

**DISTRICT COUNCIL OF  
KIMBA**

**1.1**

**FAIR TREATMENT POLICY**



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## DOCUMENT APPROVAL

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This document has been endorsed and approved for use by:

  
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Deb Larwood  
Chief Executive Officer

21/06/2023  
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### Document Version Control

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### Change History

Version	Issue Date	Author	Reasons for Change
1	09/09/2009	D. Cearns	
3	13/04/2011	D. Cearns	Review
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6	11/02/2015	D. Cearns	Review
7	11/05/2016	D. Cearns	Review
8	10/05/2017	D. Larwood	Review
9	13/06/2018	L. Keane	Review
10	12/06/2019	L. Keane	Review
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## 1. Objective

The District Council of Kimba (“**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 Council’s corporate values, including access and equity, and the Codes of Conduct for Elected Members and Council Employees, as these apply to every member of staff, Elected Members, customers, contractors and persons working under non-employment relationship arrangements.

They also serve to acknowledge the *Equal Opportunity Act 1984* and other legislative requirements as defined within Schedule 1.

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

Council will ensure that its grievance procedure is:

- Confidential
- Timely
- Unbiased
- Procedurally fair
- Free of victimisation

## 2. Aim

*What is Unfair Treatment?*

Unfair treatment is any form of discrimination, bullying, harassment or victimisation as defined within Schedule 1 of this policy. Any form of unfair treatment is unacceptable, both legally and ethically.

## 3. Rights and Responsibilities

*Chief Executive Officers and Managers*

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 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;
- Ensuring that a regular survey is undertaken to track the impact of the Fair Treatment Policy; and
- 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.

Whilst all employees 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 Departments.

### *Employees*

- 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.

## **4. Responsible Person:**

Chief Executive Officer

## **5. References:**

Schedule 1- Definitions

Code of Conduct Policy

Fair Treatment Procedure

## **6. Adoption**

The policy was adopted by Council at its Ordinary Meeting on 21 June 2023.

## **PROCEDURE**

### **Activity definition**

The intention of these procedures is to make available a range of options to employees 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.

### **Work Health and Safety requirements**

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

### **Training/competencies required**

Fair treatment awareness training for the general workforce.

### **Performance criteria**

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

### **Work Method Requirements**

#### *Self-help*

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

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

This can happen by:

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

#### *Informal intervention*

Informal intervention is where the employee experiencing unfair treatment does not wish 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.

Employees 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. They are also encouraged to take up counselling under the Employee Assistance Program.

#### *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 employee experiencing unfair treatment still feels dissatisfied with the outcome of informal intervention. Formal complaints should be lodged with the manager of the employee making the complaint unless the complaint is about that manager or if the employee 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.

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

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

*The manager will take the following steps:*

Assess if 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 employee's consent) to the Chief Executive Officer.

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 in the appeals section regarding the Chief Executive Officer.

### **Appropriate action**

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.

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; and/or
- An official warning; and/or
- Demotion; and/or
- Dismissal.

### **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

## **Appeals**

If an employee thinks that the grievance procedure was not followed properly, the employee 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 subject of the complaint, the Principal Member of 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.

## **Lodging a complaint with the Commissioner for Equal Opportunity**

This procedure is intended to avoid this being necessary. Nevertheless, an employee 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.

## **Performance indicators**

Every complaint under the Fair Treatment Policy will be investigated to a conclusion which satisfies the complainant, unless the complaint has been deemed frivolous or vexatious.



## Schedule 1

### Definitions

#### **"The Law"**

This policy of Fair Treatment is informed by the *Equal Opportunity Act 1984* and the *Work Health and 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 1984* is supported in South Australia 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*.

#### **"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.

#### **"Work Health and Safety"**

Occupational Health and 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.

#### **"Workplace Bullying"**

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

The practices or behaviours of workplace bullying include, but are not limited to, the following practices:

- 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

#### **"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 unfavourably because of the person's sex
- **Sexuality:** discrimination on the ground of sexuality means unfair treatment of a person because of their sexual orientation 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 de facto 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**

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.

### **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.

### **"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 actions. 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

### **"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 actions 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 engaging in these practices or behaviours.

### **"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.

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

- Lodges a complaint of unfair treatment; and/or
- Is supporting someone else acting on their rights; and/or
- Is required to provide evidence during any resolution process.

### **"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.

### **"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.

### **"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.