



Agriculturally rich – Naturally beautiful

ADMINISTRATIVE POLICY

Fair Treatment Policy

Policy Number:	PO026		
Strategic Plan Objective	Meet all legislative and compliance responsibilities.		
Policy Owner:	Chief Executive Officer	File Number:	12.63.1
Responsible Officer:	Manager Organisational Development	Minute Reference:	CMT
Date Adopted:	20/03/2014	Next Review Date:	March 2016

1. POLICY OBJECTIVES

The Yorke Peninsula Council promotes the recognition, acceptance and right of all people to be treated with fairness, equity and justice. The Council does not condone or tolerate unfair treatment and is committed to ensuring that the workplace is free from harassment, bullying and inappropriate behaviour. In line with legislative requirements, this policy will:

- Inform all employees of their rights and obligations;
- Set standards of behaviour; and
- Addresses the consequences of breaches of this policy, which are to be dealt with fairly, promptly, impartially and confidentially.

2. SCOPE

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

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

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

3. DEFINITIONS

Bullying	Repeated and unreasonable behaviour directed towards an employee or a group of employees that creates a risk to health and safety
Bullying Behaviour	Can be: <ul style="list-style-type: none"> • Abusive, insulting or offensive language or comments • Unjustified criticism or complaints

	<ul style="list-style-type: none"> • Continuously and deliberately excluding someone from workplace activities • 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 such that it has a detriment to the employee • Spreading misinformation or malicious rumours • Changing work arrangements, such as rosters and leave, to deliberately inconvenience a particular employee or employees • Excessive scrutiny at work
Discrimination and Harassment Contact Officer	Designated Council employees who is available to assist employees in understanding the options available to them in addressing their grievance and/or concern. Information provided to Discrimination and Harassment Contact Officers remains confidential unless the content breaches the law (e.g. self-harm, harm to others or any other illegal activity).
Discrimination	Occurs when a person treats, or proposes to treat, someone unfavourably because of a personal characteristic.
Employee	Any person who is employed by Council but also includes any contractors, volunteers and consultants undertaking work for, or on behalf of Council.
External body	Such as the Equal Opportunity Commission (SA), Office of the Employee Ombudsman, SafeWork SA etc.
Fair treatment	<ul style="list-style-type: none"> • treating people as individuals with different skills and abilities, without making judgement based on stereotypes, or on characteristics (such as sex, age, race, sexuality, disability, pregnancy or marital status) that are irrelevant to a person’s capacity to do the job; • ensuring a work environment that allows for all employees to work to their full potential, and that is free from all forms of discrimination and harassment, including sexual harassment; and • ensuring that work decisions are based on the merit principles. That is, the applicant who best meets the needs of the job is selected, and the employee who best meets the needs of the job is retained.
Harassment	Repeated, unwelcomed and unsolicited, uninvited, offensive behaviour or comments aimed at a person or group that makes that person feel offended, humiliated or threatened.
Manager	A person directly responsible for supervising another employee(s) and administering Council activities irrespective of their actual title (e.g. Director, Manager, Supervisor, Coordinator, Leading Worker etc.) to whom an employee directly reports.
Procedural fairness	Fair and proper process appropriate to the

(also referred to as Natural Justice)	<p>circumstances, where decisions are made without bias and are supported by evidence and communicated with reasons and involves:</p> <ul style="list-style-type: none"> • right to a fair hearing; • right to attend hearings with a support person; • opportunity for all parties involved to openly present their case; • the subject of the complaint having full knowledge of the nature and substance of all allegations; • the person making the complaint having full knowledge of the nature and substance of all allegations; • the person making the complaint or appeal not determining the complaint or appeal; • the right to an independent, unbiased decision maker; and • a final decision that is based solely on the relevant evidence.
Repeated behaviour	Persistent nature of the behaviour and can involve a range of behaviours over time.
Unreasonable behaviour	Behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.
Victimisation	<p>Subjecting a person to some form of detriment because that person under this Policy:</p> <ul style="list-style-type: none"> • has lodged a complaint; • is associated with a person who has lodged a complaint; • has had a complaint made against them; or • is associated with a person who has had a complaint made against them.
Vilification	Occurs when a person speaks or writes in an insulting, abusive or defamatory way about or to a person or group. Vilification is commonly associated with the incitement of hatred towards a person due to their race, religion, or beliefs.

4. POLICY STATEMENT

- 4.1 Council has the responsibility and commitment to provide a safe working environment that is free from inappropriate behaviour and seeks to ensure that reasonable steps are taken to minimise any form of bullying, harassment or discrimination and that any such complaints are dealt with fairly, promptly, impartially and confidentially.
- 4.2 Council encourages people affected by unfair treatment to talk directly with the person engaging in unfair treatment to explain to them how it impacts on them and to ask that they stop. Council also recognises that this is not practicable in all situations.
- 4.3 This policy should be read in conjunction with Council’s PO017 Conflict Resolution Policy.

- 4.4 Employees are encouraged to contact a Council Contact Officer where appropriate.
- 4.5 Council will attempt to resolve complaints internally in the first instance.
- 4.6 This policy does not prevent complaints of unfair treatment being made directly to an appropriate external body. If formal notification is received that a grievance is subject to a formal external enquiry or legal action, the internal resolution process will be suspended until the external action is completed.
- 4.7 Employees are expected to assist in creating a fair treatment environment by:
- Speaking up and making it clear when behaviour is unacceptable;
 - Assisting to support people who are affected by breaches of this policy;
 - Encouraging those affected by inappropriate behaviour to take action;
 - Promoting the Employee Values and Code of Conduct; and
 - Supporting and promote the principles of this policy.

5. PROHIBITED BEHAVIOURS

- 5.1 Council actively fosters a climate where courtesy, fairness and equality are applied at all times. Employees are specifically prohibited from engaging in the following behaviours whilst undertaking their duties regardless of the location:
- Harassment, bullying or vilification;
 - Racial vilification or racist behaviour;
 - Sexual harassment;
 - Discrimination on the basis of personal characteristics such as age, relationship status, pregnancy, race, colour, sex, sexual preference, marital status, family or carer's responsibilities, national extraction or social origin;
 - Discrimination on the grounds of a disability or medical condition;
 - Discrimination on the grounds of religion, criminal record (where irrelevant), political opinion or trade union activity; or
 - Victimisation of anyone who makes a complaint under this policy.

6. CONFIDENTIALITY AND DOCUMENTATION

- 6.1 Only people directly involved in a complaint, or its resolution, may access information about the complaint and associated resolution process.
- 6.2 Each party involved in resolving a complaint will be advised about the importance of confidentiality.
- 6.3 The Discrimination and Harassment Contact Officer will make a confidential file note summarising any discussions and include any agreed actions. This file note will be kept in a secure location.
- 6.4 Where there has been disciplinary action as part of the complaint resolution process, any correspondence relating to this action is to be kept in the relevant employee's personnel file.

7. RAISING GRIEVANCES AND/OR CONCERNS

- 7.1 All grievances and/or concerns will be dealt with promptly, seriously, confidentially and constructively. There are a number of options available to employee and these include:
- 7.1.1 Self-Help;
 - 7.1.2 Council Contact Officers;
 - 7.1.3 Raising an informal grievance and/or concern; or
 - 7.1.4 Lodging a formal grievance and/or concern.
- 7.2 Whilst it is encouraged to try and resolve grievances and/or concerns through internal processes, employees have the right to contact an external agency for advice or help at any time. These agencies include Equal Opportunity Commission, Federal Human Rights Commission, Office of the Employee Ombudsman, SafeWork SA or the relevant union.
- 7.3 Anyone raising a grievance and/or concern, or assisting someone else to resolve a grievance and/or concern, is protected through this policy from being victimised for their actions.
- 7.4 Employees have the right to raise any breaches of this policy through Council's PO134 Whistleblowers Policy if they wish.

8. RESOLUTION OF GREIVANCES AND/OR CONCERNS

- 8.1 All grievances received (both informal and formal) will be handled and/or investigated using the conflict resolution process outlined in the Conflict Resolution Policy PO017.
- 8.2 This policy does not remove the right of the employee lodging the complaint to proceed to an external body, such as the Australian Industrial Relations Commission; Equal Opportunity Commission, SafeWork SA or any other relevant union or organisation.
- 8.3 Contact Officers are available to assist employees in understanding the options available to them in addressing their grievance and/or concern. Information provided to Contact Officers remains confidential unless the content breaches the law (e.g. self-harm, harm to others or any other illegal activity).
- 8.4 In resolving any grievance and/or concern, it is recommended that the employee raise their concerns with the person concerned. This is also known as "self-help" and is always encouraged as the best option for all parties.
- 8.5 Where the "self-help" option is not appropriate or the employee does not feel that they have had their concerns resolved, they may wish to talk to their manager. Through discussions with their manager, the employee can raise a grievance and/or concern in an informal manner. Grievances and/or concerns raised through this method will be addressed in an appropriate manner.
- 8.6 When speaking to a manager, it is important to note that once they are aware of your grievance and/or concern, they have a duty of care to investigate and implement a suitable corrective action.

- 8.7 Should the employee feel that their grievance and/or concern has not been addressed appropriately by their manager, they may speak to the Manager Organisational Development.
- 8.8 Employees have a right to lodge a formal complaint in relation to a grievance and/or concern they have at any time. All formal complaints are to be forwarded to the Manager Organisational Development, who will assign either an internal or external party to conduct a formal investigation

9. GRIEVANCES AND/OR CONCERNS SUBSTANTIATED

- 9.1 Where the grievance and/or concern is substantiated, Council will take appropriate disciplinary action and may include:
 - 9.1.1 apologising;
 - 9.1.2 counselling;
 - 9.1.3 formal warning;
 - 9.1.4 transfer or demotion; and/or
 - 9.1.5 dismissal/termination of employment.
- 9.2 The SA Police will be contacted where there is a grievance and/or concern that is governed by criminal law.

10. GRIEVANCES AND/OR CONCERNS NOT SUBSTANTIATED

- 10.1 If insufficient evidence exists to determine if the circumstances surrounding the allegations, no disciplinary action will be taken, however, the manager will monitor the situation and consider staff education and/or training.

11. FALSE OR MALICIOUS COMPLAINTS

- 11.1 If a complaint is found to have been false or malicious, Council may discipline the complainant. Untrue allegations could lead to individuals choosing to pursue legal action for defamation. The level of discipline will depend on:
 - 11.1.1 the severity and frequency of the discrimination or harassment;
 - 11.1.2 the weight of evidence;
 - 11.1.3 whether the behaviour was intentional or malicious;
 - 11.1.4 existence of any prior incidents or official warnings; and/or
 - 11.1.5 whether there are any mitigating circumstances.

12. VICTIMISATION

- 12.1 Staff are encouraged to raise their grievances and/or concerns as outlined in this policy, without the fear of being victimised. Where staff feel they are being victimised due to raising a grievance and/or concern, they are encouraged to raise the matter with their manager, director or Manager Organisational Development.
- 12.2 Grievances and/or concerns raised through this method will be handled in accordance with this policy.

13. DISCRIMINATION AND HARASSMENT CONTACT OFFICERS

- 13.1 Contact Officers will act as a point of contact for employees experiencing difficulties in the workplace. The role of Contact Officers is to provide information to employees with concerns or complaints of discrimination, harassment or bullying in the workplace. If requested by the employee, Contact Officers may support the employee if they wish to make a formal complaint. The Contact Officer does not have a role in investigating, arbitrating or resolving the complaint between the parties, but rather, to inform the person with the grievance of the available options.
- 13.2 Training, information and guidelines will be provided to Contact Officers who will maintain confidentiality and only take further action on specific complaints with specific permission of the person raising the matter, unless there is a threat of self-harm, harm of others or other criminal offences being (or about to be) committed. The confidentiality component does not apply to people who hold a leadership/supervisory position due to the duty of care they provide to ensure a safe work environment for all employees.

14. WHAT WILL ORGANISATIONAL DEVELOPMENT DO?

- 14.1 Organisational Development will:
- obtain comprehensive information from the employee about their complaint and how it could be resolved;
 - where appropriate, encourage the relevant employee to access assistance;
 - appoint an appropriate officer to undertake an investigation as determined by the CEO;
 - explain how the process works (including what will be done to protect the employee from victimisation if that is a concern). In addition, refer the employee to people who can assist with support or representation, if required;
 - speak to witnesses confidentially as necessary;
 - determine whether there is sufficient information as to whether the matter(s) alleged in the complaint can be substantiated;
 - based on information/evidence obtained, make a determination about the appropriate action to be taken;
 - once a decision is made on a resolution of the issue, advise all parties of the action to be taken, which may include the following:
 - attempting to mediate between parties involved with a view of achieving a mutually satisfactory agreement about how the complaint should be resolved;
 - informing relevant parties about the consequences if the complaint was proved one way or the other; and
 - informing relevant parties of the right to appeal.
 - monitor the situation;
 - provide professional advice on this policy;
 - coordinate and provide support to Discrimination and Harassment Contact Officers where required; and

- provide appropriate education and training for employees and management on this policy and any other relevant education and training.

15. RIGHTS AND RESPONSIBILITIES

15.1 Employees have the right to work in an environment:

- that is supportive and free from discrimination, sexual harassment and workplace bullying;
- where selection and recruitment decisions are made on merit;
- where they will not be discriminated against, sexually harassed or victimised at work;
- where they will be protected by their employers from inappropriate behaviours;
- where they will have their concerns listened to and addressed in a constructive manner;
- where individuals have responsibility not to discriminate against, sexually harass or victimise other employees or members of the public; and
- where individuals have responsibility to be familiar with Conflict Resolution Policy PO017 and Whistleblowers Policy PO134 where deemed appropriate.

15.2 Managers/Supervisors have the:

- right to manage and monitor work performance in a supportive and constructive manner;
- right to give legitimate and constructive comment on performance or work related behaviour;
- responsibility to role model the appropriate behaviours expected;
- responsibility to take all reasonable steps to prevent inappropriate behaviour;
- responsibility to respond promptly, appropriately and effectively to any complaints received;
- responsibility to communicate this policy to employees and ensure it is adhered to; and
- responsibility to ensure that the workplace and goods and services offered are free from discrimination, sexual harassment, victimisation and workplace bullying.

16. COMPLAINTS

Complaints can be made in writing to the Manager Organisational Development. All complaints will be managed in accordance with Council's Complaints Policy PO147 (or in the case where the policy only applies internally and not to the public, Conflict Resolution Policy PO017).

17. REVIEW

This policy will be reviewed every two years, in consultation with employees and/or their nominated representative(s). The policy will also be reviewed as deemed necessary in consideration of any changes to legislation, relevant standards, codes

and guidelines, audit findings, any corrective actions/controls arising from risk assessment and/or hazard/incident reports and stakeholder feedback.

18. TRAINING

Training needs will be reviewed during induction and annually, during individual performance reviews and as necessary in consideration of any changes to legislation, relevant standards, codes and guidelines, audit findings, any corrective actions/controls arising from risk assessment and/or hazard/incident reports and stakeholder feedback.

19. RELATED COUNCIL POLICIES AND DOCUMENTS

Complaints Policy PO147
Conflict Resolution Policy PO017
Code of Conduct for Employees PO014
Statutory Code of Conduct for Employees
Disciplinary and Performance Management Policy PO146
Whistleblowers Protection Policy PO134

20. REFERENCES AND LEGISLATION

Age Discrimination Act 2004
Australian Human Rights Commission Act 1986 (Cth)
Disability Discrimination Act 1992
Equal Opportunity Act 1984 (SA)
Fair Work Act 1994 (SA)
Local Government Act 1999
Prevention and Responding to Workplace Bullying Code of Practice (Draft)
Privacy Act 1988
Racial Discrimination Act 1975
Sex Discrimination Act 1984
Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill Act 2013 (Cth);
Work Health and Safety Act 2012 (SA)
Whistleblowers Protection Act 1993 (SA)
Workers Rehabilitation and Compensation Act 1986
Workplace Gender Equality Act 2012

21. COUNCIL DELEGATION

Details of Delegation:	Chief Executive Officer.
Delegate:	Nil

22. VERSION HISTORY

Archived Policy Name	Policy Number	Date Adopted	Last Reviewed
Equal Employment Opportunities	PO026	07/04/2003	08/06/2010
Sexual Harassment Policy and Procedure	PO076	07/04/2003	08/06/2010
Workplace Bullying	PO0119	14/09/2005	08/06/2010