



**Government
of South Australia**

**Department for
Energy and Mining**

Hon Ben Hood MLC
Parliament House
North Terrace
ADELAIDE SA 5000

By email: benhood.office@parliament.sa.gov.au

Dear Mr Hood

I am writing in relation to your application made under the *Freedom of Information Act 1991* (FOI Act) in which you requested access to the following documents:

All documentation regarding your internal complaints process.

On 9 June 2023, the above scope was clarified by negotiation with your office to:

The latest copies of your internal complaint management policy for staff complaints and grievances, including procedure guides and reporting requirements.

In accordance with Premier and Cabinet Circular PC045, if you are given access to documents as a result of this FOI application, details of your application, and the documents to which access is given, may be published in the agency's disclosure log. A copy of PC045 can be found at <http://dpc.sa.gov.au/what-we-do/services-for-government/premier-and-cabinet-circulars>.

A search has been conducted and two (2) documents were discovered that fall within the scope of your application. The documents are identified in the attached schedule. In respect of the documents, I have determined as follows:

Documents 1 and 2

I have determined that these documents should be released in full.

Appeal Rights

If you are dissatisfied with this decision, you are entitled to exercise your rights of review and appeal as outlined in the attached documentation.

If you have any queries in relation to your application, please contact me via email DEM.FOI@sa.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'JC' followed by a long horizontal stroke.

Julianne Cirson
Accredited FOI Officer

26 June 2023

SCHEDULE OF DOCUMENTS

Freedom of Information application by the Hon Ben Hood MLC, seeking access to:

The latest copies of your internal complaint management policy for staff complaints and grievances, including procedure guides and reporting requirements.

Doc No	Description	Exemption Clause(s)	Determination
1	Employee Grievance Procedure		Document released in full
2	Respectful Behaviours Policy		Document released in full



DEMPRO.023 Employee Grievance Procedure

Purpose

This procedure supports the DEM Employment Policy and provides employees with proper and fair avenues of redress regarding improper or unreasonable conduct including unlawful discrimination, harassment, workplace violence or other inappropriate behaviour.

Additionally, it outlines the process to be followed should an employee be aggrieved by an administrative decision which directly affects them.

Scope

This procedure applies to all areas of DEM, to all employees and contractors working for DEM, or other agencies covered by approved Service Level Agreement with DEM.

Definitions

Term	Definition
Administrative Decision	A decision or failure or refusal to make a decision in the exercise or purported exercise of administrative authority.
Advocate	Unlike a support person, an Advocate can speak on behalf of another person. The use of an Advocate might be considered reasonable in certain circumstances.
Assault ¹	Criminal Law Consolidation Act 135 Section 20 defines Assault (1) A person commits an assault if the person, without the consent of another person (the victim)— (a) intentionally applies force (directly or indirectly) to the victim; or (b) intentionally makes physical contact (directly or indirectly) with the victim, knowing that the victim might reasonably object to the contact in the circumstances (whether or not the victim was at the time aware of the contact); or (c) threatens (by words or conduct) to apply force (directly or indirectly) to the victim and there are reasonable grounds for the victim to believe that— (i) the person who makes the threat is in a position to carry out the threat and intends to do so; or

¹ Criminal Law Consolidation Act 1935



DEMPRO.023 Employee Grievance Procedure

Term	Definition
	(ii) there is a real possibility that the person will carry out the threat; or (d) does an act of which the intended purpose is to apply force (directly or indirectly) to the victim; or (e) accosts or impedes another in a threatening manner.
Complainant	The person making the complaint.
Confidential	Keeping information relating to the complaint restricted to the smallest number of individuals involved.
Employment Decision²	An administrative decision relating to the employment of a person, including an administrative decision relating to the engagement, promotion, transfer, remuneration, entitlements, or termination of employment of a person and a decision to take disciplinary action against a person.
Prescribed Decision²	Can include: <ul style="list-style-type: none">• A decision to take disciplinary action; or• A decision to reduce an employee's remuneration level; or• A decision to transfer an employee or to assign an employee to different duties or a different place, made in conjunction with a decision to take disciplinary action or reduce an employee's remuneration level: or• A decision to transfer an employee, or to assign an employee to a different place, that reasonably requires the employee to change his or her place of residence.
Investigative Officer	Senior Officer authorised to conduct an investigation and to make recommendations to a delegate.
Natural Justice	Applies when a person's rights are likely to be affected. It refers to the person's right to have an unbiased decision made after being given an opportunity to present his or her case to the decision maker.
Respondent	The person responding to the complaint.

² Public Sector Act 2009



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Term	Definition
Review Officer	Senior Officer authorised to conduct an internal review and to make recommendations to the delegate.
SAET	South Australian Employment Tribunal
Support Person	A person of the employee's choice to accompany them to meetings to provide support but does not advocate on the employee's behalf.

Procedure Detail

It is the responsibility of every public sector employee to familiarise themselves with the *Code of Ethics for the South Australian Public Sector* (the Code of Ethics) and to conduct themselves in a manner that is consistent with the set values, behavioural principles and standards of professional conduct.

Managers within the department have a responsibility to treat employees fairly and consistently and not subject employees to arbitrary, improper or unreasonable administrative decisions.

Complaints and grievances may be prevented in some instances through:

- Inclusive decision-making processes
- Appropriate consultation
- Equitable treatment of all employees
- Clear and prompt communication of administrative decisions to all employees who may be affected by that decision
- Regular promotion of departmental policies and procedures, the DEM Enablers and High Performing Behaviour Framework, the Public Sector Values, and the Code of Ethics.

Complaints and/or grievances must be based on genuine reasons and must not be vexatious or frivolous. This means it is expected that a complaint will not be made for trivial or vengeful reasons but made in good faith in an attempt to resolve the matter. Should it be found that a complaint and/or grievance was frivolous or vexatious by nature, disciplinary action may be taken against the offending employee/s.

All employees, whether they are involved in a complaint and/or grievance or become aware that a complaint and/or grievance has been made, must ensure that their behaviour extends to ensuring the confidentiality of the complainant, the respondent, and the complaint and/or that the internal review process is respected.



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Natural justice and procedural fairness will be afforded to all parties throughout the complaint resolution and/or internal review process. All employees can access a support person during the investigation process.

Where employees experience threats and/or harm from other staff or customers/clients they should inform either;

- their advocate
- their line manager
- their director or executive director
- Human Resources (HR) or Work Health Safety
- Where appropriate, South Australian Police (SAPOL), Office for the Commissioner for Public Sector Employment (OCPSE) or the Equal Opportunity Commission (EOC).

Where a person has been information of such behaviour, they should make an assessment as to whether the alleged incident(s) should also be reported to SAPOL. This assessment should include behaviour that amounts to criminal acts such as physical or sexual assault or the threat to harm someone. Where this is unclear support can be provided by HR.

The impacted employee may also choose to report the behaviour to SAPOL.

Complaints regarding violence, bullying, harassment and/or discrimination

Any complaint of violence, bullying, harassment and/or discrimination (including of a sexual nature) must be made honestly and not be discussed with anyone other than those involved in complaint proceedings with a duty or legitimate right to know about the complaint, in order to minimise the number of people involved in the complaint process. A proven breach of confidentiality may result in disciplinary proceedings.

It is recognised in some instance's employees may choose to report or disclose an incident anonymously. While the department treats all disclosures and complaints seriously, it may be unable to investigate a behaviour or incident either properly or fully, provide a decision or take action to resolve the issue when the source of the complaint is unknown.

An anonymous disclosure is appropriate if the employee does not wish the department to respond to the disclosure but would like a record made of the incident to identify underlying issues, risks or trends; and where they recognise that the department may not be able to take formal action.

An employee may utilise an advocate to assist them lodge a complaint of violence, bullying, harassment and/or discrimination.



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An employee should lodge a complaint if they witness inappropriate behaviour towards another employee.

Where possible evidence should be collected and preserved. This may include a record of what happened (time, date, location, witnesses, factual description of what happened) and anything else you think may be important. Take a screen shot if the behaviour occurs online, preserve an area in the workplace if appropriate.

Appropriate³ allegations made by a complainant will be put to the individual respondent. Complaints will be investigated as possible grounds for misconduct and can result in disciplinary action. Procedural fairness and natural justice will be applied.

Principles of natural justice should be followed in all complaint investigations. These principles are designed to protect all parties and include that:

- The person who is alleged to have behaved inappropriately should be treated as innocent unless the allegations are founded on the balance of probabilities
- Allegations should be investigated promptly
- Appropriate allegations will be put to the person they are made against
- The respondent must be given a chance to explain their version of events
- If the complaint is upheld, any disciplinary action that is taken will be dependent upon the circumstances of the particular matter
- Mitigating factors should be taken into account when assessing if disciplinary action is necessary.

If appropriate, the department encourages the complainant to attempt to resolve the issue with the individual/s involved. Some issues can be resolved by talking to or contacting the person concerned and can also be done with the assistance of a support person if required.

However, should an employee decide to make a formal complaint alleging violence, bullying, harassment and/or discrimination then the procedure outlined below should be followed.

Initial options for resolution

Where the complainant does not feel comfortable talking to or contacting the person involved, they can contact their

- line manager
- director or executive director
- Human Resources or WHS

³ As determined by the delegate after consideration of the complaint and supporting evidence



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The primary aim is to resolve the matter and return the individuals to productive work as soon as possible without further violence, bullying, harassment and/or discriminatory behaviour.

Some options to resolve the situation include, but are not limited to:

- A facilitated conversation between the complainant and the respondent to discuss the issues raised and work towards a resolution
- (Re)circulating relevant policy and procedures relating to appropriate behaviour
- Organising relevant training for an employee or a group of staff
- A formal mediation process
- Change in supervision or working arrangements
- Disciplinary action, including reprimand, reassignment, reduction in salary or termination.

Lodging a formal complaint

Where resolution within the work unit has failed or is not appropriate, complaints may be raised with the relevant Director, Executive Director or Leader, People and Culture.

Complaints lodged should include:

- Details of the alleged incident(s)
- Details of the parties involved
- The date(s) on which the alleged incident(s) occurred
- Any evidence preserved
- Any action that was taken in response to the incident(s)
- Any suggestions on how the problem might be resolved.

The department will:

- Acknowledge the complaint in writing
- Discuss the complaint with the Leader, People and Culture for assessment.

This assessment will determine whether there is sufficient substance to support an investigation of the complaint in its entirety. If there is sufficient substance, the Leader, People and Culture will:

1. Appoint an Investigative Officer to conduct the investigation process with impartiality in accordance with the principles of procedural fairness in a timely manner (this may include being referred to an external investigator; Crown Solicitors Office or SAPOL)
2. Notify the complainant of the decision to conduct an investigation into the complaint
3. Determine if it is appropriate to notify the respondent of the scope of the complaint and the intended investigation, and if so, do so.



DEMPRO.023 Employee Grievance Procedure

- Afford the respondent every opportunity to make an informed response to the complaint
- 4. Present an investigation report to the relevant delegate suggesting findings they believe are available based on the balance of probabilities⁴ test ensuring that all relevant matters have been investigated and the employees have been given every opportunity to explain and/or justify their actions. If disciplinary action in accordance with the *Public Sector Act 2009* (PS Act), is recommended then the report may also be provided to the relevant delegate (if different from above)
- 5. Notify the complainant and the respondent of the findings. If disciplinary action is taken, review options will be provided.

Review of an Employment Decision (pursuant to the PS Act)

For detailed information about review of an employment decision refer to *Commissioner's Guideline: Review of Employment Decisions*.

The provisions for internal and external review are only applicable to non-executive employees.

Request for an Internal Review (of employment decisions)

The aggrieved employee should make application for an internal review directly to the Chief Executive, in writing, outlining the specific employment decision for review and providing appropriate details to support the request. On receipt of the request, the Chief Executive will refer the matter to the Leader, People and Culture who will appoint a relevant Review Officer.

Timelines associated with Internal Reviews to be conducted by the department are in accordance with the PS Act and are as follows:

- If the matter relates to a merit-based selection process, the request must be made within seven days after the day the employee was informed of the decision.

All other requests for Internal Reviews must be lodged within 21 days after the day on which the employee was notified of management's decision/action.

- The Internal Review must commence within 21 days of receipt of the application for internal review (see Regulation 26(4)).
- The Internal Review process must be completed within 21 days after the employee has finished providing information and making submissions on their application (see Regulation 26(5)).

⁴ Guideline of the Commissioner for Public Sector Employment - [Management of Unsatisfactory Performance \(Including Misconduct\)](#)



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- If the employee is not satisfied with the outcome/decision of an Internal Review, the employee can lodge a request for an External Review with the SAET.

Request for an External Review (of employment decisions)

In most cases, an employee will need to lodge a request for the department to conduct an Internal Review before proceeding to request an External Review. If the employee remains aggrieved following an Internal Review, they may apply for an External Review with the SAET.

In the case of termination, an employee who believes the termination was harsh, unjust or unreasonable can lodge an application to the SAET under section 106 of the *Fair Work Act 1994*. Applications must be lodged within twenty one (21) days of the date the termination takes effect.

Reporting

The department may be required to report on the amount of investigations conducted and time taken to conduct through the State of the Sector report generated by the Office of the Commissioner for Public Sector Employment. No personal information is included in this reporting.

Review Period

Three years from the date of approval or as required.

Relevant Information

- [Fair Work Act 1994](#)
- [Public Sector Act 2009](#)
- [Public Sector \(Honesty and Accountability\) Act 1995](#)
- [Public Sector Regulations 2010](#)
- [Code of Ethics for the South Australian Public Sector](#)
- [Commissioner for Public Sector Employment Guideline: Management of Unsatisfactory Performance \(including misconduct\)](#)
- [Commissioner for Public Sector Employment Guideline: Review of Employment Decisions](#)
- [Disability Access and Inclusion Plan](#)
- [Diversity Strategy](#)
- [Domestic Violence Policy](#)
- [Domestic Violence Procedure](#)



DEMPRO.023 Employee Grievance Procedure

- [Employment Policy](#)
- [Gender Equality and Respect Action Plan](#)
- [Respectful Behaviours Policy](#)
- [South Australian Employment Tribunal](#)

Feedback

To provide feedback on this document email to dem.policiesandprocedures@sa.gov.au

DOCUMENT CONTROL

Approved by: Paul Heithersay	Title: Chief Executive
Contact person: Leader People and Culture	Telephone: 8429 3644
Division: Corporate Services	Date of approval: August 2019
Version No: V3.0	Date of review: December 2021
Next review date: March 2024	

DEMPOL.057 Respectful Behaviours Policy

Purpose

The purpose of this policy is to ensure that all staff are aware of the department's expectations that employees interact in a respectful and professional manner that fosters equality, fairness and dignity in the workplace.

Scope

This policy applies to all areas of DEM, to all employees and contractors working for DEM, or other agencies covered by approved Service Level Agreement with DEM.

Definitions

Term	Definition
Direct Discrimination	To treat a person less favourably under one of the grounds as prescribed in law
Indirect Discrimination	Indirect discrimination occurs when there is a requirement or rule that appears on the surface to treat everyone equitably but which in fact has an unfavourable effect on a certain individual or group of people.
Repeated Behaviour	Refers to the persistent nature of the behaviour and can involve a range of behaviours over time.
Respectful Treatment	Treating people in a polite, courteous and considerate manner. This includes behaviours, communications and actions.
Unreasonable/ Inappropriate Behaviour	Behaviour that a reasonable person, having regard for the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating, discriminating or threatening.
Victimisation	Subjecting or threatening to subject a person to some form of detriment because they have reasonably asserted their rights under equal opportunity legislation, or because they have supported someone else who acted on those rights.
Wellbeing	A condition of psychological, emotional and physical balance.
Workplace	For the purposes of this policy the workplace includes work related activities such as sanctioned social situations that are linked to work. This would include Christmas Parties, education and training events, social work events and conferences.
Workplace Bullying	Repeated and unreasonable behaviour directed towards an individual or a group of people that creates a risk to health and safety.



DEMPOL.057 Respectful Behaviours Policy

Policy Detail

The department is committed to promoting a positive work environment which supports the wellbeing of our people by:

- developing and embedding our [Enablers and High Performing Behaviours](#);
- adopting appropriate practices, underpinned by legislation and policy, which result in improved workforce and business outcomes.

Our Enablers and High Performing Behaviours clearly articulate our commitment to respect our colleagues and value our personal and professional diversity to ensure we all contribute to our success.

The department is committed to zero tolerance towards workplace violence, unfair discrimination, bullying, and harassment and will take an active approach to address and eliminate such behaviours.

Inappropriate behaviours can be considered a workplace hazard that can cause extensive health problems for employees, including physical and psychological illnesses and injuries. In addition, disrespectful treatment at work can also constitute a breach of the professional conduct standards as outlined in the [Code of Ethics](#) which requires all public sector employees to uphold the values of the Public Sector.

Deliberate breach or circumvention of the principles of the policy or any documents referenced in this document, may lead to the appropriate disciplinary action in accordance with the [Public Sector Act \(2009\)](#) (PS Act). Any incidents of inappropriate or disrespectful behaviour should be addressed in a prompt and constructive manner in accordance of the principles of procedural fairness.

Discrimination and harassment constitute a denial of equality in the workplace and is not consistent with the right of employees to 'safe and healthy working conditions'.

Discrimination and harassment is prohibited by both this policy as well as by Federal and State legislation.

Public sector environment

Public sector principles are articulated in the PS Act and include public focus, responsiveness, collaboration, excellence, ethical behaviour and professional integrity as well as fulfilling legal requirements.

The Code of Ethics outlines the values as the foundation for ethical behaviour in the SA Public Sector as well as detailing professional conduct standards. The Public Sector values provide further conduct and expectations of all South Australian public servants.

The DEM Enablers and high performing behaviour statements bring the Public Sector values to life and provide meaning to how they are applied in practice in DEM.



DEMPOL.057 Respectful Behaviours Policy

Safe and fair work environment

The department's employees, contractors and volunteers are to act in a positive way to maintain a safe working environment while they are employed.

The department promotes practices that support workplace health and wellbeing and achieve improved workforce and business outcomes. The PS Act and *Fair Work Act 1994* set the legislative framework for fairness in the workplace.

The *Work Health and Safety Act 2012* sets the legal framework for safety in the workplace.

The following principles are to be followed in the workplace:

- Personal safety is of paramount consideration
- Basic human rights are unaltered by special needs, cultural, or socioeconomic factors
- Individuals are deserving of respect, care and protection
- Individuals can exercise their right to have an advocate act on their behalf.

Non-discriminatory workplace

Equal opportunity legislation protects citizens from discrimination. It is unlawful to treat people unfairly or less favourably because of their particular personal characteristics or because they belong to a certain group. To help ensure this, we have the following anti-discrimination laws in South Australia:

- [Equal Opportunity Act 1984](#) (SA)
- [Public Interest Disclosure Act 2018](#) (SA)
- [Racial Vilification Act 1996](#) (SA)
- [Sex Discrimination Act 1984](#)
- The racial victimisation provisions in the [Civil Liability Act 1936](#) (SA)

Discrimination is unlawful under the *Equal Opportunity Act 1984* and can include (but not limited to) direct and indirect discrimination based on:

- Age
- Sex, chosen gender or sexuality
- Race
- Disability
- Marital or domestic partnership status
- Religious Appearance or Dress
- Pregnancy
- Caring responsibilities.



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Bullying and / or harassment

Bullying and harassment will not be tolerated in the workplace. Bullying and harassment can include behaviour that:

- Is directed towards an employee or a group of employees
- Is repeated and systematic
- A reasonable person, having regard to all the circumstances, would expect that it would victimise, humiliate, undermine or threaten the employee or employees to whom the behaviour is directed
- Creates a risk to health or safety.

Examples of behaviour, whether intentional or unintentional, that may be considered to be workplace bullying if they are repeated, unreasonable and create a risk to health and safety, include but is not limited to:

- Abusive, insulting or offensive language or comments
- Unjustified criticism or complaints
- Continuously and deliberately excluding someone from workplace activities
- Withholding information that is vital for effective work performance
- Setting unreasonable timelines or constantly changing deadlines
- Setting tasks that are unreasonably below or beyond a person's skill level
- Denying access to information, supervision, consultation or resources such that it has a detriment to the worker
- Spreading misinformation or malicious rumours.

A single incident of unreasonable behaviour is not workplace bullying, however it may be repeated or escalated and so should not be ignored.

Bullying Behaviour does not include:

- Reasonable action taken in a reasonable manner by an employer to transfer, demote, discipline, counsel, retrench or dismiss an employee
- A decision by an employer, based on reasonable grounds, not to award or provide a promotion, transfer, or benefit in connection with an employee
- Reasonable administrative action taken in action taken in a reasonable manner by an employer in connection with an employee's performance.

Safe Work Australia have released a Guide for Preventing and Responding to Workplace Bullying and Dealing with Workplace Bullying – A Workers Guide. Further guidance can be found on the SafeWork SA website Workplace Bullying.

Victimisation

It is unlawful to victimise a person specifically because they have:



DEMPOL.057 Respectful Behaviours Policy

- Brought proceedings against a person
- Given evidence or information in proceedings or
- made a formal complaint

Under the *Public Interest Disclosure Act 2018*, the *Independent Commission Against Corruption Act 2012* or Equal Opportunity legislation.

Sexual harassment

Sexual harassment is any unwanted or unwelcome sexual behaviour, which a reasonable person having regard to all the circumstances would anticipate that the person would feel offended, humiliated or intimidated.

With sexual harassment, what is important is how the behaviour was perceived, not necessarily how it was intended. Workplace and work related behaviour that qualifies as sexual harassment can be verbal, written, visual or physical. Sexual harassment can take many forms, including, but not limited to, unwelcome:

- Touching or kissing in a sexual way;
- Comments or behaviours such as leering or staring, that is sexually suggestive;
- Sexually explicit pictures, objects or reading matter;
- Direct or implied sexual propositions, or requests for dates;
- Intrusive questions about sexual activity.

The *Sex Discrimination Act* makes it unlawful for a person to sexually harass another person in a number of areas including employment, education, the provision of goods and services and accommodation.

What to do if you experience inappropriate behaviour (including bullying, harassment or sexual harassment)

A person may elect, according to the nature and seriousness of the behaviour, to:

- Resolve the issue informally by approaching the parties involved directly and discussing their concerns, or
- Seek support through the generally accepted reporting structure i.e. approach the line manager, and / or the relevant division / director; or
- Follow the complaint process as outlined in the DEMPRO.001 - DEM Employee Grievance Procedure which can be utilised to address employee concerns or complaints of unfair treatment, bullying, discrimination, harassment which are related to work or the work environment, or
- Approach an external agency (e.g. Commissioner for Equal Opportunity, Australian Human Rights Commission, Office of the Employee Ombudsman, Work Health & Safety Inspector).



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NB: Every employee retains the right, at any time, to lodge a complaint or appeal with an outside agency.

Roles and Responsibilities

Roles	Responsibilities
Chief Executive	<ul style="list-style-type: none">• ensure all staff are aware of their rights.• has a legal responsibility to take all reasonable steps to ensure that the workplace and the services provided to employees and clients are free of discrimination and harassment.• take reasonable steps to address concerns as they arise.• provide respectful, sensitive and non-judgmental support.
Managers and Supervisors	<ul style="list-style-type: none">• have a legal responsibility to take all reasonable steps to ensure that the workplace and the services provided to employees and clients are free of discrimination and harassment.• take reasonable steps to address concerns as they arise.• provide respectful, sensitive and non-judgmental support• ensure confidentiality of information.
Employees	<ul style="list-style-type: none">• abide by the Code of Ethics, which requires exhibiting the highest standards of professional conduct and respect in and outside the workplace.• report inappropriate behaviour observed in the workplace.• ensure confidentiality of information.
People and Culture	<ul style="list-style-type: none">• provide advice and support to employees and managers on appropriate behaviours in the workplace.• investigate matters as they arise.• ensure confidentiality of information.

Reporting

Not relevant

Review Period

Three years from the date of approval

Relevant Information

- [Civil Liability Act 1936](#)
- [Equal Opportunity Act 1984](#)
- [Fair Work Act 1994](#)
- [Independent Commission against Corruption Act 2012](#)



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- [Public Interest Disclosure Act 2018](#)
- [Public Sector Act 2009](#)
- [Public Sector \(Honesty and Accountability\) Act 1995](#)
- [Racial Vilification Act 1996](#)
- [Sexual Discrimination Act 1984](#)
- [Work Health and Safety Act 2012](#)
- [Code of Ethics for the South Australian Public Sector](#)
- [Public Sector Values](#)

Feedback

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Contact person: Leader, People and Culture	Telephone: 84293644
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