



Gladstone Regional Council

Council Policy

Title	ANTI-DISCRIMINATION POLICY
Policy Number	P-2014/1
Responsible Directorate	OFFICE OF THE CHIEF EXECUTIVE OFFICER
Responsible Officer	MANAGER PEOPLE AND PERFORMANCE
Date of Adoption	6 MAY 2014
Resolution Number	G/14/1976
Date Review Due	6 MAY 2017

1.0 PURPOSE:

The purpose of this policy is to assist Gladstone Regional Council in complying with the requirements of the Anti-Discrimination Act 1991 and related legislation and to promote equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct.

2.0 SCOPE:

This policy applies to workplace participants (as defined in the definition section of this policy) while in Council's workplace and work sites, at work-related functions (including social functions and celebrations), while on business trips and attending training courses and conferences.

3.0 RELATED LEGISLATION:

- Anti-discrimination Act Queensland 1991
- Age Discrimination Act 2004 (*Cth*)
- Disability Discrimination Act 1992 (*Cth*)
- Racial Discrimination Act 1975 (*Cth*)
- Sex Discrimination Act 1984 (*Cth*)
- Australian Human Rights Commission Act 1986 (*Cth*)
- Workplace Health and Safety Act 2011 (*Cth*)
- Fair Work Act 2009 (*Cth*)
- Fair Work Amendment Act 2012
- Fair Work Regulations 2009

4.0 RELATED DOCUMENTS:

Gladstone Regional Council Policies and Corporate Standards:

- Harassment Policy
- Recruitment and Selection Policy
- Recruitment and Selection Corporate Standard
- Learning and Development Policy
- Code of Conduct for Employees
- Disciplinary Policy
- Employee Assistance Program Corporate Standard
- Employees attending Conferences, Meetings or Training Corporate Standard
- Social Media Policy Anti-Discrimination Corporate Standard.
- Lodging a Formal Grievance Factsheet
- Steps to Consider Before Lodging a Formal Grievance Factsheet
- Contact Officer Factsheet

Other:

- Anti-Discrimination Commission Queensland website www.adcq.qld.gov.au.

5.0 DEFINITIONS:

To assist in the interpretation of this policy the following definitions apply:

- **“Anti-Discrimination”** means the promotion of equality of opportunity for everyone by protecting them from unfair discrimination in certain areas of activity and from sexual harassment and certain associated objectionable conduct.
- **“Discrimination”** (according to the *Anti-Discrimination Act 1991*) is discrimination on the basis of an attribute including direct and indirect discrimination on the basis of-
 - a. a characteristic that a person with any of the attributes generally has; or
 - b. a characteristic that is often imputed to a person with any of the attributes; or
 - c. an attribute that a person is presumed to have, or to have had at any time, by the person discriminating; or
 - d. an attribute that a person had, even if the person did not have it at the time of the discrimination.

Discrimination on the basis of an attribute includes **direct** and **indirect discrimination**:

- **“Direct Discrimination”** (according to the *Anti-Discrimination Act 1991*) on the basis of an attribute happens if a person treats, or proposes to treat, a person with an attribute less favourably than another person without the attribute is or would be treated in circumstances that are the same or not materially different.

Examples of direct discrimination include (a) an employer who refuses to hire women; (b) an employer who refuses to teach an employee to operate a new piece of equipment because they are too old; (c) not hiring a woman with young children because it is assumed they may need to use carers leave more often; (d)

using recruitment selection processes based on irrelevant attributes such as age, race or impairment rather than on skills needed for the job; (e) not considering a job application from a person called Viv because it is assumed Viv is a female.

- **"Indirect Discrimination"** (according to the *Anti-Discrimination Act 1991*) on the basis of an attribute happens if a person imposes, or proposes to impose, a term-
 - a. With which a person with an attribute does not or is not able to comply; and
 - b. With which a higher proportion of people without the attribute comply or are able to comply; and
 - c. That is not reasonable.

Examples of indirect discrimination include (a) making it essential to see a person's driver licence as a form of identification, a vision impaired person would not be able to obtain a driver licence; (b) making it an essential requirement of a job to hold a driver licence when it is not required, this may indirectly discriminate against an applicant who has a disability or against a person who is too young to obtain a driver licence; (c) placing a job advertisement for a cleaner that requires they have excellent English language skills, this may discriminate based on race when having excellent English language skills is not essential to undertake the duties of a cleaner; (d) not considering making reasonable adjustments to the workplace to allow employment of a person with an impairment who may otherwise be able to perform the essential requirements of the job but just in a different way.

- **"Harassment"** is unwanted and offensive conduct or behaviour by a person or persons directed towards another person based on an attribute such as a person's age, gender, race, religion or a disability. Harassment can be either physical or psychological.

Note: Harassment is not a single incident type behaviour.

Examples of behaviour that may constitute harassment include (a) a co-worker sabotages your work by giving you glaringly incorrect information and making you look incompetent in front of others; (b) your supervisor scathingly calls you a 'wog' in front of the entire work team and humiliates you; (c) a colleague emails you, leaves you voice mail messages and then sends you an SMS message, all messages make offensive remarks about your Jewish religious beliefs; (d) you are Japanese and you are never invited to the work team's social functions, when you ask why you were excluded they reply that you would not be interested in attending an 'Aussie' barbecue.

- **"Sexual Harassment"** (according to the *Anti-Discrimination Act 1991*) happens if a person-
 - a. subjects another person to an unsolicited act of physical intimacy; or
 - b. makes an unsolicited demand or request (whether directly or by implication) for sexual favours from the other person; or
 - c. makes a remark with sexual connotations relating to the other person; or
 - d. engages in any other unwelcome conduct of a sexual nature in relation to the other person;

and the person engaging in the conduct described in paragraphs a., b., c., or d. does so—

1. with the intention of offending, humiliating or intimidating the other person; or
2. in circumstances where a reasonable person would have anticipated the possibility that the other person would be offended, humiliated or intimidated by the conduct.

Examples of sexual harassment include (a) physical contact such as pinching, touching, grabbing, kissing or hugging; (b) staring or leering at a person or parts of their body; (c) sexual jokes or comments; (d) requests for sexual favours; (e) persistent requests to go out where they are refused; (f) sexually explicit conversations; (g) displays of offensive and pornographic material; (h) accessing or downloading sexually explicit material from the internet; (i) suggestive comments about a person's body or appearance; (j) sending rude or offensive emails, attachments, text messages or other social media; (k) talking about your sex life or asking about the other person's sex life.

Notes: Sexual harassment has nothing to do with mutual attraction and such friendships are a private matter. Some sexual harassment is also a criminal offence and Council may be obligated to report such matters to the authorities.

- **“Vilification”** is a public act which incites hatred, serious contempt for, severe ridicule of, a person or group of persons on the ground of race, religion, sexuality or gender identity of the person or members of the group. Examples of vilification include (a) someone paints 'death to all blacks, Jews and Muslims' on the building at work; (b) a car is parked in the workplace car park with a bumper sticker displaying the words 'Exterminate all Jews' or 'Licence to shoot Homosexuals'; (c) a Council officer posts a comment on a public Facebook group that proposes the community gets rid of all transgender persons in the community and labels them as perverts.
- **“Victimisation”** is the process of being victimised or becoming a victim such as retaliation against or being subjected to a detriment because they have lodged a complaint, they intend to lodge a complaint or they are involved in a complaint of unlawful conduct. Workplace participants must not retaliate against a person who raises a complaint or subject them to any detriment. Other examples of victimisation include (a) a supervisor tells a recruitment panel member not to hire a woman for the position, the panel member refuses to follow this unreasonable direction, in retaliation the supervisor stops giving them any available overtime and repeatedly allocates it to others; (b) an employee is involved in a workplace complaint, they ask another employee to come forward as a witness for them. The person is then contacted by the respondent to the complaint who threatens to harm them if they give evidence in favour of the other employee; (c) an employee lodges a complaint about discrimination, the worker is then subject to taunts and snide remarks about the complaint from their co-workers, he is then excluded from being invited to attend work meetings and the team's monthly social event.
- **“Unlawful discrimination”** refers to a prohibited action that is unlawful under the Anti-Discrimination Act 1991.

- **“Workplace Participants”** means
 - all employees appointed or engaged under a contract of service or a contract for services (whether permanent full time or part time, temporary fixed term including apprentices and trainees, contract staff including executive contracts and casual employees);
 - all labour hire workers;
 - all vocational and work experience placements;
 - all volunteers;
 - elected Councillors;
 - all other authorised agents;of Gladstone Regional Council.

6.0 POLICY STATEMENT:

6.1 Policy Principles and Objectives

Council will:-

1. Value and promote equal opportunity for all workplace participants and will ensure systems and processes are implemented to support equality of opportunity and anti-discrimination principles.
2. Strive to ensure that all employees, prospective employees and others in the workplace are treated equally, fairly, respectfully and with dignity.
3. Strive to provide and foster an inclusive, healthy workplace culture and positive working environment for all employees, prospective employees and others that is free from unlawful discrimination (direct or indirect), harassment, sexual harassment, victimisation and vilification.
4. Have zero tolerance of discrimination (direct or indirect), harassment, sexual harassment, victimisation, vilification and associated inappropriate behaviour in the workplace and will investigate all reports of such behaviour in a timely, impartial and effective manner and in accordance with relevant procedures and practices and applying fair and appropriate corrective and disciplinary action.
5. Provide a workplace culture that is committed to providing fair opportunities to all employees, agents, prospective employees and relevant others at all stages of the employment relationship (including recruitment processes, selection criteria, advertising, shortlisting and interview process, terms and conditions of service, daily duties, training and development, promotion, resignation, retrenchment, redundancy and dismissal).
6. Ensure fairness and equity is applied in all employment decisions and appointment and promotional decisions are based on the principle of merit having regard for an applicant's abilities, skills, experience, qualifications and potential, relative to other applicants and against the selection criteria specified in the relevant position description and not on irrelevant attributes or characteristics that an individual may possess.
7. Develop and provide, as part of its learning environment, appropriate training and awareness courses to workplace participants to ensure they understand their

responsibilities and obligations under the *Anti-Discrimination Act 1991* and associated legislation.

8. Ensure that training and development opportunities are extended to employees in a fair and equitable way based on relevancy to the job and job needs and not on any irrelevant attributes or characteristics that an individual may possess.
9. Develop and maintain appropriate workplace systems, policies, corporate standards and practices that support the desired environment and culture. Council currently has in place documented policies and corporate standards including 'Code of Conduct for Employees', 'Workplace Harassment', 'Recruitment and Selection' and 'Learning and Development' policies that all support Council's objectives.
10. Provide effective procedures for handling of complaints relating to anti-discrimination and associated legislation and will ensure training is provided to line supervision, Contact Officers and others. Line supervision will be held accountable for effectively managing complaints in accordance with procedure.
11. Enable employees to obtain support, assistance and guidance through the provision of an Employee Assistance Program and access to a trained network of Contact Officers.
12. Provide and maintain effective recruitment and selection practices that promote and provide equal access to jobs, benefits and services for all employees and prospective employees in the workplace. Employment practices will ensure fair and equitable outcomes in all areas of employment which relate to recruitment, selection, and access to information, supervision and management. No individual shall be excluded from consideration, participation, promotion or benefits because of their (a) gender, gender identity, homosexuality, transsexuality, sexuality, sexual preference, lawful sexual activity; (b) marital status, relationship status (c) pregnancy (including potential pregnancy); (d) breastfeeding; (e) parental status, carers' responsibility, family responsibility, being childless; (f) age; (g) race (including colour, nationality, descent, ethnic, ethno-religious or national origin); (h) disability (including physical, mental and intellectual disability); (i) religious belief or activity; (j) political belief or activity; (k) industrial/trade union membership, non-membership or activity; (l) employer association membership, non-membership or activity; (m) temporary absence from work because of injury or illness; (n) HIV/AIDS; (o) spent convictions; (p) criminal record; (q) medical record; (r) Defence service; (s) compulsory retirement; (t) their relationship to or association with a person(s) covered by any of these attributes for which discrimination is prohibited. Basing decisions on any of these characteristics is unfair, illegal and does not comply with Council's Corporate Values.
13. Take reasonable precautions not to publish or display an advertisement, or authorise its publication or display, if the advertisement indicates that a person intends to act in a way that contravenes the Act. Advertising, both internally and externally, includes in newspaper or other publication, television, radio, signage and social media.

In certain circumstances discrimination is acceptable. Examples include (a) an imposition of a genuine occupational requirement such as it being essential to be eligible for a Working with Children Blue Card for a position where the incumbent must care for and give instruction to minors; (b) remunerating a worker who is under 21 years of age according to the workers age; (c) employment discrimination based on a person's

impairment where the person has undergone a medical and it has been deemed a high risk to the organisation for the person to perform the specified position.

6.2 Responsibilities

All workplace participants must:-

- ensure they do not engage in any unlawful conduct towards other workplace participants, customers/clients or others with whom they come into contact through work;
- ensure they do not aid, abet, encourage or ignore other persons who engage in unlawful conduct;
- follow Council's Grievance and Dispute Settling Procedure (refer to Gladstone Regional Council's Certified Agreement 2012) if they experience any unlawful conduct;
- report any unlawful conduct they see occurring to others in the workplace;
- maintain confidentiality if they are involved in the complaint, any process of the Grievance and Dispute Settling Procedure or in any workplace investigation; and
- be aware that they can be held legally responsible for unlawful conduct.

Workplace Participants, who aid, abet, encourage or ignore other persons who engage in unlawful conduct can also be legally liable.

A workplace participant must not ask another person, either orally or in writing, to supply information on which unlawful discrimination might be based. For example, an employer would contravene the Act by asking applicants for all jobs whether they have any impairment but may ask applicants for a job involving heavy lifting whether they have any physical condition that indicates they should not do that work.

Workplace participants who supervise or manage other workplace participants have a special responsibility to model exemplary behaviour (refer to Code of Conduct for Employees) and to ensure that the workplace participants they supervise understand the standard of performance and behaviour that is expected of them in relation to this Policy. Supervisors shall promote this Policy, monitor the work environment to ensure compliance with this Policy within their area of accountability, treat all complaints seriously and attend to them promptly and impartially and generally ensure that the principles of anti-discrimination legislation are applied during the course of their work-related dealings in all matters pertaining to the employment relationship. Supervisors should seek consultation with People and Performance Division's Human Resources Advisors should any unacceptable behaviour be demonstrated within the area of accountability.

6.3 Training

Gladstone Regional Council will implement and conduct training and awareness activities at the workplace. The aim of the training will be to ensure that all employees understand their responsibilities under this Policy and relevant legislation. Employees in supervisory and management roles will receive additional job-specific training appropriate to their leadership roles.

Refresher training in anti-discrimination and harassment will be delivered to workplace participants every two to three years.

Council will also train appointed workplace participants to undertake the role of Contact Officer (Refer Section 6.5).

6.4 Employee Assistance Program

Council will maintain and provide an Employee Assistance Program where employees can obtain confidential and independent professional counselling at Council's cost should employees feel they have been treated unfairly or been subjected to discrimination, harassment, sexual harassment, vilification or victimisation. Refer to Employee Assistance Program Corporate Standard for further information.

6.5 Contact Officer Program

Council will maintain a network of trained Contact Officers who are committed in supporting and assisting workplace participants. Their responsibility is to be available at the local level to provide information, support and assistance to workplace participants in relation to issues and cases related to anti-discrimination legislation such as harassment, discrimination, vilification and victimisation. It is important to note that it is not the Contact Officer's role to act as a full time delegate for the position. The hours required are on an 'as needed' basis. The Contact Officer's role is undertaken in addition to their normal duties and is assigned to an individual rather than a position within the organisation. Selection and designation of Contact Officer's duties will be on the basis of individual's skills, abilities and knowledge and will be assessed at an individual level. Nominations for the position will be called by Human Resources and candidates must have a genuine interest in maintaining a safe and discrimination free workplace.

Contact Officers will receive training to gain knowledge and understand the role of the Contact Officer, of discrimination and harassment and the issues surrounding it in the workplace and in regard to Council's grievance and dispute settling processes. Contact Officers will receive cross cultural training. Contact Officers will receive refresher training relevant to the role every two to three years.

A current list of Contact Officers will be made available to workplace participants on Council's intranet.

6.6 Consequences of Breaches of Policy

Disciplinary action will be taken against any workplace participant found to have breached this policy or the relevant legislation.

Workplace participants who are agents and contractors (including temporary contractors) who are found to have breached this policy may have their contracts with Council terminated or not renewed.

Claims made by workplace participants that are found to be malicious, vexatious and frivolous (i.e. making up a complaint to get someone else into trouble or making a complaint where there is no substance to the claim) may be disciplined and may also be exposed to a defamation claim.

7.0 ATTACHMENTS:

Nil.

8.0 REVIEW TRIGGER:

This policy will be reviewed when any of the following occur:

1. The related legislation/documents are amended or replaced.
2. Other circumstances as determined from time to time by a resolution of Council
3. Periodic Review – 3 years from date of adoption.

TABLE OF AMENDMENTS		
Originally Adopted	24 th February 2009	09/101
Amendment 1	6 May 2014	G/145/1976
Amendment 2	<INSERT DATE COUNCIL MEETING>	<INSERT RESOLUTION NUMBER>
Amendment 3	<INSERT DATE COUNCIL MEETING>	<INSERT RESOLUTION NUMBER>

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STUART RANDLE
CHIEF EXECUTIVE OFFICER