



CHERBOURG ABORIGINAL SHIRE COUNCIL

STAFF DISCIPLINARY POLICY

POLICY DETAIL:

PURPOSE:

The purpose of this policy is to establish clear guidelines for managing performance issues and any associated disciplinary processes within the Cherbourg Aboriginal Shire Council ("CASC") This policy is to ensure that employees are being treated fairly, uniformly and consistently. Having regards to the principles of procedural fairness and natural justice.

The policy has the objective of maintaining and enhancing the work performance of all employees and ensuring that acceptable standards of conduct and established policies and procedures are adhered to by all employees. The policy is designed to encourage a problem solving approach to managing employee performance issues with an emphasis on greater individual responsibility.

SCOPE OF POLICY:

The policy applies to all award coverage employees.

LEGISLATION & RELATED DOCUMENTS:

Local Government Act 2009

Industrial Relations Act 1999

CASC Employee Code of Conduct (Currently in DRAFT)

Equal Employment Opportunity Policy

EMPLOYEE'S RIGHTS AND OBLIGATIONS UNDER THIS POLICY:

- To co-operate fully, truthfully and openly in any proceedings under this policy.
- To have access to their personnel file and may take notes and / or obtain copies of the contents of the file.
- To be entitled to sight, note and / or respond to any information placed on their personnel file that may be regarded as adverse.
- To be entitled to make application to delete or amend any disciplinary or other record mentioned on their personnel file, which the employee believes, is incorrect, out of date, incomplete or misleading.
- To be entitled to request the presence of a union representative or witness and / or the involvement of their union.

EMPLOYER'S RIGHTS AND OBLIGATIONS UNDER THIS POLICY:

- In order for this policy to operate effectively Council must ensure that expected levels of performance and conduct are made clear to all employees and that all employees are aware of the operational procedures, safety requirements, employment policies, job performance standards and delegated authorities in relation to their position with Council.
- Council's actions must always be in proportion to the seriousness of the incident.
- To maintain accurate and complete records of all issues to which this

- policy applies. To properly conduct and efficiently conclude any investigation under this policy.
- CASC at its discretion may conduct an investigation internally or use an external investigator.

The Chief Executive Officer may remove an employee from duty with or without pay during an investigation process or right of response period with the following considerations:

- The employee may be directed to perform other duties or to not attend work during the period that the disciplinary action or investigation period is being undertaken. Based on the seriousness of the allegations, the employee may be stood down from normal duties with pay during this period of non attendance.
- Alternatively, the employee will be suspended from duties which will be unpaid.
- If, after investigation, the reasons for the suspension are found to be inappropriate or unsubstantiated, the employee shall not suffer any loss of pay for the period under suspension.
- The suspension shall not affect the employee's continuity of service for the purpose of accruing leave entitlements.
- During any stand down or suspension period the employee is not to enter CASC premises unless to conduct business as a resident of the CASC.
- CASC shall not unreasonably refuse an application for paid leave during a period of suspension.
- A period of suspension shall not extend beyond 14 days without pay.

STEPS TO BE FOLLOWED WHEN TAKING ACTION ON UNACCEPTABLE PERFORMANCE OR CONDUCT:

The Council will afford an employee the benefit of procedural fairness in the implementation of this policy.

Where unacceptable performance or conduct requires action, the process to be followed is comprised of a number of steps. The action considered appropriate will be determined by the nature of the unacceptable performance or conduct in question. The steps must be followed in sequence.

However, the point of entry to the steps depends on the nature of the incident. Disciplinary action can only be taken against an employee in accordance with this policy. It should also be noted that in some specific circumstances the Chief Executive Officer is required to inform the Crime and Misconduct Commission and possibly other external agencies e.g. Police.

STEP 1 - COUNSELLING INTERVIEW:

Where a supervisor considers that an employee's work performance or behaviour is not satisfactory, the supervisor will counsel the employee.

The counselling session may include:-

- Notifying the employees Manager for their information and involvement, who may in turn notify the Chief Executive Officer;
- Advising the employee of the standard of work or conduct expected by CASC;
- Indicating clearly the area where it is considered that the employee is

failing to meet the required standard;

- Providing assistance to the employee in determining the reasons for the unsatisfactory performance or behaviour and in rectifying the problem;
- The employee endeavouring to remedy the unsatisfactory work performance or behaviour to the satisfaction of Council;
- Providing an oral warning to the employee that more formal action will be taken if work performance or behaviour is not modified to a satisfactory level;
- And a record of the interview will be placed on the employee's personnel file.
- A copy of this record will be provided to the employee at their request.

STEP 2 – FORMAL WARNING:

If work performance or conduct is not at a satisfactory standard within a reasonable period of time, the supervisor will advise the Manager who in turn will notify the Chief Executive Officer who will develop and issue the employee with a formal warning letter and institute a counselling program which will include:

- Regular, structured counselling sessions with the supervisor to monitor the employees performance (a written record will be kept on these counselling sessions);
- Ensuring that the employee is aware of the nature of the unsatisfactory performance and the required standard to be achieved;
- Providing assistance to the employee in determining the reasons for the unsatisfactory performance or behaviour and in rectifying the problem;
- The employee endeavouring to remedy the unsatisfactory work performance or behaviour to the satisfaction of CASC;
- Where appropriate, assistance/training may be provided to the employee to improve or remedy conduct/performance;
- Will be aimed at ensuring that the employee continues employment and makes a satisfactory contribution as outlined in the position description;
- Representation by a union representative or witness, if requested by the employee;
- Advice to the employee on the severity of the situation. For example, whether the employee may be dismissed or incur another form of disciplinary action should performance not improve within designated timeframes; and
- A copy of the warning letter and record of the interview to be placed on the employee's personnel file.

STEP 3 - FINAL WARNING:

If work performance or behaviour does not improve as agreed upon in Step 2 (following the formal warning and counselling) a final warning shall be given to the employee. If the employee's work performance or conduct does not improve after the final warning further disciplinary action may be taken. This action to be taken needs to be documented in a letter to the employee (clearly outlining the grounds and particulars of the disciplinary action) and placed on their personnel file.

STEP 4 - SHOW CAUSE NOTICE:

If work performance or behaviour does not improve after the final warning, or specific behavior or breaches occur, a show cause notice why CASC should not terminate the employee's employment will be issued. The employee will be given not less than 7 normal working days to respond either in writing or verbally in a meeting scheduled with the Chief Executive Officer. The show cause notice will outline the specific allegations that the employee will be responding to and reiterate the employee's rights and obligations.

STEP 5 – DETERMINATION BY CHIEF EXECUTIVE OFFICER:

The Chief Executive Officer will make a determination following consideration of all relevant matters including:-

- The employees responses to the allegations;
- Any previous disciplinary action;
- The employees length of service, work record and level of performance;
- Any training and development provided to the employee;
- The seriousness of the offence;
- The interests of any other party;
- Risk to personal safety in relation to the employee, other staff and members of the public;
- Any extenuating or mitigating circumstances;
- Any precedents;
- All relevant workplace procedures and policies;

- Relevant industrial relations legislation.

Options open to the Chief Executive Officer following the making of a determination include but are not limited to:

- Taking no further action;
- Further written warning;
- Change of duties;
- Closer supervision;
- Denial or removal of personal privileges or benefits;
- Withholding of advancement;
- Changing work location;
- Lateral transfer;
- Demotion; or
- Termination.

RETENTION OF DOCUMENTATION:

Records relating to disciplinary action taken against employees, including allegations, investigations, charges, formal inquiries, punishment and appeals need to be retained for 2 years then destroyed. If a disciplinary matter leads to a dismissal records should be retained for the same period as the personnel file.

ROLE OF UNION REPRESENTATIVE OR WITNESS (SUPPORT PERSON):

Where meetings are initiated by CASC under steps 2 to 4 of the Policy, the employee may request either a witness or a union representative be present to attend meetings. It is a matter for the employee to advise CASC regarding who will be attending meetings.

Witness (Support Person)

Where an employee has requested a witness, that person may be an employee of CASC or a family member or friend of the employee. The

witness is attending strictly in the role of support person to observe and adopt a passive role during meetings. The witness does not generally comment during the meeting unless requested or considered appropriate to the meeting. Further a witness does not advocate on behalf of an employee during a meeting.

The occasion may arise where a witness may seek a time out or request a recess break for the employee during the meeting which will be appropriately communicated at the time. In the event that circumstances during a meeting require comment from a witness then such activity may occur where reasonable.

A witness is a support person. A union representative is different to a witness due to being a workplace delegate of a registered industrial organisation.

Union Representative

Where an employee has requested a union representative, that person may be a delegate, being a direct employee of CASC or alternatively, a union official. The union representative is attending generally in the role of support person to observe and adopt a passive role during meetings. The union official does not generally advocate on behalf of an employee during a meeting.

The occasion may arise where a union representative may seek a time out or request a recess break for the employee during the meeting which will be appropriately communicated at the time. In the event that circumstances during a meeting require comment from a union representative then such activity may occur where reasonable.

Where an employee elects to attend a meeting conducted by CASC with a union representative then CASC will confirm with the employee that any documentation provided to the employee may also be provided to the union representative. In that event, Council may be satisfied that the employee has authorised material to be provided to the union representative, and that the union representative is authorised to attend the meeting with the employee.

Should a union representative not allow an employee to answer questions or answer questions on behalf of an employee during a meeting conducted by CASC, then answers provided by the union representative will be adopted as answers of the employee.

An employee or nominated employee representative may have reasonable grounds to make application for an adjournment or to seek a rescheduling of an interview or meeting where less than 2 working days notice has been provided and the meeting has the potential to conclude in an outcome of a disciplinary nature.

Resolution Number	:	1051 dated 24 September 2013
Date of Effect	:	01 October 2013
Update History	:	September 2015