

## POLICY STATEMENT

The City of Marion (Council) believes equal opportunity can deliver advantages to our business, people and workplace.

Treating people fairly has a positive impact on employee and customers and strengthens our reputation as an employer of choice.

Council has a strong commitment to equal opportunity (EO) principles that will assist in ensuring:-

- A safe, healthy, caring and non-discriminatory working environment
- Protecting employee wellbeing
- Our workforce is efficient and productive
- Every employee has the opportunity to apply for positions
- The best person for the job is selected (Merit Principle)
- Less disruption and work conflict
- Employee turnover is minimised
- Sickness and absenteeism is minimised

This policy describes the behaviour required to meet our legal and organisational obligations towards EO, harassment, discrimination and bullying within the workplace. All employees volunteers, labour hire employee and contractors providing labour and services to Council have a joint responsibility to meet these requirements.

## CONSTRUCTIVE CULTURE LINKS:

The implementation of this policy, associated procedures and training will help to develop a constructive work environment. The policy aims to promote the following constructive behaviours:

- Resolving conflicts constructively
- Encouraging and supporting others
- Valuing diversity and creativity
- Combine a balance of concern for people and tasks

## DEFINITIONS

### Employer

In the context of this document, employer refers to the City of Marion (Council).

### Employees

In the context of this document, employees refers to all Council staff, volunteers, labour hire personnel, work experience placements who are performing duties/tasks on behalf of the Council, and contractors providing labour and services to Council.

### Manager

In the context of this document, manager refers to – includes all manager/supervisor positions within Council irrespective of their actual title (e.g. Manager, Team Leader, Co-ordinator etc).

### Customer

In the context of this document, customer refers to – a party who receives the direct output of a process (both internally & externally).

### Equal Opportunity

Equal Opportunity (EO) means fairly treating employees and customers. Fair treatment is:

- treating people as individuals without making judgments based on particular personal characteristics;
- creating a work environment free from discrimination, harassment, bullying and victimisation;
- allowing all employees to work to their full potential;
- making decisions based on merit.

### Discrimination

Unlawful discrimination is unfairly treating people because of their particular personal characteristics or because they belong to a certain group.

Discrimination can be direct or indirect. Indirect discrimination is treatment which appears to be equal but is unfair on certain people. To be unlawful, it must also be unreasonable.

It is unlawful to unfairly treat people because of their age, sex, race, disability, sexuality, marital status, pregnancy, family status or religion/beliefs in either employment, education, providing goods and services, accommodation, clubs and associations, granting qualifications, advertising or selling land.

Legitimate comment on performance or work related behaviour is not unfair treatment. Full and frank feedback can be given by managers in a constructive and sensitive way.

Sometimes discriminating behaviours are referred to as bullying. Bullying is behaviour which makes people feel offended, afraid or humiliated and in the circumstances it is reasonable to feel that way.

Bullying behaviour relating to age, sex, race, disability, sexuality, marital status, pregnancy, family status or religion/beliefs, is unlawful.

### **Workplace Bullying**

Workplace bullying means any behaviour that is repeated, systematic and directed towards an employee or group of employees that a reasonable person, having regard to the circumstances, would expect to victimise, humiliate, undermine or threaten and which creates a risk to health and safety – Section 55A (1) of the Occupational Health, Safety and Welfare Act 1986..

Bullying behaviour can be:

- Abusive, insulting or offensive language;
- Behaviour or language that frightens, humiliates, belittles or degrades;
- Teasing or regularly making someone the brunt of practical jokes;
- Spreading gossip, rumours and innuendo of a malicious nature;
- Deliberately excluding, isolating or marginalising a person from normal workplace activities;
- Deliberately denying access to information, consultation or resources;
- Unfair treatment in relation to accessing workplace entitlements such as leave or training.

### **Sexual Harassment**

Sexual harassment is sexual behaviour which makes people feel offended, afraid or humiliated and in the circumstances, it is reasonable to feel that way. Both men and women can sexually harass or be harassed.

Sexual harassment is determined from the point of view of the person feeling harassed. It is how the behaviour is received not how it is intended.

Sexual harassment can be:

- unwelcome touching or kissing;
- comments or jokes, leering or staring;
- sexual pictures, objects, emails, text messages or literature;
- direct or implied propositions, or requests for dates;
- questions or comments about sexual activity.

Mutual attraction or friendship with consent is not sexual harassment.

### **Diversity**

In the context of this document, diversity refers to the differences in individuals or groups in their opinion, practices, race, language, appearance, culture and physical or intellectual ability, which results in a recognition that the individual or group is unlike the majority of others in the group, team, section, department or organisation.

### **Victimisation**

Victimisation is treating someone unfairly because they have acted on the rights given to them by equal opportunity law (or any other laws or rights provided under Legislation or City of Marion policy), or because they have supported someone else who acted upon those rights.

Unlawful victimisation is unfair treatment for complaints about discrimination or sexual harassment.

## **PRINCIPLES**

### **1. Zero Tolerance**

City of Marion acknowledges its responsibility to provide a safe workplace for all its employees. If any employee feels that they have been treated unfairly (eg harassed, discriminated or bullied), they may address it through one of the following avenues:

- Equity and Diversity Contact Officers (Contact Officers)
- Conflict Resolution process outlined in the relevant Enterprise Agreement; or
- Discussion with their manager.

Any employee found to be behaving in a manner that contravenes this policy will be subject to disciplinary action. In serious cases, it may result in dismissal.

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

Where there are concerns about the behaviour and conduct of non-Council employees, these should be raised with their own immediate manager.

## 2. Rights and Responsibilities

The Equal Opportunity Act 1984 (SA) outlines the rights and responsibilities of employers, potential and current employees. To ensure these rights and responsibilities are met, the following is expected:

Employees have the right to work in an environment:

- that is supportive and free from discrimination, sexual harassment and workplace bullying
- where selection and placement decisions to be 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 clients;
- where individuals have responsibility to be familiar with Equal Opportunity policies and complaint procedures
- that uses the Whistleblowers Policy and Procedure where deemed appropriate.

Managers 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 behaviours;
- responsibility to respond quickly, seriously and effectively to any complaints received;
- responsibility to communicate this policy to employees and ensure it is followed;
- responsibility to ensure that the workplace and goods and services offered are free from discrimination, sexual harassment, victimisation and workplace bullying.

## 3. Behaviours

In keeping with the City of Marion's constructive culture and this policy, the following behaviours are expected:

Managers' Behaviour

- Respect for staff by treating them in a fair and just manner;
- Provide training and development opportunities that promote staff development;

- Feedback and appraisals are undertaken based on performance and objective criteria rather than personal or subjective criteria;
- Encourage staff learning through constructive conversations rather than the use of authority;
- Develop and maintain effective and constructive communication with employees and customers;
- Delegate effectively, and coach and mentor employees.
- Constructively and proactively manage performance of their employees;
- Promote and value diversity within their team and across the organisation;
- Demonstrate transparency and accountability in decision making and managing risk;
- Make sure that policies, practices and procedures are inclusive as well as non-discriminatory.

#### Employees' Behaviour

- Communicate with others in a courteous manner that is also appropriate to age, gender, ethnicity, physical disability, intellectual impairment, cultural, social and linguistic backgrounds;
- Listen openly to the views of others, and demonstrate sensitivity to the differences between colleagues;
- Treat colleagues and customers fairly and with respect;
- Make sure that verbal and written advice and reports are composed constructively and contain information which is impartial, substantiated, accurate and complete;
- Demonstrate transparency and accountability in decision making;
- Work together as a team, embracing the constructive culture philosophy to achieve the organisation and team goals;
- Encourage and support others within their team;
- Raise concerns and or complaints in a constructive manner, including identifying possible solutions.

#### **4. Raising Grievances and/or Concerns**

All grievances and/or concerns will be dealt with quickly, seriously, confidentially and constructively. There are a number of options available to employee and these include:

- Self-Help
- Contact Officers
- Raising an informal grievance and/or concern
- Lodging a formal grievance and/or concern.

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 anytime. These agencies include:

- Equal Opportunity Commission,
- Federal Human Rights and Equal Opportunity Commission
- SafeWork SA
- Relevant Union.

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.

Employees have the right to raise any breaches of this policy through Council's Whistleblowers Policy and Procedure if they wish.

## **5. Resolution of Grievances and/or Concerns**

All grievances received (both informal and formal) will be handled and/or investigated using the Conflict Resolution process outlined in the relevant Enterprise Agreement.

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, Workplace Ombudsman, SafeWork SA or the relevant union.

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 (eg self harm, harm to others or any other illegal activity).

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.

Where the "self-help" option is not appropriate or the employee does not feel that they have had their concerns taken seriously, they may wish to talk to their manager. Through talking to their manager, they can raise their grievance and/or concern in an informal manner. Grievances and/or concerns raised through this method will be addressed in an appropriate manner.

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 put corrective action in place.

Should the employee feel that their grievance and/or concern has not been taken seriously or addressed appropriately by their manager, they may speak to one of the HR Partners or the Manager Organisational Development.

Employees have a right to lodge a formal complaint in relation to a grievance and/or concern they have at anytime. 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.

## **6. Grievances and/or concerns substantiated**

Where the grievance and/or concern is substantiated, Council will take appropriate disciplinary action and may include:

- apologising
- counselling
- formal warning
- dismissal

The SA Police will be contacted where there is a grievance and/or concern that is governed by criminal law.

## **7. Grievances and/or concerns not substantiated**

If there is not enough evidence to decide if the allegations happened or were likely, no disciplinary action will be taken. However, the manager will monitor the situation and consider staff education and/or training.

## **8. False or Malicious Complaints**

If a complaint is found to have been false or malicious, Council may discipline the person making the complaint. Untrue allegations could lead to individuals choosing to pursue legal action for defamation. The level of discipline will depend on:

- the severity and frequency of the discrimination or harassment;
- the weight of evidence;
- whether the behaviour was intentional or malicious;
- existence of any prior incidents or official warnings;
- whether there are any mitigating circumstances

## **9. Victimisation**

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, HR Partner or Manager Organisational Development. Grievances and/or concerns raised through this method will be handled in accordance with this policy.



## 10. Documentation

Records, notes or reports on all complaints and/or grievances will be kept in accordance with the State Records Act.

## 11. Contact Officers

Equity and Diversity Contact Officers (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 complaint what options are available

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.

## 12. Equity, Diversity and Wellbeing Committee

The City of Marion has an Equity, Diversity and Wellbeing Committee to assist the Organisational Development Unit in relation to equal opportunity, harassment, discrimination, bullying and wellbeing matters across the organisation.

The Equity, Diversity and Wellbeing Committee will be the key forum for:

- Reviewing policies and procedures relating to application of the EO laws, and making recommendations for any improvements.
- The development of equity, diversity and wellbeing guidelines and organisational training programs related to EO.
- Developing an information strategy to maintain awareness of equity, diversity and wellbeing issues.
- Identifying individual or group knowledge and skill development requirements relevant to the Contact Officers role and providing recommendations.
- Working with the OHS&W Committee in identifying strategies for improving the wellbeing of employee across the organisation.

## REFERENCES

### **CORPORATE PLAN:**

EC3.1 – Ensure our workplace provides safe systems of work, fair treatment, appropriate reward and recognition, values diversity and embraces a healthy work/life balance.

**EXCELLENCE IN GOVERNANCE:**

Nil

**PROCEDURE REFERENCE:**

City of Marion Recruitment and Selection Procedure  
City of Marion Email and Internet Access and Usage Policy  
City of Marion Code of Conduct  
City of Marion Whistleblowers Policy and Procedure

**COUNCIL AGENDA REFERENCE:**

Nil

**OTHER RELATED REFERENCES:**

City of Marion Enterprise Agreement – Indoor Staff – No 5, 2004  
City of Marion & ASU 2007 Enterprise Agreement Supplemental Memorandum of Understanding  
City of Marion & AWU 2006 Enterprise Agreement Supplemental Memorandum of Understanding  
City of Marion Enterprise Agreement – Outdoor Staff – No 6, 2003  
Equal Opportunity Commission website – [www.eoc.sa.gov.au](http://www.eoc.sa.gov.au)  
Preventing Workplace Bullying, A Guide for Employers

**Federal Legislation:**

Disability Discrimination Act 1992  
Equal Opportunity for Women in the Workplace Act 1999  
Human Rights and Equal Opportunity Commission Act 1986  
Privacy Act 1988  
Racial Discrimination Act 1975  
Sex Discrimination Act 1984  
Workplace Relations Act (Cth) 1996

**State Legislation:**

Equal Opportunity Act 1984 (SA)  
Racial Vilification Act 1996 (SA)  
Whistleblowers Protection Act 1993 (SA)

Occupational Health, Safety and welfare Act 1986

## **PREVIOUS VERSIONS**

Equal Employment Opportunity Ref No: 3.2.9 (1.1.97)

Sexual Harassment Ref No: 3.2.30 (1.1.97)

Equal Employment Opportunity, Discrimination and Harassment Ref No HR-8 (2.12.05)

## **AUTHOR**

Evelyn Pollard