



CHERBOURG ABORIGINAL SHIRE COUNCIL

22 BARAMBAH AVENUE
CHERBOURG QLD 4605

Phone: (07) 4168 1866
Fax: (07) 4168 2727

PERFORMANCE AND MISCONDUCT POLICY

1. PURPOSE

The objectives of Cherbourg Aboriginal Shire Council (Council) performance and misconduct policy/Disciplinary Procedures are:

- 1.1 correct and/or improve the standard of conduct of an employee where appropriate or necessary;
- 1.2 provide any particular employee with an opportunity to correct unacceptable conduct (other than in situations where summary dismissal is appropriate);
- 1.3 ensure that all employees are treated fairly, equally and consistently and in accordance with Local Government legislation; and
- 1.4 ensure that each situation is reviewed and addressed on an individual basis and in relation to the particular facts of each circumstances.
- 1.5 To outline the various types of disciplinary action which may be taken by Council.

2. COMMENCEMENT OF POLICY

This Policy will commence from 24th July 2018. It replaces all other performance and misconduct policies of Council (whether written or not).

3. APPLICATION OF THE POLICY

This Policy may be varied from time to time by Council and does not form part of any employee's contract of employment.

This Policy is to be applied when dealing with necessary discipline arising from matters associated with poor performance and/or misconduct in any circumstances at, in connection with, or arising out of employment with Council. Circumstances in which may be connected with or arising out of employment includes conduct at work-related functions. A work-related function may include work lunches, dinners, conferences, Christmas functions and client/customer functions. This Policy also applies when employees go to other workplaces in connection with or arising out of employment performed for Council, for example, when visiting a supplier, client or customer.

If conduct involves a potential breach of any Australian law, Council may notify the police or other relevant government authority.

4. GROUNDS UPON WHICH DISCIPLINARY ACTION MAY BE TAKEN

Disciplinary action may be taken in relation to:

- 4.1 failure to perform responsibilities in accordance with an employee's contract of employment or the *Local Government Act 2009* (QLD) (Act); or



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- 4.2 the local government principles, and which may include persistent poor performance; or
- 4.3 action taken under the Act in a way that is not consistent with the local government principles, and which may include misconduct.

5. DISCIPLINARY PROCEDURE OVERVIEW

The procedures outlined below are intended as a guide only to the disciplinary procedures which may be implemented by Council. In every case, the actual disciplinary procedure to be adopted will be a matter of Council discretion but in all circumstances Council will comply with the requirements outlined by the Local Government Regulation 2012 (Qld) s283.

Nothing in this Policy prevents Council, where Council considers it appropriate in the circumstances, from issuing a first and final warning as an initial disciplinary step, subsequent to having carried out the disciplinary procedures outlined in this policy. Similarly, if the circumstances warrant, nothing in this Policy prevents Council from dismissing an employee as a first and final disciplinary outcome, subsequent to having carried out the disciplinary procedures outlined below at clauses 6. and 7. where a circumstance may involve serious misconduct by an employee.

6. INVESTIGATION

Depending on the circumstances, it may be necessary to conduct an investigation into incidents and/or allegations against a particular employee. This may involve collecting relevant data, interviewing relevant witnesses, such as the employee's co-workers or supervisors, or even customers and suppliers with whom the employee has had contact. Council will endeavour to investigate all allegations of unsatisfactory performance, unacceptable conduct, or wilful or serious misconduct by an employee promptly and fairly.

If Council is satisfied, on reasonable grounds, that there appears to be sufficient evidence to support the allegations against an employee, and if those allegations were proven, will lead to disciplinary action of some form against the employee, the employee may, if Council believes this to be reasonably necessary in the circumstances, suspend an employee from duty on ordinary pay pending completion of an investigation. In such circumstances, the employee should be informed in writing of the conditions of the suspension at the time of the suspension and must be paid the employee's full remuneration as at the start of the suspension for the period of suspension.

7. NOTICE OF PROPOSED DISCIPLINARY ACTION AND DISCIPLINARY INTERVIEW

If on the basis of the investigation and evidence discovered, Council believes that there is a case to be answered by the employee against whom an allegation has been placed, before Council can take any form of disciplinary action, the employee must be provided with a written 'Notice of Proposed Disciplinary Action', and be provided with a reasonable

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opportunity to respond to the information contained in that written notice. Council requires all responses to a 'Notice of Proposed Disciplinary Action' to be in writing, and in addition, the employee will be asked to attend a meeting to discuss the issue(s) of concern.

Details that must, as a minimum, be contained in a written 'Notice of Proposed Disciplinary Action' are as follows:

- (a) the disciplinary action to be taken;
- (b) the grounds on which the disciplinary action is taken;
- (c) the particulars of conduct (*facts*) claimed to support the grounds;

In carrying out a proposed disciplinary interview subsequent to the provision of a written Notice of Proposed Disciplinary Action, the following procedure will generally be applied:

- 7.2 The employee will be given advance notice of the meeting and what will be discussed at the meeting.
- 7.3 The employee will be given a reasonable opportunity to have a support person present at the meeting.
- 7.4 At the meeting the issue(s) of concern or allegations will be clearly put to the employee, including any evidence upon which those concerns or allegations are based, and this must be consistent with the details contained in the written Notice of Proposed Disciplinary Action

The employee is to be informed that they must address each of the allegations put to them in the Notice of Proposed Disciplinary Action, and if relevant, provide to Council any evidence that the employee has in support of their response to each allegation.

- 7.5 The employee will be given an adequate opportunity to respond to each allegation and to raise any concerns. If a support person is speaking for or on behalf of the employee, the support person and employee must be made aware that Council will make its decision about proposed disciplinary action based on what the support person has stated on behalf of the employee in response to each of the allegations.
- 7.6 At the conclusion of the interview the manager/supervisor conducting the interview will consider the employee's response, including written response to the Notice of Proposed Disciplinary Action, and make any further enquires or investigations that may be necessary.
- 7.7 After making any further enquiries or investigations which may be necessary, and after consideration of the response or explanation of the employee, the manager/supervisor will weight up the evidence and determine whether it is more probably than not that the concern(s) or allegations have been proven.



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In circumstances where additional facts or allegations have been brought to Council's attention prior to the disciplinary interview, and these have not been provided to the employee via the provisions of a written 'Notice of Proposed Disciplinary Action', before these allegations can be addressed in a disciplinary interview, and/or taken into consideration by Council in informing its decision about taking Disciplinary Action, a supplementary 'Notice of Proposed Disciplinary Action' containing the relevant details of those additional facts or allegations must first be provided to the employee in writing, and the employee afforded a reasonable opportunity to respond to those additional facts or allegations.

- 7.8 At the conclusion of the disciplinary interview, if it is determined that all or some of the concerns or allegations are proven, and after consideration of:
- (a) the seriousness of the poor performance/misconduct;
 - (b) the response or explanation given by the employee;
 - (c) the employee's employment history and record; and
 - (d) whether there are appropriate and reasonable alternatives to dismissal, the manager/supervisor will make a decision on what, if any, disciplinary action is appropriate.

Council may take disciplinary action against the employee in a form which it feels is appropriate in the circumstances.

8. DISCIPLINARY ACTION

The type of disciplinary action taken may vary from case to case, depending upon all of the circumstances, including a consideration of whether the employee has received any prior verbal or written warnings in relation to their performance or conduct.

Regardless of whatever disciplinary action is imposed, where it does not lead to dismissal, such action may be relied on in future to support dismissal due to ongoing unsatisfactory performance, unacceptable conduct or misconduct of any kind.

Nothing contained in this policy prevents an employee from exercising their rights under the *Industrial Relations Act 1999* (Qld) or other applicable law if Council takes disciplinary action against an employee.

9. FORMAL DISCIPLINE

The types of formal disciplinary action which may be taken by Council include, but are not limited to, the following:

- 9.1 termination of employment;
- 9.2 demotion, including a reduction in remuneration;
- 9.3 a written reprimand or warning.



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10. INFORMAL DISCIPLINE

Other forms of disciplinary action which may be taken by Council include, but are not limited to, the following:

- 10.1 redirection, retraining;
- 10.2 reorganisation/redeployment; and
- 10.3 counselling.

Informal disciplinary action is not appropriate where the employee's conduct amounts to wilful or serious misconduct.

11. DISMISSAL

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

- 11.1 written notice of the day of the dismissal or payment in lieu of notice, except where dismissal is due to serious misconduct;
- 11.2 payment of all accrued entitlements;
- 11.3 payment of any outstanding entitlements;
- 11.4 a Separation Certificate; and
- 11.5 a Statement of Service, if one is requested.

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

12. WRITTEN/REPRIMAND OR WARNING

If disciplinary action taken against an employee consists of a written warning or reprimand, it will form part of the employee's employment record and must as a minimum state the following:

- 12.1 the employee's conduct that is disapproved of;
- 12.2 the remedial action needed to rectify the conduct;
- 12.3 the period within which the remedial action is to be taken; and
- 12.4 the possible consequences for a repeat of the conduct by the employee.

13. DOCUMENTATION

Council should make contemporaneous notes of disciplinary discussions, disciplinary interviews and subsequent actions.



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File notes should be placed on the employee's personnel file summarising the nature of the allegations, the details and outcome of any investigation undertaken, including any conversations with the employee, and the disciplinary action taken, including a copy of any warning or termination letters issued. Where possible the employee should be asked to sign any file notes associated with any conversations and/or disciplinary interviews as an acknowledgement that they have attended and acknowledge that the notes accurately reflect what was discussed. If the employee refuses to sign the file note, this should also be recorded on the file note along with the reason for the employee's objection if this is provided.

Variations

Council reserves the right to vary, replace or terminate this policy from time to time.

POLICY VERSION AND REVISION INFORMATION

Policy Authorised by: Warren Collins Original issue: 24/07/2018

Title: Chief Executive Officer

Policy Maintained by: Julianne Hansen Current version: 1

Title: Human Resources Manager

Review date: 24/07/2019

WORKPLACE PARTICIPANT ACKNOWLEDGEMENT

I acknowledge:

- *receiving the Council's Performance and Misconduct Policy;*
- *that I should comply with the policy; and*
- *that there may be disciplinary consequences if I fail to comply, which may result in me being dismissed from my employment.*

Your name:

Signed:

Date:
