

	<h1>Fair Treatment Policy & Procedure</h1>	Version No:	2.0
		Issued:	February 2017
		Last Review:	June 2020
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Name of Council	Wudinna District Council
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Next review date:	Council will endeavour to review this policy every three years or upon Legislative change.
Applicable Legislation:	Local Government Act 1999 Equal Opportunity Act 1984 Work Health and Safety Act 2012 Fair Work Act 1994 (SA) Fair Work Act 2009(Fed) Racial Vilification Act 1996 Sex Discrimination Act 1984 Racial Discrimination Act 1975 Human Rights and Equal Opportunity Commission Act 1986 Workplace Gender Equality Act 2012 Disability Discrimination Act 1992
Related Policies and Procedures:	Code of Conduct for Council Employees, Code of Conduct for Elected Members

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1. POLICY STATEMENT

The Wudinna District Council is committed to a culture of Fair Treatment where the rights of all people are protected. These rights of protection are particularly the responsibility of those in positions of leadership.

A Fair Treatment culture is one where justice and impartiality prevail with all practices, systems and behaviours being informed by:

- Respect
- Responsibility
- Support
- Integrity
- Dignity
- Honesty
- Unity
- Transparency
- Equality
- Openness
- Inclusivity

These practices or behaviours serve to also acknowledge the Wudinna District Council's corporate values including Access and Equity and the Code of Conduct as they apply to every member of staff, elected members, customers, contractors, volunteers and unpaid workers.

They also serve to acknowledge the SA Equal Opportunity Act 1984 and other legislative requirements.

Fair Treatment will apply in all aspects of the work undertaken by the Wudinna District Council and its relationships.

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The Council will ensure that its unfair treatment grievance procedure is:

- **Confidential:** Only the people directly involved in making or investigating a complaint will have access to information about the complaint.
- **Unbiased:** Both sides will have a chance to put their case. All relevant information will be collected and considered.
- **Free of Victimisation:** Provided the complaint is not frivolous or vexatious, no action will be taken against anyone for making a complaint or assisting someone to make a complaint.
- **Timely:** All complaints will be dealt with as quickly as possible, with a maximum target of 20 working days for resolution of any complaint.
- **Procedurally Fair:** That the principles of natural justice are followed.

The Wudinna District Council will not tolerate in any way the behaviour of any worker who victimises another worker who:

- (a) Lodges a complaint of unfair treatment;
- (b) Is supporting someone else acting on their rights, and
- (c) Is required to provide evidence during any resolution process.

Unfair Treatment is any form of discrimination, bullying, harassment or victimisation as defined within the 'Definitions' in Section 3. It is a condition of Employment with Council that all workers behave in a professional manner and treat others with dignity and respect.

Any form of Unfair Treatment is unacceptable, both legally and ethically.

Council has appointed an Equal Opportunity Officer to assist with the promotion of fair treatment; this Officer is Mr Alan McGuire, Chief Executive Officer.

2. SCOPE

This Policy sets out behavioural standards and compliance with anti-discrimination and equal opportunity laws required by all workers in their interactions with other workers and members of the public whilst undertaking their duties. This is consistent with Councils Worker Values and the Employee Code of Conduct objectives.

Complaints of bullying, harassment or discriminatory behaviour by or against workers are dealt with under this Policy and Procedure and will be subject to disciplinary action. This policy does not deal with complaints made by members of the general public.

Any worker found to make a false or malicious complaint, will be subject to disciplinary action.

Grievances and complaints arising from unfair treatment will be managed in accordance with the options set out within Schedule 1.

3. DEFINITIONS

3.1 The Law

This Fair Treatment Policy is informed by the Equal Opportunity Act 1984 and the Work Health Safety Act 2012, particularly as it relates to duty of care and shared responsibility for the Safety and Welfare of all, by all, in the Organisation.

The Equal Opportunity Act is supported in SA by the Racial Vilification Act 1996, and federally by the Sex Discrimination Act 1984, Racial Discrimination Act 1975, Human Rights and Equal Opportunity Commission Act 1986, Workplace Gender Equality Act 2012 and the Disability Discrimination Act 1992.

3.2 Equal Opportunity

Equal Opportunity means that all workers have the right to work in an environment that enables them to work to their full potential free from all forms of discrimination and harassment, including sexual harassment and workplace bullying.

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3.3 Work Health and Safety

Work Health and Safety legislation, by its duty of care requirement, gives all workers the right to work in a safe place workplace. It defines anything that affects the wellbeing of a worker at work as a work health and safety matter.

3.4 Workplace Bullying (Harassment)

Workplace bullying is *repeated* and *unreasonable behaviour* directed towards a worker or a group of workers that *creates a risk to health and safety*. This can be by one or more members of staff (paid or unpaid), by contract workers or by elected members.

- (a) *Repeated behaviour* refers to the persistent nature of the behaviours and can involve a range of behaviours over time.
- (b) *Unreasonable behaviour* means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.
- (c) Examples of behaviour, whether intentional or unintentional, that may be workplace bullying if they are ***repeated, unreasonable*** and ***create risk to health and safety*** include, but are not limited to:
 - abusive, insulting or offensive language or comments;
 - aggressive and intimidating conduct;
 - belittling or humiliating comments;
 - victimisation;
 - practical jokes or initiation;
 - unjustified criticism or complaints;
 - deliberately excluding someone from work related activities;
 - withholding information that is vital for effective work performance;
 - setting unreasonable timelines or constantly changing deadlines;
 - setting tasks that are unreasonably below or beyond a person's skill level;
 - denying access to information, supervision, consultation or resources to the detriment of the worker;
 - spreading misinformation or malicious rumours;
 - changing work arrangements such as rosters and leave to deliberately inconvenience a particular worker or workers.

If the behaviour involves violence, for example physical assault or the threat of physical assault, it should be reported to the police.

- (d) Workplace Bullying does not include:
 - Occasional differences of opinion and non-aggressive conflicts, or problems in the workplace;
 - Workplace counselling, or poor performance management.

3.5 Discrimination

Unlawful Discrimination means treating someone differently and less favourably because of the grounds spelt out in law. In South Australia, these grounds are covered by the Equal Opportunity Act 1984 and under the Federal Racial Discrimination Act 1975 or Sex Discrimination Act 1984.

- (a) **Sex:** sex discrimination means treatment of a person of one sex less favourably than a person of another sex.
- (b) **Gender Identity:** gender identity discrimination means the unfavourable treatment because the person is, or has been a person of a particular gender identity or because of the others past sex; or on the basis of a characteristic that appertains generally to persons of a particular gender identity, or on the basis of a presumed characteristic that is generally imputed to persons of a particular gender identity.

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- (c) **Sexual Orientation:** discrimination on the ground of sexual orientation means unfair treatment of a person because of their present or past sexual orientation and refers to whether they are heterosexual, homosexual, bisexual and transsexual.
- (d) **Race:** unfavourable treatment by reason of the others race e.g. colour, descent, ethnic origin or nationality. It can also include unfair treatment because of the people you live with or are associated with.
- (e) **Disability:** unfavourably treatment because of disability, or a past disability or a disability that may exist in the future; this includes physical and intellectual impairment.
- (f) **Age:** it is unlawful to discriminate against a person on the ground of age.
- (g) **Marital or Domestic Partnership Status:** unfair treatment on the basis of whether a person is single, married, divorced, separated, widowed or living in a defacto relationship with a person of the opposite or of the same sex.
- (h) **Pregnancy:** this includes the unfair treatment of a woman who is pregnant, suspected of becoming pregnant or is expected to become pregnant.
- (i) **Religion:** unfavourable treatment because of religious appearance or dress.

Under Federal Legislation it is also against the law to discriminate on the grounds of political opinion; union or non-union involvement; medical record; prior criminal record and temporary absence due to illness or injury. Discrimination may be either *Direct* or *Indirect*.

3.6 Direct Discrimination

Direct Discrimination is any action that specifically excludes a person or a group of people from a benefit or opportunity, or significantly reduces their chances of obtaining it because of a personal characteristic irrelevant to the situation.

3.7 Indirect Discrimination

Indirect Discrimination refers to the outcome of rules, practices and decisions that appear to treat people equally and to be neutral, but have an adverse outcome for a group or an individual thus reducing a benefit or opportunity.

3.8 Sexual Harassment

Sexual Harassment is prohibited under the Equal Opportunity Act (1984) Section 87.

Sexual Harassment is a single or sequence of unwelcome offensive comment(s) or actions of a sexual nature or having sexual connotations.

Some of the forms, practices or behaviours that Sexual Harassment can take are:

- (a) Unwelcome touching or kissing;
- (b) Repeated comments or jokes, leering or staring, that are sexually suggestive;
- (c) Sexually explicit picture, objects or reading matter;
- (d) Direct or implied sexual propositions, or unwelcome requests for 'dates';
- (e) Intrusive questions about sexual activity; and
- (f) Abusing position of power to try to obtain sexual favours.

If any of the above behaviours are unwelcome and result in a person feeling offended, humiliated or intimidated, then the behaviour could be construed as "Sexual Harassment" regardless of the intentions of the person engaging in these practices or behaviours.

3.9 Victimisation

Victimisation is the name given to the unfair treatment of someone because they have acted on the rights given to them by the Equal Opportunity Act (1984) or because they have supported someone else acting on their rights.

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3.10 Grievance

A grievance is a concern or complaint expressed by a Worker in relation to their work or the work environment. A grievance may be about any act, omission, situation or decision that a Worker thinks is unfair, discriminatory or unjust.

3.11 Natural Justice

Natural Justice is concerned with ensuring procedural fairness and means:

- (a) That any decision maker or process is free from bias;
- (b) That all parties have the right to be heard;
- (c) That the respondent to the complaint has a right to know what they are being accused of; and
- (d) That all parties are informed of the basis on which a decision is made.

3.12 Mediation

Mediation is a voluntary process whereby conflict, problems and issues between two or more people (who agree to participate in the mediation) are sorted out with the assistance of a person who is not a party to the conflict, problems or issues. This person is referred to as the Mediator.

It is not the role of the Mediator to give advice, to impose a decision or to take sides. The Mediator therefore is the facilitator who engages with the parties in a process of co-research around the problems and their solutions.

4. RIGHTS and RESPONSIBILITIES

4.1 The Chief Executive Officer

The Chief Executive Officer will be responsible for taking all reasonable steps to ensure a culture of fair treatment is promoted and that the work environment is free from discrimination, workplace bullying and any form of harassment.

The Chief Executive Officer commits to achieving this by:

- (a) Ensuring this policy is endorsed and communicated throughout the Organisation and that appropriate resources are allocated to ensure its successful implementation.
- (b) Ensuring that the appropriate delegated authorities are in place to manage all allegations of unfair treatment in the workplace.
- (c) Ensuring that those delegated with this authority receive appropriate training to carry out their role.
- (d) Ensuring all workers have access to information on their rights and responsibilities concerning unfair treatment in the workplace.
- (e) Ensuring that all workers have access to receive assistance and support.
- (f) Ensuring that appropriate reporting mechanisms are in place to capture the number and nature of allegations of unfair treatment and the outcome of these allegations.
- (g) Ensure that this policy is reviewed and updated in line with the notion of continuous improvement and to incorporate any additional requirements as and when required.

4.2 Manager's and Supervisors

Whilst all workers have a responsibility to uphold the principles outlined in this policy, specific responsibility will rest with Managers and Supervisors for ensuring fair treatment for all within their Department.

4.3 Workers

- (a) Every worker has the right to work in an environment free of any form of unfair treatment.
- (b) Workers will share the responsibility for maintaining a culture of fair treatment by treating everyone they deal with fairly and by not engaging in practices of unfair treatment.
- (c) This will include not making complaints/allegations about another worker that are known to be untrue or which are made with the intent to cause harm or hardship to another worker.

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- (d) Every worker has a responsibility to keep and maintain confidentiality throughout any complaint, investigation or resolution.
- (e) Workers are encouraged to raise with appropriate officers, any grievances arising from a perception that they have been unfairly treated.

5. AVAILABILITY OF POLICY

This Policy will be available for inspection at Council's principal office during ordinary business hours and on the Council's website www.wudinna.sa.gov.au. Copies will also be provided to interested members of the community upon request, and upon payment of a fee in accordance with Council's Schedule of Fees and Charges.

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Schedule 1 PROCEDURE FOR ADDRESSING UNFAIR TREATMENT

1. INTENTION OF PROCEDURES

The intention of these procedures is to make available a range of options to workers who believe they are receiving unfair treatment. These options range from dealing directly with the person in a more informal way to having it formally addressed through processes designed for this purpose. The options are intended to enable the person experiencing unfair treatment to take action that fits with them and their circumstances.

2. WORK HEALTH AND SAFETY REQUIREMENTS

This procedure recognises that actions which contravene the Fair Treatment Policy can cause significant health issues for workers and others who are subject to unfair treatment. These issues can range from mental stress to physical injury in the cases of physical bullying.

3. TRAINING/COMPETENCIES

Fair Treatment awareness training for the general workforce will be undertaken.

4. PERFORMANCE CRITERIA

This procedure will be followed in all matters reported under the Fair Treatment Policy.

5. DEALING WITH COMPLAINTS

There are broadly three levels of complaint. These are identified as Self-Help; Informal Intervention and Formal Intervention.

Stage 1: Self Help.

Stage 2: Informal Intervention.

Stage 3: Formal Intervention.

5.1 Stage 1: Self Help

Self-Help is where the worker who holds a belief that they have experienced practices of unfair treatment takes the matter up directly with the person who is treating them unfairly.

This should happen where the worker is of a view they can deal with the problem themselves, and where they do not feel intimidated.

This can happen by:

- (a) Telling the person what has been happening, the effects of this and asking them to stop.
- (b) Writing to the person outlining what has happened, the effects and requesting that the unfair treatment stop.
- (c) Speaking directly to the person being accompanied by a union representative or a friend.

Even though this is basically a self-help option, it would usually be appropriate for the person whose advice has been sought to follow up with the complainant, to clarify that the problem has been resolved.

If the complaint has not been resolved the complainant should be encouraged to pursue resolution through a Stage 2 or Stage 3 complaint. However, to see a complaint formalised this encouragement should not become coercion or duress. The complainant should always independently make the choice whether to proceed or not.

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5.2 Stage 2: Informal Intervention

Informal Intervention is where the worker experiencing unfair treatment does not wish to take it up with the person directly and does not at this point wish to make a formal complaint.

Instead they request someone within the Organisation to intervene on their behalf. This may be a person with more authority in the Organisation, such as a team leader, Manager or the Chief Executive Officer.

Workers wishing to take this course of action are encouraged to first speak with the Chief Executive Officer to ensure they are clear about what has been happening and the options available to them.

5.3 Stage 3: Formal Intervention

Making a formal complaint can be done at any time but this usually occurs when informal approaches do not result in the practices of unfair treatment ceasing or if the worker experiencing unfair treatment still feels dissatisfied with the outcome of informal intervention.

Formal complaints should be lodged with the manager of the worker making the complaint unless the complaint is about that manager or if the worker feels that their manager may hold some conflict of interest. In these instances, the Chief Executive Officer should be approached.

In requesting formal intervention, the following facts should be documented.

- (a) The name(s) of the person who is alleged to have engaged in practices of unfair treatment
- (b) The nature or the practices of unfair treatment
- (c) The impacts/effects of these practices on the person making the allegations
- (d) Dates (and any other information) when these practices occurred
- (e) Names of any witnesses to the unfair treatment
- (f) Details of any action already taken
- (g) Desired outcomes
- (h) How the complainant wishes to proceed with resolving the matter

It is important that confidentiality is stressed to allow all involved and that those involved in the exploration of the allegations bear no conflict of interest.

5.4 Guideline for Manager's

Managers will take the following steps:

- (a) Assess that they are the right person to deal with the complaint. If they may be biased because of their relationship with the person making the complaint, they should refer the complaint (with the worker's consent) to the Chief Executive Officer.
- (b) If they are the right person to deal with the complaint, they will investigate, report and respond to the complaint in accordance with this Procedure, ensuring that the Chief Executive Officer is kept informed and updated throughout the process. See also the note on appeals re the Chief Executive Officer.

5.5 Appropriate Action

- (a) If the complaint is substantiated, the following action may be appropriate:
 - A written apology; and/or
 - An official warning; and/or
 - Counselling; and/or
 - Demotion; and/or
 - Dismissal.

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(b) If the complaint is frivolous or vexatious then action in relation to the complainant should follow, for example:

- Counselling for the person who made the complaint;
- A written apology;
- An official warning;
- Demotion;
- Dismissal.

5.6 Mediation

Mediation is an option available to any of the parties at any time before and during the informal or formal intervention processes. It is a voluntary process therefore all of the parties to the complaint must agree to proceeding down this path and agree to the person appointed as the mediator. The mediator will be an independent person with credentials as an accredited mediator and will act in accordance with accepted mediation principles.

5.7 Appeals

If a worker thinks that the procedure was not followed properly, the worker may appeal to the Chief Executive Officer. The Chief Executive Officer will look at the way that the complaint was handled. If it was handled properly, no further action will be taken. If it was not handled properly, arrangements will be made for the complaint to be reviewed. In the event that the Chief Executive Officer is the complainant or the subject of the complaint, the Mayor and Council will undertake the formal intervention and/or review.

A person, other than the person who first handled the complaint will carry out this review.

5.8 Lodging a Complaint with the Commissioner for Equal Opportunity

This procedure is intended to avoid this being necessary. Nevertheless, a worker making allegations may at any time choose to go directly to the Commissioner for Equal Opportunity to lodge a formal complaint.

This can be done in writing, by email or in person.