

Version No:	V04.00
Issued:	29/08/2017
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1. Background

- 1.1 Section 19 of the WHS 2012 provides that a person conducting a business or undertaking so far as reasonably practicable, the health and safety of -
- Workers engaged by that person; and
 - Workers whose activities in carrying out work are influenced or directed by the person, while the workers are at work in the business or undertaking.
- 1.2 A person conducting a business or undertaking must insure, so far as reasonably practical, that the health and safety of other persons is not put at risk from work carried out as part of the business or undertaking.
- 1.3 Without limiting subsections(1) & (2) a person conducting a business or undertaking, must insure so far as reasonably practicable
- The provision and maintenance of a work environment without risks to health and safety; and
 - The provision and maintenance of safe plant and structures; and
 - The provision and maintenance of safe systems of work; and
 - The safe use, and storage of plant, structures and substances; and
 - 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; and
 - 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; and
 - That the health of workers and the conditions at the workplace are monitored for the purpose of preventing illness or injury of workers arising from the conduct of the business or undertaking.
- 1.4 Section 28 Duties of workers:
- While at work, a worker must-
- Take reasonable care for his or her own health; and
 - Take reasonable care that his or her acts or omissions do not adversely affect the health And safety of other persons; and
 - Comply, so far as the worker is reasonably able, with any reasonable instruction that is given by a person conducting the business or undertaking to allow the person to comply with the act;
- 1.5 Section 30 of the WHS Act provides health and safety duty including reckless conduct & failure to comply with health and safety duty and lists the category of offences and their penalties

SIGNED:

CEO

Chairperson, Health Safety Committee

Date: / /

Date: / /

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2 Overview

The District Council of Mount Remarkable (“the Council”) is committed to a culture of Fair Treatment where the rights of all 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
- Dignity
- Equality
- Responsibility
- Honesty
- Openness
- Support
- Unity
- Inclusivity
- Integrity
- Transparency

These practices or behaviours serve to also honour and acknowledge the Council’s corporate values and the Code of Conduct as they apply to every employee, elected members, customers, contractors and persons working under ‘Non-Employment Relationship’ arrangements.

They also serve to acknowledge the SA Equal Opportunity Act 1984 and other legislative requirements as defined within this Policy Document and the associated Legislation.

Fair Treatment will apply in all aspects of the work undertaken by Council.

It is a condition of Employment with Council that all employees behave in a professional manner and treat others with dignity and respect.

Council will ensure that its grievance procedure is:-

- Confidential
- Timely
- Unbiased
- Procedurally Fair
- Free of Victimization

3 Policy Position

Unfair Treatment is any form of discrimination, bullying, harassment or victimization as defined within section 4.0 of this Policy Document.

Any Form of unfair treatment is unacceptable, both legally and ethically.

4 Definitions

4.1 Equal Opportunity

Equal opportunity means that all employees 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.

4.2 Work Health & Safety

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

4.3 Workplace Bullying

Workplace Bullying is the unwelcome, persistent and continuous ill treatment of an individual or individuals by one or more other employees (paid or unpaid), by contract employees, contractors or by elected members. The impact of this ill treatment having a negative impact on the individual's health, productivity or relationships both inside and outside of the workplace.

The practices or behaviors of Workplace Bullying include, but are not limited to, the following:-

- Verbal abuse, either privately or in front of others;
- Humiliation through constant criticism, nit picking, sarcasm, and insults;
- Physical abuse (this can also be a criminal offence);
- Threatening gestures such as finger pointing, fist shaking, arm waving and hostile facial expressions;
- Threats of dismissal or severe punishment for no apparent or justified reason;
- Spreading gossip, malicious rumours or making malicious allegations;
- Assigning a greater proportion of unpleasant work to a person.

4.4 Discrimination

Unlawful discrimination means treating someone differently and less favourably because of one of the grounds spelt out in law. In South Australia these grounds are covered by the Equal Opportunity Act 1984:-

- **Sex/gender:** sex discrimination means treatment of a person of one sex less favourably than a person of another sex;
- **Sexuality:** discrimination on the ground of sexuality means unfair treatment of a person because of their sexuality and refers to whether they are heterosexual, homosexual, bisexual or transsexual;
- **Marital 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;
- **Pregnancy:** this includes the unfair treatment of a woman who is pregnant, suspected of becoming pregnant, or is expected to become pregnant;
- **Race:** race includes colour, descent, ethnic origin or nationality. It can also include unfair treatment because of the people you live with or are associated with;
- **Disability:** includes physical and intellectual impairment;
- **Age:** this covers all ages

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

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.

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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.

4.5 Harassment

The effects of Harassment are similar to Workplace Bullying, the difference being that practices of unfair treatment named as harassment are informed by and concerned with the same grounds as those described under Discrimination and covered by the Equal Opportunity Act 1984.

The practices of Harassment and Workplace Bullying can therefore be the same, the difference being in how they are informed and consequently what legislative action can be taken.

Harassment is a single or sequence of unwelcome offensive comment(s) or action(s). Some of these practices include:-

- Intimidation, ridiculing and teasing;
- Offensive jokes;
- Negative, insulting or belittling comments;
- Unreasonably setting different conduct or work standards;
- Exclusion from activities, facilities and resources.

4.6 Sexual Harassment

Sexual harassment is prohibited under the Equal Opportunity Act (1984).

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

Some of the forms, practices or behaviours that sexual harassment can take are:

- Unwelcome touching or kissing;
- Repeated comments or jokes, leering or staring, that are sexually suggestive;
- Sexually explicit pictures, objects or reading matter;
- Direct or implied sexual propositions or unwelcome requests for 'dates';
- Intrusive questions about sexual activity;
- 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(s) engaging in these practices or behaviours.

4.7 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.

Council will not tolerate (in any way) the behaviour of any employee who victimises another employee who:-

- Lodges a complaint of unfair treatment;

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- Is supporting someone else acting on their rights, and / or
- Is required to provide evidence during any resolution process.

4.8 Grievance

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

4.9 Natural Justice

Natural justice is concerned with ensuring procedural fairness and means:-

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

4.10 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.

5.0 Rights & Responsibilities

5.1 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:-

- Ensuring this policy is endorsed and communicated throughout the organisation and that appropriate resources are allocated to ensure its successful implementation;
- Ensuring that the appropriate delegated authorities are in place to manage all allegations of unfair treatment in the workplace;
- Ensuring that those delegated with this authority receive appropriate training to carry out their role;
- Ensuring all employees have access to information on their rights and responsibilities concerning unfair treatment in the workplace;
- Ensuring that all employees have access to appropriately trained Fair Treatment Contact Officers in order to receive assistance and support;
- 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;

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- 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 through Council's internal review procedures.

5.2 Every Employee

Every employee has the right to work in an environment free of any form of unfair treatment.

Employees 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.

This will include not making complaints / allegations about another employee that are known to be untrue or which are made with the intent to cause harm or hardship to another employee.

Every employee has a responsibility to keep and maintain confidentiality throughout any complaint, investigation or resolution.

Employees are encouraged to raise with appropriate officers, any grievances arising from a perception that they have been unfairly treated.

Whilst all employees have a responsibility to uphold the principles outlined in this Policy Document, specific responsibility will rest with managers and supervisors for ensuring fair treatment for all within their Departments.

5.3 Fair Treatment Contact Officers

Fair Treatment Contact Officers are employees who have been trained to provide information and support to any employee who holds a belief that they have been the target of unfair treatment.

Fair Treatment Contact Officers have a responsibility to maintain confidentiality but to ensure incidents of unfair treatment are recorded and reported where appropriate.

The role, responsibilities and guidelines for Fair Treatment Contact Officers are detailed in Appendix 1 to this Policy Document.

6 Appendices / Attachments

The following appendices / attachments form part of this Policy Document:

- Appendix 1: Role, Responsibilities and Guidelines for Fair Treatment Contact Officers

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Appendix 1 Role, Responsibilities and Guidelines for Fair Treatment Contact Officers

Fair Treatment Contact Officers are employees who have been specifically trained to provide support and information to any employee who holds a belief that they have been the target of unfair treatment.

The **role** of Fair Treatment Contact Officers is to:-

- Act as the first port of call and to provide information to anyone with concerns or complaints of unfair treatment as outlined in this Policy Document and its' attachments;
- Explain what unfair treatment is to ensure that what has happened fits within this policy and procedure;
- Discuss with the person the options available to them and support them in trying to resolve the issue as quickly as possible;
- Provide information about the steps involved once the preferred option is identified;
- Be present, if requested, at any meeting(s) involving the person alleged to be responsible for the unfair treatment;
- Refer the matter to the Chief Executive Officer where necessary; and
- Document each case and provide documentation to the Chief Executive Officer as required.

The **responsibilities** of Fair Treatment Contact Officers will involve:-

- Acting as a role model for Fair Treatment;
- Providing support and information on resources and options available to the complainant;
- Remaining impartial;
- Maintaining confidentiality unless, with the agreement of the complainant, the issues are such that they need to be brought to the attention of Chief Executive Officer and / or Council; and
- Where possible, encouraging the complainant to sort out the problem directly with the source of the perceived unfair treatment.

Fair Treatment Contact Officers will be appointed taking into account the following **Criteria for Appointment**:-

- A sensitivity and understanding about the issues;
- The need to reflect the diversity of the workplace;
- An ability to have the trust and confidence of staff; and
- An ability to engage in and model practices of Fair Treatment.

The Chief Executive Officer will be responsible for the appointment of Fair Treatment Officers within the organisation to ensure equitable distribution and representation of the workforce.

Fair Treatment Contact Officers will receive training in the following areas before taking up their role:-

- The contents of this policy, procedure and associated guidelines;
- The Code of Conduct for the employees and elected members of Council;
- The requirement for Confidentiality;
- The Equal Opportunity Act (1984) to the extent that they have all understanding and knowledge about discrimination, harassment and sexual harassment, including the role of the Equal Opportunity Commission;

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- An understanding of Workplace Bullying, its practices and effects and how these potentially may fit with the Work Health Safety legislation, and the Equal Opportunity Act (1984);
- Case studies to assist in the understanding of the Contact Officer's role and the distinction between providing information and support as opposed to providing "advice";
- Respectful communication;
- Requirements for recording the nature of any unfair treatment 'incidents';
- Mediation process for information purposes only.