because they worry about retaliation such as fear of losing their job, being bullied or other negative consequences.

Victimisation of others is unlawful under the *Equal Opportunity Act 2010* and *Racial and Religious Tolerance Act 2001*.

What is Victimisation? The *Equal Opportunity Act 2010* makes it against the law to victimise someone because they have:

- asserted their rights under Equal Opportunity or Health and Safety law.
- made a complaint or it is believed they intend to make a complaint.
- helped someone else make a complaint.
- refused to do something because it would be discrimination, Sexual Harassment, Bullying, Racial or Religious Vilification, Victimisation or in breach of this policy.

It is also Victimisation to threaten someone (such as a witness) who may be involved in the investigation of a concern or complaint under this policy

Examples of Victimisation

- A worker is refused a promotion and told that it is because their complaint of Bullying last year showed that they are not a team player.
- A warning being given to someone for being a witness to a complaint of race Discrimination made by a work colleague
- Being denied a promotion or being moved to a position with lower responsibility after helping a colleague make a Discrimination complaint
- A colleague spreading gossip or rumour about a person who has made an accusation of Sexual Harassment about them
- A colleague threatening harm towards witness involved in a workplace investigation.

What can you do? An employee who believes they have been victimised has the right to complain.

13.6 Sexual Orientation and Gender Identity

Council formally recognises and is a proud ally of our lesbian, gay, bisexual, transgender, gender diverse, intersex, queer, questioning and asexual community (LGBTIQA+). Council makes this statement in support of all forms of diversity and is committed to creating a work environment that is respectful and inclusive.

It is against the law to bully or treat someone unfairly because of their sexual orientation or gender identity or what you think their sexual orientation or gender identity might be.

Protected personal characteristics in Victoria:

- *Sex or Intersex status.*
- Sexual orientation or gender identity, including gay, lesbian, bisexual, transsexual, transgender, queer, and heterosexual.

What the law says **Gender Identity**

Gender identity Discrimination is when someone treats you unfairly or bullies you because of your gender identity, appearance, mannerisms, or other gender-related characteristics.

Under the *EO Act*, gender identity protects your right to identify as a member of the opposite sex. Gender identity also protects the right of intersex people to choose the sex they identify as.

People can do this by living, or seeking to live, as a member of a particular sex or assuming characteristics of a particular sex. This could be through:

- the way they dress
- a name change
- medical intervention, such as hormone therapy or surgery.

Sexual Orientation

Sexual orientation Discrimination is when someone treats you unfairly or bullies you because of your sexual orientation or what they assume your sexual orientation to be.

Sexual orientation means your sexuality, which is determined by the sex of your preferred sexual partners. It includes homosexuals, lesbians, bisexuals, and heterosexuals.

Examples of Discrimination **Gender identity Discrimination**

- Refusing to call someone by their preferred name or use their preferred pronouns
- Not allowing a transgender person to use the changerooms that align with their gender identity

Sexual orientation Discrimination

- Asking a staff member not to talk about his boyfriend or her girlfriend at work because it makes them feel uncomfortable,
- Refusing to employ a bisexual person because they wouldn't fit in with the rest of the team.

13.7 Human Rights

What are Human Rights?

Human Rights are basic entitlements that belong to every person, regardless of background, where they live, what they look like, what they think or what they believe.

Based on the values of freedom, equality, respect and dignity, Human Rights acknowledge the fundamental worth of each person. The law places responsibilities on government and other public authorities to consider people's rights when developing laws, policies and delivering services.

Accordingly, the values and principles incorporated into relevant Council policies, Codes of Conduct and the REACH characteristics have been underpinned by the *Victorian Charter of Human Rights and Responsibilities Act 2006*.

What are people's Rights?

The Act outlines 20 fundamental rights of all people in Victoria:

- right to recognition and equality before the law (section 8)
- right to life (section 9)
- right to protection from torture and cruel, inhuman, or degrading treatment (section 10)
- right to freedom from forced work (section 11)
- right to freedom of movement (section 12)
- right to privacy and reputation (section 13)

- right to freedom of thought, conscience, religion, and belief (section 14)
- right to freedom of expression (section 15)
- right to peaceful assembly and freedom of association (section 16)
- right to protection of families and children (section 17)
- right to taking part in public life (section 18)
- cultural rights (section 19)
- property rights (section 20)
- right to liberty and security of person (section 21)
- right to humane treatment when deprived of liberty (section 22)
- rights of children in the criminal process (section 23)
- right to a fair hearing (section 24)
- rights in criminal proceedings (section 25)
- right not to be tried or punished more than once (section 26)
- right to protection from retrospective criminal laws (section 27)

13.8 Racial or Religious Vilification

What is Racial or Religious Vilification? *The Racial and Religious Tolerance Act 2001* makes it against the law to vilify a person or group of people because of their race or religion.

Racial or Religious Vilification includes public behaviour that incites:

- hatred.
- serious contempt.
- revulsion or severe ridicule.

of a person or group of people, because of their racial or religious background.

Behaviour that could be seen as Vilification includes:

- speaking about a person's race or religion in a way that could make other people hate or ridicule them.
- publishing claims that a racial or religious group is involved in serious crimes without any proof.
- repeated and serious spoken or physical abuse about the race or religion of another person.
- encouraging violence against people who belong to a particular race or religion or damaging their property.
- encouraging people to hate a racial or religious group using flyers, stickers, posters, a speech, or publication, or using websites or email.

It is also against the law to give permission or help someone to vilify others.

For example, Iftikhar is a Muslim and complains that a social networking site publishes offensive material that encourages people to hate Muslim people.

Some behaviour may not be Vilification, if it is reasonable and done in good faith, such as publishing a media report about racist behaviour. Some comments or jokes about a person's race or religion may not be Vilification, but they could still be discriminatory if they happen in one of the areas of public life covered by the *EO Act*, such as at work.