

## ADMINISTRATION POLICIES



### PERFORMANCE AND MISCONDUCT POLICY

#### **Objective**

The main objectives of this policy are to:

- establish a consistent, equal and fair procedure for addressing unsatisfactory conduct and/or performance;
- ensure that Council adheres to our legal obligations relating to disciplinary procedures as per the Local Government (State) Award;
- ensure that employees are treated consistently, equally and fairly;
- correct and/or improve the standard of conduct of an employee where necessary;
- provide employees with the opportunity to correct unacceptable conduct. This does not apply in situations where summary dismissal is appropriate.

This policy may be used to deal with necessary disciplinary action arising from conduct in any circumstances connected with work and this includes out-of-work conduct and conduct at work-related function. This policy also applies when employees go to other workplaces in connection with work.

This policy application is subject to any relevant provisions in the Local Government (State) Award 2017 and ensures adherence to the clauses in the Award relating to disciplinary action.

If an employee's conduct involves a potential breach of any Australian law, Council may notice the police or other relevant authority as well as taking actions detailed in this policy.

#### **Scope**

This policy applies to all employees within Council, and sets out the way in which allegations or complaints of work performance or inappropriate conduct by staff members are to be dealt with.

Inappropriate conduct refers to any behaviour that is not acceptable within the workplace and includes (but is not limited to):

- misconduct at work or at a Council or work related sponsored function or event, and serious misconduct such as theft, fraud or violence;
- breaches of Council policies and procedures;
- breaches of Council's Code of Conduct;
- breaches of legislation relating to sexual harassment, bullying, harassment, discrimination, privacy etc.
- behaviour which, due to its nature, has the potential to have an adverse impact on the Council's reputation; and
- any other behaviour that is inconsistent with the Council's vision and values.

In this policy, the term "misconduct" and "inappropriate conduct" are used interchangeably, and are intended to cover serious misconduct unless otherwise indicated.

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#### **POLICY**

##### **Grounds for Disciplinary Action**

Disciplinary action may be initiated in circumstances that include but are not limited to:

- Failure to comply with WHS requirements/policies
- Poor attendance and/or punctuality
- Unsatisfactory work performance
- Failure to comply with Council's Code of Conduct
- Failure to comply with reasonable and lawful direction
- Failure to comply with Council policies
- Bringing Council into disrepute
- Behaviour that contravenes legislation including (but not limited to) bullying, harassment, discrimination, privacy
- Corrupt conduct

##### **Disciplinary Procedure**

The procedures outlined below are intended as a guide only to the disciplinary procedures that may be implemented by Council and should be read in conjunction with the Disciplinary Procedures of the Local Government (State) Award. In every case, the actual disciplinary procedure to be adopted will be at Council's discretion, having regard to the Employee's position and in consideration of the circumstances of the case as a whole.

Nothing in this Policy prevents Council from issuing a final warning at any stage of the process if the circumstances warrant, similarly nothing in this policy prevents Council from dismissing an employee at any stage of the procedure set out in this policy, for example in circumstances involving serious misconduct by an employee. Summary dismissal is dismissal without notice.

When dealing with matters related to performance, the nature, severity and frequency of the alleged misconduct must be assessed to determine what approach should be taken to deal with the issue. Advice should always be sought from the Human Resources Manager to assist in this determination.

A less formal process may be taken when the alleged misconduct is not serious in nature or for other reasons a formal process is not necessary or appropriate.

Where an issue is dealt with informally, potential outcomes can include:

- verbal counselling;
- coaching;
- training.

Informal processes would not usually give rise to a written warning. The aim is to ensure that the staff member understands what behaviour was unacceptable and what standards of behaviour are expected, and to take steps to ensure the behaviour is not repeated.

A record that an informal discussion has taken place should be placed within the Supervisor's/Manager's Diary.

Should the staff member wish, they are entitled to have a support person present at any informal counselling session.

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A more formal process should be used for more serious matters, including any alleged conduct which, if proven, would result in disciplinary action which may include termination of employment.

A formal process usually involves:

- formal notification to the staff member concerned of the alleged misconduct, providing sufficient detail to enable the person to properly respond;
- an investigation into the alleged conduct;
- an opportunity for the staff member to provide a response to the allegations.

Should the staff member wish, they are entitled to have a support person present at any stage of this process.

In some cases, an investigation is not required to determine the facts involved, such as where the person admits the conduct and there is no dispute about the facts.

Sometimes when a formal investigation is undertaken, it may be necessary to take some initial action to protect the interests of all staff members involved and the Council. Any such initial action is taken without prejudice, and has no impact on the ultimate outcome of the investigation.

This may involve:

- standing the staff member(s) aside pending the outcome of the investigation, so that they are not required to attend work in this period (although they must be available to attend if required, including for the purpose of the investigation);
- restricting access to Council property and systems (eg IT, keys );
- suspending Council benefits or use of tools of trade (eg corporate credit cards, cars);
- any other action as necessary in the circumstances.

Staff members have the right to have a support person during formal meetings as part of this process.

The Local Government (State) Award 2017 sets out the formal disciplinary procedures to be done as following:

1. Initial Warning issued (First Warning) as per Award resulting from unsatisfactory work performance or conduct.
  - Monitor performance and/or conduct.
  - No improvement - move to next step.
2. Reoccurrence of unsatisfactory work performance and/or conduct.
  - Formal Warning and discipline counselling (Second Warning) as per Award.
  - Unsatisfactory work performance and/or conduct continues or resumes.
3. Final Warning (Third Warning) as per Award.
4. If work performance or conduct does not improve then further disciplinary action may be taken.

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#### **Investigations**

An investigation is a process undertaken by an appropriate Departmental Head/ General Manager and Council's Human Resource Manager, or outsourced to an external party, to gather evidence about an allegation or complaint, in order to determine whether it can be substantiated or not. Where an allegation is substantiated, a disciplinary outcome, including dismissal, may result.

Investigations should remain confidential at all times, and may include the following steps as appropriate:

- gathering appropriate and relevant evidence, including where relevant witness statements or records;
- obtaining a written complaint or statement from the person who has raised the allegations (the complainant);
- providing a written letter containing the allegations of inappropriate conduct to the staff member (the respondent);
- considering any written response from respondent;
- conducting further interviews as required based on information presented by witnesses or the respondent;
- preparing a written investigation report, in which the relevant evidence is set out and conclusions are presented regarding whether the allegations are substantiated or not;
- communicating the findings of the investigation to the respondent whilst protecting confidentiality to the best of our ability.

#### **Procedural Fairness**

Procedural fairness is an integral component of any investigation or disciplinary process. What is required for procedural fairness depends on the circumstances of the case, but typically involves:

- providing the staff member with a written outline of the alleged inappropriate conduct;
- providing the staff member with the substance of the allegations or complaint. Note that this does not require provision of any actual written complaint, but requires the provision to the staff member of enough information to enable them to understand and adequately respond to the allegations;
- providing the staff member with reasonable time to consider the allegations, and where appropriate to seek advice;
- enabling the staff member to provide a written response to the allegations, which is then considered by Council;
- providing the staff member with the opportunity to provide a verbal response to the allegations or complaint;
- providing the staff member with the opportunity to make a submission about any proposed disciplinary outcome (especially if termination of employment is being proposed);
- allowing the staff member to have a support person present at all stages.

#### **Disciplinary Outcomes**

Where an allegation of inappropriate workplace behavior/serious misconduct is substantiated, General Manager (in consultation with the staff member's Departmental Head and HR ) determine what, if any, disciplinary action may result.

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In coming to this view, the General Manager should consider all relevant matters including:

- the nature and seriousness of the substantiated allegation(s);
- the impact of the conduct on other staff members;
- the potential impact of the substantiated conduct on Council's reputation;
- the staff member's knowledge of the relevant standards or behavior or policy requirements (or the level of knowledge that could reasonably be expected of them);
- the staff member's employment history, including previous disciplinary matters and warnings;
- any relevant matters raised by the staff member about the conduct or the staff member's circumstances;
- where termination is being considered, whether the staff member was aware (or should have reasonably been aware) that the conduct could have led to the termination of their employment.

Where termination is considered, advice must also be sought from the General Manager as the General Manager is the only person with the authority to terminate employment.

#### **Types of disciplinary outcomes**

Where a formal approach is taken and an allegation is substantiated, potential disciplinary outcomes include formal written warnings, demotion and termination of employment.

#### Formal written warnings

A formal warning may be a first warning, subsequent warning, or first and final warning.

All formal warnings should be presented to the staff member in writing, and must be placed on the staff member's file. The staff member may also place a response to that warning on their file if they choose.

These warnings represent a historical record of the staff member's employment. Over time, however the relevance of a previous warning to future disciplinary conduct will diminish, subject to the nature of the future conduct and seriousness of the warnings.

If disciplinary action taken against an employee consists of a written warning to be placed on employee's employment record, it must state the following:

- the employee's conduct that is not acceptable;
- the remedial action needed to rectify the conduct;
- the period within which the remedial action is to be taken; and
- the possible consequences for a repeat of the conduct by the employee

However, an employee may make an application to delete or amend any disciplinary or other record mentioned on their personnel file which the employee believes is incorrect, out-of-date, and incomplete or misleading as this is an award provision.

In this instance, the General Manager will review all of the relevant information and make a decision based on the factual evidence at hand and a balance of probabilities. The individual who has made the application to amend or delete things on their personnel file will be advised in writing of the outcome of their application.

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#### Demotion

Subject to the nature of the allegations and in adherence with the Local Government (State) Award 2017's provisions, Council may demote an employee to a lower paid position. As per the award, the employee will not 'suffer a reduction in rate of pay for 2 weeks from the date of demotion.'

#### Termination of employment

Termination of a staff member's employment may be appropriate where there has been a serious breach of standards, Council policy or procedures and/or where the staff member has received prior warnings for misconduct. Normally, termination of employment will be with pay in lieu of notice. In cases of serious misconduct, Council has a right to terminate a person summarily, without notice.

If the decision is made to dismiss the employee, the employee should be given:

- written notice of the day of the dismissal or payment in lieu of notice, and if dismissal is due to serious misconduct;
- payment of all accrued entitlements;
- payment of any outstanding entitlements; and
- a Statement of Service, if one is requested.

On dismissal, the employee must immediately return all of Council's property in the employee's possession or control to Council.

#### **Associated Documents**

This policy should be read in conjunction with:

- Walcha Council Alcohol and Other Drugs Policy
- Walcha Council Alcohol and Other Drugs Procedure
- Walcha Council Code of Conduct
- Local Government (State) Award 2017
- Walcha Council Harassment, Anti-Discrimination and Bullying Policy

#### **Policy Administration**

This policy is administered by Human Resources and will be reviewed every two years and updated where applicable. Only the General Manager has the authority to terminate the employment of an employee.

#### **POLICY VERSION AND REVISION INFORMATION**

Policy Authorised by Council.

Current Version: 1

Adoption Date: 13 February 2019 – Resolution: 122/20182019

Review Date: October 2020