



Blackall-Tambo Regional Council

Harassment and Bullying Complaints Procedure

Resolving Complaints in the Workplace: A Complaint Management System

Policy Number: Stat 37	Reviewed Date: 20.07.2022
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Policy Compiled by: Human Resources Officer	
Policy Approved by: Chief Executive Officer	

PURPOSE

Bullying and harassment will not be tolerated at any worksite of the Blackall- Tambo Regional Council.

Employees have access to resources that allow them to effectively report any instances of bullying and/or harassment to their direct Supervisor. Employees also have access to reporting tools including incident/accident report forms in consultation with Line Managers, Supervisors, Workplace Health and Safety Officer and Committee members, Human Resources Officer, and the Chief Executive Officer.

ANTI-BULLYING LAWS

In 2013, amendments to the *Fair Work Act 2009* (the Act) conferred power upon the Fair Work Commission (the Commission) to make orders to stop bullying effective from 1 January 2014. Prior to this, the Commission had no power to deal with workplace bullying complaints. Under these new provisions, the Commission must start to deal with an application for an order to stop bullying within 14 days of the application being made.

The Commission may refer a matter to Workplace Health and Safety Queensland where it considers it to be necessary and appropriate. The Act specifies that a complaint may be managed by the Commission and Workplace Health and Safety Queensland.

DEFINITIONS

Workplace Bullying and Harassment is the repeated, unreasonable, and unwelcome behaviour directed towards an employee or group of employees. Such behaviour creates a risk to health and safety.

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Harassment is unwanted behaviour that offends, humiliates, or intimidates a person and targets them on a basis of a characteristic, such as gender, race, ethnicity, or sexual orientation.

An *appeals process* provides an avenue for workers to communicate, where possible, to a higher level of Management about their dissatisfaction with any decision or process considered to be unjust or unfair (for example, inadequate or ineffective managerial action taken in response to a workplace harassment complaint).

WHAT IS NOT BULLYING AND HARASSMENT?

A single incident of harassment or bullying type behaviour is not considered to be workplace bullying and/or harassment. Nevertheless, single incidents of harassing type behaviour should not be ignored or allowed. Professionally managed intervention in response to single incidents will help prevent the situation from escalating.

REASONABLE PERFORMANCE MANAGEMENT

Council’s approach to employees’ performance management processes have been implemented to establish a clear and reasonable link between Council and individual employee expectations and objectives. One of these processes is by way of an annual Performance Appraisal which allows Management and Supervisors to review and evaluate employees’ individual performance in a positive and reasonable way.

Before lodging a formal bullying or harassment complaint, the person/s or the group concerned must consider that a directive or work method comment about performance management that is conducted in a reasonable manner by a Manager, Supervisor, or a person in charge, does not constitute harassment. In cases where a Manager or Senior Executive has become the victim of harassment and/or bullying, the Mayor, as per Council’s organisational hierarchy, would be consulted in the first instance to help resolve the complaint. If an amicable solution is not reached then the matter may be referred to the Local Government Association of Queensland’s Workforce Mediation and Investigations Solutions, or to the Industrial Commission.

COMPLAINT REPORTING SYSTEM

When a complaint of workplace harassment or bullying is raised it needs to be responded to in a timely manner to prevent further escalation of the issue.

Persons responsible for Human Resources, Workplace Health and Safety, Managers and Supervisors can be consulted to advise employees in regard to policies and procedures that manage workplace harassment and bullying complaints.

Generally, complaints can be resolved either formally or informally.

Before deciding on how to resolve the complaint, the person raising the complaint should:

- Clearly define their concerns and desired outcome.
- Assess the advantages and disadvantages of the informal versus the formal process.
- Consider the complexity of the situation (a formal option may need careful consideration if the situation is overly complex).

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- Be aware of support mechanisms available, e.g. counselling.
- Acknowledge the consequences of making malicious, frivolous, or vexatious complaints (complaints that are deliberately harmful, spiteful, trivial, or unworthy of serious attention or resources).

7.1 INFORMAL COMPLAINT REPORTING SYSTEM

The objective of the informal approach is to resolve the matter with a minimum of conflict or distress to individuals.

The benefits of resolving workplace harassment/bullying informally are :

- The process is generally quick and less adversarial and cumbersome.
- It does not require extensive proof of workplace harassment/bullying to be demonstrated.
- The person exhibiting harassing/bullying behaviours may not be aware of their own behaviour and this may give them the opportunity to refrain from behaviours which others find offensive, intimidating or humiliating and of which they may not be aware.

Speaking directly with the person

Any worker who believes they are being harassed may choose to speak directly with the person/persons demonstrating harassing/bullying behaviours. Directly dealing with the person/s responsible sometimes results in the behaviour ceasing. If after speaking with the person the behaviours continue then you can use formal processes.

Mediation

Resolving complaints informally through mediation is generally more effective, requires fewer resources and often prevents further escalation of the issue while in no way trivialising the issue or the effect it has on an individual.

Mediators should:

- Be competent, impartial, maintain confidentiality and be acceptable to all parties.
- Be a guide for discussions between parties.
- Encourage parties to identify the issues in dispute and explore options for agreement.
- Guide the parties to negotiate and implement options for agreement.
- Take account of real or perceived differences in power between parties.

If a party has a significant concern about an internal resolution process it may be necessary to arrange an external mediator.

7.2 FORMAL COMPLAINT REPORTING SYSTEM

If the informal approach is unsuccessful and the harassing/bullying behaviours continue at the workplace, the complainant can request that a formal approach is implemented to address their complaint of workplace bullying/harassment.

Where a complaint handling system is in place it should be used to address the complaint. The persons responsible for Human Resources or Workplace Health and Safety matters should be able to advise employees in regard to complaint resolution policies and procedures and how to lodge a formal complaint. Effective Human Resource systems can help prevent or control workplace harassment from occurring. Ensuring the workplace as effective and reasonable performance management processes and open communication systems are two ways that can achieve this.

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Mediation

Where a complaint cannot be resolved by informal means a formal process should be followed.

In the absence of Council Trained Mediators, Council would engage the services of the Local Government Association of Queensland’s Workforce Mediation and Investigation Solutions. They are able to offer qualified, experienced investigators, mediators and human resources and industrial relations professionals whose expertise can help and support Council to deal with workplace grievances and complaints. Workforce investigators are available to conduct professional and unbiased workplace investigations, particularly in the areas of:

- Workplace harassment and bullying,
- Misconduct, and
- Crime and Misconduct Commission (CMC) referred investigations.

Workforce Mediation and Investigation Solutions use a formal process to examine the relevant facts of allegations and ascertain whether Council officers have breached policy or law. Their investigators are discreet and sensitive to the issues at hand, and will:

- Undertake investigations in a planned and structured manner, and
- Ensure objectivity.

INVESTIGATING COMPLAINTS PROCEDURE

The objective of an investigation is to resolve the conflict which prompted the complaint and to effectively control the risk of workplace injury or illness from workplace harassment.

An investigation will aim to establish the facts and circumstances of the situation and usually lead to a formal report being prepared. The person responsible for Human Resources or Workplace Health and Safety matters in the workplace should be able to offer further advice concerning the applicable formal procedure.

An effective investigation procedure should be:

- Planned - to ensure the investigation process is appropriate.
- Transparent - the investigation process and timeframes to be outlined for all parties.
- Objective/impartial - the investigator should be unbiased and non-judgemental.
- Documented - information from interviews and accurate records of evidence used to establish facts should be kept. No assumptions or opinions should be included. Detailed investigation notes are essential to demonstrate fair practices associated with the investigation.
- Reviewed - so an assessment can be made as to whether or not the behaviour constitutes workplace harassment.
- Able to provide factual evidence - so appropriate remedial actions may be taken by the employer in relation to the complaint or other issues identified during the investigation.

Council’s standard procedure for dealing with reports of bullying and/or harassment should be followed in line with the principles of natural justice, meaning :

1. The person alleged to have committed workplace harassment/bullying is presumed to be innocent until allegations are proved to be true.
2. All allegations of workplace harassment/bullying are investigated promptly.
3. The person who has allegedly committed the workplace harassment/bullying is informed of all the allegations and given an opportunity to explain his or her version of events.



4. Should the complaint be proven to be true, then disciplinary action will be taken on the person or persons involved who could have their employment terminated by the Chief Executive Officer, as per the flow chart.

Persons who are the victims or perpetrators should be offered counselling before and after an investigation.

In the case of a complaint of bullying and/or harassment against a Senior Manager/Chief Executive Officer, that person should not be involved in the issue resolution process, and as Council’s standard bullying complaints procedure involves the Senior Manager/Chief Executive Officer, someone else should be nominated to fulfil their role in managing the complaint, for example a member of other Senior Management.

RESOLVING COMPLAINTS THROUGH EXTERNAL AGENCIES

Most external agencies will not accept a complaint unless complainants have attempted to resolve the workplace harassment/bullying internally through an informal or formal process (where available).

Workplace harassment/bullying can be addressed within the workplace before referring to external agencies through:

- Speaking directly to the person.
- Mediation between the parties.
- Formal process.

Complainants may contact the following agencies where internal processes have been ineffective (or not available). The most appropriate agency will depend on the type of complaint and the complainant’s desired outcome.

For assistance in determining the most appropriate agency, call the Workplace Health and Safety Info Line on 1300 369 915. Info Line staff will ask a series of questions to help identify which agency or agencies are appropriate to assist and provide information about them. Depending on the nature of the complaint it is possible that more than one agency will be involved.

External Agencies in Queensland Role

Workplace Health and Safety Queensland (WHSQ) can only respond to complaints in certain situations that fall within the scope of the *Work Health and Safety Act 2011*.

The complaint must (on face value) fall within the definition of workplace harassment/bullying.

The complaint should always be in writing and submitted within one week of the incident occurring. Investigations should begin within a reasonable timeframe, for example, not less than one week after the initial submission. These timeframes allow the incident to be dealt with using the informal approach used to resolve issues at a base level, e.g. face to face mediation.

Where a complaint falls within the scope and risk of injury or illness from workplace harassment/bullying is determined likely to exist, an Inspector may be assigned to investigate.

The types of information an Inspector may request include:

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- Incident records,
- Workplace harassment/bullying policy,
- Grievance procedures,
- Information about the workplace complaint handling system,
- Workplace records to show that the allegation of workplace harassment/bullying has been investigated appropriately,
- The steps that have been taken to remedy the situation (should the risk of workplace harassment/bullying be identified in the investigation),
- Staff training records, e.g. take 5 toolbox talks, and
- Any other information required by the Inspector.

An effective investigation procedure should be:

- Planned - to ensure the investigation process is appropriate.
- Transparent - the investigation process and timeframes be outlined for all parties.
- Objective/impartial - the Investigator should be unbiased and non-judgemental. In some workplaces this may mean the need to engage someone from outside the workplace to avoid a conflict of interest, e.g. a trained Investigator.

During a workplace visit the Inspector will review documentation and may survey or interview staff members as part of the investigation. The Inspector will assess if there is a risk of injury from workplace harassment/bullying and review controls implemented at the workplace.

THE APPEALS PROCESS

If a complaint cannot be resolved through conciliation between the parties, the complainant can refer it to the Queensland Civil and Administrative Tribunal. The Tribunal hears complaints in a similar way to a court and seeks to operate in an informal and non-intimidating way. All the Tribunal members who hear complaints are experienced lawyers.

A worker may apply to the Fair Work Commission (the Commission) for an order to stop workplace bullying. This is available under the *Fair Work Act 2009*.

The Commission can make an order to prevent a worker being bullied at work if it is satisfied that:

- The worker has been bullied at work by an individual or group of individuals.
- There is a risk that the worker will continue to be bullied at work by the same individual or group.

The Commission is a Tribunal and is required to hear from all relevant parties before making orders. It does not conduct investigations into allegations of bullying at work.

For more information about anti-bullying laws, refer to the Fair Work Commission website. Fair Work Online provides information and advice about the national workplace system. Links are provided to the Fair Work Ombudsman and Fair Work Australia (the national workplace relations tribunal).

The Queensland Anti-Discrimination Commission and Queensland Civil and Administrative Tribunal promotes fair treatment and equal opportunity by making discrimination and vilification (for example, on the basis of race, religion, sexuality, or gender identity) and all sexual harassment/bullying against the law.

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The Queensland Working Women's Service (QWWS) provides a comprehensive free and confidential telephone service to women on all work-related matters. QWWS has information about workplace harassment/bullying and is able to offer advice on the possible courses of action. Information on advocacy and representation can also be obtained through the service.

CHANGES SINCE LAST REVISION

Reviewed procedure as of 20.07.2022 to reflect current procedures.

RECORDS

When completed and approved the original, signed hard copy of the procedure is filed in the Master File.

Electronic copies are saved in the appropriately labelled folder in Magiq.

