

## Purpose

We are committed to providing a safe and healthy working environment for staff, contractors, customers and visitors. We also encourage workforce diversity and an inclusive, supportive, and productive environment that respects the differences and dignity of everyone.

Employment practices and decisions during the employee lifecycle are based on fact and the merit of each individual, including their skills, qualifications, competencies, and development potential. There is no tolerance for making decisions based on stereotypes, characteristics or irrelevant attributes.

The employee lifecycle includes recruitment and selection, promotion, transfers, training, career development, employment terms and conditions, disciplinary action and terminations.

We do not treat individuals or groups of people less favourably than another on grounds or any other factor irrelevant to the inherent requirements of the role: such as gender, sexuality, race, nationality, age, religion, disability, medical record, marital status, pregnancy, breastfeeding or other parental responsibilities, political opinion, association.

## Scope/Exclusions

This procedure applies to all employees, including temporary and casual employees as well as contractors and visitors to our sites.

## Key References

- **Internal**
  - Ethics and Behaviour Policy (SAWC-HR-0007)
  - Health, Safety and Injury Management Policy (SAWP-WHS-0001)
  - Grievance and Dispute Resolution Procedure (SAWP-HR-0013)
  - Whistle-blower Procedure (SAWP-HR-0004)
- **External**
  - Fair Work Act (Cth) 2009
  - Equal Opportunity Act (SA) 1984
  - Work Health and Safety Act (Cth) 2012

## Definitions and Acronyms

Term	Description
We, our	Means South Australian Water Corporation / SA Water.
You	Refers to SA Water employees, including temporary and casual employees; or contractors or visitors to SA Water sites.
Equal Employment Opportunity	The practice of treating people on their merits, that is, the attributes and qualities relevant to job performance.
Harassment	Any unwelcome behaviour or conduct that intimidates, humiliates or offends another person or group of people. Harassment can be a single or repeated act. Examples of harassment include: <ul style="list-style-type: none"><li>• derogatory remarks</li></ul>

Term	Description
	<ul style="list-style-type: none"> <li>• offensive jokes</li> <li>• spreading rumours</li> <li>• obscene telephone calls, text messages or emails</li> <li>• threats or insults, and</li> <li>• physical contact e.g. pushing or shoving.</li> </ul> <p>When the harassment relates to certain characteristics that the person possesses, such as a persons' racial or ethnic background, gender, sexual preference, disability, age or marital status, the harassment is unlawful.</p> <p>A person does not have to be directly subject to harassment to make a complaint. The law recognises the rights of a third party to find behaviour unacceptable.</p>
Sexual Harassment	<p>Any unwanted, unwelcome or uninvited behaviour of a sexual nature where a reasonable person would anticipate the possibility of the person being harassed feeling humiliated, intimidated, afraid or offended. Sexual harassment can take many different forms, including:</p> <ul style="list-style-type: none"> <li>• unwelcome comments or questions about an individuals' personal life, sexual habits or physical appearance</li> <li>• suggestive behaviour such as leering or ogling</li> <li>• offensive hand or body gestures</li> <li>• deliberate unwelcome physical contact such as patting, pinching, brushing up against or putting an arm around a person</li> <li>• sexual jokes and comments</li> <li>• the display of photographs, posters, reading matter, graffiti, computer images or objects of a sexual nature</li> <li>• offensive telephone calls, sms messages, faxes or emails</li> <li>• sexual propositions or repeated requests for dates when the other person has asked the requestor not to ask again</li> <li>• requests, demands, pressure or threats for sexual favours, or</li> <li>• sexual assault, indecent exposure, stalking and rape.</li> </ul> <p>Sexual assault, indecent exposure, stalking and rape are criminal offences and victims of criminal behaviour will be encouraged to report the offence to the police. This does not alleviate our responsibility to deal with the matter internally.</p> <p>Sexual harassment does not refer to behaviour that is based on mutual attraction, friendship and respect. If the interaction is consensual, welcome and reciprocated, it is not sexual harassment. Friendships, whether sexual or otherwise, are a private concern.</p>
Bullying	<p>Repeated and systematic behaviour that a reasonable person would find humiliating, undermining, intimidating or threatening. It has many characteristics in common with harassment, but the reasons for the bullying behaviour can be broader than the grounds that constitute harassment. Bullying is dealt with by relevant work, health and safety laws and individuals accused of bullying may be subject to prosecution.</p> <p>Bullying can include:</p> <ul style="list-style-type: none"> <li>• isolating or excluding someone</li> <li>• psychological abuse that destroys self-esteem and confidence</li> <li>• unfair or excessive criticism</li> <li>• public humiliation, teasing or practical joke</li> <li>• use of aggressive language</li> <li>• yelling abuse</li> <li>• threats of violence or unfair dismissal</li> </ul>

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	<ul style="list-style-type: none"> <li>• setting impossible deadlines</li> <li>• deliberately withholding information that is vital for effective work performance, and</li> <li>• continually ignoring or dismissing a person's contribution to a team.</li> </ul> <p>SA Water is entitled to direct and control how work is done, and People Leaders have a responsibility to monitor workflow and give feedback on performance. Reasonable direction and constructive criticism/feedback does not constitute bullying. Examples of management actions that may be considered reasonable if taken in a reasonable manner include:</p> <ul style="list-style-type: none"> <li>• legitimate performance management processes</li> <li>• action taken to transfer a worker or make a role redundant, and</li> <li>• a decision not to provide a promotion or benefit in connection with the worker's employment.</li> </ul>
Unlawful Discrimination	<p>Discrimination occurs when a person or group is treated less favourably and suffers a detriment because they possess a certain characteristic.</p> <p>Discrimination does not have to be conscious or calculated and neither motive nor intent is relevant in determining whether a particular act is discriminatory.</p> <p>Direct discrimination occurs when a person or group of people are treated less favourably because they possess a protected characteristic listed as a ground of discrimination.</p> <p>Protected characteristics include:</p> <ul style="list-style-type: none"> <li>• age</li> <li>• carer or parental status</li> <li>• disability and impairments including physical, sensory and intellectual disability, work related injury, medical conditions and mental, psychological and learning disabilities</li> <li>• pregnancy, potential pregnancy or breastfeeding responsibilities</li> <li>• race, including skin colour, nationality, ethnicity and ethnic origin</li> <li>• religious belief or activity</li> <li>• gender</li> <li>• sexual orientation</li> <li>• industrial association and activity</li> <li>• marital status, and</li> <li>• political belief or activity.</li> </ul> <p>Indirect discrimination occurs when rules, practices and decisions appear to treat people equally but actually have an adverse effect on an individual or group, thus reducing a benefit or opportunity. The practice appears fair in form but is discriminatory in outcome.</p> <p>Discrimination on the basis of disability is lawful if:</p> <ul style="list-style-type: none"> <li>• the person cannot meet the inherent requirements of the job because of his/her disability, and</li> <li>• the person needs adjustments made which would cause unjustifiable hardship to the organisation.</li> </ul>
Victimisation	<p>Victimisation is the term used to describe any pay-back, retribution or intimidation associated with a complaint of harassment, bullying or unlawful discrimination. Victimisation refers not only to intimidation of complainants and potential complainants, but also to the alleged harasser, witnesses, supporters and those resolving or investigating any complaints. Victimisation in many instances is unlawful. Victimisation is prohibited and we will take all reasonable steps to protect employees against victimisation. A person who raises a complaint or participated in an investigation in good faith and has been victimised is entitled to lodge a complaint</p>

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	that will be dealt with in accordance with this procedure.
Affirmative Action	Affirmative Action refers to strategies put in place to assist disadvantaged groups. Affirmative Action does not assume that everyone has the same abilities but aims to ensure that everyone has a fair opportunity in employment.  Affirmative Action strategies develop skills and confidence in disadvantaged groups to allow them to compete on equal terms with everyone else. These strategies are aimed at removing barriers from access to opportunities by providing tools for competing on an equal footing.
Unfair treatment	Situations or events where the treatment of people is not based on their merits, but rather people are subject to harassment, sexual harassment, unlawful discrimination and/or victimisation.
Contact Officers	An employee who has volunteered to provide confidential emotional support and information to any person who has a problem or thinks they may have a complaint in relation to unfair treatment. Contact Officers are able to talk about an issue with employees even if that employee does not wish to lodge a complaint.

## Procedure

### 1. Seeking Advice

If you feel you have been, or are subject to, unfair treatment, we encourage you to approach a Contact Officer, your People Leader or Human Resources Business Partner for information and guidance.

These people are able to help you determine whether the behaviour constitutes harassment, bullying, unlawful discrimination and/or victimisation in accordance with relevant legislation and this procedure.

Alternatively, if you believe that you have been subjected to unfair treatment in relation to a decision associated with your employment or employment conditions, then you may raise a grievance. See the Grievance and Dispute Resolution Procedure (SAWP-HR-0013) for details.

Without disclosing details or a complainant's identity, an internal Contact Officer or People Leader may consult a Human Resources Business Partner to discuss any aspect of the matter.

### 2. Contact Officers

A Contact Officer is an employee who has volunteered to provide confidential emotional support and information to anyone who has a problem or believes they may have a complaint in relation to unfair treatment. Contact Officers are available to talk to even if you do not wish to lodge a complaint.

Contact Officers are responsible for listening to your concerns and empowering you to take the appropriate steps to deal with it. They can advise you about your options including access to the Employee Assistance Program and how to address the unfair treatment directly or make a formal complaint.

Contact Officers cannot disclose the information they receive, however, they can discuss the issue with their People Leader or Human Resources Business Partner, providing no identities are revealed.

Contact Officers are appointed by SA Water and provided training and support. When a Contact Officer vacancy becomes available and a replacement is required, an Expression of

Interest will be circulated. The successful candidate will be selected based upon their skills and attributes.

### 3. Taking Action

If you believe that you have been treated unfairly, you can make a complaint, either verbally or in writing, to a People Leader/ Manager/ Senior Manager/ General Manager or Human Resources Business Partner. The relevant Manager or Human Resources Business Partner must accept the complaint unless it is of a frivolous nature.

Contact Officers are unable to accept or act on a complaint, but can direct employees to an appropriate person.

If the complaint is made verbally, the person receiving the complaint must take notes including:

- the alleged behaviour
- the person or people against whom the allegation is made
- how the complainant responded to the behaviour
- the strategies adopted to stop the behaviour, and
- the outcome of adopting this strategy.

If you have not yet adopted any strategies to stop the behaviour, you may be encouraged to do so before taking formal action. However, you can make a formal complaint regardless of whether you have tried to manage the situation or not.

Complaints cannot be made anonymously. The principles of "natural justice" require that the person against whom allegations are made has the right to respond fully to them.

Complainants can be assured that People Leaders and Human Resources Business Partners will not intervene on their behalf, without their consent and that information will only be shared on a "need-to-know" basis.

People Leaders have the responsibility to take action against unfair treatment in the workplace regardless of whether a complaint has been received or not. If a People Leader witnesses unfair treatment, they must advise the perpetrator and counsel them on their behaviour. If the behaviour continues, the matter must be referred to the relevant Human Resources Business Partner to jointly consider further action.

Everyone is encouraged to respectfully challenge events of unfair treatment.

If a Manager has heard of the unfair treatment through hearsay, they can ask the affected employee if they would like to make a complaint. If they do not make a complaint, the Manager must take general action to stop the unfair treatment. This can include addressing the workgroup to remind them of their responsibilities, re-issuing the procedure or providing training.

### 4. Mediation or Conciliation

You may elect for a People Leader/Manager/ Senior Manager/ General Manager or Human Resources Business Partner to conduct mediation or conciliation. In some cases an external party may be sought.

Mediation and conciliation cannot proceed unless the complainant and the respondent agree to participate voluntarily. If either party declines to participate, the complaint can only be resolved by formal investigation.

All parties must be given an outline of the formal mediation or conciliation process so they can make an informed decision. The respondents' participation in the mediation or conciliation process is not an admission of guilt. If the matter can be resolved through mediation or conciliation, whether the behaviour or event did or did not occur is irrelevant.

In mediation, the People Leader, Manager, Human Resources Business Partner, or an external party negotiates with all parties in an attempt to reach an agreeable solution for everyone. The mediator conveys messages between the parties to broker an agreement however, does not interfere with the process itself.

While mediation and conciliation can occur without the need for the complainant and respondent to meet face-to-face it is easier, to reach a satisfactory outcome where everyone communicates directly with each other.

If the matter cannot be resolved through mediation or conciliation, the complaint will proceed to formal investigation.

Note, all matters involving a possible criminal act (e.g. assault) and all matters relating to claims for workers compensation must be referred to Human Resources immediately and before any further action is taken.

## 5. Formal Investigation

A formal investigation must be undertaken where one of the parties vetoes mediation and conciliation, or where a resolution is not reached. Likewise if the allegations are of a serious nature.

When investigation is required a Human Resources Business Partner or external party not involved elsewhere in the process (e.g. in giving advice, mediating, conciliation, etc.) will investigate.

### 5.1 Formal Statement of Complaint

To start the investigation, the complainant must make a formal statement to the investigator. The statement summarises the allegations, with enough information - dates, times and actions - to enable a response. The statement may be reviewed and edited by the complainant before being signed and the investigation proceeding. The statement must contain a declaration that the statement is a complete list of all complaints at that time.

### 5.2 Respondent

The respondent will be informed both verbally and in writing that a complaint has been made against them requiring formally investigation. A list of allegations will also be provided. The respondent must be advised that reprisal against the complainant (i.e. victimisation) is unacceptable and possibly unlawful.

In the event of serious allegations with potential to lead to a stage 3 formal warning or dismissal in accordance with our Disciplinary Procedure, the respondent may be suspended from work with pay for the duration of the investigation. If the matter is less serious, the respondent may be temporarily transferred to another team, business unit or group, if practicable, for the duration of the investigation. Any such action is undertaken without prejudice.

The respondent must be given at least 48 hours' notice of the requirement to attend a meeting at where they will be given the opportunity to respond to the allegations. The respondent must be informed of the right to have a support person or representative at the meeting and be cautioned regarding confidentiality.

### 5.3 Investigation

If the respondent denies or contests important aspects of the allegations, a full investigation will be required. The complainant and the respondent will be given an estimated timeframe for the investigation to be completed.

During the investigation, interviews will be conducted with the complainant, the respondent and any witnesses. Physical evidence may also be examined.

The investigator will remain impartial at all times throughout the investigation. No assumptions will be made and no actions undertaken until all relevant information has been gathered and considered.

### 5.4 Findings and Actions

Upon completion of the investigation, the investigator may include recommendations for remedial or disciplinary action, particularly if the complaint is substantiated or if the complaint is found to be malicious or vexatious. The General Manager, People and Safety (or delegate) will review the investigation report and recommendations for approval.

Within three working days of the investigation being completed, the parties must be informed of actions to be taken. This time frame may be extended if extenuating circumstances apply. For example, the requirement for an interpreter or the absence from the workplace of one of the parties. If the complaint is not substantiated, the reason for the decision will be explained to the parties involved.

## 6. Lodging a Claim Externally

If the complainant is not satisfied they can take the matter to a relevant government body.

The complainant is encouraged to speak with their Human Resources Business Partner to identify the appropriate government body to list their complaint.

## 7. Frivolous, Malicious and Vexatious Claims

### 7.1 Frivolous Claims

A frivolous claim is one so minor that it does not meet the threshold of seriousness for the purposes of the "reasonable person" test. That is, a reasonable person would not find the behaviour offensive, intimidating or threatening etc.

The person who receives the complaint, or the person appointed to investigate the complaint, will determine if the claim is frivolous and may refuse to accept or investigate the complaint. In determining whether a claim is frivolous, due consideration will be given to previous decisions within SA Water and Australian case law.

A person who repeatedly makes frivolous complaints may be subject to disciplinary action.

### 7.2 Malicious and Vexatious Claims

A malicious claim is one that is knowingly false and which is made with the intent of causing detriment to another person or people.

A vexatious claim is one with no merit and which is intended to cause annoyance or inconvenience to the respondent.

A person who is found to have lodged a malicious or vexatious complaint will be subject to disciplinary action. The disciplinary action may be proportionate to the action that would have been taken against the respondent if the complaint has been substantiated.



## 8. Appeals Process

A complainant or respondent may appeal the findings of a formal investigation if they believe there has been a flaw in the investigation process. Appeals will not be held simply because the complainant or respondent does not like the investigation findings or recommendations.

The appeal will be heard by a person in a more senior position than the original investigator. The person who manages the appeal may confirm the original decision or overturn it determine an alternative outcome.

## 9. Record Keeping

### 9.1 Contact Officers

Contact Officers must maintain brief notes of conversations held with employees in relation to unfair treatment issues. These notes are kept in a diary or notebook stored in a secure location, such as a locker. This information can only be released with the written permission of the employee(s) concerned.

### 9.2 People Leaders

People Leaders who provide confidential advice to employees on unfair treatment matters shall maintain notes of the conversation and provide a copy to their Human Resources Business Partner.

### 9.3 Investigators

Records of complaint, investigation documents and details of the actions taken must be maintained in the complainants' personnel file. If disciplinary action is taken, the investigation report will be maintained with the relevant disciplinary documentation on the relevant employee file(s).

If the complaint is not substantiated, the record of the complaint and the investigation report will be maintained in the complainants' employee file.

Access to the employee files is limited to the HR team.

## 10. Liability

Equal opportunity legislation provides three levels of liability for unfair treatment:

### 10.1 Vicarious Liability

Vicarious liability is a strict, secondary liability that makes SA Water responsible for the actions of its employees at all levels in relation to harassment, bullying, unlawful discrimination and victimisation, even when we do not know the unfair treatment is occurring. Ignorance of the behaviour is neither an excuse nor a satisfactory defence against a claim of vicarious liability.

### 10.2 Accessory Liability

Accessory liability occurs if SA Water, via its employees and agents, requests, encourages, authorises, causes, instructs, induces, aides or permits an individual to commit an act of harassment, bullying, unlawful discrimination or victimisation.

### 10.3 Direct or Personal Liability

Direct or personal liability indicates that employees of SA Water may be held directly and personally liable for acts of harassment, bullying, unlawful discrimination or victimisation.



Further, a People Leader may be held directly liable for unfair treatment if s/he is aware of the behaviour and fails to take reasonable action to address that behaviour.

## Responsibilities

Role	Responsibility
SA Water	<ul style="list-style-type: none"> <li>• we are responsible for the overall operation of this Procedure including:</li> <li>• developing a culture that encourages workforce diversity and aims to provide an inclusive, supportive, and productive environment that respects the differences and dignity of individuals</li> <li>• addressing organisational factors that may contribute to unfair treatment</li> <li>• ensuring suitable fair treatment information and education is provided Ensuring appropriate support and assistance is provided to Contact Officers to enable them to effectively perform their role</li> <li>• monitoring the effectiveness of the Procedure and gaining feedback to improve and amend as necessary</li> <li>• ensuring contractors and visitors are aware of the Procedure at the time of induction</li> <li>• providing a mechanism for complaints, treat complaints seriously and take action to investigate and resolve matters, and</li> <li>• not tolerate victimisation of an individual who has made a complaint or who has cooperated with an investigation.</li> </ul>
People Leaders	<p>Individual People Leaders are responsible for:</p> <ul style="list-style-type: none"> <li>• supporting the operation of this Procedure</li> <li>• ensuring their team is aware of the requirements of the Procedure</li> <li>• offering support and providing timely feedback and communication to all parties involved</li> <li>• communicating the consequences of non-compliance, and</li> <li>• treat any complaints seriously and sensitively, have respect for confidentiality, and ensure that a worker is not victimised.</li> </ul> <p>People Leaders are responsible for taking action when they witness or are made aware of unfair treatment.</p>
Employees	<p>You:</p> <ul style="list-style-type: none"> <li>• will at all times carry out your duties and responsibilities in a safe manner, respecting the differences and dignity of individuals</li> <li>• are encouraged to respectfully challenge events of unfair treatment, and</li> <li>• behave responsibly, treat others with dignity and respect and be aware of the impact of their behaviour on others.</li> </ul>

## Approval

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Roch Cheroux  
Chief Executive

## Document Control

<b>Procedure Owner</b>	General Manager, People and Safety
<b>Responsible Manager</b>	Senior Manager, Human Resources
<b>Approved by</b>	Chief Executive

## Version History

<b>Version</b>	<b>Effective Date</b>	<b>Author</b>	<b>Comments</b>	<b>Next Review</b>
1.0	04/04/18	Paige Christian	First release superseding the Workplace Bullying, Harassment and Discrimination.	04/04/20