

Councillor Equal Opportunity and Workplace Behaviours	Policy No:	SCS039
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1. Purpose

Councillors recognise that it is the responsibility of Surf Coast Shire Council to provide:

- a workplace that is free from bullying, sexual harassment, harassment, discrimination and victimisation and where staff, Councillors, contractors, prospective employees and volunteers treat each other with respect, courtesy and dignity;
- a framework to ensure Council, Councillors and individuals comply with relevant legislation, Council policy and relevant codes of conduct;
- an environment where diversity is embraced and employment and promotion decisions are merit based;
- flexible arrangements to encourage full participation in the workplace;
- a workplace that recognises staff's right to raise genuine concerns without fear of victimisation;
- an organisation that recognises its role in the community to lead by example and set a high standard for others to follow; and
- a workforce that broadly mirrors our community's diversity.

Councillors, like all workplace participants, are required to behave in a manner that does not breach reasonable behavioural standards as encapsulated in Council policies, procedures and codes of conduct.

In addition, Councillors have a key role to play in modelling behaviours and leading by example as well as ensuring that the CEO and staff have appropriate policies and systems in place to address any inappropriate behaviours in the workplace and to comply with legislation.

2. Scope

This policy applies to all Councillors of the Surf Coast Shire Council.

It provides guidance to Councillors concerning meeting their legal obligations corporately as Council and individually as Councillors concerning addressing inappropriate and unreasonable behaviours demonstrated by any Councillor in Council's workplaces as well as carrying out their governance functions to ensure that Council is meeting or exceeding its obligations to address inappropriate or unreasonable behaviours demonstrated by any person in the workplace.

3. POLICY

Recognising the obligations placed on Council by relevant legislation and acknowledging the expectations of the community at Surf Coast Shire, the Council and Councillors are committed to ensuring that Council is:

- taking proactive, reasonable and proportionate measures to eliminate all forms of bullying, harassment, discrimination, sexual harassment and victimisation within its workplaces;
- eliminating discrimination on the basis of any ground or attribute contained in Federal or Victorian anti-discrimination legislation including the attributes set out in the Appendix to this Policy;
- creating a workplace culture where staff, Councillors, volunteers, prospective employees and contractors treat each other with respect, dignity and courtesy;
- fostering by way of equal employment opportunities a diverse and skilled workforce, improved employment access and participation, and a workplace culture of fair workplace practices and behaviours where each person has the opportunity to progress to the extent of their ability;
- promoting appropriate standards of conduct at all times by way of policy and procedure, codes of conduct, supervision and monitoring of behaviours in the workplace;
- acting consistently with the Workplace Diversity Commitment;
- implementing education and awareness-raising strategies to ensure that employees are aware of their rights and responsibilities;
- encouraging reporting of inappropriate behaviour and providing an effective procedure for resolving complaints in a sensitive, confidential, fair and timely manner.

Councillors will best attain these goals by:

- carrying out their governance functions to satisfy themselves that the CEO and Senior Leadership team have appropriate policies, procedures, practices, codes of conduct and standards in place;
 - demonstrating the highest standards of personal behaviour at all times when engaged in carrying out Council functions.
4. Example: Councillors are to be aware of situations where those who have a disability may be discriminated against and will support reasonable decisions to remove any such disadvantage, such as supporting changes to local law procedures that require people to stand, which procedures discriminate against those who are unable to stand or find standing difficult.
5. Example: Councillors are to be aware of the heightened effect of their behaviour when interacting with the CEO and Council Staff by reason of the power imbalance between their positions and the positions of Staff. Councillors will be cognizant of ensuring that their behaviour does not result in any staff member feeling intimidated, harassed, bullied or discriminated against by reason of unreasonable repeated requests, unreasonable excessive contact, disrespectful and/or discourteous communications, displays of anger or the use of any abusive language.

6. What are Councillors Responsible For?

Councillors, when performing duties on behalf of Council or attending Council workplaces, have an obligation to meet the requirements of this policy by:

- promoting and encouraging staff to behave professionally and appropriately by adhering themselves to a high standard of appropriate behaviour including through any written communication or any online forum or site;
- demonstrating respectful and courteous behaviour to all persons with whom they come in contact while carrying out any Council function;
- adhering to the Councillors Code of Conduct in the treatment of colleagues;
- ensuring Council has developed appropriate policies, procedures, practices and codes of conduct with which to educate staff on appropriate behaviours and to monitor and deal with any breaches in the standard of behaviour required;
- ensuring that Council is not vicariously liable for any breaches of relevant legislation due to any unlawful behaviour by a Councillor.

7. Example: In dealing with Council Staff or with other persons with whom they come into contact in the course of carrying out Council functions, Councillors will be cognizant of ensuring that they do not assign stereotyped roles to any person and in the course of any communications will not assume that a particular role should be filled by a person of a particular gender or ask questions implying gender stereotyping such as asking a woman at an evening function questions like “who is looking after the children tonight”?

8. Example: If Councillors experience abusive posts to any social media medium used by the Councillor for Council related comment, and the person posting such abusive comments is blocked by the Councillor, the Councillor will ensure that other Councillors and the CEO are advised of this.

9. PROCEDURE AS IT APPLIES TO COUNCILLORS

There are a range of behaviours including bullying, harassment, sexual harassment, discrimination and victimisation, which are expressly addressed by this policy, however, the policy extends to any form of inappropriate, unreasonable or unlawful behaviour.

Councillors who believe they have been (or are being) bullied, harassed, sexually harassed, discriminated against or victimised, are encouraged to directly talk to the offender. This involves raising the issue of concern with the person involved and explaining your perspective and why you found a certain behaviour, decision or action unacceptable.

If this course of action is not appropriate to the situation or does not resolve the issues, then any inappropriate, unreasonable or unlawful behaviour may be the subject of a complaint through Council’s **Grievance Policy**.

Any complaints will be handled confidentially, transparently, impartially, sensitively and promptly and be mindful of the need to ensure victimisation does not occur.

Complaints will be handled in accordance with the principles of natural justice and procedural fairness for all involved, including the respondent(s).

10. Complaints of Bullying, Harassment, Discrimination, Sexual Harassment or

Victimisation Against the CEO by a Councillor

Complaints of this nature against the CEO should be handled in accordance with Part 4, Division 4 of the Local Government Act 1989 eg the CEO must notify Council, and the CEO or Mayor can request the appointment of a probity auditor to assist.

11. Other Avenues of Complaint

A Councillor may at any time lodge a relevant complaint with:

- Victorian Equal Opportunity and Human Rights Commission;
- Australian Human Rights Commission
- Victoria Police
- WorkSafe Victoria

12. Confidentiality

Attention will be paid to the sensitive nature of the complaint and confidentiality maintained to protect all parties. This includes the storage and retrieval of documents in accordance with the Privacy and Data Protection Act 2014. Confidentiality will be observed as far as possible but in cases where there is a risk to health and safety or where there is the potential for a crime, or an actual crime has been committed, this can be impractical. Management has a legal duty to follow up on such matters once they become aware of them, regardless of whether the person bringing the complaint wants action to be taken or not. In these circumstances, management should seek the advice of People & Culture on how to proceed.

13. DEFINITION OF TERMS

14. Discrimination

Discrimination against prospective employees, employees, contract workers and those working in a common workplace may be unlawful if the relevant tests in State and Federal anti-discrimination legislation apply.

Discrimination based on an identified attribute or ground, set out in State or Federal anti-discrimination legislation may form the basis of an unlawful discrimination legal complaint where direct or indirect discrimination occurs in an area of life set out in the legislation such as employment or the provision of services.

See Appendix 1 for a list of the attributes set out in the *Equal Opportunity Act 2010* (Victoria).

15. Direct Discrimination Occurs When:

When a person treats, or proposes to treat, a person with a protected attribute unfavourably, because of that attribute.

16. Indirect Discrimination Occurs When:

An unreasonable requirement, condition or practice that purports to treat everyone the same ends up actually disadvantaging someone with a protected attribute.

17. **Workplace Flexibility**

Workplace arrangements shall be as flexible as reasonably possible to account for Councillor's family responsibilities, religious beliefs, disabilities, and personal needs.

18. **Victimisation**

Victimisation occurs when someone is intimidated, disadvantaged or treated unfavourably or to their detriment because they have, or intend to, raise a matter of concern under the internal procedures for making a complaint, or for contacting the Victorian Equal Opportunities & Human Rights Commission or the Australian Human Rights Commission, for information or advice about making a complaint.

19. **Sexual Harassment**

Sexual harassment occurs when someone is subjected to an unwelcome sexual advance or request for sexual favours or is subject to unwelcome conduct of a sexual nature in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the person would be offended, humiliated or intimidated by this behaviour.

Sexual harassment is not mutual attraction or flirtation based on consent.

There is commonly a situation of power imbalance between the person committing the sexual harassment and the person being harassed.

20. In s102 of the Victorian *Equal Opportunity Act 2010*, there is a specific provision which states:

A councillor of a municipal council must not sexually harass—

- (a) another councillor of that council; or
- (b) a member of a committee of that council who is not a councillor of that council.

21. Example: Care should be taken to avoid:

- addressing any person in too casual or too personal a fashion, for example, calling people by forms of endearment such as "love" or "darling" or any similar names; and
- touching people in any manner that they may find offensive or intimidating or overly familiar.

22. **Bullying and Harassment (Non-Sexual) and Workplace Violence**

Bullying, harassment and workplace violence are unsafe behaviours that are criminal offences pursuant to the Victorian *Occupational Health and Safety Act 2004*.

23. **Bullying**

Workplace bullying is characterised by persistent and repeated negative behaviour directed at an employee or Councillor that creates a risk to health and safety.

24. Example: Repeatedly referring directly or by clear inference to another Councillor in a critical manner in any social media forum may cause that person to suffer stress, humiliation, offense or intimidation or any other negative reaction that creates a risk to their health and safety.

25. Example: Working with one or more other Councillors to deliberately exclude or isolate any other Councillor may cause that person to suffer stress, hurt, humiliation and distress or any other negative reaction that creates a risk to their health and safety.

26. **Harassment**

Harassment occurs when someone is subjected to unreasonable or inappropriate conduct that the person finds offensive, embarrassing, humiliating or intimidating. It can include a single incidence of unreasonable behaviour which if repeated would be bullying.

27. **Workplace Violence**

This includes behaviour where an employee or Councillor is physically attacked or threatened with physical or psychological harm in the workplace.

28. **Relevant Legislation**

Local Government Act 1989 (as amended)

Fair Work Act 2009 including the National Employment Standards

Victorian Occupational Health and Safety Act, 2004

Victorian Equal Opportunity Act 2010

Victorian Racial and Religious Tolerance Act 2001

Victorian Charter of Human Rights & Responsibilities 2006

Commonwealth Sex Discrimination Act 1984

Commonwealth Racial Discrimination Act 1975

Commonwealth Age Discrimination Act 2004

Commonwealth Disability Discrimination Act 1992

Australian Human Rights Commission Act 1986

Victorian Crimes Act 1958

Privacy and Data Protection Act 2014

29. **Other Related Council Policies**

- Councillor Workplace Health and Safety Policy and Procedure
- SCS Workplace Health and Safety Policy and Procedure
- SCS Equal Opportunity and Workplace Behaviours Policy and Procedure
- HR-01 Recruitment & Selection Policy
- HR-21 Complaints Policy and Management Procedure

We exist to: **Help our community and environment to thrive**

- HR-07 Discipline Policy
- HR-24 Code of Conduct
- Councillors Code of Conduct
- WHS 1.0 WHS Issue Resolution
- Council policy, IS-010 Records Management Policy
- Other Council policies and procedures
- Current and relevant staff enterprise agreements
- Agreements with health authorities
- Voluntary principles, best practices, charters, codes of conduct and guidelines

Our organisation will be:

An innovative and flexible leader, and a constructive partner, that values the strengths of others;
A place where people can do their best and be proud of their achievements.

30. **Appendix 1 – Protected Attributes for the purposes of Anti-Discrimination legislation – *Equal Opportunity Act 2010***

7(2) Discrimination on the basis of an attribute includes discrimination on the basis—

(a) that a person has that attribute or had it at any time, whether or not he or she had it at the time of the discrimination;

(b) of a characteristic that a person with that attribute generally has;

(c) of a characteristic that is generally imputed to a person with that attribute;

(d) that a person is presumed to have that attribute or to have had it at any time.

31.	Age	includes age group
32.	Breastfeeding	includes the act of expressing milk
33.	Employment activity	means an employee in his or her individual capacity— (a) making a reasonable request to his or her employer, orally or in writing, for information regarding his or her employment entitlements; or (b) communicating to his or her employer, orally or in writing, the employee's concern that he or she has not been, is not being or will not be, given some or of his or her employment entitlements;
34.	Gender identity	(a) the identification on a bona fide basis by a person of one sex as a member of the other sex (whether or not the person is recognised as such)— (i) by assuming characteristics of the other sex, whether by means of medical intervention, style of dressing or otherwise; or (ii) by living, or seeking to live, as a member of the other sex; or (b) the identification on a bona fide basis by a person of indeterminate sex as a member of a particular sex (whether or not the person is recognised as such)— (i) by assuming characteristics of that sex, whether by means of medical intervention, style of dressing or otherwise; or (ii) by living, or seeking to live, as a member of that sex;
35.	Disability	(a) total or partial loss of a bodily function; or (b) the presence in the body of organisms that may cause disease; or (c) total or partial loss of a part of the body; or (d) malfunction of a part of the body, including— (i) a mental or psychological disease or disorder; (ii) a condition or disorder that results in a person learning more slowly than people who do not have that condition or disorder; or (e) malformation or disfigurement of a part of the body—

		and includes a disability that may exist in the future (including because of a genetic predisposition to that disability) and, to avoid doubt, behaviour that is a symptom or manifestation of a disability;
36.	Industrial activity	(a) being or not being a member of, or joining, not joining or refusing to join, an industrial organisation or industrial association; or (b) establishing or being involved in establishing an industrial organisation or forming or being involved in forming an industrial association; or (c) organising or promoting or proposing to organise or promote a lawful activity on behalf of an industrial organisation or industrial association; or (d) encouraging, assisting, participating in or proposing to encourage, assist or participate in a lawful activity organised or promoted by an industrial organisation or industrial association; or (e) not participating in or refusing to participate in a lawful activity organised or promoted by an industrial organisation or industrial association; or (f) representing or advancing the views, claims or interests of members of an industrial org
37.	Lawful sexual activity	means engaging in, not engaging in or refusing to engage in a lawful sexual activity;
38.	Marital status	means a person's status of being— (a) single; or (b) married; or (c) a domestic partner; or (d) married but living separately and apart from his or her spouse; or (e) divorced; or (f) widowed
39.	Parental status or status as a carer	parent includes— (a) step-parent; (b) adoptive parent; (c) foster parent; (d) guardian; carer means a person on whom another person is wholly or substantially dependent for ongoing care and attention, other than a person who provides that care and attention wholly or substantially on a commercial basis;
40.	Physical features	physical features means a person's height, weight, size or other bodily characteristics;
41.	Political belief or activity	means— (a) holding or not holding a lawful political belief or view; (b) engaging in, not engaging in or refusing to engage in a lawful political activity;
42.	Pregnancy	being or planning to become pregnant. Includes making decisions based on the assumption that someone is, or will become pregnant

43.	Race	including colour, descent or ancestry, nationality and national origin, ethnicity or ethnic origin
44.	Religious belief or activity	means— (a) holding or not holding a lawful religious belief or view; (b) engaging in, not engaging in or refusing to engage in a lawful religious activity;
45.	Sex	being male or female
46.	Sexual orientation	means homosexuality (including lesbianism), bisexuality or heterosexuality;
47.	Expunged homosexual conviction	means an expunged conviction within the meaning of Part 8 of the Sentencing Act 1991
48.	Personal association	(whether as a relative or otherwise) with a person who is identified by reference to any of the above attributes.