

## WORKPLACE BEHAVIOUR ADMINISTRATIVE POLICY

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| <p><b>Related Legislation and Applicable Laws</b></p> <p><i>NB Council and Workers and Others at the Workplace have legal obligations to comply with the requirements of the Related Legislation. Breaches of the Related Legislation are unlawful and may subject the infringing individual entity to fines, penalties, requirements for specific performance, and imprisonment depending on the circumstances. Breaches also make Council vicariously liable for some conduct of some persons.</i></p> | <ul style="list-style-type: none"> <li>• <i>Local Government Act 1993 (Tas)</i></li> <li>• <i>Fair Work Act 2009 (Cth)</i></li> <li>• <i>Work Health &amp; Safety Act 2012 (Tas)</i></li> <li>• <i>Workers Rehabilitation &amp; Compensation Act 1988 (Tas)</i></li> <li>• <i>Anti-Discrimination Act 1998 (Tas)</i></li> <li>• <i>Racial Discrimination Act 1975 (Cth)</i></li> <li>• <i>Sex Discrimination Act 1984 (Cth)</i></li> <li>• <i>Disability Discrimination Act 1992 (Cth)</i></li> <li>• <i>Age Discrimination Act 2004 (Cth)</i></li> <li>• <i>Australian Human Rights Commission Act 1986 (Cth)</i></li> <li>• Associated Regulations (if any of the above)</li> <li>• Successors of any of the above.</li> </ul> |
| <p>Related Council Documents</p>   | <p>Code of Conduct</p> <p>Bullying, Discrimination and Harassment Policy</p> <p>Equal Employment Opportunity and Diversity Policy</p> <p>Managing Worker Performance Administrative Policy</p> <p>Counselling and Discipline Administrative Policy</p> <p>Social Media Guidelines</p> <p>Work Health and Safety Policy</p> <p>Grievance Resolution Administrative Policy</p> <p>ICT Usage Administrative Policy</p>  |
| <p>Scope and Application</p>   | <p>This policy covers and applies to Council Workers and Other Persons at the Workplace in accordance with Section 2 Coverage.</p>   |
| <p>Commencement Date</p>   | <p>July 2018</p>   |

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| Review Date  | July 2020  |
| Previous Policies replaced by this Policy              | Workplace Behaviour Administrative Policy dated May 2016   |
| Department responsible for the operation of the policy | <b>Organisational Development</b> (induction of new employees and appropriate action for breach of the guidelines including potential disciplinary action).                                    |
| <b>Council</b>   | Kingborough Council  |
| <b>Councillor</b>                                      | An elected member of Council known as a Councillor or Alderman or otherwise meeting the definition of a 'councillor' as defined under section 3 of the <i>Local Government Act 1993</i> (TAS). |
| <b>General Manager</b>                                 | The general manager of Council as appointed under section 61 of the <i>Local Government Act 1993</i> (TAS).  |
| <b>Infringing Workplace Behaviour</b>                  | Any act or omission, which amounts to a breach of any Council policy, contractual obligation or misconduct at common law.  |
| <b>Employee</b>  | A person who carries out work for Council as an employee of Council.   |
| <b>Manager/Supervisor</b>                              | A person at the Workplace who is appointed to a position that has management/supervisory responsibilities for others or their appropriately nominated or authorised delegate.                  |

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| <b>Other Persons at the Workplace</b> | Any person, other than a Councillor, at the Workplace who is not a Worker including visitors and ratepayers.  |
| <b>Policy</b>                         | This Workplace Behaviour Administrative Policy including the 'Authority and Application'.   |
| <b>Worker</b>                         | <p>A person, other than a Councillor, who carries out work in any capacity for Council, including work as:</p> <ul style="list-style-type: none"> <li>(a) an Employee;</li> <li>(b) a contractor or subcontractor;</li> <li>(c) an employee of a contractor or subcontractor;</li> <li>(d) an employee of a labour hire company who has been assigned to work at Council;</li> <li>(e) an outworker;</li> <li>(f) an apprentice or trainee;</li> <li>(g) a student gaining work experience; or</li> <li>(h) a volunteer.</li> </ul> |
| <b>Workplace</b>                      | A place where work is carried out for Council.  |

## 1 PURPOSE

The aims of this Policy are to:

- (a) ensure that Workers and Other Persons at the Workplace understand their obligations and do not engage in Infringing Workplace Behaviour;
- (b) ensure that Workplace requirements (e.g. recruitment, remuneration, promotion and access to training and development) are determined on the basis of relevant skills,

experience, qualifications, knowledge, aptitude and the potential for future development of the individual and are reflected in policies and procedures that relate to Workers and their employment or engagement;

- (c) confirm expectations regarding appropriate behaviours and that Council will not tolerate Infringing Workplace Behaviour;
- (d) provide a broad, overarching Policy that incorporates or overlaps some elements of other policies; and
- (e) operate with Applicable Laws and Related Council Documents.

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## **2**    **COVERAGE**

- (a) This Policy covers and applies to Workers and Other Persons at the Workplace in relation to:
  - (i) behaviour at the Workplace;
  - (ii) the performance of work for or in connection with Council; and
  - (iii) conduct outside the Workplace or working hours if the acts or omissions:
    - (A) are likely to cause serious damage to the relationship between Council, Councillors, Workers or Other Persons at the Workplace; or
    - (B) are incompatible with a Worker's duty to Council or employment relationship or engagement; or
    - (C) damage or are likely to damage Council's interests or reputation.
- (a) For the avoidance of doubt this Policy does not cover or apply to a Councillor.

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## **3**    **REQUIREMENTS**

- (a) Workers and Other Persons at the Workplace are required to comply with this Policy, Applicable Laws and not directly or indirectly engage in or encourage Infringing Workplace Behaviour.
- (b) Managers/Supervisors are required to reasonably promote this Policy within their area of responsibility and take reasonable steps to ensure that any potential breaches of this Policy are identified, taken seriously and acted upon appropriately.
- (c) Workers and Other Persons at the Workplace are required to utilise the Issue Resolution Policy if they reasonably suspect Workers or Other Persons at the Workplace have engaged or are engaging in Infringing Workplace Behaviour. However, complaints which are vexatious, frivolous or otherwise not made in good faith will constitute a breach of this Policy.

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## **4 DISCRIMINATION**

### **4.1 What is discrimination?**

- (a) Discrimination is behaviour that favours one particular individual or group over others based on an attribute, whether known, imputed or assumed and can be either direct or indirect. Discrimination at the Workplace can occur (by way of example):
- (i) when determining who should be offered work;
  - (ii) in the terms and conditions of work that is offered;
  - (iii) in failing or refusing to offer work;
  - (iv) in failing or refusing to grant, or limiting, access to opportunities for promotion, transfer, training or other benefit to a Worker;
  - (v) in dismissing a Worker; and
  - (vi) by treating a Worker otherwise less favourably.
- (b) There may be genuine occupational reasons based on the inherent requirements of the role that means discrimination is not unlawful.
- (c) For example, it will not be unlawful to terminate employment if:
- (i) disability prevents a Worker from being able to perform the inherent requirements of their position; or
  - (ii) performance of the inherent requirements would require services, facilities or reasonable adjustments that would impose an unjustifiable hardship on Council.

### **4.2 What is Direct Discrimination?**

Direct discrimination is where an individual or group is treated less favourably due to a particular attribute or personal characteristic or a characteristic imputed to that attribute. For example, if Council decided:

- (a) not to employ or promote a person because of their:
- (i) nationality;
  - (ii) sexuality; or
  - (iii) pregnancy; or
- (b) to terminate an employee because they took personal leave (because disability includes illness and is a protected attribute), carer's leave or parental leave (because family responsibilities is a protected attribute).

### 4.3 What is Indirect Discrimination?

- (a) Indirect discrimination occurs if a person imposes a condition, requirement or practice which is unreasonable in the circumstances (even if it appears to be fair and neutral) and has the effect of disadvantaging a member of a group of people who:
  - (i) share, or are believed to share, a prescribed attribute; or
  - (ii) share, or are believed to share, any of the characteristics imputed to that attribute, more than a person who is not a member of that group.
- (b) For indirect discrimination to take place, it is not necessary that the person who discriminates is aware that the condition, requirement or practice disadvantages the group of people.
- (c) For example:
  - (i) offering training opportunities to staff members only at limited and rigid times which prevented staff with parental responsibilities from attending the training;
  - (ii) not reasonably providing somewhere for a breast feeding Worker to express milk while at work; or
  - (iii) not providing reasonable equipment to allow an employee with a back injury to stand and still do computer work.

### 4.4 What are the protected attributes or personal characteristics?

Direct or indirect discrimination within the Workplace based on any of the following attributes or personal characteristics will breach this Policy:

- (a) gender (male, female and intersex) and gender identity;
- (b) marital status;
- (c) relationship status;
- (d) pregnancy;
- (e) family responsibilities;
- (f) race;
- (g) colour;
- (h) national or ethnic origin;
- (i) religion;
- (j) physical, intellectual, psychiatric or learning disability;
- (k) impairment (including HIV/aids status);

- (l) parental status;
- (m) breastfeeding;
- (n) age;
- (o) sexual orientation;
- (p) lawful sexual activity;
- (q) industrial activity;
- (r) political belief or affiliation;
- (s) political activity;
- (t) irrelevant criminal or medical record; or
- (u) being associated with a person who has (or is believed to have) any of these attributes.

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## **5 ADVERSE ACTION**

### **5.1 What is Adverse Action?**

Unlawful adverse action can occur where a person engages in adverse action (or threatens, organises or coerces others to take adverse action) against a person because that person:

- (a) has a workplace right (or has exercised or proposed exercising their workplace right or has not done so or has prevented a Worker from doing so); or
- (b) engages (has engaged, proposes to engage or has not engaged) in industrial activity or, is (or not so) an officer or member of an industrial association.

### **5.2 Types of Adverse Action**

- (a) Dismissal or termination of contract (e.g. terminating employment or a contractor's services);
- (b) Injuring the Worker in relation to their employment or terms and conditions of contract (e.g. offering a salary or fee for services that is less than would otherwise be offered);
- (c) Alter the position of the Worker to their prejudice (e.g. removing status or areas of responsibility from an employee or providing a damaging recommendation in relation to a contractor to other service users); or
- (d) Discrimination between a Worker and other Workers or a Worker and other prospective Workers (e.g. preferring applications for annual leave from a non-union member employee or using contractors with non-union enterprise agreements); and
- (e) An employee or union takes industrial action against Council (e.g. stop work meeting).

### 5.3 Types of Workplace Rights, Relevant Attribute or Industrial Activity

#### *Workplace Rights*

- (a) An entitlement under the Local Government Industry Award or enterprise agreement or a workplace law (e.g. entitlement to make a worker's compensation claim).
- (b) A role or responsibility under a workplace law or enterprise agreement or award (e.g. to act as a bargaining representative).
- (c) Ability to initiate or participate in a process or proceedings under a workplace law or enterprise agreement or award (e.g. making a request for flexible working arrangements or participating in a consultation process regarding redeployment in a redundancy situation).
- (d) Ability to make a complaint or inquiry to seek compliance with a workplace law or enterprise agreement or award or generally in relation to a person's employment (e.g. making a complaint to the Anti-Discrimination Commissioner or making an inquiry about their classification or salary level).

#### *Relevant Attributes*

- (e) Race, colour, sex, sexual preference, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin.
- (f) Can initiate or participate in a process or proceeding under a workplace law or enterprise agreement (e.g. making an individual flexibility arrangement, appointing a bargaining representative or acting as a witness for another employee in a Fair Work Commission hearing).

#### *Industrial Activity*

- (g) Is or is not an officer or member of an industrial association.
- (h) Engages or does not engage in industrial activity (e.g. promoting, encouraging or participating in an activity on behalf of an industrial association such as an on-site meeting).

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## 6 WORKPLACE HARASSMENT

### 6.1 What is Workplace Harassment?

- (a) Workplace harassment is any conduct which:
  - (i) offends;
  - (ii) humiliates;
  - (iii) intimidates;
  - (iv) insults; or

(v) ridicules,

another person on the basis of protected attributes in circumstances in which a reasonable person, having regard to all the circumstances, would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.

- (b) Workplace harassment can be a one-off occurrence and a specific intent or motive is not necessary.
- (c) Workplace harassment is unlawful.

## **6.2 What are the protected attributes for Workplace Harassment?**

- (a) race;
- (b) age;
- (c) sexual orientation;
- (d) lawful sexual activity;
- (e) gender;
- (f) gender identity;
- (g) intersex;
- (h) marital status;
- (i) relationship status;
- (j) pregnancy;
- (k) breastfeeding;
- (l) parental status;
- (m) family responsibilities; or
- (n) disability.

## **6.3 What are Examples of Workplace Harassment?**

Examples of workplace harassment include:

- (a) telling a joke about a homosexual person which may offend someone who is homosexual;
- (b) sending an email to workmates ridiculing a colleague because they have taken carer's leave to look after a sick child which may be humiliating and offensive;
- (c) putting a sign on the door of a room where a Worker is expressing breast milk unnecessarily advertising the activity the Worker is engaging in which may be humiliating;
- (d) telling a Worker who is pregnant that they are getting fat or must be having twins which is offensive;

- (e) telling a Worker she is 'just a young girl and could not be expected to cope in the Workplace'.

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## **7 SEXUAL HARASSMENT**

### **7.1 What is Sexual Harassment?**

- (a) Sexual harassment is any unwanted or unwelcome conduct which:
  - (i) is of a sexual nature in that there is a sexual element, overtone or implication, which may not in isolation appear to be sexual in nature, but may become so because of the surrounding circumstances (e.g. unsolicited act of physical contact of a sexual nature, unwelcome sexual advance or request for sexual favours, unwelcome gesture, action or comment of a sexual nature); and
  - (ii) is unreasonable in the circumstances; and
  - (iii) a reasonable person having regard to all the circumstances would have anticipated that the other person would be offended, humiliated, intimidated, insulted or ridiculed.
- (b) Sexual harassment can be a one-off occurrence and a specific intent or motive is not necessary.
- (c) Sexual harassment is unlawful.

### **7.2 What are Examples of Sexual Harassment?**

- (a) Offensive or sexually orientated email or text messages, voice mail messages, screen savers (words and images), telephone calls;
- (b) Deliberate and unnecessary physical contact such as patting, pinching, fondling or deliberately brushing against another body, attempts at kissing;
- (c) Constant requests for drinks or dates, especially after prior refusal;
- (d) Request for sexual favours, gestures or body movements of a sexual or intimidating nature;
- (e) Crude or sexually orientated jokes, comments and suggestions; or
- (f) Innuendo, including sexually provocative remarks, suggestive or derogative comments about a person's physical appearance, inferences of sexual morality or tales of sexual performance.

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## **8 WORKPLACE BULLYING**

### **8.1 What is Bullying?**

- (a) Bullying is repeated, unreasonable behaviour directed towards a Worker or a group of

Workers (or Other Persons at the Workplace), that creates a risk to health and safety.

- (b) **‘Repeated behaviour’** refers to the persistent nature of the behaviour and can refer to a range of behaviours over time.
- (c) **‘Unreasonable behaviour’** means behaviour that a reasonable person (i.e. objective test), having regard for the circumstances, would see as unreasonable (e.g. victimising, humiliating, undermining or threatening).
- (d) **‘Risk to health and safety’** can refer to physical or psychological injury that may occur as a result of the repeated, unreasonable behaviour.
- (e) Bullying is unlawful.

## 8.2 How does Bullying occur?

Workplace Bullying can be:

- (a) direct (obvious) or indirect (subtle);
- (b) intended or unintended; or
- (c) upwards, downwards or sideways.

## 8.3 What is Direct or Indirect Bullying?

- (a) Bullying can involve many different forms of behaviour and can occur face-to-face, over the phone, via email, instant or text messaging or using social media technologies.
- (b) Examples of potential *direct* Bullying may include:
  - (i) aggressive and abusive or threatening language;
  - (ii) yelling and invading personal space;
  - (iii) finger pointing, eye rolling and scowling;
  - (iv) inappropriate emails containing unjustified criticism delivered bluntly; and
  - (v) delivering negative feedback in front of co-workers.
- (c) Examples of potential *indirect* Bullying may include:
  - (i) spreading rumours or lies;
  - (ii) displaying degrading or offensive material in the Workplace;
  - (iii) deliberately excluding, isolating or marginalising a person;
  - (iv) deliberately withholding information that is vital to do a job;
  - (v) deliberately setting unrealistic deadlines and tasks that are unreasonably above or below a person’s skill or experience; and
  - (vi) deliberately changing work arrangements to cause stress.

#### 8.4 What is Intentional or Unintentional Bullying?

- (a) Bullying can be intentional, where the actions are intended to humiliate, offend, intimidate or distress, whether or not the behaviour did have that effect. Indirect Bullying will often occur intentionally.
- (b) Bullying can also be unintentional, where actions which, although not intended to humiliate, offend, intimidate or distress, do so and would be reasonably likely to do so. Sometimes people do not realise that their behaviour can be harmful to others because that is how they would like to be treated. Direct Bullying may occur unintentionally where the intentions can even be good but the impact is harmful and the behaviour is not reasonable in the circumstances.

#### 8.5 How can Bullying be carried out?

Bullying can be directed at a single person or a group of people and be carried out by one or more persons. Organisationally, Bullying can be:

- (a) **downwards** from Managers/Supervisors to their team members – for example, an immediate Manager/Supervisor may have a management style that is unreasonably domineering, they may stand over employees when they speak to them or speak to employees rudely or in a demanding or unreasonably loud manner that is disrespectful;
- (b) **sideways** between Workers and/or Other Persons at the Workplace – for example, a Worker unreasonably seeking to enhance their position or sense of power in the Workplace may make a co-worker perform the duties that are less likely to be recognised, blame others for mistakes or fail to pass on instructions from a Manager/Supervisor so the co-worker makes mistakes; or
- (c) **upwards** from team members to immediate Managers/Supervisors, Councillors – for example, Workers may bully their immediate Manager/Supervisor to try and unreasonably drive them from the Workplace or prevent them from effectively doing their job by spreading misinformation or malicious rumours about them or criticising them or complaining about them without justification.

#### 8.6 What's the difference between Bullying and Harassment?

- (a) Discrimination, harassment and adverse action:
  - (i) do not have to be repeated and can be *one off behaviour*; and
  - (ii) must be linked to a protected characteristic (e.g. personal attributes, workplace rights or industrial activity).
- (b) Bullying requires repeated unreasonable behaviour (i.e. cannot be one off behaviour) but there does not need to be any link to protected attributes or protected actions (i.e. it is no

defence to treat everyone equally unreasonably).

- (c) It is possible for a person to be bullied, harassed and discriminated against at the same time.

### **8.7 What is not considered to be Bullying?**

- (a) Many things that happen at the Workplace are generally not considered to be Bullying, although some experiences can be uncomfortable.
- (b) A single incident of unreasonable behaviour is not Bullying, although it may have the potential to escalate into Bullying. A single incident of unreasonable behaviour can create a risk to health and safety and can be considered to inappropriate workplace behaviour as distinct from Bullying.
- (c) Differences of opinion, performance management, conflicts and personality clashes do happen in any workplace but do not, without more, amount to Bullying.
- (d) Reasonable management action, which is carried out in a reasonable manner is not Bullying.

### **8.8 Workplace Conflict is not Bullying**

- (a) Workplace conflict of itself does not amount to Bullying.
- (b) Not all conflict is negative nor does it always pose a risk to health and safety. When conflict is at a low level and task based, it can generate debate and lead to new ideas and innovative solutions. For example, collaborating on a project requires a robust exchange of ideas to be effective.
- (c) Conflict may be negative and undesirable but still not amount to Bullying or even inappropriate behaviour. For example, Workers may have a 'personality clash' and not like each other but still behave in a professional and respectful way to each other.

### **8.9 Reasonable management action carried out in a reasonable manner is not Bullying**

- (a) Reasonable management action (i.e. 'what') carried out in a reasonable manner (i.e. 'how') is not Bullying. Managers/Supervisors have a right to direct the way work is carried out and to monitor and give feedback on performance.
- (b) Examples of reasonable management action relating to *performance management* include:
  - (i) setting reasonable performance goals, standards and deadlines in consultation with Workers and after considering their respective skills and experience;
  - (ii) allocating reasonable work to a Worker in a transparent way;
  - (iii) deciding not to select a Worker for promotion, following a fair and documented process;

- (iv) informing a Worker about unsatisfactory or unacceptable work performance in a constructive way and in accordance with policies and procedures;
  - (v) informing a Worker about unacceptable conduct or behaviour in accordance with policies and procedures; and
- (c) Examples of reasonable management action relating to *operational matters* include:
- (i) fairly rostering and allocating working hours;
  - (ii) transferring a Worker for genuine operational reasons;
  - (iii) implementing organisational changes or restructuring;
  - (iv) decisions regarding accessing leave entitlements based on genuine operational requirements; and
  - (v) providing access to training or employment benefits based on genuine operational requirements and merit.

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## **9 VICTIMISATION**

### **9.1 What is Victimisation?**

- (a) Victimisation occurs when a person subjects, or threatens to subject, another Worker, Councillor, or Other Person at the Workplace or an associate of that person or to any detriment because they:
- (i) made or intend to make a complaint;
  - (ii) gave, or intend to give, evidence or information in connection with any proceedings;
  - (iii) allege or intend to allege that any person has committed an act which would amount to a contravention of Applicable Laws;
  - (iv) refused or intend to refuse to do anything that would amount to a contravention of Applicable Laws; or
  - (v) have reasonably reported a breach of this Policy or utilised the Issue Resolution Policy.
- (b) Victimisation under an Applicable law is unlawful.

### **9.2 What are some examples of the types of activities that could in the above circumstances amount to Victimisation?**

- (a) Refusing to employ another person;
- (b) Terminating or threatening to terminate employment;

- (c) Prejudicing or threatening to prejudice a person in their employment (refusing to provide a favourable reference);
- (d) Intimidating or coercing (excluding from workplace discussions);
- (e) Imposing any pecuniary penalty or other penalty (withholding wages); or
- (f) Taking disciplinary action (e.g. giving an employee a written warning)

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## **10 VILIFICATION**

### **10.1 What is Vilification?**

- (a) Vilification is conduct that incites physical harm, hatred, serious contempt or severe ridicule towards a Worker, Councillor or Other Persons at the Workplace or group of the foregoing on the basis of race, sexuality, disability or religion. It can take many forms, including hate-speech, graffiti, websites, and distribution of propaganda or other forms of offensive literature.
- (b) Vilification is conduct which occurs in a public place. The Workplace is a public place and discussions or jokes in the Workplace that relate to race, sexuality, disability or religion could amount to vilification.
- (c) Vilification is unlawful.

### **10.2 What are Examples of Vilification?**

- (a) Speaking about a person's race, disability, sexual orientation, religious belief in a way that could make other people hate or ridicule them;
- (b) Publishing claims that a racial, disabled, sexually orientated or religious group is involved in serious crimes without any proof;
- (c) Encouraging violence against people who have a particular race, disability, sexual orientation, religious belief, or damaging their property; or
- (d) Encouraging people to hate a person or group with a particular race, disability, sexual orientation, religious belief, using flyers, stickers, posters, a speech or publication, or using websites or email.

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## **11 WORKPLACE VIOLENCE**

### **11.1 What is Workplace Violence?**

- (a) Work related violence occurs when a Worker or Other Person at the Workplace abuses, threatens or assaults another Worker, Councillor or Other Person at the Workplace, in circumstances relating to their work or the Workplace. Unlike Bullying, an action does not need to be repeated.

- (b) Threats to harm someone, of violence and of damage to property are breaches of Applicable Laws that should be referred to the Police, and any other appropriate authority.

## **11.2 What are Examples of Workplace Violence?**

- (a) Threatening to kill or hurt a person or their family;
- (b) Assault; or
- (c) Throwing objects at another person.

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## **12 INAPPROPRIATE WORKPLACE BEHAVIOUR**

### **12.1 What is inappropriate Workplace Behaviour?**

- (a) Inappropriate workplace behaviour is any behaviour by Workers or Other Persons at the Workplace that Council reasonably considers is not appropriate Workplace behaviour or is unacceptable in the Workplace. It is behaviour inconsistent with Council's policies and procedures, expectations and way of doing things, which means it will vary from case to case.
- (b) Unreasonable behaviour (as is objectively required with Bullying) will also amount to inappropriate workplace behaviour. However, behaviour does not have to be unreasonable in the circumstances to be considered inappropriate workplace behaviour. For example, 'over sharing' of personal information by a Manager/Supervisor with a direct report which may be welcomed by the employee in the circumstances but still be considered inappropriate behaviour by Council for not meeting the communicated expectations of a professional Manager/Supervisor.
- (c) Inappropriate workplace behaviour may also fit into any of the categories of unlawful behaviour under this Policy. Even if it does not, it still amounts to Infringing Workplace Behaviour. Therefore, if you are unsure as to what the standards are ask your Manager/Supervisor or Human Resources or other appropriate person in the circumstances.

### **12.2 What are Examples of Inappropriate Workplace Behaviour?**

- (a) Treating people rudely, disrespectfully or without dignity are examples of what is considered inappropriate workplace behaviour.
- (b) At the 'high' or serious end of the scale, it is behaviour that may also constitute serious misconduct at common law.
- (c) At the low or 'less serious' end of the scale, it may be behaviour that is inappropriate but not unreasonable (e.g. Manager/Supervisor privately makes crude jokes with a direct report in the Workplace which are based on protected attributes. This may not be unlawful

in the circumstances in that the employee welcomes the behaviour and no-one overheard or was likely to but is still considered inappropriate behaviour because it amounts to poor judgment and is below what is expected of a Manager/Supervisor).

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### **13 SUPPORT**

If a Worker is subjected to or observe discrimination, offensive conduct, harassment, bullying, sexual harassment, victimisation, vilification or inappropriate Workplace behaviour as outlined in this Policy and require advice or support the following can assist:

- (a) your immediate supervisor or manager;
- (b) Organisational Development;
- (c) Council's Workplace Support /Contact Officers;
- (d) Council's Employee Assistance service; or
- (e) Your Union delegate.

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### **14 TRAINING**

Council will provide all persons covered by this Policy with appropriate training so that are made aware of their responsibilities and obligations under this Policy.

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### **15 INTERPRETATION**

- (a) Unless expressly provide for, this Policy is not in any way incorporated as part of any Enterprise Agreement and does not form part of any Employee's contract of employment. Any applicable enterprise agreement or contact of employment will prevail over this Administrative Policy to the extent of any inconsistency.
- (b) It is not intended that this Policy impose any obligations on the Council or those covered by it that are unreasonable or contrary to the operation of Applicable Laws. Any obligation, direction, instruction or responsibility imposed by this Policy must be carried out in a manner that an objective third party would consider to be fair and reasonable taking into account and in the context of all the relevant Applicable Laws, operational and personal circumstances.
- (c) Examples in this Policy are for illustrative purposes only and are not intended to be exhaustive.
- (d) Questions relating to the interpretation, application or enforcement of this Policy should be directed to a person's Manager/Supervisor.

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### **16 REPORTING OF BREACHES**

Persons covered under paragraph 2 (Coverage) must reasonably report breaches of Infringing Workplace Behaviour as follows:

For breaches by

- a) an Employee (other than the General Manager), or other Workers, the report must go to the reporting person's applicable Manager/Supervisor;
  - b) an Other Person at the Workplace, to the General Manager; and/or
  - c) the General Manager the report must go to the Mayor (or if unavailable to the next appropriately delegated Councillor) and
- as otherwise required or permitted by Applicable Laws.

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## **17 BREACH OF POLICY**

Persons covered under paragraph 2 (Coverage) who engage in Infringing Workplace Behaviour may (as is appropriate and as applicable) be subject to appropriate disciplinary action in accordance with Disciplinary Policy and Procedure (Employees), or removal from the Workplace or termination of services (Workers [other than Employees] and Other Persons at the Workplace. Infringing Workplace Behaviour may also amount to breaches of Applicable Laws:

- a) exposing individuals to legal proceedings; and
- b) making Council vicariously liable for the conduct of others.

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## **18 REVIEW**

This Policy will be reviewed every two years. Council retains the sole discretion to vary, terminate or replace this Administrative Policy from time to time. Council will consult before amendments are made and will notify and train those the amendments apply to.

**Approved:**

*Signed by Gary Arnold*

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**General Manager**

*July 2018*

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**Date**