



## **Policy No. 2017- 47**

# **Disciplinary Policy & Procedure**

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### AUTHORITY & APPLICATION

<b>Date of approval</b>	21 July 2020
<b>Source of approval</b>	Council Meeting
<b>Start date</b>	21 July 2020
<b>Related Council Documents</b>	<p>This Policy should be considered in the context of the following policies and procedures:</p> <ul style="list-style-type: none"> <li>• <i>Grievance &amp; Dispute Resolution Policy</i></li> <li>• <i>Harassment &amp; Discrimination Policy</i></li> <li>• <i>Drug and Alcohol Policy</i></li> <li>• <i>Bullying Policy</i></li> <li>• <i>Fraud Control Policy</i></li> <li>• <i>Work Health &amp; Safety</i></li> </ul>
<b>Date of review</b>	30 June 2023
<b>Previous policies replaced by this Policy</b>	Policy approved May 2017
<b>Publication of Policy</b>	Policy Register
<b>Definitions</b>	
<b><u>Term</u></b>	<b><u>Meaning</u></b>
<b>Applicable Laws</b>	<p>All laws in connection with the carrying out of work or the Workplace including:</p> <ul style="list-style-type: none"> <li>• <i>Age Discrimination Act 2004 (Cth)</i></li> <li>• <i>Anti-Discrimination Act 1998 (TAS)</i></li> <li>• <i>Australian Human Rights Commission Act 1986 (Cth)</i></li> <li>• <i>Disability Discrimination Act 1992 (Cth)</i></li> <li>• <i>Fair Work Act 2009 (Cth)</i></li> <li>• <i>Local Government Act 1993 (TAS)</i></li> <li>• <i>Racial Discrimination Act 1975 (Cth)</i></li> <li>• <i>Sex Discrimination Act 1984 (Cth)</i></li> <li>• <i>Work Health &amp; Safety Act 2012 (TAS)</i></li> <li>• <i>Workers Rehabilitation &amp; Compensation Act 1988 (TAS)</i></li> </ul>
<b>Council</b>	Central Highlands Council

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<b>Councillor</b>	An elected member of Council known as a Councillor or Alderman or otherwise meeting the definition of a 'councillor' as defined under section 3 of the <i>Local Government Act 1993</i> (TAS).
<b>EAP</b>	Employee Assistance Programme
<b>Employee</b>	A person who carries out work for Council as an employee of Council.
<b>General Manager</b>	The general manager of Council as appointed under section 61 of the <i>Local Government Act 1993</i> (TAS).
<b>Industrial Instrument</b>	An instrument recognised under the Fair Work Act 2009 that has legal application with respect to minimum entitlements to those Employees covered within its scope (eg Award or Enterprise Agreement).
<b>Infringing Workplace Behaviour</b>	Any act or omission, which amounts to a breach of any Council policy, contractual obligation or misconduct at common law.
<b>Manager/Supervisor</b>	A person at the Workplace who is appointed to a position that has management/supervisory responsibilities for others or their appropriately nominated or authorised delegate.
<b>Other Persons at the Workplace</b>	Any person at the Workplace who is not a Worker including visitors and ratepayers.
<b>Policy</b>	This Disciplinary Policy including the 'Authority and Application'.
<b>Procedure</b>	The Disciplinary Procedure including the 'Authority and Application'.
<b>Related Party Conflict</b>	An event where there is a family relationship between the employee and a Manager/Supervisor or an event where there is a family relationship between an employee and another employee
<b>Worker</b>	A person who carries out work in any capacity for Council, including work as: <ul style="list-style-type: none"> <li>(a) an Employee;</li> <li>(b) a contractor or subcontractor;</li> <li>(c) an employee of a contractor or subcontractor;</li> <li>(d) an employee of a labour hire company who has been assigned to work at Council;</li> <li>(e) an outworker;</li> <li>(f) an apprentice or trainee;</li> <li>(g) a student gaining work experience;</li> <li>(h) a volunteer; or</li> <li>(i) Councillor.</li> </ul>
<b>Workplace</b>	A place where work is carried out for Council.
<b>Training</b>	Council will provide all persons covered by this Policy with appropriate training so they are made aware of their responsibilities and obligations under the Policy.

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<b>Amendment</b>	Council retains the sole discretion to vary, terminate or replace this Policy from time to time. Council will consult before amendments are made and will notify and train those the amendments apply to.
<b>Interpretation of Policy</b>	<p>(a) The singular includes the plural and vice versa.</p> <p>(b) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacement or re-enactments of any of them.</p> <p>(c) A reference to a policy or procedure means any approved policies or procedures of Council unless otherwise stated.</p> <p>(d) 'Including' and similar expressions are not words of limitation.</p> <p>(e) A reference to a document (including this document) is to that document as amended, novated or replaced unless otherwise stated.</p> <p>(f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.</p> <p>(g) Examples used in this Policy are for illustrative purposes only and are not intended to be exhaustive.</p> <p>(h) Unless expressly provided for this Policy is not in any way incorporated as part of any enterprise agreement and does not form part of any Employee's contract of employment and any applicable enterprise agreement or contract of employment will prevail over this Policy to the extent of any inconsistency</p> <p>(i) It is not intended that this Policy impose any obligations on the Council or those covered by it that are unreasonable or contrary to the operation of Applicable Laws. Any obligation, direction, instruction or responsibility imposed by this Policy must be carried out in a manner that an objective third party would consider to be fair and reasonable taking into account and in the context of all the relevant Applicable Laws, operational and personal circumstances.</p> <p>Questions relating to the interpretation, application or enforcement of this Policy should be directed to a person's Manager/Supervisor.</p>
<b>Reporting of Breaches</b>	<p>Persons covered under paragraph 3 (Coverage) must reasonably report breaches of Infringing Workplace Behaviour as follows:</p> <p>For breaches by</p> <p>a) an Employee (other than the General Manager) the report must go to the reporting person's applicable Manager/Supervisor; and/or</p>

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	<p>b) the General Manager the report must go to the Mayor (or if unavailable to the next appropriately delegated Councillor) and</p> <p>as otherwise required or permitted by Applicable Laws.</p>
<b>Breach of Policy</b>	<p>Persons covered under paragraph 3 (Coverage) who engage in Infringing Workplace Behaviour may (as is appropriate) be subject to appropriate disciplinary action in accordance with Disciplinary Policy and Procedure. Infringing Workplace Behaviour may also amount to breaches of Applicable Laws:</p> <p>(a) exposing individuals to legal proceedings; and</p> <p>(b) making Council vicariously liable for the conduct of others.</p>

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## 2 PURPOSE

The aims of this Policy are to:

- (a) recognise that all Employees are responsible for their behaviours;
- (b) to set and maintain standards of conduct within Council and help and encourage Employees to achieve and maintain those satisfactory standards;
- (c) enable Council to appropriately deal with Infringing Workplace Behaviour fairly, consistently and transparently having regard to the individual circumstances and other relevant factors;
- (d) provide opportunities for Employees to correct behaviours unless immediate dismissal is appropriate;
- (e) provide a reference and framework for the Disciplinary Procedure; and and
- (f) operate with Applicable Laws and Related Council Documents..

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## 3 COVERAGE

- (a) This Policy covers and applies to Employees in relation to Infringing Workplace Behaviour and including poor performance.
- (b) This Policy does not cover or apply to behaviours that amount to or are dealt with by Council as:
  - (i) incapacity for work
- (c) For the avoidance of doubt this Policy does not cover or apply to a Councillor.

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## 4 REQUIREMENTS

- (a) Employees must comply with this Policy.
- (b) Managers/Supervisors must communicate and implement this Policy within their area of responsibility.

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## 5 ROLE RESPONSIBILITIES

### 5.1 What are the Manager/Supervisor's Responsibilities?

Managers/Supervisors are responsible for:

- (a) ensuring appropriate management of Infringing Workplace Behaviours;
- (b) making appropriate records relating to disciplinary procedures;
- (c) making reasonable resources available to assist Employees;

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- (d) advising Employees of reasonable internal and external support; and
- (e) identifying the appropriate support, training or experience and opportunities to avoid Infringing Workplace Behaviours.

## **5.2 What are the Employee’s Responsibilities?**

Employees are responsible for:

- (a) their own behaviours, including avoiding Infringing Workplace Behaviours;
- (b) participating appropriately in disciplinary procedures; and
- (c) requesting or participating in the appropriate support, training or experience and opportunities to avoid Infringing Workplace Behaviours.

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# **6 ENGAGING IN A DISCIPLINARY PROCESS AND OUTCOME**

## **6.1 Council’s Disciplinary Procedure**

Council’s Disciplinary Procedure provides for:

- (i) an appropriate disciplinary process to determine whether Infringing Workplace Behaviour has occurred and related facts and circumstances; and, if so
- (ii) appropriate disciplinary outcomes.

## **6.2 When may Council commence a disciplinary process?**

Council may only commence a disciplinary process where it has formed a reasonable suspicion (i.e. there exists facts which are sufficient to induce a suspicion in a reasonable person) that an Employee has engaged in Infringing Workplace Behaviour.

## **6.3 What is the disciplinary process?**

The Disciplinary Procedure provides for guidelines containing a number of different processes Council may utilise to appropriately determine Infringing Workplace Behaviour.

## **6.4 Is there a requirement to use a particular disciplinary process?**

Council may use a particular disciplinary process that a Manager/Supervisor considers reasonable in the circumstances that is consistent with the Disciplinary Procedure and provides procedural fairness appropriate to the circumstances.

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**6.5 Who conducts a disciplinary process?**

- (a) A disciplinary process is conducted by the Employee’s immediate Manager/Supervisor.
- (b) Despite this, Council may decide, taking into consideration the relevant circumstances, to utilise instead or in addition to the Employee’s immediate Manager/Supervisor:
  - (i) a more senior Manager/Supervisor; and/or
  - (ii) an independent external person
- (c) Where there is a related party conflict, an independent external person will be used to conduct the disciplinary process.

**6.6 What is the disciplinary outcome?**

The Disciplinary Procedure provides for guidelines containing a number of different outcomes Council may utilise to appropriately determine Infringing Workplace Behaviour.

**6.7 Is there a requirement to implement a particular disciplinary outcome?**

Council may implement a particular disciplinary outcome that a Manager/Supervisor considers reasonable in the circumstances that is consistent with the Disciplinary Procedure.

**6.8 Who carries out a disciplinary outcome?**

A disciplinary outcome will be carried out by an authorised Manager/Supervisor following a disciplinary process where there is a finding of Infringing Workplace Behaviour. This may, depending on the circumstances, range from the Employee’s immediate Manager/Supervisor through to the General Manager.

**6.9 What if an Employee considers that a disciplinary outcome imposed on them is excessive or inappropriate?**

Employees should discuss the outcome with their Manager/Supervisor before seeking external advice regarding an appropriate appeal process (if any) in the circumstances.

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# DISCIPLINARY PROCEDURE

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## **1 AUTHORITY & APPLICATION**

<b>Definitions</b>	As per this Policy (2017-47) as amended from time to time.
<b>Training</b>	Council will provide all persons covered by this Procedure with appropriate training so they are made aware of their responsibilities and obligations under the Procedure.
<b>Amendment</b>	Council retains the sole discretion to reasonably terminate, replace or vary this Procedure from time to time. Council will consult before amendments are made and will notify and train those the amendments apply to.
<b>Interpretation of Procedure</b>	<p>(a) The singular includes the plural and vice versa.</p> <p>(b) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.</p> <p>(c) A reference to policy or procedure means any approved policies or procedures of Council unless otherwise stated.</p> <p>(d) 'including' and similar expressions are not words of limitation.</p> <p>(e) A reference to a document (including this document) is to that document as amended, novated or replaced unless otherwise stated.</p> <p>(f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.</p> <p>(g) Examples used in this Procedure are for illustrative purposes only and are not intended to be exhaustive.</p>

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	<p>(h) Unless expressly provided for this Procedure is not in any way incorporated as part of any enterprise agreement and does not form part of any employee's contract of employment and any applicable enterprise agreement or contract of employment will prevail over this Procedure to the extent of any inconsistency.</p> <p>(i) It is not intended that this Procedure impose any obligations on the Council or those covered by it that are unreasonable or contrary to the operation of Applicable Laws. Any obligation, direction, instruction or responsibility imposed by this Procedure must be carried out in a manner that an objective third party would consider to be fair and reasonable taking into account and in the context of all the relevant Applicable Laws, operational and personal circumstances.</p> <p>Questions relating to the interpretation, application or enforcement of this Procedure should be directed to a person's Manager/Supervisor.</p>

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## 2 GUIDELINES

### 2.1 General Guidelines

- (a) This Disciplinary Procedure is conducted with a level of formality appropriate to the circumstances but in a practical manner and not to the standard of a judicial hearing or police style examination of the circumstances.
- (b) Particular disciplinary processes and outcomes will be utilised as considered reasonably necessary by Council in the individual circumstances. The exact nature of procedural fairness will vary according to the individual circumstances of each case including confidentiality and privacy considerations and obligations.
- (c) An Employee will be advised of the opportunity to have a support person during this process, who may be a Union official, other industrial representative or other external person. The role of the support person is to assist Employees by providing emotional support, aiding the Employee's understanding or by taking notes, asking appropriate questions, or requesting breaks. An appropriate support person is a person who is not a party to a process or involved as a potential witness or otherwise has a conflict of interest. Where the support person is a Union official or other professional advocate they may speak or write on behalf of Employee but only to as to:

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- (i) matters of interpretation (eg legislation, Industrial Instrument etc);
  - (ii) clarify, summarise and explain the member or client's position;
  - (iii) resolution of the matter; and/or
  - (iv) submissions as to mitigation and/or penalty.
- (d) The need to consider and conduct a disciplinary process under this Policy is a matter to be determined by Council in the circumstances. A complaint and/or complainant is not always necessary to consider, commence and/or conduct a disciplinary process given Council's duty of care, in general terms, to provide a safe Workplace. For example there may not be a specific complaint or complainant that money has been stolen but if the financial irregularity is discovered during an audit process Council may consider it appropriate to commence and/or conduct a disciplinary process in accordance with this Policy.

## 2.2 Guidelines for Nominated Persons for Conducting Disciplinary Processes

- (a) **Treat fairly and seriously** - assess all matters on their merits and facts. Any disciplinary process should be thorough enough and obtain relevant and credible evidence as is reasonably necessary to ensure substantive fairness by:
- (i) providing particulars of allegations and available evidence (including a copy of any complaints if available and not otherwise inappropriate to provide on legitimate work health and safety grounds) so participants understand the context of the process in which they are being required to participate;
  - (ii) providing Employees with a reasonable opportunity to respond to allegations, findings, proposed disciplinary action, subsequent or additional information (whether in writing and/or in person as appropriate) or other process;
  - (iii) making factual findings that are reasonably open to be made (e.g. specific behaviours and their context and surrounding circumstances);
  - (iv) making conclusions or characterisations (e.g. breaches of policies which are serious) that can be objectively drawn from those factual findings;

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- (v) notifying Employees of the findings relevant to them and any proposed disciplinary action (if any);
  - (vi) taking into account the nature and extent of the Infringing Workplace Behaviours, an Employee’s personal circumstances and employment record including prior disciplinary action, any mitigating circumstances, Council requirements and any other relevant matters to ensure that any disciplinary outcome is appropriate in the circumstances; and
  - (vii) notifying Employees of the disciplinary action (if any) which will be imposed and when.
- (b) **Act promptly** – disciplinary matters should be dealt with courteously, respectfully and within appropriate timelines on a case by case basis. All relevant parties should be provided reasonable estimates of timeframes and be kept reasonably informed of the progress. Extensions of time may be appropriate in complex matters where justified. If additional time beyond the initial estimate is reasonably required to address the issues, all relevant parties should be advised of the additional time required and, in a manner appropriate, the reasons for the delay.
- (c) **Support all parties** – Employees involved in the process should be told what support is available including EAP.
- (d) **Be neutral** - impartiality towards everyone involved (i.e. persons seeking to impose disciplinary action, witnesses, affected parties, and responding persons). Participants should also avoid any personal or professional bias (perceived or actual). If a preliminary enquiry or Workplace investigation is undertaken, the investigator may be internal or external to Council and must be a person who is:
- (i) objective and neutral and impartial (i.e. avoid real or perceived bias);
  - (ii) competent having regard to the particular circumstances;
  - (iii) available to conduct a preliminary enquiry or Workplace investigation and report in a timely manner; and
  - (iv) not a potential witness or who has had prior dealings with parties that creates a real or perceived bias.

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- (e) **Communicate process and outcomes** - all parties should be reasonably informed of the process, and what they can expect will happen during a resolution process and potential outcomes. Council will provide all parties with clear reasons for any actions taken or not taken. Details of disciplinary matters should only be disclosed in a manner to those parties that need to know, provided that such disclosure does not create an unreasonable risk to their health and safety.
- (f) **Maintain confidentiality** - the process should ensure appropriate confidentiality for all parties involved and consider individual requests for confidentiality subject to Council's duty to provide a safe Workplace.
- (g) **Keep records as appropriate** - some form of record should be made of the disciplinary process and matters dealt with under this Procedure including details of allegations, written responses or submissions from those involved, the process adopted and any outcomes.
- (h) **Seeking advice and support** - Participants are entitled to obtain advice of their choice and have a support person, who may be a Union official, other industrial representative or other external person, present during any meetings they are required to attend at their own cost.
- (i) **Appropriate interim arrangements** – It is necessary to preserve the integrity of the disciplinary process being undertaken and having regard to the seriousness of allegations or to reasonably ensure the health and safety of any Workers and Other Persons at the Workplace. While in the process of resolving any disciplinary matter, the parties must reasonably ensure that there is no interruption to work. Council may impose appropriate interim arrangements which may include any combination of the following:
  - (i) stand down with pay [unless otherwise specifically provided for in an industrial instrument] Employees responding to allegations (and other Employees where considered appropriate);
  - (ii) providing alternative duties to Employees;
  - (iii) directing temporary changes to work arrangements (including reporting lines and location);
  - (iv) preventing or restricting communication between Employees, Workers and Other Persons at the Workplace;

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- (v) imposing, for legitimate work health and safety reasons only, confidentiality obligations on Employees, Workers and Other Persons at the Workplace (which does not preclude the taking of bona fide advice from a Union official or other professional advocate);
- (vi) preserving evidence - if necessary secure part of the Workplace, obtain photographs or take any other steps to preserve physical evidence that may otherwise be lost; and
- (vii) reporting to relevant authorities – e.g. Police, Regulators, Work Safe Tasmania etc.

Any action taken in subparagraph (i) is an interim measure only and is not a disciplinary outcome and is without loss of pay or other entitlements [unless otherwise specifically provided for in an industrial instrument].

### **3 DISCIPLINARY PROCESSES**

A disciplinary process appropriate to the circumstances will be applied which will include processes for:

- (a) determining Infringing Workplace Behaviour such as a Manager/Supervisor determination, preliminary enquiry or Workplace investigation; and
- (b) stand downs and other interim arrangements; and
- (c) determining disciplinary outcomes.

## **4 DETERMINING INFRINGING WORKPLACE BEHAVIOUR**

### **4.1 Manager/Supervisor Determination**

- (a) Managers/Supervisors may make determinations if satisfied that conduct occurred or did not occur and that conclusions can be objectively drawn (i.e. make findings as to the nature and extent of Infringing Workplace Behaviour or find that Infringing Workplace Behaviour is not substantiated).
- (b) Examples of this include where:
  - (i) Managers/Supervisors directly observe the Infringing Workplace Behaviour;
  - (ii) Employees do not deny the allegations against them or are found to be unreliable, demonstrably wrong or not credible;

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- (iii) there is no dispute as to the key facts and other factual matters in dispute may not need to be resolved to appropriately determine the matter; and
- (iv) key disputed material facts can be easily resolved by reliable documentary evidence or corroboration by reliable witnesses or physical evidence to find allegations proven or unsubstantiated.

#### 4.2 Preliminary enquiry

- (a) A preliminary enquiry is a process to consider facts and circumstances of reported or suspected Infringing Workplace Behaviour without making findings where there are disputed facts.
- (b) In a preliminary enquiry allegations may not be fully particularised, the Complainant (if relevant) and Respondent(s) (if appropriate) are interviewed and other relevant evidence including interviews may be obtained and evaluated and a report is provided to Council.
- (c) Council can reasonably decide, taking into consideration the relevant circumstances, whether to commence a:
  - (i) preliminary enquiry prior to conducting a workplace investigation (which may or may not occur); or
  - (ii) Workplace investigation without conducting a preliminary enquiry.
- (d) Examples of Council determining to commence a preliminary enquiry include where:
  - (i) there is likely to be no dispute as to the key facts and other factual matters in dispute may not need to be resolved to appropriately determine the matter; or
  - (ii) the nature and extent of the complaints or potential Infringing Workplace Behaviour is unknown and it is reasonable to ascertain this prior to determining any further appropriate disciplinary process including whether specific allegations need to be made and if so against who in a Workplace investigation.
- (e) At the conclusion of a preliminary enquiry, Council may then determine it is reasonably satisfied (on a similar basis as referred to in paragraph 4.1) that:

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- (i) a Workplace investigation will commence to determine whether or not there is Infringing Workplace Behaviour; or
- (ii) Infringing Workplace Behaviour has occurred based on facts that are not disputed; or
- (iii) Infringing Workplace Behaviour has not occurred or is unsubstantiated.

**4.3 Specific Workplace investigation**

- (a) A specific Workplace investigation is a formal process to objectively and reliably determine facts and circumstances of reported or suspected Infringing Workplace Behaviour to determine whether specific allegation(s) of Infringing Workplace Behaviour has occurred.
- (b) In a Workplace investigation allegations are particularised and made against specific Employee(s), relevant witnesses are interviewed and other relevant evidence is obtained and findings of fact are made to determine allegations and other relevant matters.
- (c) Examples of Council determining to commence a specific Workplace investigation include where:
  - (i) there is a dispute as to the key facts and other factual matters which must be resolved to make findings as to the nature and extent of Infringing Workplace Behaviour or find that Infringing Workplace Behaviour is not substantiated; and
  - (ii) having regard to the nature of the complaints (if relevant) or seriousness of the allegations and the potential consequences (e.g. dismissal is a potential disciplinary outcome and potential impact on an Employee’s reputation).

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**5 DISCIPLINARY OUTCOMES**

The following types of disciplinary action may be implemented at the conclusion of a disciplinary process where Infringing Workplace Behaviour is found to have occurred.

**5.1 General Guidelines**

- (a) To be effective, disciplinary action, where dismissal is not appropriate should emphasise correcting Infringing Workplace Behaviours to bring about a required change rather than just punishing and deterring Employees.

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- (b) Without limiting what particular disciplinary action may be imposed in the individual circumstances, as a general guide, it should provide for increasingly serious steps if Infringing Workplace Behaviours do not change.
- (c) Where action is undertaken in accordance with sections 5.2 to 5.7, Employees should therefore be informed, regardless of the type of disciplinary action, as to how and why their behaviour is considered Infringing Workplace Behaviour.
- (d) Where action is undertaken in accordance with sections 5.2, 5.3, 5.4 and 5.7, Employees should also be informed, regardless of the type of disciplinary action, as to:
  - (i) the required standards of behaviour and any reasonable assistance available for Employees to achieve this;
  - (ii) support provided by Council to correct the behaviour;
  - (iii) (if appropriate) timeframes within which Employees will be required to improve or change behaviours; and
  - (iv) what may occur if Employees' behaviours do not improve or change including types of potential disciplinary action.
- (e) It may be appropriate for a combination of types of disciplinary outcomes to be implemented.

## **5.2 Formal Counselling**

- (a) Formal counselling involves formally expressing dissatisfaction with an Employee's behaviour during a meeting including documenting the outcome which will form part of the Employee's employment record.
- (b) Formal counselling is considered as less serious than a written warning and to not place the Employee's employment at immediate risk.

## **5.3 Written Warnings**

- (a) A written warning may be implemented where it is considered necessary to formally express dissatisfaction with an Employee's behaviour and to expressly put the Employee on notice that ongoing employment is at risk if there is further Infringing Workplace Behaviour.
- (b) A written warning will be provided to an Employee during a meeting and will form part of the Employee's employment record.

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- (c) Written warnings do not have to follow a '3 warning' process before dismissal is considered. Termination can be considered without any minimum number of prior warnings depending on the circumstances. Each matter is considered on its merits.
- (d) For example, an Employee may receive more than 3 written warnings for different types of Infringing Workplace Behaviour and not have dismissal considered. Alternatively, an Employee may receive a first and final written warning for a particularly serious instance of Infringing Workplace Behaviour without any previous disciplinary action.
- (e) A written warning does not 'expire' after a period of time and remains part of an Employee's employment record. Not all warnings may be relevant to future disciplinary action. The 'age' of the warning will be a relevant factor in considering any subsequent potential disciplinary action. Regardless of the 'age' of a warning, a previous warning will only be relevant where there is a consistent and causal connection between the alleged Infringing Workplace Behaviour to it.

**5.4 Transfer**

On appropriate health and/or safety grounds (eg to remove interpersonal conflict, threat of injury or equivalent requirement) an Employee may be transferred to work in another area of Council as part of the disciplinary outcome.

**5.5 Dismissal with notice or a payment in lieu of notice**

- (a) Dismissal may occur where Council determines it is appropriate to terminate the employment relationship.
- (b) Dismissal should not occur under this Procedure unless there is a valid reason for dismissal, Employees have been accorded an adequate level of procedural fairness and any other relevant matters have been considered.
- (c) Examples of this include where the Infringing Workplace Behaviour:
  - (i) results in poor performance that has not adequately improved following a Performance Management ;
  - (ii) causes the employment relationship to have irretrievably broken down or a loss of mutual trust and confidence necessary to continue the employment relationship;
  - (iii) potentially damages the reputation of Council or undermines the capacity of an Employee to remain in the Workplace;

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- (iv) relates or is similar to behaviours that an Employee has previously been formally warned that further instances may result dismissal; or
  - (v) is of itself or viewed collectively with other Infringing Workplace Behaviours of such a serious nature to warrant dismissal.
- (d) Council in its discretion may provide or make a payment in lieu of the required notice period.

**5.6 Immediate dismissal without payment in lieu of notice**

- (a) Employees found to have engaged in serious misconduct may be dismissed without notice or any payment in lieu of notice.
- (b) Serious misconduct is conduct and/or behaviour which is sufficiently serious for Council to consider termination of employment.
- (c) Serious misconduct has its ordinary meaning and includes both:
  - (i) wilful or deliberate behaviour by an Employee that is inconsistent with the continuation of the contract of employment; and
  - (ii) conduct that causes serious and imminent risk to the:
    - (A) health or safety of a person; and
    - (B) reputation, viability or profitability of Council.
- (d) Examples of serious misconduct include (unless an Employee is able to show that the conduct engaged in was not conduct that made employment in the period of notice unreasonable):
  - (i) theft;
  - (ii) fraud;
  - (iii) assault; and
  - (iv) without reasonable grounds refusing to carry out a lawful and reasonable instruction that is consistent with an Employee’s contract of employment.

**5.7 Other disciplinary outcomes**

Other actions, which are not disciplinary action, may be considered as part of a disciplinary outcome, other than dismissal, to bring about a positive change include:

- (a) coaching;
- (b) training;
- (c) mediation or facilitated meetings between Employees;

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- (d) (if applicable) notifying complainant/s of outcome;
- (e) appropriate report back to Other Persons at the Workplace;
- (f) other appropriate actions; and
- (g) processes to monitor Employee behaviours or the outcomes of any actions referred to in this paragraph 5.7.

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