

**DISCIPLINARY AND FAIR TREATMENT**

**Procedure 5.5.11**

Policy No. and Title	5.5	Conditions of Employment Policy
Procedure	5.5.11	Disciplinary and Fair Treatment
Version	1	
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**1 INTRODUCTION**

Council recognises that the need to take disciplinary action inevitably occurs in every organisation. Any disciplinary procedure should ensure the fair treatment of all employees and to promote improvement in performance by encouraging employees to accept responsibility for their own actions in the workplace. The process should allow for re-education as well as ensuring that the facts to support any further actions are gathered and considered. It should also follow the conditions set out in the various State and Federal Acts/Awards and ensure that sufficient evidence is gathered for presentation to any Industrial and/or Civil Court if necessary.

**2 GUIDELINES**

The Employee Disciplinary Process is outlined in Clause 32 of the Local Government (State) Award and sets out clear procedures to be followed in terms of disciplinary procedures, these procedures must be read in conjunction with the award provision.

**3 DISCIPLINARY PROCEDURES**

- a) Where an employee's work performance or conduct is considered to be unsatisfactory, the employee shall be informed in the first instance of the nature of the unsatisfactory performance or conduct and of the required standard to be achieved, by the employee's immediate supervisor or other appropriate officer or nominee of Council.
- b) Unsatisfactory work performance or conduct shall include, but not be limited to, neglect of duties, breach of discipline, breach of Council's code of conduct, absenteeism and non-compliance with safety standards. A written record shall be kept on the appropriate file of such initial warning. The employee shall be entitled to sight and sign such written record and add any notations regarding the contents of such record.
- c) Where there is a re-occurrence of the unsatisfactory performance or conduct, the employee shall be warned formally in writing by the appropriate office of Council and counselled. Counselling should reinforce the standard of work or conduct expected and, where the employee is failing to meet these required standards, a suitable review period of monitoring the employee's performance; the severity of the situation; and whether disciplinary action will follow should the employee's work performance or conduct not improve.
- d) A written record shall be kept of such formal warning and counselling. The employee shall be entitled to sight and sign such written record and add any notations regarding the contents of such record.
- e) If the employee's unsatisfactory performance or conduct continues or resumes following the formal warning and counselling, the employee shall be given a final warning in writing giving notice of disciplinary action should the unsatisfactory work performance or conduct not cease immediately.

- f) If the employee's unsatisfactory performance or conduct does not improve after the final warning further disciplinary action shall be taken.
- g) This shall not affect the rights of the Council to take other disciplinary action before and/or during the above procedure in cases of misconduct or where the employee's performance warrants such action including:
  - i) At any stage during this procedure Council may immediately suspend an employee without pay.
  - ii) The suspension of an employee from duty does not prevent the council from granting to an employee accrued leave for whole or part for the period of the suspension.
  - iii) Suspension from duty shall not affect an employee's continuity of service for the purposes of accruing leave entitlements.
  - iv) If after investigation, the reasons for suspension are found to be inappropriate, the employee shall not suffer any loss of pay for the period under suspension.
- h) At any stage during this procedure Council shall be entitled to demote an employee to a lower position, provided that Council shall give not less than two weeks notice in writing of its intention to demote.
- i) Nothing in this clause prevents Council from terminating an employee's service in accordance with Clause 34, Termination of Employment of the Local Government (State) Award.
- j) At any counselling or disciplinary session the staff member may elect to have an independent observer present. That person may be a representative of a union, provided the staff member is a current financial member of the union at the time of the incident, or another personal representative.
- k) Council is entitled to request the presence of a union representative at any stage.
- l) At anytime during the process the staff member may have access to Council's Employee Assistance program (5.5.42).
- m) At anytime during the process the staff member may speak to another level of management, including Director and or Team Leader Human Resources if they feel they are not being treated fairly.
- n) Employees shall have access to their personal files and may take notes and/or obtain copies of the contents of the file.
- o) In the event that any employee is of the opinion that any disciplinary or other records contained on their personal files is incorrect, out of date, incomplete or misleading, such employee may make application to the General Manager, for the deletion or appropriate amendments of such record.

#### **4 GUIDELINES FOR THE PROCESS OF DISCIPLINE**

Before any consideration is given to initiating disciplinary action, pertinent facts must be gathered and unemotionally considered. This is the first element of the 'due process of discipline.' The emphasis is on facts, not opinions. An individual's observations (a supervisor's complaint, witnesses' statements) are to be in writing. Although the emphasis here is on accuracy, time is also important and any disciplinary action should occur as soon as possible after the event.

## **5 STAGE 1: COUNSELLING AND INITIAL REPRIMAND**

- a) The Manager or supervisor is to speak to the employee at the first transgression pointing out the error(s) and/or point(s) of unsatisfactory performance or conduct. It is important that the correct behaviour is emphasised.
- b) The employee is to be reprimanded by his/her Manager/Supervisor. Advice and counsel must be given to assist the employee to improve. The employee must be advised that a record of disciplinary action will be placed on his/her personal file.

This action should cover:

- i) A statement - this is a "Disciplinary Interview".
  - ii) A specific outline of the transgression.
  - iii) A statement as to why the performance/conduct is unacceptable.
  - iv) A description of acceptable behaviour.
  - v) The consequences if acceptable behaviour is not followed are to be detailed.
- c) Unsatisfactory work performance or conduct will include neglect of duty, breach of discipline, absenteeism, breach of Code of Conduct, non-compliance with safety standards or procedures.
  - d) A written record (First Formal Counselling Session Form (*Attachment A*)) of the counselling and initial reprimand (Stage 1) is to be detailed. The employee is entitled to sight and sign such written record and add notations regarding the content of such record. The original only is to be forwarded to the Human Resources section for advice and placement on the employee's personal file.

## **6 STAGE 2: SECOND WARNING – WRITTEN WARNING AND INTERVIEW**

- a) Where there is a recurrence, or no improvement of the employee's unsatisfactory performance or conduct, a second warning will be issued in writing (Second Formal Counselling Session Form (*Attachment B*)) by the Manager and signed by the employee. If the employee declines to sign the record, this is to be noted.
- b) This warning will be recorded on the employee's personal file and a copy given to the employee.
- c) The employee is to be asked if a Union Representative or personal representative is required to be present at this interview. If the employee declines the offer of having a representative present, this must be noted in the record of disciplinary interview.
- d) The Team Leader Human Resources or a third party nominated by the General Manager should be present at the interview.

## **7 STAGE 3: FINAL WARNING**

- a) If the employee's unsatisfactory performance or misconduct continues or resumes following the Second Warning, it will result in the issuing of a "Final

Warning" by the Manager in the presence of the employee's Union Representative and the Team Leader Human Resources.

- b) This warning is to be recorded (Third Formal Counselling Session Form (*Attachment C*)) on the employee's personal file and carry the signatures of the employee, the Manager, the Union Representative and the Team Leader Human Resources. If any party declines to sign the record of Disciplinary Action this must be noted.
- c) It is essential that the employee be made aware that this is to be regarded as the "Final Warning". The record must indicate this.

## **8 STAGE 4: FINAL ACTION**

- a) If the employee's performance or conduct does not improve after the "Final Warning", the Manager recommends an appropriate course of action to the Director. If the recommendation is for dismissal, the General Manager is to be advised in writing.
- b) Dismissal must be authorised by the General Manager.

## **9 IMPORTANT GENERAL INFORMATION**

- a) Employees shall have access to their personal files and may take notes and/or obtain copies of the contents of the file.
- b) At each stage of this procedure, where disciplinary action is contemplated it is important staff should be advised of their rights, as expressed in any applicable Industrial Award or Agreement - to be heard in the company of their Union. If a staff member declines to exercise this right, this must be stated on the documentation of interview.
- c) Managers are responsible to protect the Council against accusation of wrongful dismissal and to ensure employees are treated fairly on this account. To ensure uniformity of practice, Managers must refer all matters which may lead to dismissal to their Department Director and the Team Leader Human Resources.
- d) In the case of dismissal or suspension, Council must be protected against possible litigated action for damages on account of defamatory or slanderous statements. Under no circumstances should any statements and/or comments be made in the general workplace in relation to any specific aspects or details of the dismissal. It should always be remembered that it is the General Manager's decision to terminate an employee's service.
- e) In the event that an employee's record warrants further discipline and a period of twelve months has elapsed since a previous warning, this employee will be evaluated as to whether they should remain at the same stage in the "Progressive Stages" procedures and not automatically proceed to the next stage.

## **VARIATION**

Council reserves the right to renew, vary or revoke this procedure which will be reviewed periodically to ensure it is relevant and appropriate.

**FIRST FORMAL COUNSELLING SESSION**  
**FILE NOTE: – FIRST WARNING**

Date:		
Employee Name:		
Present Position:		
Subject:		
	Name	Title
Counselling Session Conducted By:		
Third Party Nominated By Council:		
Personal Representative:		
Reason for Counselling:		
Action Plan:		
Review Date:		
Employee's Comments:		
Employee's Signature:		
Manager's Signature:		
Third Party Signature:		
Personal Representative Signature:		

**SECOND FORMAL COUNSELLING SESSION**  
**FILE NOTE: – SECOND WARNING**

Date:		
Employee Name:		
Present Position:		
Subject:		
	Name	Title
Counselling Session Conducted By:		
Third Party Nominated By Council:		
Personal Representative:		
Reason for Counselling:		
Action Plan:		
Review Date:		
Employee's Comments:		
Employee's Signature:		
Manager's Signature:		
Third Party Signature:		
Personal Representative Signature		

**THIRD FORMAL COUNSELLING SESSION  
FILE NOTE: - FINAL WARNING**

Date:		
Employee Name:		
Present Position:		
Subject:		
	Name	Title
Counselling Session Conducted By:		
Third Party Nominated By Council:		
Personal Representative:		
Reason for Counselling:		
Action Plan:		
Review Date:		
Employee's Comments:		
Employee's Signature:		
Manager's Signature:		
Third Party Signature:		
Personal Representative:		