

## FAIR TREATMENT

### 1. Introduction

The Flinders Ranges Council (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 within the Council organisation.

This policy and procedure applies to all Elected Members and staff and those in non-employment relationships such as volunteers, work experience persons and similar with the Council.

Risk Management is an important obligation the Council takes very seriously and pro-actively manages.

In the delivery of its services, both internal and external, and the employment of people, the Council is very aware that there may be risks that it's Elected Members and staff or other representatives may be exposed to in relation to treatment of colleagues and members of the public.

The Council has a Risk Management Policy and a number of current procedures as well as a Risk Management Framework – all of which are available for viewing at [www.frc.sa.gov.au](http://www.frc.sa.gov.au)

In the provision and delivery of its services, both internal and external, all workers and clients of Council services are encouraged to consider applicable perceived risks and, if necessary, communicate these to the Chief Executive Officer or the South Australian Equal Opportunity Commissioner if in doubt prior to the commencement of the service delivery.

### 2. Definitions

#### ***Discrimination***

Unlawful discrimination means treating someone differently and less favourably because of one of the grounds spelled 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 de-facto relationship;
- **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 illness or injury.

Discrimination may be either Direct or Indirect.

#### ***Direct Discrimination***



## GOVERNANCE POLICY

### FAIR TREATMENT

Policy Number	HR.02
Version Number	3
Previous Version	August 2013
Last Review	Feb 2023
Next Review	Feb 2028
GDS	9.63.1.1

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.

#### ***Equal Opportunity***

Equal opportunity means that all persons have the right to work in an environment that enables them to work to their full potential free from all forms of unfair treatment. Clients of the Council may expect the same in regard to the provision of Local Government services and the conduct of Council operations.

#### ***Grievance***

A grievance is a concern or complaint expressed by an Elected Member, staff or client in relation to their work or the work environment or provision of services by Council. A grievance may be about any act, omission, situation or decision that a worker/client thinks is unfair, discriminatory or unjust.

#### ***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  
(exclusion from activities could include ignoring or isolating a person or deliberately denying access to information, consultation or resources).

#### ***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.

#### ***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.

### ***Natural Justice***

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

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

### ***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.

### ***Elected Member Contact***

The Mayor is the designated Contact Officer for Elected Members and / or the Chief Executive Officer.

### ***Staff Contact Officer***

The designated Staff Contact Officer is appointed by the Chief Executive Officer and is currently the Supervisor, Administration and Tourism.

### ***The Law***

This policy and procedure of Fair Treatment is informed by the *Equal Opportunity Act 1984* and the *Work Health and Safety Act 2011* 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 1987* 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*, *Disability Discrimination Act 1992* and the *Age Discrimination Act 2004*.

### ***Unfair Treatment***

Unfair Treatment can be any of, or a combination of:

- Discrimination (including Direct or Indirect)
- Harassment
- Sexual Harassment
- Workplace Bullying
- Victimisation

### **Work Health and Safety**

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

### **Workplace Bullying**

Workplace Bullying is the unwelcome persistent and continuous ill treatment of an individual by one or more other members of the staff (paid or unpaid), by contract workers or by Elected Members. The impact of this ill treatment can have a negative influence on an 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 spoken of justified reason;
- spreading gossip, malicious rumours or making malicious allegations (beware of internet usage in this regard); and
- assigning a greater proportion of unpleasant work to a person.

### **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 Flinders Ranges Council will not tolerate in any way the behaviour of any Elected Member or employee who victimises another person who:

- lodges a complaint of unfair treatment
- is supporting someone else acting on their rights, and
- is required to provide evidence during any resolution process.

## **3. Policy Statement**

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

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

These practices or behaviours serve to also honour and acknowledge the Council corporate values including Access and Equity and the Codes of Conduct as they apply to all Elected Members, staff, volunteers, 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 Section 5, documentation below.

Fair Treatment Policy and Procedure will apply in all aspects of the work undertaken by The Flinders Ranges Council.



## GOVERNANCE POLICY

### FAIR TREATMENT

Policy Number	HR.02
Version Number	3
Previous Version	August 2013
Last Review	Feb 2023
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GDS	9.63.1.1

The Council will ensure that its grievance procedures both internal for Elected Members and staff and its Complaints and Public Grievance Policy for the public are followed and such processes are:

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

#### 3.1. What is Unfair Treatment?

Unfair treatment is any form of discrimination, bullying, harassment or victimisation as defined in this Policy and Procedure and relevant legislation.

Any form of unfair treatment is unacceptable, both legally and ethically. Council, in the conduct of its operations and delivery of its services, must ensure its services are offered and accessed equitably and avoid unfair treatment to any person or groups. Likewise, Elected Members and staff of the Council, including volunteers and other non-employment groups must be protected from unfair treatment in the workplace.

#### 3.2. Responsibilities

##### 3.2.1. Council

The Council has the responsibility to ensure that effective training in these issues is available and undertaken, and to support those Elected Members and staff affected by, or accused of, unfair treatment.

##### 3.2.2. Mayor

The Mayor has the responsibility to:

- ensure that the Elected Members' environment and the services provided to electors is free from unfair treatment; and
- take all reasonable steps to make sure that this happens and assume responsibility, should they be involved in unfair treatment, to ensure confidentiality is maintained, that complaints are taken seriously are dealt with quickly and in an unbiased manner.

If the Mayor fails, either through refusal or neglect, to take action to prevent unfair treatment, then subject to the provisions of the relevant legislation referred to in Section 5 of the document, a prosecution may occur.

##### 3.2.3. Managers / Supervisors

Managers / Supervisors have the responsibility to:

- ensure that the workplace and the services provided to customers and stakeholders are free from unfair treatment; and
- take all reasonable steps to make sure that this happens. Workers in management positions also have the responsibility, should they be involved in an unfair treatment complaint, to ensure confidentiality is maintained, that complaints are taken seriously are dealt with quickly and in an unbiased manner.

If Managers or Supervisors fail, either through refusal or neglect, to take action to prevent unfair treatment, then subject to the provisions of the *Work Health and Safety Act 2011*, a prosecution may occur.

##### 3.2.4. Staff

Staff have the responsibility not to unfairly treat other staff or customers and also have the responsibility, should they be involved in an unfair treatment complaint, to ensure confidentiality is maintained.

	<b>GOVERNANCE POLICY</b>  <b>FAIR TREATMENT</b>	Policy Number Version Number Previous Version Last Review Next Review GDS	HR.02 3 August 2013 Feb 2023 Feb 2028 9.63.1.1
---	---	--	---

If staff fail, either through refusal or neglect, to take action to prevent unfair treatment, then subject to the provisions of the *Work Health and Safety Act 2011*, a prosecution may occur.

Staff have a responsibility not to lodge malicious or false allegations.

### 3.2.5. Responsible Person

The Mayor is the designated Elected Member Contact Officer and the Executive Assistant is the designated Staff Contact Officer for the purposes of the Fair Treatment Policy and Procedure.

## 4. Procedure

The following options and procedures apply to any member of the organisation who is involved in unfair treatment, including the complainant, the alleged perpetrator, or anyone who intervenes in a complaint process. It is important to note that during the process of any of the options identified in the procedures, consideration must be given to whether or not the alleged target and alleged perpetrator can continue to remain in the same location, both during the investigation process and after.

### 4.1. Options for Persons who have a Complaint

There are a number of options available to persons who believe they have been subject to unfair treatment:

- self-help;
- informal intervention;
- mediation; and
- formal complaint.

Any option can be selected. A person is not required to go through all the options if they believe resolution of their complaint can be resolved by selecting one or more of the above options.

Persons are encouraged to keep a record of any incident(s) leading to an unfair treatment complaint, i.e. dates, times, witnesses, other persons involved.

### 4.2. Self Help

A person with a complaint may deal with the problem by seeking advice and support from a colleague, supervisor or manager, or the *Mayor or the Staff Contact Officer*. If the person feels able to deal with the problem themselves, they are encouraged to use this procedure.

The self-help methods may include:

- the complainant personally approaches the person who is the alleged perpetrator of the unfair treatment and seeks clarification of this person's perspective, as they may not be aware of the consequences of their actions, or that their behaviour is offensive;
- the complainant personally approaches the person who is the alleged perpetrator of the unfair treatment and advises them that their behaviour is offensive and asks them to stop;
- the complainant writes to the person who is the alleged perpetrator of the unfair treatment, and advises that a complaint may be made if the behaviour does not stop; or
- the complainant speaks to the person about the complaint which has been made in the company of a support person or other representative.

The advantage of self-help is:

- allows the complainant to feel that they can help themselves;
- gives the person complained against, the opportunity to correct their behaviour; and
- results in least disruption to the workplace and to the parties involved.





## GOVERNANCE POLICY

### FAIR TREATMENT

Policy Number	HR.02
Version Number	3
Previous Version	August 2013
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Next Review	Feb 2028
GDS	9.63.1.1

If a person is too intimidated by the person complained against to deal directly with them, perhaps because the person has more authority or because of the nature of the behaviour, then self-help may not be the best option.

#### 4.3. Informal Intervention

It is recognised that approaching the Mayor / Supervisor / Manager is a formal act. For the purposes of these procedures, intervention, prior to the lodging of a written complaint, is labelled 'informal intervention'.

Where informal intervention is the chosen option, the person may have someone intervene on his or her behalf without a formal complaint being made.

An Elected Member may:

- directly approach the Mayor and advise them of the person complained against, and ask or request them to intervene on their behalf;
- request the Chief Executive Officer to intervene on their behalf; and / or
- request a colleague / support person to intervene on their behalf.

A staff member may:

- directly approach their Manager / Supervisor and advise them of the person complained against, and ask or request them to intervene on their behalf;
- request the *Staff Contact Officer* to intervene on their behalf;
- request a colleague / support person to intervene on their behalf; and / or
- directly approach another member of the Senior Leadership Team and advise them of the person complained against and ask them to intervene on their behalf.

It is the role of any person intervening on behalf of a complainant to ensure the alleged perpetrator is aware of the allegations and is given the opportunity to respond to the complainant. The intervening officer must maintain the confidentiality of both parties during the intervention process.

Informal complaints may involve:

- The nominated person approaching the alleged perpetrator, informing him or her of any allegations made and explaining the requirements of Council's policy;
- If the alleged perpetrator acknowledges that the complaint is true, the nominated person shall require the alleged perpetrator to cease the practice complained of, explaining the consequences for them if the unfair treatment does not cease, e.g. formal complaint being lodged leading to possible disciplinary action.
- If the alleged perpetrator refutes the claim or does not respond satisfactorily to the nominated officer's investigation/discussion/requests, the person contacted will then seek direction from the complainant as to whether or not a formal complaint will be made. If the complainant wishes, the matter is to be brought to the attention of the relevant person, or the Chief Executive Officer or the *Staff Contact Officer*, depending on the individuals involved. Otherwise the matter will be deemed closed.

#### 4.4. Mediation

A person may approach the Mayor or *Staff Contact Officer* to arrange for a mediator to mediate a meeting between themselves and the alleged perpetrator.

Mediation of the complaint would involve:

- the mediator approaching the alleged perpetrator, advising that the allegations had been made and that a mediation meeting is to be arranged to discuss the allegations further;
- at the meeting, the mediator would clarify the Council's policy and procedures in relation to unfair treatment to both parties;

- the mediator will request the complainant to inform the alleged perpetrator of the particulars of the allegations, and ensure that the alleged perpetrator is allowed ample time to respond to the allegations presented;
- the mediator's role is to ensure both parties are heard and to attempt to offer solutions and resolve the matter in a way which is satisfactory to all participants;
- the mediator shall keep a record of their contact with the complainant and any action undertaken should be documented and held by the mediator in a safe and secure location; and
- all parties must be aware that, should the mediation process be unsuccessful, the records kept may be made available in any further process.

### 4.5. Formal Complaint

A formal complaint can be lodged at any time. Persons may feel that informal attempts at resolution are not appropriate or have failed due to:

- victimisation;
- serious allegations of misconduct;
- the member of staff about who the complaint has been made is at a senior level; or
- allegations are denied.

A formal complaint must be submitted in writing (*an e-mail is not considered an appropriate mechanism for lodging a formal complaint*) detailing the activities of the alleged perpetrator, dates / times of alleged incidents, and the possible outcome of the complaint requested by the complainant. The complaint should be directed to the Mayor in respect to an Elected Member or *Staff Contact Officer* in respect of staff, who will both advise the Chief Executive Officer.

Formal complaints will involve the appointment of an investigating officer / mediator who will undertake to capture all relevant information relating to the complaint. A person accused of unfair treatment must be advised that they have the right to involve a suitable representative or an officer of their union (where applicable) as a support person during this process.

The investigation process will usually involve the conduct of formal interviews. The investigator / mediator will provide the Mayor or Chief Executive Officer with a formal report detailing the investigation and recommending relevant action to be undertaken.

**NOTE:** Investigation process must be undertaken, as a matter of urgency and the formal report should be completed within 4 weeks from the commencement of the investigation.

Staff may also approach their worker representative association and / or the Employee Ombudsman for assistance. Furthermore, staff may contact the Commissioner for Equal Opportunity (but only in cases that come within the scope of the *Equal Opportunity Act 1984*).

### 4.6. A Guide for the Complainant

The Complainant should:

- recognise the signs – many targets of unfair treatment do not recognise what is being done to them and wonder whether they are to blame in some way. Targets need to recognise that uncertainty is often part of unfair treatment and there is no behaviour or perceived behaviour that justifies being the target of unfair treatment;
- focus on taking action to have the behaviour cease;
- identify clearly who is or are the perpetrators – there are occasions where there is more than one – you need to identify all the perpetrators regardless of the extent to which they participated in the unfair treatment; and
- keep records – make notes of any incident, when, where and who was involved, how you felt about it, were there any witnesses, who, if at all, did you speak to about it. These notes can be vital to any formal or informal process that may be undertaken as a means of investigating the complaint and resolving the situation:



- talk to appropriate people about it – keeping the incident/s to yourself will only increase your sense of isolation. However, be aware of the possibility of defamation claims (see Defamation);
- refrain from using intimidating or other inappropriate behaviour as a means of responding – this may only serve to inflame a situation and/or you may find yourself the subject of a disciplinary investigation;
- if possible try to remain at your role – moving from the environment does not result in the intimidation being dealt with in an appropriate manner, or at all and more importantly may result in you suffering from reduced personal esteem; and
- be careful not to confuse performance management or disciplinary issues as unfair treatment.

#### 4.7. Defamation

Persons involved in the resolution of a complaint are entitled to share any information as long as the information is shared with persons who have legitimate right to the information.

People with complaints, people complained against and those properly involved in a complaint may be protected against defamation where the complaint is made honestly and is only made to those who have a duty to receive it.

The possibility of being sued for defamation arises when a person with a complaint speaks to anyone other than the alleged perpetrator or those with a genuine need to know. That is, the protection is lost if the person with details of the complaint broadcasts the problem outside the proper channels to those who have no right to, or have no need to know about it.

#### 4.8. Rights of Any Person Accused of Unfair Treatment

All Elected Members and staff have the right to be entitled to the principles of 'natural justice'. Natural justice must be observed in all dealings with persons accused of unfair treatment.

Therefore the following must be considered to ensure that all relevant workers involved in the investigation of complaints are afforded natural justice:

the right to:

- be fully informed about the complaint - this includes being told the name of the person making the complaint;
- reply in full to the complaint;
- be considered innocent until proven guilty;
- representation by a person of his or her choice;
- have information about the complaint restricted to those who are directly involved, where appropriate;
- be given the benefit of any reasonable doubt;
- have all mention of the matter removed from relevant personal records if the case is not proven;
- be informed of any rights of appeal that may exist against any decision made on the matter;
- the contents, including rights and obligations, contained in relevant policies, procedures and legislation relevant to the matter to be brought to the attention of the person against whom the complaint is made, at the beginning of the proceedings;
- have the matter investigated in a timely manner, without delay;
- remain in their workplace if the complaint is found to be without substance;
- appropriate support being provided by the Council; and
- have some recourse in the case of malicious or false accusations, e.g. the Manager / Supervisor is advised of the malicious or false accusation and takes appropriate action, which may include disciplinary action.

#### 4.9. Right of Appeal

Should either party be dissatisfied with the outcome, a grievance appeal can be lodged with the Mayor, Chief Executive Officer, or the Employee Ombudsman.

	<b>GOVERNANCE POLICY</b>  <b>FAIR TREATMENT</b>	Policy Number Version Number Previous Version Last Review Next Review GDS	HR.02 3 August 2013 Feb 2023 Feb 2028 9.63.1.1
---	---	--	---

#### 4.10. Confidentiality

All parties concerned in the investigation of a complaint of unfair treatment should observe strict confidentiality. This is a serious duty owed both to the complainant and the person complained against.

The importance of maintaining confidentiality is to ensure that both the complainant and the employees involved in dealing with the complaints are legally protected from any charge of defamation which might be made by the person complained against.

Permission from the complainant and the alleged perpetrator must be sought before divulging their name to any person not concerned in the investigation.

#### 4.11. Keeping Records

All records are confidential and are to be stored securely. The following record keeping rules are to be applied:

##### 4.11.1. Personal Notes

It is advisable that personal notes are retained and it is essential that:

- people who are experiencing unfair treatment record the dates, places and details of every incident as well as meetings with relevant persons and mediators and any mediation agreement which is reached.
- those people who have been complained against should document similar details as those of the complainant.
- Mayor / Manager / Supervisors should keep chronological notes of interviews with the complainant and respondent and any actions, which they have taken to resolve the complaint.

##### 4.11.2. Council Records

The Council will keep formal records concerning a complaint only where a formal complaint has been made to the Mayor or Chief Executive Officer, or a formal complaint has been lodged with an outside agency.

##### 4.11.3. Personnel Files (Elected Members / Staff / Volunteers)

If the complaint is made, investigated and upheld, and the person complained against has been disciplined, then a summary of the nature of the complaint and the outcome must be placed on their personnel file for a period of not less than two (2) years.

Information detailing disciplinary action (including a formal warning) will be placed on the personnel file.

No mention of a complaint will be placed on a complainant's personnel file unless the complaint is found to be malicious or the accusations are false.

#### 4.12. Disciplinary Action

If instances of unfair treatment have involved sexual or racist harassment, violations of the industrial or criminal codes etc., resolution of these matters may involve the processes of the relevant legislation and administering authorities.

Where unfair treatment has violated the Council's Code of Conduct and or other Council Policy(s), the investigating officer may recommend some form of disciplinary action in line with the relevant code or policy.

	<b>GOVERNANCE POLICY</b>  <b>FAIR TREATMENT</b>	Policy Number Version Number Previous Version Last Review Next Review GDS	HR.02 3 August 2013 Feb 2023 Feb 2028 9.63.1.1
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## 5. Legislation

- Equal Opportunity Act 1987 (SA)
- Work Health and Safety Act 2011 (SA)
- Racial Vilification Act 1996 (SA)
- Sex Discrimination Act 1984 (Commonwealth)
- Age Discrimination Act 2004 (Commonwealth)
- Racial Discrimination Act 1975 (Commonwealth)
- Human Rights and Equal Opportunity Commission Act 1986 (Commonwealth)
- Disability Discrimination Act 1992 (Commonwealth)
- Workplace Gender Equality Act 2012 (Commonwealth)
- Fair Work Act 2009 (Commonwealth)
- Whistleblower Protection Act 1993

## 6. References

- Code of Conduct – Elected Members, Employees & Council Volunteers
- Customer Service Goals
- Equal Employment Opportunity Policy
- Safe Environment Policy
- Customer Complaints Policy
- Whistleblower Protection Policy

## 7. Review

This Policy shall be reviewed every four (4) years or more frequently if legislation or Council needs change.

Review Date	Version Number	Consultation	Resolution
July 2012	1	Received for consultation	121/2012
14 August 2012	1	No submissions received - Adopted	164/2012
Policy rewritten: replaces HR.02 Bullying, Discrimination and Harassment Procedure with HR.02 Fair Treatment			
Presented to 2014 December Ordinary Council Meeting Presented to 2015 January Ordinary Council Meeting Reviewed by Senior Leadership Team 12 January 2015 Consultation period: 20 January - 27 February 2015			
17 March 2015	2	No submissions received – Adopted	084/2015
13 February 2018	2	Reviewed by PRRC 30Jan18 – No changes	020/2018
21 March 2023	3	Minor formatting and Act reference updates	46/2023