

Equal Opportunity

Corangamite Shire

January 2024



**CORANGAMITE
SHIRE**

Council Policy



Equal Opportunity

Introduction

Discrimination, harassment, bullying, victimisation and other forms of inappropriate workplace behaviour are not only unacceptable but are unlawful under equal opportunity and occupational health and safety laws.

Corangamite Shire Council is committed to the principles of equal opportunity and ensuring that people are treated equitably and face no unnecessary barriers to their full participation at work.

Purpose

This policy has been developed to inform those who work for Council of the principles of equal opportunity and their application in the workplace.

By effectively implementing those principles, we aim to:

- create a culture that is inclusive, respectful and free from discrimination.
- ensure that everyone has the same opportunities at work, including women, culturally and linguistically diverse people, people who identify as Aboriginal or Torres Strait Islander and people of all abilities.

Scope

This policy applies to councillors when they are performing Council duties or attending Council workplaces, and to employees and other people who perform work for Council, including, contractors, work experience students and volunteers.

It applies to behaviours that occur during all aspects of employment including:

- work performed wherever and whenever employees and councillors may be as a result of their duties, for example: out of hours or off-site work, when working from home, or when working with clients or the community.
- during work-related events, for example at work-related social functions or conferences.
- during online activity

Definitions

Equal Opportunity is the principle that the provision of employment, education, access to services and other social benefits should be allocated based on individual merit and not on stereotypes or other irrelevant characteristics. It does not assume everyone is the same and it does not mean treating everyone the same. In some circumstances, treating everyone the same is unfair and against the law (see indirect discrimination).

Discrimination is treating, or proposing to treat, someone unfavourably in an area of public life (for example, at work) due to one of their personal characteristics.

Direct Discrimination occurs where a person with a particular characteristic or attribute is treated unfavourably compared to a person who does not have that attribute, under the same or similar circumstances. Direct discrimination often happens because of unfair assumptions about what people with certain personal characteristics can and can't do.

For example: A worker is refused promotion because it is assumed they are 'too old to learn new skills'.

Indirect Discrimination happens when a policy or practice that appears to be neutral actually results in a person with a particular attribute being unfairly disadvantaged. This occurs when an unreasonable requirement, condition or practice that purports to treat everyone the same ends up disadvantaging someone with a personal characteristic protected by law.

For example: An advertisement for a job as a cleaner requires an applicant to have fluent English. The requirement may not be reasonable if fluent English is not necessary to perform the job.

Equal Employment Opportunity (EEO)

Equal opportunity in the workplace means:

- all employees have equitable and merit-based access to jobs, opportunities and training, regardless of irrelevant personal characteristics.
- there is no discrimination against anyone because of a personal attribute and all employees are treated with dignity, courtesy and respect.

Harassment is a form of unlawful discrimination that occurs when behaviour that is offensive, humiliating or intimidating is directed towards someone, and may be related to a protected attribute.

Examples of harassment include, but are not limited to:

- demeaning references to a person's age, racial background, sexual orientation, gender identity, disability or other protected attribute;
- downloading or displaying offensive material or objects;
- yelling, screaming, swearing or similar behaviour directed at someone which intimidates, frightens, coerces or offends them.

Positive Duty

Councils have a positive duty under legislation to take proactive, reasonable and proportionate measure to eliminate discrimination, harassment and victimisation.

This positive duty includes with the provision of goods and services, including free services.

Complying with this positive duty may include:

- having up to date policies in place;
- having a good complaint handling process;
- conducting ongoing training;
- reviewing services and operations to prevent discrimination.

Protected Attribute

It is unlawful in areas of public life in Victoria to treat someone unfavourably (or substantially because) they have, or are assumed to have, or because they do not have, or are assumed not to have, a personal characteristic protected by law.

<p>Age whether young or old, or because of age in general.</p>
<p>Disability a disability, disease, or injury, including behaviour that is an outward sign or symptom of a disability.</p>
<p>Employment activity for example, where someone asks a question or raises concerns about their rights or entitlements at work.</p>
<p>Expunged homosexual conviction as homosexual acts are no longer considered a crime under Victorian Law, people can apply to have their historical homosexual convictions expunged (removed) from their criminal record. It is against the law for someone to discriminate against you because of this.</p>
<p>Gender identity is a person’s gender-related identity, which may be different to the one assigned to them at birth. It includes a person's sense of their own body (whether affirmed by medical intervention or not) and other expressions of gender, including dress, speech, mannerisms, names and personal reference.</p>
<p>Industrial activity including being a member of an industrial organisation like a trade union or taking part in industrial activity, or deciding not to join a union.</p>
<p>Lawful sexual activity taking part in sexual activity that is not against the law.</p>
<p>Marital status whether married, divorced, unmarried, in a de facto relationship or a domestic relationship.</p>

<p>Parental status and carer status</p> <p>where a person is responsible for caring for children or other dependents Note: does not cover those who are being paid to provide such care.</p>
<p>Political belief or activity</p> <p>includes taking part in political activity, or not taking part in political activity at all.</p>
<p>Pregnancy and breastfeeding</p> <p>including being pregnant or the potential to get pregnant, or because a woman is breastfeeding a child or expressing milk.</p>
<p>Profession, trade or occupation</p> <p>ensures sex workers cannot be discriminated against because of their work.</p>
<p>Race</p> <p>race, colour, descent or ancestry, nationality, ancestry or ethnic background.</p>
<p>Physical features</p> <p>such as height, weight, size, hair or birthmarks.</p>
<p>Religious belief</p> <p>includes taking part in a lawful religious activity, or not holding a lawful religious belief.</p>
<p>Sex</p> <p>whether male, female, or intersex.</p>
<p>Sex characteristics</p> <p>a person’s physical features relating to sex including sexual and reproductive parts, chromosomes, genes, hormones, and any physical features they develop after puberty.</p>
<p>Sexual orientation</p> <p>a person’s emotional, affectional, and sexual attraction to, or intimate or sexual relations with, people of a different gender, the same gender, or more than one gender.</p>
<p>Spent conviction</p> <p>a previous conviction from anywhere in Australia that no longer appears on most criminal record checks.</p>
<p>Personal association</p> <p>an association with someone who has, or is assumed to have, one of these characteristics, such as being the partner of an industrial activist.</p>

It is also unlawful to discriminate against a person who is personally associated with someone with any of these characteristics, or on the presumption that a person has a particular characteristic.

Reasonable Adjustments

Councils have an obligation to make reasonable adjustments for employees with disability to enable them to perform the inherent requirements of the role.

Sexual Harassment is a specific form of harassment that is unwelcome and unreciprocated sexual behaviour. Sexual harassment can be physical, spoken or written. (see Sexual Harassment Policy).

Sexual harassment **is not** behaviour based on mutual attraction, friendship and respect.

Workplace Bullying is repeated, unreasonable behaviour directed toward an employee, or group of employees, that creates a risk to health and safety, including the mental or physical health of an employee. Bullying directed towards someone because of a protected attribute is also discrimination. (see Bullying and Harassment Prevention Policy).

Victimisation occurs when a person is retaliated against or treated unfairly or less favourably because the person has or intends to make a complaint or is involved in a complaint (ie: as a witness etc).

Vilification is defined as a public act that could incite or encourage hatred, contempt or severe ridicule towards people on the grounds of their race or religious belief or activity. This includes spoken, written, online or physical behaviour towards a particular race or religious group. Serious vilification that threatens harm towards a person or group may amount to criminal conduct.

References

- Victorian Human Rights and Equal Opportunity Commission
- Fair Work Commission

Related Legislation

As employers and providers of services, councils have obligations under the *Equal Opportunity Act 2010*, the *Local Government Act 2020* and state and federal anti-discrimination legislation

Federal

- *Commonwealth Sex Discrimination Act 1984*
- *Commonwealth Disability Discrimination Act 1992*
- *Commonwealth Racial Discrimination Act 1975*
- *Workplace Gender Equality Act 2016*
- *Age Discrimination Act (2004)*
- *Fair Work Act (2009)*

State

- Victorian Equal Opportunity Act 2010
- Racial and Religious Tolerance Act 2001
- Victorian Charter of Human Rights and Responsibilities Act 2006
- Local Government Act 2020
- Occupational Health and Safety Act 2004
- Crimes Amendment (Bullying) Act 2011

Related Council Guidelines

The following guidelines and complaints handling procedures will assist employees to comply with this policy:

- Recruitment & Selection Policy and Guidelines
- Performance Management Policy and Guidelines
- Employee Complaints, Grievance and Dispute Procedure
- Misconduct and Discipline Policy and Procedure
- Employee Code of Conduct
- Councillor Code of Conduct

Policy Detail

Council is responsible for ensuring compliance with the relevant laws and providing a working environment free from discrimination and inappropriate workplace behaviour.

To that end, Council will demonstrate the following principles of equal opportunity:

- Decisions will be made impartially and without regard to irrelevant personal attributes.
- All employees will have equitable access to workplace opportunities and benefits which are relevant to their position
- Employees or job applicants who have either a temporary or permanent disability or illness will not be discriminated against. They will be provided with the assistance they need to be able to do the essential parts of their job where this is reasonably practicable.
- Councillors and employees will receive training on their rights and responsibilities in relation to equal opportunity, unlawful discrimination and harassment.
- The social and cultural backgrounds of all staff, councillors and customers will be recognised and respected.
- There will be effective mechanisms to resolve complaints in place.

Reporting Procedure

Corangamite Shire takes reports of unacceptable behaviour seriously and will ensure that they are dealt with confidentially, fairly and in a timely manner.

If you believe you have been discriminated against, harassed or victimised you are strongly encouraged to report this to your manager, or in the case of a councillor to the CEO. If you are uncomfortable raising the matter with your manager, you can raise the matter with another manager, the HR manager or the Human Rights and Equal Opportunity Commission. Behaviour such as threats to harm someone, violence and property damage may be criminal matters and should also be referred to the police. Complaints and grievances will be handled in accordance with the relevant Corangamite Shire complaint procedures.

Gossip

It is not appropriate to talk with other staff, councillors, or members of the community about any equal opportunity complaint. Breaching the confidentiality of a complaint investigation is a serious matter and is likely to create new problems and make it harder to resolve the original issue.

Responsibilities

Employees and Councillors

Employees and councillors (when performing duties on behalf of Council or attending Council workplaces) have a responsibility to:

- Comply with this policy, related procedures and legislation.
- Respect the social and cultural diversity among other councillors, staff and customers.
- Report acts of unlawful discrimination, bullying or harassment.
- Adhere to the relevant Codes of Conduct when dealing with colleagues.
- Avoid gossip and respect the confidentiality of the complaint resolution procedures.
- Ensure that Council is not vicariously liable for any breaches of relevant legislation due to their behaviour.

Supervisors/Managers

Supervisors and managers have additional responsibilities to:

- Model appropriate standards of behaviour.
- Know the principles supporting this policy to effectively deal with any concerns.
- Make it clear to staff that discriminatory or harassing behaviour will not be tolerated.
- Ensure that the working environment is free of sexist, racist or any other form of stereotyping material such as posters or screen savers.
- Act immediately if they witness or are advised about any unlawful or unfair treatment.
- Treat staff complaints seriously and confidentially in accordance with the grievance procedures.

Human Resources/Risk Management Department

The Human Resources/Risk Department is responsible for making sure all employees and Councillors have access to this document.

The department will also provide induction and ongoing training to ensure that employees and councillors are kept informed.

Review Date

January 2028

It is considered that this Policy does not impact negatively on any rights identified in the *Charter of Human Rights and Responsibilities Act 2006*.

The *Gender Equality Act 2020* requires Council to undertake Gender Impact Assessments when developing or reviewing any policy, program or service which has a direct and significant impact on the public. As this policy aims to address inequality, a Gender Impact Assessment has not been undertaken.

Further advice and information about discrimination, harassment and sexual harassment may be obtained from:

Human Resources/Risk Management Department

Michele Stephenson, Manager. Tel: 55937135 (BH)

Victorian Equal Opportunity and Human Rights Commission

Free call: 1300 292 153

TTY: 1300 289 621 (*speech and hearing impaired*)

Web site: <http://www.humanrightscommission.vic.gov.au>