

Workplace Behavioural Concerns Resolution Policy & Guidelines

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1. PURPOSE AND COMMITMENT

Council is committed to providing a respectful, safe, and healthy workplace where workplace behavioural concerns and complaints are treated seriously and the approach to resolution is fair, transparent, timely and one that seeks to maintain positive relationships.

The Workplace Behavioural Concerns Resolution Policy:

- outlines the relevant obligations, requirements, and expectations of Workplace Participants about resolving behavioural concerns and complaints.
- provides clear options to enable the early resolution of workplace issues, such as initiating self-help and engaging support where required.
- references relevant Council policies and legislative or common law requirements – some of which may arise as a result of the City of Greater Dandenong's status as a Council; and
- provide processes for Council to implement in an effort to resolve behavioural issues or complaints in the workplace, including a formal complaint resolution process.

This document does not operate to the exclusion of any other Council policies and procedures or any legal rights of an affected person. There will be some situations that are beyond what is covered in this document which may need to be referred to another process or body to ensure they are dealt with appropriately (for example, misconduct or illegal activity that may require immediate action under Council's disciplinary processes).

2. BACKGROUND

In line with Occupational Health and Safety, Human Rights, Gender Equality and Equal Opportunity legislation, Council is committed to protecting the health, safety and wellbeing of all Workplace Participants and will provide, as far as it possibly can, a safe Council working environment that is free from Bullying, Discrimination, and Violent Behaviour.

Workplace participants are expected to promote an environment of wellbeing in the workplace and ensure all people in the workplace, including staff, Councillors, visitors, patrons, clients, and customers are treated with respect and dignity and report any acts or suspected acts of Bullying, Sexual Harassment, Discrimination and/or Violence. All Workplace Participants - as defined will treat all people with courtesy and respect and recognise there are legitimate differences in opinions, race, culture, religion, language, gender, and abilities.

The guiding principles upon which this policy is founded are:

- **Commitment:** Council is committed to resolving behavioural concerns in a fair, transparent, timely way and one that seeks to maintain healthy, safe, and positive relationships.
- **Accessibility:** People can easily find out how to report and disclose concerns and make a complaint and will be actively assisted throughout the resolution process.
- **Transparency:** People know how behavioural concerns will be handled.
- **Objectivity and fairness:** All parties are treated with respect and courtesy. Complaints are judged on merit and fact.
- **Confidentiality:** The concerns resolution process protects the personal information of people and prohibits Victimisation.
- **Accountability:** We are accountable for our decision making and complaint handling performance. Reasons for decisions will be provided and decisions will be subject to appropriate review processes.

- **Continuous improvement:** Council regularly analyses data to find ways to improve our concern resolution activities and obtain knowledge to reduce and minimise behavioural concerns in the workplace.

3. SCOPE

The policy applies to all employees including full-time, part-time, temporary, and casual employees and Workplace Participants. The policy does not apply to Councillors. The *Councillor Code of Conduct* provides direction as to how concerns or disputes will be addressed in accordance with the prescribed requirements of the *Local Government Act 2020*, including disputes between Councillors and Council staff.

The Policy applies to the majority of workplace behavioural concerns, matters or complaints including:

- Unlawful conduct, including Discrimination, Bullying, Sexual Harassment, Racial and Religious Vilification, Work-Related Violence, Victimisation
- Workplace conflicts due to behavioural matters
- Interpersonal disputes
- Personality conflicts
- Disrespectful workplace behaviour including rumour, gossip, and innuendo.

It also applies to addressing concerns or complaints of unlawful and 'inappropriate behaviours' perpetrated by third-parties including clients, customers, patrons and other members of the public.

The Policy does not apply to matters or complaints relating to:

- safety breaches other than workplace bullying and work-related violence (refer to Council's 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 or similar (refer to Staff Grievance Resolution Policy or the Dispute Resolution Procedure in the Enterprise Agreement)
- complaints that fall within the Protected Disclosures Act 2012 (Vic) (refer to the Disclosures under the Protected Disclosures Act 2012 Policy).

This Policy is not intended to replace the Dispute Resolution procedure in Council's Enterprise Agreement. However, if the Dispute Resolution procedure from the Enterprise Agreement applies, and part of it is inconsistent with a part of this Policy, then the applicable part from 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.
	Contact Representatives will not solve the problem but are able to provide assistance to you to 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 by searching the term AWB Contact Representatives. Their details are also displayed on noticeboards.

Bystander/Witness	Is someone who witnesses or overhears inappropriate behaviour in the workplace and who may intervene or take action in response.
Complainant	A person who makes a formal or informal complaint.
Disclosure or report	Information provided by a worker about an experience or incident. The report may be made by the worker or by a bystander. It could be an anonymous report. It requires action but may not lead to a formal complaint.
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.
Knowingly false complaint made in bad faith	A false, malicious, or vexatious complaint is one 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.
Preliminary Assessment	A Preliminary Assessment may be used by Council for the purposes of determining what steps are appropriate in order to resolve the matters or complaint appropriately, particularly where the reported behaviours do not constitute a breach of a Council policy (such as the <i>Appropriate Workplace Behaviours Policy</i>) but have still resulted in two or more parties feeling uncomfortable or upset.
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 Equal Opportunity and Human Rights 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 who the complaint is made.

Support Person	A Support Person is a person who provides support to another person (including to the Complainant, Respondent or Witnesses) during the processes associated with this Policy. A Support Person may include a colleague, friend, relative or union delegate or AWB Contact Representative or OHS representative. Please note support can only be provided by an OHS representative in relation to issues of Bullying or Occupational Violence and Aggression. A Support Person may participate by – • providing emotional support and reassurance. • prompting or giving support to assist the person in responding. • explaining or clarifying the questions which have been asked. • assisting in clarifying a response if the person has difficulty communicating their reply. • taking notes; and • seeking breaks to assist the person. A Union Delegate may do all of the above as well as advocate on behalf of the person being represented, except where they are providing support to a person who is giving a statement as part of a formal investigation process. The Support Person cannot be someone who is involved in the complaint and should not be someone who is likely to be a Witness should the matter proceed to, or be under, investigation.
The parties	Are the people involved in a complaint, that is, the complainant and respondent.
Victimisation	Victimisation is when someone subjects, or threatens to subject, another person to some form of detriment or harm, because they have: • lodged a complaint of Discrimination or Sexual Harassment. • provided information or documents regarding a complaint of Discrimination or Sexual Harassment. • reasonably asserted their rights, or supported someone else's rights, under anti-discrimination laws. • made an allegation that a person has acted unlawfully under anti-Discrimination laws.
Witness	A person who may have knowledge or further information about a particular matter under investigation.
Workplace	Place of employment, where a person attends for the purpose of carrying out any functions in relation to his or her employment, occupation, business, trade, or profession. It applies in all situations and locations where a person is representing or doing work for or on behalf of Council, whether on Council premises or off-site. It also includes when a person is at a location 'because of work' such when a person is representing or doing work on behalf of or for Council, whether on Council premises or off-site, including (but not limited to) conferences, work functions, team lunches, Christmas parties, client premises or business trips or where a person can be readily identifiable as a representative of Council.
Workplace Participants	Council employees and others engaged directly by Council including contractors, agency staff, volunteers, and students.

5. POLICY

Responding to inappropriate or unlawful workplace behaviour

Council's *Appropriate Workplace Behaviours Policy* sets out Council's expectations in relation to appropriate workplace behaviours including unlawful behaviours such as:

- Discrimination
- Equal Opportunity in Employment
- Bullying
- Sexual Harassment
- Work-Related Violence
- Racial or Religious Vilification
- Sexual Orientation and Gender Identity
- Human Rights
- Victimisation

Don't respond to inappropriate or unlawful behaviour with your own inappropriate or unlawful behaviour. There are a range of formal and informal resolution options available.

Council's priority will be on ensuring the safety and wellbeing of the person disclosing or formally reporting the inappropriate behaviour.

This Policy and associated documents listed on page 22 will assist you to:

- understand available options for resolution.
- support that is available; and
- possible outcomes

What support is available?

Employee safety and wellbeing is of the utmost importance. Before, during and even after the process of addressing concerns, it is appropriate for all parties to know that support is available to alleviate reservations and support health and wellbeing during the process.

If you are impacted in a manner which is adversely affecting your health and wellbeing, your first step should be to get support. Council's Employee Access Program (EAP) is always available (see below) or you may prefer to seek your own support from other professionals.

When you are ready to address the matters in the workplace, there are a number of people who can assist and advise you in relation to workplace behavioural concerns:

Support can be obtained directly from:

- Council's Employee Assistance Program (EAP) service – telephone 1300 687 327 to book a confidential appointment at no cost to you. The EAP consultant can assist by providing confidential emotional support throughout the process and offer suggestions in relation to resolution of the concerns.
- Your direct supervisor or manager or another manager if you prefer.
- Any Director.
- An Appropriate Workplace Behaviours (AWB) Contact Representative.
- AWB Contact Representative details are found in The Source by searching the phrase AWB Contact Representatives (or part thereof). Their details are also displayed on notice board.

- AWB Contact Representatives cannot offer advice about your complaint. Their role is to provide confidential, impartial information and support to employees with inquiries or who would like to explore their options on workplace behaviour matters.
- A Union representative.
- Your designated work group Health & Safety Representative (HSR)* (in relation to issues of Bullying or Occupational Violence and Aggression only)
- If it is not feasible possible to seek advice and support, or to lodge a complaint with your work group's designated work HSR, you can choose to speak to a HSR from any designated work group. Their details can be found on The Source and are displayed on notice boards
- Team Leader Organisational Development (designated EEO Officer).

Supervisors, team leaders and managers have a responsibility to support their staff involved in the process by regularly checking-in with the parties involved. Their support is to continue regardless of whether the parties are at work or not.

In some cases, Council will appoint an independent person to provide "welfare support" to the complainant, respondent, and other relevant parties to the complaint. This person will offer additional independent support and information about the process.

If you need the support of an interpreter or translator, or special services or facilities to fully participate in any process, please inform your chosen support person, supervisor, or a member of the OD team.

Urgent matters

There may be circumstances where it is appropriate to raise a concern or make a complaint immediately to a member of the management team (Team Leader Organisational Development, a Manager, Director or Chief Executive Officer).

Such circumstances could include instances where the behaviour is likely to result in serious and imminent risk to the health and safety of yourself or other(s), including physical or psychological harm or where the matter has potential to bring Council into disrepute.

Why taking action is so important

The most important thing any victim, witness or bystander can do is to act on inappropriate workplace behaviour.

People are often concerned about making a report and the barriers to reporting include the belief that the behaviour isn't serious enough, there is a power imbalance, that reporting would make no difference or be treated seriously or that there would be negative consequences. While these concerns relate to all types of inappropriate behaviours, this is particularly so for matters of Sexual Harassment.

Notwithstanding the very valid reasons people are reluctant to come forward, Council encourages anyone experiencing or witnessing inappropriate behaviour to speak up. This provides the chance to put a stop to current or further harm and helps drive important changes to improve the workplace for everyone.

You will be supported throughout the process and measures will be taken to maintain the wellbeing and safety of all parties.

Victimisation and reprisal is unlawful. If this occurs or is suspected, Council will take action which may include disciplinary action in line with the Performance and Behavioural Issues Policy and Procedures.

Resolution options

A range of options exist to help resolve workplace behavioural concerns or issues. Each option is explored further in Section 13.4 Steps towards resolution.

- **Informal Resolution Options**

- This includes self-management, 'courageous conversations', supported resolution and alternative resolution processes such as a facilitated discussion or mediation

- **Formal Resolution Options**

- This includes preliminary assessments or workplace investigations. Council's Workplace Investigation Procedure explains the investigation process in more detail should a complaint proceed to formal investigation. (Refer Additional Resources on page 21)

- **External Resolution**

- This includes referral to an external body such as the Australian Human Rights Commission, the Victorian Equal Opportunity, and Human Rights Commission or Worksafe. Note that not all breaches of this policy will fall within the jurisdiction of an external body).
- Contact details for relevant external organisations on page 21.
- At any time, information may be obtained from, or a complaint lodged, with an external organisation.
- Council encourages exploration of internal resolution options before going external. This is because it is common for the external organisation to first seek to understand if the matter can be resolved using the options provided by Council and it also gives Council the opportunity to offer support to the people affected by an issue.

Council's [Behavioural Concerns Resolution Pathways document](#) summarises the various options and when each is best applied.

Usually, the complainant is able to choose the resolution option they would like to use to try to resolve the concern. However, if the matter is of a sufficiently serious or complex nature, or action is required by law, Council may determine it appropriate to proceed directly to a formal investigation or refer the matter to an external organisation (such as Victoria Police, Ombudsman Victoria, or the Independent Broad-based Anti-Corruption Commission (IBAC)). The reasons for doing so will be explained and support options discussed.

Outcomes

The outcome or resolution of a complaint may include but is not limited to the following:

- Agreement that inappropriate behaviour will stop or change
- An agreement or memorandum of understanding between the parties for future interactions
- An apology including written or verbal
- A change in working arrangements
- Changes to policy, procedure, or practices
- A recommendation to participate in mediation, facilitation, or conciliation between the parties (where both parties agree to this action)
- Conduct a workplace health check for one or more teams
- A confidential one-to-one discussion with an employee and a manager to establish future expectations

- Disciplinary action in accordance with Council's policies
- Education/training for a person or group (e.g., respectful workplace behaviours, communication skills, diversity awareness, interpersonal skills)
- Engaging in a cooperative conversation
- Formal written behavioural agreement
- Move one or more parties or make changes in reporting arrangements
- Reinstatement of benefit (for example, sick leave or training that was denied)
- Review of a decision
- Support and counselling provided to the affected person(s)
- Team building or other restorative work with the parties or group
- In particular circumstances, Council will limit access to Council facilities or ban a customer, client, patron where their behaviour is considered inappropriate
- Enter into other alternative dispute resolution processes with the third party

Communication of outcomes and findings

Any information and reports obtained during any resolution process will be treated confidentially in accordance with Council's policies and procedures.

Council will arrange for meetings and/or correspondence to communicate the findings of any investigation and confirm the findings with all parties, including the complainant.

The complainant and the respondent will be provided with a summary of the findings of any investigation in terms of whether or not, and to what extent, the complaint has been substantiated.

Neither party will be told details of any disciplinary (or other) action as it applies to the other party as this information is confidential to that individual.

Confidentiality and record keeping

Any information and reports obtained during any resolution process will be treated confidentially in accordance with Council's policies and procedures.

All parties involved with the matter (including managers and team leaders, complainants, respondents, witnesses, and bystanders) must observe strict confidentiality.

This means the complaint cannot be raised or discussed with any other staff member, except for Organisational Development and your chosen Support Person or representative. These parties are also bound by the same confidentiality requirements.

Breach of confidentiality can lead to further complaints (which may also be subject to investigation), aggravation of the issue or even risks of defamation. Council may take disciplinary action against employees who breach confidentiality. Such action will be taken in accordance with the appropriate Council policies and procedures.

This does not mean that information imparted during the investigation will not be shared, as this information may need to be put to all or some of the people involved in the complaint such as the Respondent or Witnesses for their response. However, information sharing may only be done by a person authorised to do so, such as the investigator engaged to review the matter.

At the conclusion of the process, the officer responsible for the management of the complaint will work with Organisational Development to ensure all documentation is securely stored in accordance with Council's document management processes.

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 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 and the Victorian Public Sector Model Policy for the Prevention of Sexual Harassment in the Workplace.

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 preparing and reviewing this Policy. The Policy 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 2021. 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

The contents of the policy were checked using a 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

Background

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.

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. RESPONSIBILITIES

As overarching principles, all parties have a responsibility to -

- behave courteously, to act in good faith and to respect the rights of all others during and after the process.
- respect the confidentiality of the complaint and the process.
- comply with relevant Council policies and procedures, including Council's [Appropriate Workplace Behaviours Policy](#);
- make complaints in good faith, and not knowingly make false accusations.

- advise of any conflict of interest (for example if requested to act in the role of a Support Person whilst being a potential witness).
- act and respond to matters in a timely manner including as directed by Council or an investigator: and
- not victimise or retaliate against any person because of their involvement in a complaint.
- should a complaint progress to a formal complaint resolution process, you may be provided with additional information in regard to your rights and responsibilities and you will be required to comply with these.

Specifically, it is the responsibility of **People Leaders** to ensure that:

- They identify, prevent, and address potential problems before they become formal grievances.
- They are actively involved in communicating and information sharing with the relevant parties and particularly the participants within their unit to ensure welfare and information is shared in a timely manner.
- All decisions relating to employment practices are made with consideration given to the ramifications for the individual, as well as the organisation in general.
- Any complaint or grievance is handled in the most appropriate manner at the earliest opportunity.
- All employees and volunteers are treated fairly and without fear of intimidation.

It is the responsibility of **Employees** and other **Workplace Participants** to ensure that:

- They attempt to resolve any issues through their immediate supervisor and through internal processes at the earliest opportunity.
- Actively and genuinely participate in any attempts to resolve behavioural concerns in the workplace.

It is the responsibility of the **Organisational Development Unit** to ensure that:

- Workplace Participants are aware of their obligations and responsibilities in relation to dealing with workplace behavioural concerns.
- Ongoing support and guidance is provided to relevant parties.
- Any grievance that comes to the attention of managers or supervisors is handled in the most appropriate manner at the earliest opportunity.

11. REPORTING, MONITORING AND REVIEW

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

Council 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.

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 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
- 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
- Prevention of Bullying and Harassment in the Workplace Guideline
- Privacy & Personal Information Policy
- Protected Disclosures Act Policy
- Reasonable Adjustments Policy
- Social Media Policy
- Staff Grievance Resolution Policy

13. APPENDIX A - WORKPLACE BEHAVIOURAL CONCERNS RESOLUTION PROCESS GUIDELINES

13.1 Introduction

These guidelines outline the options available at Council to assist in the resolution of behavioural complaints and concerns in the workplace. These guidelines are complemented by a series of Fact Sheets, Council's Workplace Investigations Procedure and other appropriate Council Policies and Guidelines.

Council will make its own decisions as to how it will choose to deal with a complaint or behavioural concern in the workplace, including by carrying out a Preliminary Assessment

13.2 Preliminary Assessment

A Preliminary Assessment might be carried out as an initial step to explore the facts and evidence available at the time the concern or complaint is raised to determine how best to manage and / or resolve the matter.

A Preliminary Assessment might also occur where there is no actual complaint or allegations have been made, but suspicions have been raised about internal issues which, on the face of it, need to be investigated and possibly addressed.

A Preliminary Assessment could involve:

- conducting confidential interviews with relevant people,
- reviewing documentation; and
- gathering evidence.

Conversely, in some cases, a Preliminary Assessment could be conducted without the knowledge or participation of the Complainant and / or Respondent. Council may also consider the broader context of the matter or complaint.

A Preliminary Assessment explores the evidence available at the time and takes into account the broader context of the matter or complaint. It does not result in findings of fact and may be conducted without the participation of the complainant and / or respondent. A preliminary assessment differs from a formal investigation in that it does not:

- require findings of fact to be made.
- require procedural fairness to be applied.
- result in disciplinary outcomes.

Outcomes of a Preliminary Assessment could be a decision to recommend or take further action in relation to a concern or a decision that no formal action is necessary. Other resolution options could include the following, some of which are further set out below:

- Alternative resolution processes (i.e., group or team building, facilitated discussion or mediation).
- An investigation on the papers (where a decision is made based only on documentary evidence, which may include written submissions from the parties).
- Other informal interventions between the parties.
- A workplace health check or risk review.
- A formal investigation; or
- Referral to an external body for investigation or assistance

The Preliminary Assessment might be carried out internally by an appropriately skilled Council employee or an external party engaged by Council.

13.3 The Resolution Process

13.3.1 Self-care

Following any incident or event in which you feel you have experienced inappropriate behaviour; you should first take care of your emotional wellbeing and health. This may include contacting Council's Employee Assistance Provider (Converge International) on 1300 687 327 for confidential counselling and/or support.

You might also seek assistance from an appropriate medical practitioner or other professional.

13.3.2 Analyse the situation

It is important that you understand and are able to clarify what your concerns are. Take some time to consider alternate points of view. Ask yourself –

- Is this part of an ongoing interpersonal conflict?
- Are you able to put yourself in the other person's place? Is there anything that may explain their behaviour towards you?
- Is it possible this may be a misunderstanding that needs to be clarified?
- Has this behaviour occurred before and what has previously been done to resolve the matter?
- Given all the circumstances, would a 'reasonable person' have behaved or reacted in a similar manner?
- Does the behaviour potentially breach a law, workplace right or policy?

Once you have clarified your concern(s), you will be better placed to move to resolving the matter.

13.4 Steps towards resolution

Council encourages individuals to follow three stages of resolution and to attempt genuine resolution at each stage prior to moving to the next. The aim of each stage is to enable the issue to be resolved without the need for higher authority intervention and in recognition that direct resolution between the parties usually results in better outcomes for the working relationship.

However, there will be occasions where direct resolution will not be possible including power imbalances, and there is no restriction on progression to later stages in the resolution process in recognition of this.

You may be reluctant to speak up about a workplace behavioural concern for fear that speaking up may have a negative impact on you or there may be reprisals.

It is important to realise that if no action is taken or the behaviour is unlikely to stop. Council views victimisation or reprisals very seriously and has processes in place to protect and/or deal with such behaviour should it occur. If you believe you are being victimised, you should bring this to the immediate attention of your Team Leader or Manager, an AWB Contact Representative or Organisational Development.

There are circumstances when Council must, by law, take action about the matters raised. This is to ensure that you and / or other employees and Workplace Participants remain safe in the workplace and Council meets its legal obligations.

To the extent the law allows, Council will provide the opportunity for anyone who discloses or reports inappropriate behaviour to have a say in how the matter is treated.

13.4.1 Step 1 – Informal resolution (Self-management)

The complainant is supported to resolve the matter on their own, provided they feel confident and safe to do so.

What does self-management involve?

Self-management means you attempt to resolve the matter directly with the other person(s) in a respectful, honest, and professional manner, consistent with Council's REACH characteristics.

Self-management is about trying to fix the problem without laying blame, passing judgement and/or without expecting punishment or proving one person to be right and another wrong.

Choosing to self-manage your concern in no way diminishes the importance of the matter nor should it be viewed as diminishing the impact the behaviour has or is having on you.

Self-management does not result in a disciplinary outcome.

The benefits of self-management

Self-management can be a difficult step to take because you may be fearful of the reaction of the other person. However, it is usually the most effective resolution approach because you give the other person the opportunity to respond and to try and address the issue.

Self-management also ensures information about the situation is contained to as few people as possible. This increases the chance that the matter remains confidential.

Self-management can be very effective in resolving matters quickly and effectively.

Self-management is also helpful when the other person is unaware that their behaviour has had a particular impact and is a good option when a miscommunication may have occurred between you and the other person. It is usually a good approach as it is likely to preserve, if not enhance, the working relationship.

Cooperative Conversations

An effective self-management technique is to attempt a 'Cooperative Conversation' with the other person(s).

A Cooperative Conversation involves you making a calm, polite but firm request for the change you need. You indicate the effect of the behaviour or decision on you and ask for agreement about how things need to be different in the future. In simple terms, what you are saying is "Stop – I don't like it".

This approach works best if you act in a timely manner. It may be necessary to give yourself time to 'cool off' if you are feeling emotional, but it can become more difficult to raise issues as time passes. Also, your approach may come as more of a surprise to the other person.

If you are unsure of how best to express yourself or have concerns about how the other person might respond to self-management, please seek support from any of the people listed as support (refer above in this Policy).

A Cooperative Conversations fact sheet is available to help you prepare for a cooperative conversation (see Resources on page 24).

Keeping notes of self-management attempts

It is important that you keep notes of any attempts you take to raise the issue with the other person using self-management.

It can also be helpful to record any agreement in writing (e.g., sending an email summarising the agreement made between yourselves).

What if self-management doesn't resolve the matter **or is not appropriate in the circumstances**

In some circumstances, self-management will be inappropriate, e.g., if there is a power imbalance between the parties, if it has been attempted unsuccessfully, or if it raises safety concerns.

If self-management is not an option, consider moving to Step 2 – Supported Resolution.

13.4.2 Step 2 – Supported (informal) resolution

Resolving the issue internally as agreed with the complainant, with a formal response or investigation. For example, a manager who receives a complaint takes or facilitates informal action as discussed and agreed with the complainant.

Who can support you?

In Step 2 support to resolve the matter is available from:

- any Director,
- your manager or supervisor,
- the Team Leader Organisational Development, who is also Council's designated EO Officer (Note: You should advise the Team Leader that you are approaching them in the capacity of informal resolution as they are also the contact for formal resolution).
- a consultant from the Organisational Development team.
- the Manager People and Procurement Services.
- an AWB Contact Representative.
- your designated Health and Safety Representative (in relation to issues of Bullying or Occupational Violence and Aggression only).
 - Where it is not possible to seek advice or support from your designated work group's Health and Safety Representative you may choose to speak to any Health and Safety Representative. Elected Health and Safety Representatives displayed on notice boards and on The Source.
- an EAP Consultant.

A support person may accompany you to discussions.

Clarify your concerns

Before seeking support, it is important that you spend some time clarifying your concerns, what happened and what you would like to happen as a result. An optional form has been designed that you might find useful to help you gather and write down your concerns (see Resources on page 22).

It is not mandatory to submit a formal written complaint on this or any other form.

Resolution options available in this step

During this step, the various options available for resolving your concern(s) will be explored. Options may include:

- Requesting assistance so that you can undertake Step 1 – Self-Management. For example, you might ask the person for some feedback about the words you are proposing to use in the conversation or rehearse the conversation.
- Having your Team Leader / Manager directly approaching the person to raise your concerns on your behalf. They would effectively be undertaking Step 1, self-management, on your behalf. You would usually need to be present during your Team Leader / Manager's conversation with the other person.
- The Team Leader / Manager, in conjunction with Organisational Development, may discuss and recommend training opportunities which may assist you, the other person or perhaps the entire team depending on the nature of the issue and whether it is a widespread concern.
- The appropriateness of undertaking a review or survey of your work area to obtain further information (note this is not a workplace investigation).
- Referral to the Employee Assistance Program.
- Exploration of alternative resolution processes (see next page).
- Making a decision to move immediately to Step 3 – Formal Resolution or External Resolution. This might occur, for example, where an issue has the potential to bring Council into serious disrepute or there has potentially been serious misconduct.
- Assisting you to contact Victoria Police if you feel you have been subject to a criminal offence, such as an assault or threat of harm.

Alternative Resolution Processes (ARP) including facilitated discussions and mediations

Another supported informal resolution tool which may be appropriate could be an "Alternative Resolution Process" (ARP).

Like self-management, **this is** an opportunity for the parties to resolve their concerns without laying blame or passing judgement and is without disciplinary outcomes. The focus is on reaching a positive agreement to allow the parties to continue to work together professionally.

Other options include:

- facilitated discussion
- mediation
- group relationship building initiatives
- team health checks
- training or mentoring.

In some cases, ARP may not be appropriate. For example, where there is an allegation of physical harm to a person, when the allegations, if proven, would constitute a serious workplace policy breach or unlawful conduct, there are significant reputational or legal issues involved, the parties are unwilling to participate.

Facilitated Discussions & Mediations

Whether a Facilitated Discussion or Mediation will be appropriate will depend on the nature of the issue(s), whether both parties have contributed to the breakdown, whether the behaviour is a one-off incident or the willingness of each party to participate.

A Facilitated Discussion or Mediation could occur at either of two stages in the resolution process:

- where the informal approach has not resolved the issue; or
- where an investigation has recommended this as a method to assist with resolution of the allegations.

A Facilitated Discussion or Mediation uses the assistance of an independent third party, the facilitator or mediator, to help the parties discuss and try to resolve an issue between them.

The Discussion or Mediation is intended to help the parties identify and deal with the issues between them and to gain a better understanding of each other's point of view. It focuses on assisting the parties to resolve the disagreement and how they will work together in future with a view to avoiding further disputes about the issues.

A Facilitated Discussion or Mediation does not make findings of fact and is not intended to revisit the allegations or the findings which have been reached as a result of any prior investigation.

A Facilitated Discussion/Mediations Fact Sheet is available to help to understand and prepare for these discussions (see Additional Resources, page 22)

What if informal resolution is unsuccessful or **not appropriate in the circumstances**

Informal responses may not be appropriate for serious behaviour that would warrant disciplinary action if substantiated, criminal conduct or where other workers may be at risk.

There will be situations where Steps 1 and 2 are not appropriate or unsuccessful. If appropriate, the matter may proceed to a formal resolution process (Step 3).

13.4.3 Step 3 - Formal resolution

Dealing with a matter using formal internal processes, including investigation with documented findings.

Overview

Where self-management or informal resolution has not been successful or is inappropriate Council will take steps to determine the most appropriate resolution process. This will be done by taking into account all factors and the rights and wishes of the individuals concerned.

Formal investigation

Notwithstanding anything above, you may request to have the matter formally investigated.

Not all complaints will proceed to a formal investigation.—For example, complaints which should be managed in accordance with Council's Grievance Resolution process or have been deemed to be part of reasonable performance management will not be investigated, nor will complaints that are more appropriately resolved by one of the informal resolution options.

The decision as to whether an investigation will take place rests with Council, not the parties to the complaint. If Council decides not to investigate a matter, it may choose to resolve the matter by any other means which it regards as appropriate. This could include one or more of the Outcomes / Resolutions listed above.

Lodging a formal complaint	Refer to Council's Workplace Investigations Procedure for more information (see Additional Resources on page 224) Formal complaints can be made verbally or in writing to the Team Leader Organisational Development who is Council's designated Equal Opportunity Officer. To enable Council to obtain a good understanding of what the complaint is about, it is preferable that the following information is provided: • Your name, address and contact details (the Complainant). • Who the complaint is being made about (the Respondent/s). • Details in date order about: ○ What happened to you. ○ When it happened. ○ Where it happened. ○ The people involved. ○ Whether anyone witnessed the behaviour (<i>Witnesses</i>). ○ What (if any) action has been taken to try to resolve the matter. • An explanation of how the situation has affected you. • What you would like to see happen in order to resolve this complaint. • any additional information that can support your complaint. The Behavioural Concerns form can be used as a guide to gather your thoughts or to document your concerns (see Additional Resources, page 22).
Timing	Council will endeavour to acknowledge formal complaints within 2 working days and commence action such as engaging an investigator within 10 working days. Sometimes this timeframe will vary (i.e., when a suitable investigator cannot be identified or is unable to commence, or when one or more of the parties is absent or unable to participate). All parties will be updated as regularly as is possible about progress.

13.4.4 Anonymous complaints

Anonymous complaints or reports can be made via a service provided by Grant Thornton, an external organisation contracted by Council to receive anonymous reports. This service will receive reports of serious inappropriate behaviour such as sexual harassment and other inappropriate or unlawful behaviour including bullying.

The Service provides an independent and confidential anonymous way for Workplace Participants to report inappropriate behaviour discreetly at any time day or night.

Reports can be made by email, mail, or telephone. Only the details provided through the complaints service will be provided to Council.

Limitations

Anonymous complaints are taken seriously. Council will look into the matters raised as far as practicable given that it is an anonymous complaint. There is a limit to what action can be taken to investigate or address an anonymous complaint. By law, all parties to a complaint are entitled to procedural fairness and natural justice meaning they must be given enough information to know what is being alleged against them and to fully respond to the allegations. This is not always possible for an anonymous complaint especially where not a high degree of detail is provided.

13.4.5 External complaints, advice, and resolution

At any time throughout the process, you have a right to seek information or lodge a complaint with an external body.

Before doing so, Council encourages you to explore available internal procedures and resources to resolve your concerns prior to lodging a complaint with any external organisation (except in an emergency situation). We ask this because as in most instances, the agency will seek to understand the steps that have been taken to first internally resolve the matters. Keeping Council informed also allows us to be better understand workplace concerns and review/monitor our resolution processes.

Organisation	Jurisdiction	Contact details
<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 / Enquiry service: 1300 292 153 Fax: 1300 891 858 / 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

13.5 Additional Resources

- [Cooperative Conversations - Fact Sheet](#)
- [Facilitated Discussions & Mediations - Fact Sheet](#)
- [Workplace Investigations - Fact Sheet](#)
- [Behavioural Concerns form](#)
- [Behavioural Concerns Resolution Pathways](#)