

CEO Handbook

Supporting and Developing the Workforce

Chapter 4

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DISCLAIMER:

This information is general in nature and is not intended to constitute legal advice. Local Governments should seek their own legal advice where necessary.

Supporting and Developing the Workforce

Council staff are a key resource and vital to achieving outcomes for the community. They are your eyes and ears as well as the ones who get things done. Skills, experience and local knowledge are all in short supply. Value your staff, consider how they are best supported, and tailor the workplace to their needs in order to keep them happy and foster a productive working environment. Work with the skills and experience you have and develop, build, and enable.

1. Principles of human resource management

The CEO appoints and manages the council staff. In doing so the CEO is guided by the following principles:

- Employment decisions are fair and equitable and open to review;
- Decisions relating to engagement and remuneration are based on merit;
- Performance, development and advancement of employees is supported;
- A flexible, safe and rewarding workplace is provided where communication, consultation, cooperation and input from employees on matters that affect their workplace is valued;
- Terms and conditions and policies are subject to consultation with employees or their representatives with a view to an agreed approach;
- Council is an equal opportunity employer and diversity is fostered and recognised in the workplace;
- The workplace is free from discrimination, patronage and favouritism; and
- Council provides a safe and healthy workplace.

Local Government Act 2019, s172

2. Employment policies

The Council's CEO must maintain up-to-date employment policies that are consistent with the principles above, including in relation to:

- Recruitment;
- Probation and performance assessment
- Opportunities for advancement that are based on merit and are fair and equitable;
- Access to training and development;
- Access to employment related benefits;
- Resolution of employment-related grievances; and
- allowances and other benefits

Local Government Act 2019, s173

3. Employment rights and obligations

Employment rights and obligations in the NT are provided for by:

- The *Fair Work Act 2009* (Cth);
- Awards and Registered Enterprise Agreements; (e.g. *Local Government Industry Award 2020*)
- Employment contracts
- *Anti-discrimination Act 1992* (NT)
- *Work Health and Safety (National Uniform Legislation) Act 2011*
- *Independent Commissioner Against Corruption Act 2017* (NT)

The **Fair Work Act** is a Federal law which sets out the minimum conditions of employment for all employees in the Northern Territory (with a few exceptions), including:

- The National Employment Standards, which provide certain employees with rights such as annual leave, personal or sick leave and parental leave.
- The ability to make claims such as unfair dismissal and general protections.
- The making of awards and registered agreements.

The minimum or National Employment Standards (NES) under the *Fair Work Act* are:

- [Maximum weekly hours of work](#) – 38 hours per week, plus reasonable additional hours.
- [Requests for flexible working arrangements](#) – certain employees can ask to change their working arrangements.
- [Parental leave and related entitlements](#) – up to 12 of months unpaid leave and the right to ask for an extra 12 months of unpaid leave. Also includes adoption-related leave.
- [Annual leave](#) – 4 weeks of paid leave per year, plus an additional week for some shift workers.
- [Sick and carer’s leave and compassionate leave](#)– 10 days of paid sick and carer’s leave (pro rata for part-time employees), 2 days of unpaid carer’s leave as required and 2 days of compassionate leave as required.
- [Family and domestic violence leave](#) – 10 days paid leave per year
- [Community service leave](#) – unpaid leave for voluntary emergency activities and leave for jury service, with an entitlement to be paid for up to 10 days for jury service.
- [Long service leave](#) – paid leave for employees who have been with the same employer for a long time.
- [Public holidays](#)– a paid day off on a public holiday (unpaid for casuals), except where reasonably requested to work.
- [Notice of termination and redundancy pay](#)– up to 5 weeks’ notice of termination and up to 16 weeks’ redundancy pay, both based on length of service.
- Provision of the [Fair Work Information Statement](#) and the [Casual Employment Information Statement](#)– the Fair Work Information Statement must be provided by employers to all new employees. Casual employees must also be given the Casual Employment Information Statement.
- [Casual conversion](#)– the right for casual employees to become permanent employees.

Employment rights contained in the Act, awards or registered agreements are generally minimum terms and conditions. This means that the parties can agree to, for example, pay more than the minimum for any one or more entitlements covered by the Act, award or registered agreement.

An employment contract cannot provide for a lesser term than that contained in the Act, award or registered agreement. An employee is entitled to the benefit of the most favourable term or condition and usually the totality of the employee’s terms and conditions will be contained in legislation, awards and agreements. For example, the ordinary hours pay rate in a contract may be the most beneficial term for the employee’s ordinary hours of work, but the award overtime condition may be the most beneficial for overtime work. In those circumstances, the employee is legally entitled to the contractual term for ordinary time worked and the award term for overtime work.

Awards set the terms for particular industries and provide the minimum terms and conditions for that industry or area of work on top of the NES. **Enterprise Agreements** apply to a particular workplace and are usually agreed between the union on behalf of the employees and the council. Enterprise agreements give the council the opportunity to provide benefits and arrangements that build on the minimum requirements and suit the council and the workers.

4. Recruitment and Selection

First, develop your job description and selection criteria – are they still relevant, what are the skills and experience required. Ask yourself if the job really needs a qualification or specific experience – you may be discriminating against or excluding good applicants if these are not essential. For example: a finance manager who has worked in not for profit organisations for a number of years may have more appropriate or adaptable skills and experience than a recent graduate accountant who has worked in local government for one year.

Advertise widely, both externally and internally. Don't preclude the possibility of developing internal or local applicants. Provide a contact person who can provide relevant information about the position – it is important to make a good first impression to potential employees.

Select your recruitment panel and ensure diversity. Make sure your panel members are available and determine steps in the process and a timeline, including:

- short list the best applicants for interview based on the selection criteria;
 - develop a set of questions for interview and a method for assessing the applicants against these;
 - check referees and eligibility;
 - make an offer;
 - settle the contract;
 - support induction and outline expectations.
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5. Probation and performance review and development

The Probation period is a period of providing support to a new employee and determining suitability for the position. A probation period would usually be within 3 – 6 months. Any longer and under the *Fair Work Act* the employee may be entitled to challenge any termination of employment.

Make sure the employee understands their role and the expected level of performance and how their probation period will be reviewed. The review should come as no surprise – make sure you provide regular feedback, rather than just at an annual review.

Performance review and development reviews should help the employee understand what they are doing well, how they can improve and what is expected of them in the future. It should focus on the development and support that would assist the employee in performing their role and in widening their skills and should be clear about any improvements required.

Stages of the review cycle

- Establish expectations
- Guide and advise
- Assess
- Monitor and develop
- Review and adjust

6. Workforce strategy

Recruiting to the sector, particularly in regional and remote areas, can be challenging. Councils will often develop workforce strategies to develop and support skills, to attract skilled and experience workers to the area and to retain their workforce. The Strategy might identify plans for covering vacancies, securing housing and child care for workers, multi-skilling, secondments and exchanges, and taking advantage of employment programs or subsidies available for workers. LGANT has committed to developing a local government workforce strategy that will identify opportunities such as Aboriginal cadetships, graduate, apprentice, trainee, transition from school to work, mentoring, work experience and exchange programs.

Flexibility in the workplace allows employers and employees to agree on changes to working arrangements that suit them both. Under the *Fair Work Act*, there are 2 main ways employees can make their work arrangements more flexible:

- [flexible working arrangements](#) – when certain employees have worked for the same employer for 12 months, they can make a request to change their working arrangements
- [individual flexibility arrangements](#) – an employer and an employee can negotiate to change how certain terms apply in an award or their enterprise or registered agreement.

7. Code of Conduct and dealing with grievances in the workplace

It is the CEO's responsibility to determine the code of conduct for the council's staff. The CEO and other members of a council's staff must maintain proper standards of integrity, diligence and concern for the public interest and declare potential or actual conflicts of interest.

Regular and open communication helps maintain a harmonious working environment, clarifies expectations and standards, and can prevent workplace issues from happening. Consultation on change and sharing information, and having clear and fair processes and timelines for dealing with complaints will assist in their resolution.

Management of change in the workplace and to the terms and conditions of employment are covered by the Award and enterprise agreement.

8. Disciplinary processes and ending employment

Disciplinary processes will be governed by the Award, your enterprise agreement, and your policies and processes. Make sure all managers are aware of these.

In most cases, disciplinary action will be aimed at addressing and improving employee behaviour and will go through a series of escalation steps and warnings before resulting in a termination of employment. It is important that your process is clear and natural justice is afforded at each step of the process.

In cases of serious misconduct, summary dismissal may be warranted but legal advice should be sought expeditiously if this action is considered.

Notice periods are usually required if either the employee or employer ends the employment. The council should ensure final pay is provided to the employee within 7 days of the end of employment.

Termination due to redundancy is governed by the provisions of the Award and enterprise agreement where relevant.

9. Safe and healthy work conditions

The *Work Health And Safety (National Uniform Legislation) Act 2011* regulates the workplace.

9.1. Safe system of work

Employers should look at:

- the provision and maintenance of a work environment without risks to health and safety
- the provision and maintenance of safe plant and structures
- the provision and maintenance of safe systems of work
- the safe use, handling and storage of plant, structures and substances
- the provision of adequate facilities for the welfare at work of workers in carrying out work for the business or undertaking, including ensuring access to those facilities
- the provision of any information, training, instruction or supervision that is necessary to protect all persons from risks to their health and safety arising from work carried out as part of the conduct of the business or undertaking
- monitoring the health of workers and the conditions at the workplace for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.

Workers should:

- pay attention to any training they receive, including workplace induction training
- know the health and safety procedures in their workplace, including emergency procedures
- always follow the health and safety procedures in their workplace
- ask for training when starting a task for the very first time or using / operating new tools or machinery
- ask to be supervised to make sure they are doing the job safely
- talk to their supervisor if they think a task is too dangerous or difficult
- always wear any personal protective equipment supplied by their employer

- report all hazards, near misses and injuries to their supervisor
- ask their supervisor or a workmate for help if they can't remember how to do a job safety
- keep an eye out and help new or young workers
- discuss safety concerns with more experienced workers or their supervisor.

Where there are concerns about physical or mental health in the workplace, NT Worksafe can be contacted to conduct a workplace visit, conduct an inspection and provide a report recommending actions, or alternatively may pursue enforcement action.

9.2. Mental Health

An employer has a legal responsibility to manage psychosocial hazards and risks in the workplace. Psychosocial hazards include:

- High or low job demands
- Low job control
- Poor support
- Traumatic events or material
- Remote or isolated work
- Lack of role clarity
- Poor organisational change management
- Inadequate recognition and reward
- Poor organisational justice
- Poor physical environment
- Harmful behaviours

Councils' often have an arrangement with an employee assistance service to assist in mitigating risks associated with psychosocial hazards.

9.3. Workplace bullying and harassment

Everyone has the right to a workplace free from bullying.

Bullying at work happens when:

- a person or group of people repeatedly behave unreasonably towards another worker or group of workers; and
- the behaviour creates a risk to health and safety.

Examples of bullying include:

- behaving aggressively towards others
- teasing or playing practical jokes
- pressuring someone to behave inappropriately
- excluding someone from work-related events
- unreasonable work demands.

Reasonable management action that's carried out in a reasonable way is not bullying. An employer or manager can:

- make decisions about poor performance
- take disciplinary action
- direct and control the way work is carried out.

9.4. Sexual Harassment

Under the *Fair Work Act*, workers, future workers and people conducting a business or undertaking (such as self-employed people or sole traders) are protected from sexual harassment connected to work, including in the workplace.

Sexual harassment is:

- an unwelcome sexual advance or request for sexual favours to the person who is harassed
- other unwelcome conduct of a sexual nature in relation to the person who is harassed.

Sexual harassment occurs when it is reasonable to expect that there is a possibility that the worker being sexually harassed would be offended, humiliated or intimidated. There is a positive duty on employers to prevent sexual harassment in the workplace and the Australian Human Rights Commission can enforce compliance.

Some forms of sexual harassment can also be considered bullying if the behaviour is repeated or continuous. But unlike bullying, sexual harassment does not need to be continuous or repeated behaviour, it can be a one-off event. There is also no need to establish a risk to health and safety.

10. Discrimination in the workplace

The *Fair Work Act* prohibits an employer from taking adverse action against an employee or a prospective employee for discriminatory reasons. This includes because of their:

- race
- colour
- sex
- sexual orientation
- age
- physical or mental disability
- marital status
- family or carer's responsibilities
- pregnancy
- religion
- political opinion
- national extraction
- social origin
- breastfeeding
- gender identity
- intersex status.

The *NT Anti-Discrimination Act 1992* prohibits any distinction, restriction, exclusion or preference made on the basis of an attribute that has the effect of nullifying or impairing equality of opportunity; and harassment on the basis of an attribute. It applies to the provision of services and to paid full time, part time, casual or contract work, including probation periods and to job advertisements, applications and offers of employment, promotions, training, transfers and dismissal. The attributes that may give rise to prohibited discrimination include:

- race;
- language, including signed language;
- sex;
- gender identity;
- sexual orientation;
- sex characteristics;
- age;
- relationship status;
- accommodation status;
- employment status;
- employment in sex work or engaging in sex work, including past employment in sex work or engagement in sex work;
- pregnancy;
- carer responsibilities;
- breastfeeding;
- disability;
- HIV/hepatitis status;
- subjected to domestic violence;
- trade union or employer association activity;
- religious belief or activity;
- political opinion, affiliation or activity;
- irrelevant medical record;
- irrelevant criminal record;
- the person's details being published under section 66M of the Fines and Penalties (Recovery) Act 2001; and
- association with a person who has, or is believed to have, an attribute referred to above.

There are some limited exemptions in the Act but the most relevant for councils is that discrimination is allowed against a person in a program, plan or arrangement designed to promote equality of opportunity for a group of people who are disadvantaged or have a special need because of an attribute. The exemption might be used to preference Aboriginal people in particular positions, programs or services.

11. Additional resources and references

This information is general in nature and is not intended to constitute legal advice. Local Governments should seek their own legal advice where necessary.

Sample policies and templates: [Local Government Resource Hub](#)

Fair Work Ombudsman: <https://www.fairwork.gov.au/>

Worksafe: <https://worksafe.nt.gov.au/>

NT Anti-Discrimination Commission: <https://adc.nt.gov.au/>

Appendix: Local Government Act Provisions

Item	Legislative Reference	Essential elements
Human resource management policies	s172 LGA	<p>A council must adopt policies on human resource management and ensure that those policies give effect to the following principles:</p> <ul style="list-style-type: none"> • selection processes for appointment or promotion must be based on merit and must be fair and equitable; • council's staff must have reasonable access to training and development and opportunities for advancement and promotion; • council's staff must be treated fairly and consistently and must not be subjected to arbitrary or capricious decisions; • suitable processes for dealing with employment-related grievances; • working conditions must be safe and healthy; and • there must be no unlawful, unreasonable or otherwise unjustifiable discrimination against a member or potential member of council's staff.
Allowances and other benefits policy	s174 LGA	<p>Council must, by resolution, adopt a policy for the CEO's allowances and other benefits. The CEO must determine a policy in relation to allowances and any other benefits for the council's staff.</p> <p>These policies must cover allowances, vehicles, accommodation and any other allowances and benefits.</p>

Code of conduct – CEO and Council Staff	s175 LGA	Council must, by resolution, adopt a code of conduct for the CEO. The CEO must determine the code of conduct for council staff.
Appointment of CEO, Deputy CEO and council staff	s165 LGA s167 LGA s170 LGA r13 LGGR r110 LGGR General Instruction 2: Annual Financial Statement	Council must appoint a CEO in accordance with any prescribed regulation and any relevant Ministerial guidelines. The CEO may, in writing, appoint a Deputy CEO for no more than 2 years, and is eligible for reappointment. The CEO is responsible for the appointment of council’s staff in accordance with a budget allocation approved by council. The CEO is also responsible for managing and, if necessary, terminating the appointment of the council's staff (other than the CEO). Note: See Part 9.1 of the Act for other Council CEO responsibilities.
Notifications for changes in council senior staff	s171 LGA General Instruction 2: Annual Financial Statement	The CEO must notify all Elected Members if any of the following occurs: <ul style="list-style-type: none"> • the CEO appoints a council senior staff member; • a council senior staff member resigns; • a council senior staff member's appointment is terminated; or • a council senior staff member's contract expires and is not renewed.

<p>Disclosure of interest (employees)</p>	<p>s179 LGA</p>	<p>A staff member commits an offence if the person has a personal or financial interest in a matter in regard to which the staff member is required or authorised to act or give advice; and the person does not:</p> <ul style="list-style-type: none"> • disclose the interest to the CEO, or if the staff member is the CEO – disclose to the council; and • act in the matter in a way that is authorised by the CEO or the council (as the case requires). <p>A staff member includes a person who:</p> <ul style="list-style-type: none"> • is not an employee but works for, or provides services to, the council on a contract basis; or • works for council under an arrangement with a labour hire agency; or • acts under powers of the council conferred by delegation (other than a member of council, council committee or local authority).
<p>Portability of long service leave rights</p>	<p>s180 LGA</p>	<p>A person who leaves the employment of one employer and enters the employment of another (to which this section applies) within 3 months, may elect to transfer their accrued and accruing rights to long service leave to the later employer.</p> <p>An employer must, as soon as practicable after an employee enters into employment, require the employee to provide to the employer, not later than 28 days after the requirement, a written declaration stating the relevant employment details and whether the employee elects to transfer long service leave.</p> <p>An employer in this section applies to:</p> <ul style="list-style-type: none"> • a council within the Territory; • a local government subsidiary formed with the Minister’s approval; and • LGANT.