

	<b>DEALING WITH BULLYING, HARASSMENT AND SEXUAL HARASSMENT</b>	<b>Version No:</b>	1.0
		<b>Last Adopted:</b>	21 March 2023
		<b>To be Reviewed</b>	March 2025

Category	Procedure
Responsible Officer	Chief Executive Officer
First Issued / Adopted	21 March 2023
Review Period	2 years
Last Reviewed	21 March 2023
Minute Reference	Carried 11196
Next review Date	February 2025 or earlier if required
File Reference	145.2.5

## 1. Introduction

- 1.1. Northern Areas Council is committed to providing a workplace and operating environment free from incidents of bullying, harassment and sexual harassment.
- 1.2. This procedure is a guide for managers and employees who are involved in:
  - Dealing with a workplace bullying, harassment or sexual harassment complaint;
  - Witnessing bullying, harassment or sexual harassment;
  - Wishing to lodge a complaint in line with the Northern Areas Council Prevention of Bullying, Harassment and Sexual Harassment Behavioural Standard for employees.
- 1.3. This procedure should be read in conjunction with that Standard.

## 2. Definitions

<b>Bullying</b>	Workplace bullying is repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health, wellbeing and safety.
<b>Employee or worker</b>	Includes permanent, fixed-term, casual, full-time and part-time employees of Council, as well as labour hire staff, volunteers, apprentices, work experience persons, contractors and consultants or other persons engaged by Council.
<b>Harassment</b>	Any unwanted, unsolicited and unwelcomed behaviour, act or statement that offends, humiliates or distresses the recipient.

<b>Repeated behaviour</b>	Refers to the persistent nature of the behaviour and can involve a range of behaviours occurring over time.
<b>Sexual Harassment</b>	Any sexual behaviour, such as a sexual advance, request for sexual favours or other conduct of a sexual nature which is unwelcomed by the recipient and that a reasonable person would have expected the recipient to find offensive, humiliating or intimidating.
<b>Unreasonable behaviour</b>	Means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

### 3. Procedures

3.1 The following procedures apply to any employee who is involved in workplace bullying, including the complainant, the alleged perpetrator, or anyone who intervenes in a complaint process. It is important to note that during the process of any of the options identified in the procedures, consideration must be given to whether or not the alleged target and alleged perpetrator can continue to remain in the same location, both during the investigation process and after.

#### 3.2 Options for employees who have a complaint:

There are a number of options available to employees who believe they have been subject to bullying, harassment or sexual harassment:

- a) Self-help;
- b) Informal intervention;
- c) Mediation;
- d) Formal complaint.

Any option can be selected. An employee is not required to go through all the options if they believe resolution of their complaint can be achieved by selecting one or more of the above options.

Employees are encouraged to keep a record of any incident(s) leading to a complaint, including dates, times, witnesses, other persons involved.

#### 3.3 Self help:

An employee with a complaint may deal with the problem by seeking advice and support from a colleague, supervisor or manager, Equal Opportunity Contact Officer, Health & Safety Representative, union representative or external support officer / counsellor. If the employee feels able to deal with the problem themselves, they are encouraged to use this procedure.

The self-help methods *may* include:

- The complainant personally approaches the person who is the alleged perpetrator of the bullying, harassment or sexual harassment to ensure that person is aware their behaviour is offensive and asks them to stop;
- The complainant writes to the person who is the alleged perpetrator of the bullying, and advises that a complaint may be made if the behaviour does not stop; or
- The complainant speaks to the person about the complaint which has been made in the company of a support person or other representative.

The advantages of self-help can be:

- It allows the complainant to feel empowered to help themselves;
- It gives the person complained against the opportunity to correct their behaviour, and;
- It can result in less disruption to the workplace and to the parties involved.

There is no expectation, however, for an employee to use this process. If an employee is too intimidated by the person complained against to deal directly with them, perhaps because the person has more authority or because of the nature of the behaviour, then self-help may not be the best option.

### 3.4 Informal intervention:

It is recognised that approaching a supervisor/manager is a formal act. For the purposes of this procedure, intervention (prior to the lodging of a written complaint) is labelled "informal intervention".

Where informal intervention is the chosen option, the employee may have someone intervene on their behalf without a formal complaint being made.

An employee may:

- Directly approach their supervisor / manager / CEO and advise them of the situation and ask them to intervene on their behalf;
- Request the Equal Opportunity Contact Officer to intervene on their behalf, or;
- Request a colleague/support person to intervene on their behalf.

It is the role of any person intervening on behalf of a complainant to ensure the alleged perpetrator is aware of the allegations and is given the opportunity to respond to the complainant. Informal intervention may involve the nominated officer approaching the alleged perpetrator, informing him or her of any allegations made and explaining the requirements of Council's behavioural standards.

The intervening officer must maintain the confidentiality of both parties during the intervention process.

If the alleged perpetrator acknowledges that the complaint is true, the nominated officer shall require the alleged perpetrator to cease the practice, explaining the consequences for them if the bullying, harassment or sexual harassment does not cease – that is, a formal complaint being lodged leading to possible disciplinary action.

If the alleged perpetrator refutes the claim or does not respond satisfactorily to the nominated officer's investigation / discussion / requests, the nominated officer will then seek direction from the complainant as to whether or not a formal complaint will be made.

If the complainant wishes, the matter is to be brought to the attention of the relevant supervisor, manager, Chief Executive Officer or other person representing the employee – see 3.6 Formal complaint. Otherwise the matter will be deemed closed.

### 3.5 Mediation:

An employee may approach the Equal Opportunity Contact Officer to arrange for a mediator to mediate a meeting between themselves and the alleged perpetrator.

Mediation of the complaint would involve:

- The mediator approaching the alleged perpetrator, advising that the allegations had been made and that a mediation meeting is to be arranged to discuss the allegations further;

- At the meeting, the mediator would clarify the Council’s behavioural standards and procedures in relation to workplace bullying, harassment and sexual harassment to both parties;
- The mediator will request the complainant to inform the alleged perpetrator of the particulars of the allegations, and ensure that the alleged perpetrator is allowed ample time to respond to the allegations presented;
- The mediator’s role is to ensure both parties are heard and to attempt to offer solutions and resolve the matter in a way which is satisfactory to all participants;
- The mediator shall keep a record of their contact with the complainant and any action undertaken should be documented and held by the mediator in a safe and secure location; and
- All parties must be aware that, should the mediation process be unsuccessful, the records kept may be made available in any further formal complaint process.

### 3.6 Formal complaint:

A formal complaint can be lodged at any time. Employees may feel that informal attempts at resolution are not appropriate or have failed.

A formal complaint must be submitted in writing, detailing the activities of the alleged perpetrator, dates/times of alleged incidents, and the possible outcome of the complaint requested by the victim. The complaint should be directed to the CEO, unless the CEO is the subject of the complaint – see 3.6.1 below if that is the case.

Formal complaints will involve the appointment, by the CEO, of a suitably trained and/or experienced, investigating officer/mediator who will undertake to capture all relevant information relating to the complaint. Employees accused of workplace bullying, harassment or sexual harassment must be advised that they have the right to involve a representative or an officer of their union as a support person during this process.

The investigation process will usually involve the conduct of formal interviews. The investigator/mediator will provide the CEO with a formal report detailing the investigation and recommending relevant action to be undertaken.

The investigation process must be undertaken as a matter of urgency and the formal report should be completed within four weeks from the commencement of the investigation.

Employees may also approach their Union Representative, ReturnToWork SA or any other counsel for assistance. Furthermore, employees may contact the Commissioner for Equal Opportunity in cases that come within the scope of the *Equal Opportunity Act 1984 (SA)*. The Equal Opportunity Act prohibits discrimination in employment on the grounds of age, sex, sexuality marital status, pregnancy, race or physical and intellectual impairment and also prohibits victimisation and sexual harassment, including sexual harassment of an employee by an employer or another employee.

Employees are also reminded of their Work Health & Safety responsibilities and should – when relevant and in line with the confidentiality requirements outlines – lodge a WHS incident report.

- 3.6.1 When the complaint is directed at the CEO, the Mayor may be asked to investigate the complaint. If there is any doubt surrounding the potential objectivity of an investigation of the CEO by the Mayor, then the CEO or the Mayor or a member of the Senior Management Team will contact the Local Government Association to seek an impartial and qualified person to conduct the investigation.

### 3.7 A guide for the victim:

- Recognise the signs – many targets of bullying, harassment or sexual harassment do not recognise what is being done to them and wonder whether they are to blame in some way. Targets need to recognise that uncertainty is often part of bullying and harassing behavior and there is no justification or tolerance for such behaviour.
- Focus on taking action to have the bullying and harassing behaviour cease. You have rights and Council will support you through the process.
- Identify clearly who is or are the perpetrators – there are occasions where there is more than one and you need to identify all the participants regardless of the extent to which they participated in the behavior.
- Keep records – make notes of any incident, when, where and who was involved, how you felt about it, were there any witnesses, who, if at all, did you speak to about it. These notes can be vital to any formal or informal process that may be undertaken as a means of investigating the complaint and resolving the situation.
- Talk to appropriate people about it in an appropriate manner – keeping the incident/s to yourself will only increase your sense of isolation.
- Refrain from using bullying / harassment or other inappropriate behaviour as a means of responding to bullying / harassment – this may only serve to inflame a situation and/or you may find yourself the subject of a disciplinary investigation.
- If possible try to remain at your worksite – moving from the workplace does not result in the behaviour being dealt with in an appropriate manner, or at all, and more importantly may result in you suffering from reduced personal esteem.
- Be careful not to confuse performance management or disciplinary processes as bullying.

### 3.8 Rights of any person accused of workplace bullying, harassment or sexual harassment:

The required standard of proof when a complaint is made – or when a complaint is being defended – will be based on the “balance of probabilities” in line with civil proceedings. That is, whether an employee can successfully establish that the claim being made is more probable than not.

All employees have the right to be entitled to the principles of “natural justice”, including those who are accused of workplace bullying, harassment or sexual harassment.

The following must be considered to ensure that all relevant employees involved in the investigation of complaints are afforded natural justice:

- The right to be fully informed about the complaint;
- The right to reply in full to the complaint;
- The right to be considered innocent until proven guilty;
- The right to representation by a person of their choice;
- The right to have all mention of the matter removed from relevant personal records if the case is not proven;
- The right to be informed of any rights of appeal that may exist against any decision made on the matter;
- The contents, including rights and obligations, contained in relevant policies, procedures and legislation relevant to the matter to be brought to the attention of the person against whom the complaint is made, at the beginning of the proceedings;
- The right to have the matter investigated in a timely manner, without delay;
- The right to remain in their workplace if the complaint is found to be without substance;

- The right to appropriate support being provided by the Council;
- The right to have recourse in the case of malicious or false accusations.

### 3.9 Right of appeal:

Should either party be dissatisfied with the outcome, a grievance appeal can be lodged with the Chief Executive Officer, or the Fair Work Ombudsman.

### 3.10 Confidentiality:

All parties concerned in the investigation of a complaint should observe strict confidentiality. This is a serious duty owed both to the complainant and the person complained against.

If you are involved in the resolution of a complaint you are entitled to share information only with those who have legitimate and genuine right to the information. Along with those involved in the complaint investigation and process, this may include your support network (e.g. spouses/close family, legal advisors, medical professionals, EAP).

### 3.11 Keeping records:

All records are confidential and are to be stored securely. Records shall be maintained for this Procedure, as required by Council's current Records Management Policy/Procedure, any relevant legislation and in compliance with relevant general disposal schedules.

#### *Personal Notes:*

It is advisable that personal notes are retained and it is essential that:

People who are experiencing bullying, harassment or sexual harassment record the dates, places and details of every incident as well as meetings with managers and mediators and any mediation agreement which is reached.

Those people who have been complained against should document similar details as those of the complainant.

#### *Council Records:*

The Council will keep formal records concerning a complaint only where a formal complaint has been made to the Chief Executive Officer, or a formal complaint has been lodged with an outside agency.

Manager/Team Leaders/Supervisors should keep chronological notes of interviews with the complainant and respondent and any actions, which they have taken to resolve the complaint.

#### *Personnel Files:*

If the complaint is made, investigated and upheld, and the person complained against has been disciplined, then a summary of the nature of the complaint and the outcome, including information detailing disciplinary action (including a formal warning) must be placed on their personnel file.

No mention of a complaint will be placed on a complainant's personnel file unless the complaint is found to be malicious or the accusations are made when they are known to be false.

### 3.12 Disciplinary action:

If instances of workplace bullying, harassment or sexual harassment have been upheld, then disciplinary action will occur in line with the *Counselling and Disciplinary Procedure*.  
[CURRENTLY UNDER REVIEW]

#### **4. Responsibilities**

The responsibilities in relation to this Procedure are detailed in the Prevention of Bullying, Harassment and Sexual Harassment Behavioural Standard for employees.

#### **5. References**

Prevention of Bullying, Harassment and Sexual Harassment Behavioural Standard  
Code of Conduct for Council Employees

#### **6. Review**

This Procedure shall be reviewed at least every two years or more frequently if required.

#### Version History

<b>Version</b>	<b>Issued</b>	<b>Description of Change</b>
1.0	21 March 2023	New procedural document