

POLICY:-	
Policy Title:	Disciplinary Policy
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Resolution Number:	213/19
Next Policy Review Date:	2022

PROCEDURES/GUIDELINES:-	
Date procedure/guideline was developed:	24 August 2006
Procedure/guideline reference number:	Included in Disciplinary Policy

RESPONSIBILITY:-	
Policy Developed by:	Human Resources Co-ordinator
Committee/s (if any) consulted in the development of this policy:	Consultative Committee
Responsibility for implementation:	General Manager
Responsibility for review of Policy:	Human Resources Co-ordinator

Objectives

The aim of this policy is to establish a fair, equitable and consistent process for addressing unsatisfactory work performance and behaviour.

Scope

This policy applies to all employees of Council except the General Manager. Where this policy differs from the Grievance and Dispute Procedures set out in the Local Government (State) Award 2017, the Local Government (State) Award 2017 takes precedent.

A. Employee's Rights

Notwithstanding procedures below, an employee shall:

- (i) Have access to their personal files and may take notes and/or obtain copies of the contents of the file;
- (ii) Be entitled to sight, note and/or respond to any information placed on their personal file which may be regarded as adverse;
- (iii) Be entitled to make application to delete or amend any disciplinary or other record mentioned on their personal file which the employee believes is incorrect, out-of-date, incomplete or misleading;
- (iv) Be entitled to request the presence of a representative and/or the involvement of their union at any stage;
- (v) Be entitled to make application for accrued leave for whole or part of any suspension during the investigation process.

(See the Local Government (State) Award 2017 Clause 36. Disciplinary Procedures, A. Employees Rights).

B. Employer's Rights and Obligations

Notwithstanding the procedures contained in the Local Government (State) Award 2017 Clause 36. Disciplinary Procedures, B. Employers Rights and Obligations: Notwithstanding the procedures contained below, the employer shall:

- (i) Be entitled to suspend an employee with or without pay during the investigation process, provided that:
 - (a) The suspension shall not be for longer than is reasonably necessary to conduct a proper investigation.
 - (b) the suspension shall be limited to circumstances where suspected unsatisfactory work performance or conduct, if substantiated, would constitute a serious breach of the employer's code of conduct, policies, procedures, or the employee's contract of employment.
 - (c) suspension without pay during an investigation shall be for a period of not more than two weeks, except where the progress of the investigation is delayed due to the unavailability of the employee and/or their representative in which case the period of suspension

without pay may be extended for a further period of up to 7 days or such greater period by agreement.

- (d) if, after investigation, the reasons for the suspension are found to be inappropriate, the employee shall not suffer any loss of pay for the period under suspension;
- (e) the suspension shall not affect the employee's continuity of service for the purposes of accruing leave entitlements;
- (f) the employee shall not unreasonably refuse an application for paid leave under this provision;
- (g) by agreement an employee may be transferred to another position or place of work;

- (ii) Be entitled to request the presence of an Association and/or union representative at any stage.

(See Local Government (State) Award 2017 Clause 36, Disciplinary Procedures, B. Employer's Rights and Obligations)

C. Workplace Investigations

- (i) The parties to the Award have agreed on guidelines ("guidelines") concerning workplace investigations.
- (ii) Failure to comply with the guidelines may be used as evidence that a person or employer has failed to properly conduct or speedily conclude a workplace investigation. However, a person or employer cannot be prosecuted only because of a failure to comply with the guidelines.
- (iii) Upon becoming aware of possible unsatisfactory work performance or conduct by an employee the employer may decide to investigate.
- (iv) Workplace investigations are a process by which employers gather information to assist the employer to make an informed decision. Workplace investigations typically involve enquiring, collecting information and ascertaining facts.
- (v) When deciding whether to investigate possible unsatisfactory work performance or conduct, factors that the employer should consider include:
 - The seriousness of the possible unsatisfactory work performance or conduct;
 - How recent the possible unsatisfactory work performance or conduct occurred;
 - Potential implications in not undertaking an investigation; and
 - Whether there are any mitigating factors (for example drug/alcohol dependency, health issues including mental health issues, or family/domestic violence issues).
- (vi) Employers shall properly conduct and speedily conclude workplace investigations concerning possible unsatisfactory work performance or conduct.

(See Local Government (State) Award 2017 Clause 36, Disciplinary Procedures, C. Workplace Investigations)

RELEVANT LEGISLATION AND COUNCIL POLICIES

The following legislation and Council policies that are relevant to this Policy include but are not limited to:

- Access to Information Policy;
- Australian Audit Standard AUS210 / ASA240;
- Anti Discrimination Act 1977;
- Bribes, Gifts and Benefits Policy;
- Cash Handling Policy;
- Code of Business Practice;
- Code of Conduct for Councilors, staff and delegates of Council;
- Complaints Management Policy;
- Corporate Credit Card Policy;
- Council's Code of Meeting Practice;
- Crimes Act 1900;
- Delegations of Authority Procedure;
- Drug & Alcohol Policy;
- Employee Assistance Program Policy;
- Environmental Planning and Assessment Act 1979;
- Equal Employment Opportunity Act 1987;
- Equal Employment Opportunity (EEO) Management Plan;
- Fair Work Act 2009 (Cwth);
- Flexible Work Arrangements Policy & Procedure;
- Fraud and Corruption Prevention Policy;
- Government Information (Public Access) Act 2009;
- Grievance Policy;
- Harassment Policy;
- Human Resource Training Plan;
- Human Resource Succession Plan;
- Independent Commission against Corruption Act (ICAC) 1988;
- Industrial Relations Act 1996;
- Injury Incident Management Procedures;
- Internal Reporting – Protected Disclosures Policy;
- Internet and Email Policy;
- Local Government Act 1993;
- Local Government (State) Award 2017;
- Local Government (General) Regulations 2005;
- Loss of Drivers Licence Policy & Procedure;
- Manual Handling Policy;
- Mobile Phone Policy;
- NSW Long Service Leave Act;
- NSW State Records Act 1998;
- Paid Parental Leave Act 2010 (Cwth);
- Payment of Expenses and Provision of Facilities Policy;
- Performance & Misconduct Policy;
- Private Works (Projects and Plant Hire) Policy;
- Privacy and Personal Information Protection Act 1998;
- Protective Clothing and Equipment Policy;

- Public Access Policy;
- Public Interest Disclosures Act 1994;
- Public Interest Disclosures Policy;
- Purchasing and Acquisition of Goods Policy and Procedures;
- Recruitment and Selection Policy;
- Rehabilitation Procedure and Practice Policy;
- Sun Protection – Council Employees Policy;
- Statement of Ethical Principles;
- Secondary Employment Policy;
- Service Delivery Policy;
- Standards Australia 8000 series;
- Time in Lieu of Overtime Policy;
- Trade Practices Act 1974;
- Trauma Management Policy;
- Trustees Act 1925;
- Upper Lachlan Shire Council Community Strategic Plan;
- Upper Lachlan Shire Council Resourcing Strategy documentation;
- Upper Lachlan Shire Council Delivery Program and Operational Plan;
- Volunteers Policy;
- Workforce Plan 2016-2020
- Workers Compensation Act 1987;
- Work Health & Safety Policy;
- Work Health & Safety Act & Regulations 2011;
- Workplace Relations Act 2008.

Variation

Council reserves the right to vary or revoke this policy.

Procedure

Local Government (State) Award 2017 Clause 36 D Procedures states;

PROCEDURES

- (i) Where an employee's work performance or conduct is considered 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 of the employer. The employer and employee will discuss the reason(s) for the unsatisfactory work performance or conduct including matters external to the workplace, and, where appropriate, measures to assist the employee to improve their work performance or conduct. Such measures may include, for example, training, counselling and provision of an Employee Assistance Program (EAP).
- (ii) Unsatisfactory work performance or conduct shall include, but not be limited to, neglect of duties, breach of discipline, 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.
- (iii) Where there is re-occurrence of unsatisfactory work performance or conduct, the employee shall be warned formally in writing by the appropriate officer of council and counseled. 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 for 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. 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.
- (iv) If the employee's unsatisfactory work 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.
- (v) If the employee's work performance or conduct does not improve after the final warning further disciplinary action may be taken.
- (vi) All formal warnings shall be in writing.
- (vii) Delegates shall be provided reasonable time without loss of pay, to represent members in disciplinary matters at the local level, provided prior approval is sought. Such approval shall not be unreasonably withheld.

1. Reasons for disciplinary action

Disciplinary action may be taken in a number of different circumstances.

Normally the grounds for disciplinary action will relate to misconduct or a failure to perform tasks and requirements of the position to an acceptable standard.

Gross misconduct will normally lead to dismissal without notice for a first offence. This is a list of examples of conduct that will be treated as gross misconduct, but this list is not exhaustive:

- (a) Wilful omission of information or provision of false information to gain employment;
- (b) Infringement of statutory duties, for example loss of professional registration or driving license where required for employment;
- (c) Being unfit for duty because of misuse/consumption of drugs or alcohol;
- (d) Misuse/consumption of drugs during working hours or on work premises;
- (e) Consumption of alcohol during working hours or on work premises other than occasions when authorised by the General Manager or senior member of staff;
- (f) Physical/verbal abuse of members of the public, visitors or staff;
- (g) Incompetence, failure to apply sound professional judgment or neglect of duties resulting in serious, or potentially serious, consequences for the safety of visitors and staff, compromises the business or security of the Council, the functions within it or the reputation of the Council;
- (h) Theft, including unauthorised possession of property belonging to the Council, members of the public, visitors and staff;
- (i) Theft/fraud involving Council finances by the falsification of records or any other means;
- (j) Discrimination, harassment or bullying that contravenes the Council Equal Employment Opportunity Policy, or victimization of an employee who makes an informal or formal complaint of discrimination, bullying or harassment;
- (k) Wilful or neglectful disclosure of confidential information to unauthorized persons;
- (l) Wilful or neglectful contravention of the Council policies and procedures that results in serious or potentially serious consequences for the safety of visitors and staff, or compromises the business or security of the Council, or the functions within it;
- (m) Refusal to carry out a reasonable management instruction which is within the individual's capabilities and which would be seen to be in the interests of the Council;
- (n) Wilful damage to the Council property;

2. Suspension

Suspension in itself is not a disciplinary act and does not prove that there has been any misconduct. It is a neutral act enabling the individual to be released from her/his place of work, pending an investigation of allegations made. If it is undesirable for the employee to remain on the premises in a case of serious misconduct, or other cause, e.g. health and safety, then she/he should be suspended.

Staff may be redeployed by mutual agreement, until the results of inquiries are known.

Normally the authority to suspend will be given only to those managers who have authority to dismiss, but during their absence the most senior manager on duty will have the authority to suspend an employee on full-pay in consultation with Human Resources Section wherever possible.

The suspension must be confirmed in writing to the employee or their nominated representative and the reason(s) for the suspension stated (see Appendix 2).

The suspended employee is not allowed to return to the Council premises without the prior authorisation of the suspending manager, and should also notify the manager prior to contacting any Council employees they intend to use as witnesses.

3. Procedure for formal investigation

The suspending manager should carry out the formal investigation. If the General Manager determines it is not appropriate for the suspending manager to carry out the formal investigation, an alternative manager may be appointed. This manager may involve others to assist with the investigation process (e.g. a Human Resources Coordinator). All the relevant facts should be gathered promptly as soon as is practicable.

If required, statements should be taken from the employee and witnesses at the earliest opportunity. All statements should be signed and dated. Any physical evidence should be retained if reasonable to do so.

The investigating manager should meet with the employee and all witnesses, and notes of these meetings should be taken. The employee and witnesses are entitled to be accompanied by a representative, union official or equivalent professional representative at these meetings. A representative from the Human Resources Section may accompany the investigating manager.

At the end of the investigation a report should be prepared that outlines the facts of the case and a chronology of the investigation. The report should outline the investigating manager's recommendations, which may be to:

- a) Take no further action against the employee;
- b) Recommend counselling for the employee;

- c) Issue a verbal warning;
- d) Proceed to a disciplinary hearing where formal disciplinary action shall be considered. The investigating manager should meet with the employee to inform them of the outcome of the investigation. If a meeting were not possible, it would be acceptable to notify the employee in writing.

4. Rights of employees at all formal stages

The employee will have the right to be accompanied by a union representative or equivalent professional representative at all formal stages of the procedure.

An employee will be given the opportunity to state his/her case at a formal hearing, before any decision is made. They may do so with the assistance of a union representative or equivalent professional representative.

To ensure consistency, a member of the Human Resources Section may be present at all formal hearings.

5. Police or legal proceedings

The General Manager may report an employee to the police if it is felt that the misconduct is also potentially illegal.

Where the Council is aware of an employee being charged or convicted of a criminal offence and considers that the offence has a bearing on the employee's job, it may be necessary to instigate an investigation under this procedure. Convictions for offences not connected with employment, nor affecting the employee's ability to carry out his/her duties will not normally provide grounds for disciplinary action. If however, the employee is subsequently sentenced to a period of detention, this may be grounds for the termination of employment.

In the event that an employee is under police or legal proceedings the Council reserves the right to take appropriate action in accordance with Council procedures, prior to the outcome of those external proceedings being reached. This means that internal investigations may continue and where there is found to be a case to answer, disciplinary proceedings may be instigated and the appropriate disciplinary penalty imposed.

In some cases an employee's solicitor or legal adviser may advise not to answer any questions or provide statements for the internal investigation due to the matter being under police investigation. In this situation the Council reserves the right to follow its internal procedures, if necessary, in the absence of the employee. Any decision taken regarding the future employment of that employee would be based on the information available to the Council at that time. The employee will be kept informed of all meetings/hearings and given the opportunity to attend or, if this is not possible, to send a representative who is acceptable to the Council. The employee will be notified in writing of the outcome of the investigations and any disciplinary proceedings.

6. Formal disciplinary hearings

The employee and their union or professional representative should where possible receive a copy of the investigation report including witness statements at least five working days before the date of the hearing.

The relevant representative of the Human Resources Section should where possible receive the employee's response to the management statements at least two days before the hearing. It should also include details of any witnesses who will be called at the hearing and witness statements.

Every effort should be made to agree a mutually convenient date and time for the hearing. When a date has been arranged a request from the employee for the hearing to be adjourned will only be considered once and may lead to the hearing proceeding in the employee's absence.

At each stage of the procedure a formal hearing will be held. The appropriate manager, accompanied by a representative of the Human Resources Section, will chair the hearing. In cases that may lead to dismissal the appropriate manager will be a member of the Senior Management Team.

The formal disciplinary procedure consists of four stages.

7. Stages within the procedure

7.1. Stage 1 – Verbal Warning

A verbal warning is appropriate when it is necessary for the manager to take action against an employee for any minor failing or minor misconduct. The employee will be advised of the reason for the warning, the improvement required, that it is the first stage of the Disciplinary Procedure and the manager will confirm the fact that further disciplinary action may follow if there is no satisfactory improvement within an agreed timescale. The manager will keep a file note of the verbal warning.

7.2 Stage 2 – First Written Warning

A first written warning is appropriate when:

- a) A verbal warning has not been heeded and the misconduct is either repeated or performance has not improved as previously agreed; or
- b) An offence is of a more serious nature for which a written warning is more appropriate.

The warning will give details of the improvement required and the timescale for review and the manager will confirm the fact that further disciplinary action may follow if there is no satisfactory improvement.

7.3 *Stage 3 – Final Written Warning*

A final written warning is appropriate when:

- a) An employee's offence is of a serious nature falling short of one justifying dismissal; or
- b) An employee persists in the misconduct or performance that previously warranted a lesser warning.

The warning should give details of the complaint and warn that dismissal may result if there is no satisfactory improvement within a notified timescale. A copy of the final written warning will be kept on the employee's record of employment.

7.4 *Stage 4 – Dismissal*

Dismissal is appropriate when:

- a) An employee's actions are considered to be gross misconduct.
- b) An employee's misconduct/performance has persisted, exhausting all other lines of disciplinary procedure.

8. *Rights of appeal*

An employee who wishes to appeal against formal disciplinary action should do so within ten working days of receiving details of the penalty in writing. The basis of an appeal should address why the resulting disciplinary action was inappropriate.

Appendix 1

Suspension Guidelines

1. Introduction

These guidelines have been produced for employees who have been suspended from work and aims to provide them with relevant information about the suspension and the support available to them.

This document should be read in conjunction with the Council Disciplinary Policy and Procedure.

2. What is suspension?

Suspension is the temporary removal of an employee from his/her place of work. Staff can be suspended from duties for a variety of reasons, the most common being to allow an investigation to take place following an allegation of misconduct, usually of a very serious nature.

3. Outline of Suspension Process

An employee can be suspended at the outset of an investigation following receipt of an allegation, or during an investigation where it becomes apparent that the allegation is more serious than initially thought, or where the employee's presence is causing difficulty in the investigation being carried out effectively. Whatever the situation is which has resulted in the suspension, the following provides a guide to the process that should be followed.

At the suspension meeting the employee should have the opportunity to be accompanied by a union representative or equivalent professional representative. However, in an emergency where the immediate removal of the employee is required, this may not be possible.

If the employee has not already done so, they are advised to consult their representative from the union or professional body at the earliest opportunity.

The suspension will be confirmed in writing and should be sent to the employee within 3 days of the suspension taking place.

The employee will be given the opportunity to meet with the investigating manager to discuss the circumstances surrounding the allegation(s) and state their case. The investigating manager may also request that the employee submit a written statement confirming their version of events.

The employee will be expected to make themselves available to attend any investigation meeting that may take place and to co-operate in the investigation process whilst they are on suspension.

The employee will be notified, in writing, of the outcome of the investigation and any subsequent actions that are proposed.

The length of the suspension will be kept under regular review and the employee will be notified of any circumstances that may affect the continuation of the suspension.

4. Police involvement

In the event that an employee is under police or legal proceedings the Council reserves the right to take appropriate action in accordance with Council procedures, prior to the outcome of those external proceedings being reached. This means that internal investigations may continue and where there is found to be a case to answer, disciplinary proceedings may be instigated and the appropriate disciplinary penalty imposed.

In some cases an employee's solicitor or legal adviser may advise not to answer any questions or provide statements for the internal investigation due to the matter being under police investigation. In this situation the Council reserves the right to follow our internal procedures, if necessary, in the absence of the employee. Any decision taken regarding the future employment of that employee would be based on the information available to the Council at that time. The employee will be kept informed of all meetings/hearings and given the opportunity to attend or, where this is not possible, to send a representative acceptable to the Council, and will be notified in writing of the outcome of the investigations and any disciplinary proceedings.

5. Employee support & information services

It is recognised that suspension can be a very stressful time for employees and the Council endeavours to provide employees with the necessary support and information required during this period. There are a number of sources from where you can obtain support or information. Council has an Employee Assistance Program Provider (EAP) that can be contacted through Council's Human Resource Section.

5.1 *The Human Resources Department*

Where health problems are considered to be a contributing factor to difficulties with conduct this may result in a referral to the Human Resources Section. The Human Resources Coordinator will refer the employees to the Council's Doctor for an assessment of the extent of the health problems and any treatment used that may have contributed to the employee's behaviour or actions.

Where violent or abusive actions have been the circumstances that have resulted in the suspension, the Human Resources Section and Management will be notified at the earliest opportunity.

The employee should contact the Human Resources Coordinator if they have any queries regarding the procedure to be followed or the application of Council procedures.

5.2. Other External Contacts

If the employee belongs to a union or professional organisation, it is advisable that the employee contact them at the earliest opportunity. Most unions/professional organisations have a range of support and advice services available to their members.

Further, Council has an adopted Employee Assistance Program (EAP) that also provides support and advice to all Council employees.



Appendix 2

Suspension Letter

Private & Confidential

Dear **[name]**,

Council is writing to confirm the outcome of the disciplinary meeting of **[date]**, attended by **[name, job title of each attendee]**. It was explained that disciplinary action was being taken regarding the following matters:

- (i)
- (ii)
- (iii)

[following sentence is not applicable if meeting attended by representative, union official or equivalent professional representative]

You were informed that you were entitled to be accompanied by a representative, union official or equivalent professional representative and you confirmed that you were willing to go ahead with the meeting without a representative.

This is a very serious matter and Council has decided that you should be suspended from duty with effect from **[date]**, until an investigation has been carried out in accordance with Council Disciplinary Policy & Procedure, a copy of which was given to you at the meeting

Council would like to emphasise that suspension is not a disciplinary act and does not prove that there has been any misconduct. It is a neutral act enabling you to be released from your place of work, pending an investigation into an allegation made or an investigation into conduct that resulted in disciplinary action being instigated.

Council reminds you that whilst on suspension you are not allowed to return to the Council premises without the prior authorisation of the suspending manager, and you should also notify the manager prior to contacting any Council employees you intend to use as witnesses.

As explained at our meeting, Council wants to ensure that this matter is resolved as quickly as possible and also that the ***[allegations/concerns raised]*** are thoroughly investigated.

You may therefore be required to attend an investigation meeting and Council will inform you of a date for this meeting and subsequently the outcome of the investigation at the earliest opportunity.

Your attention is directed to Clause 32 of the Local Government (State) Award 2017, which deals with Disciplinary Procedures, rights and obligations and penalties under the Award. The Local Government (State) Award 2017 applies in full and its application is not limited to the sections specifically referred to in this letter (**optional**)

During your suspension, please feel free to contact Council's [insert officers position title and name] if you have any queries.

Alternatively you may contact [Council's EAP Provider] for basic support and guidance. The Human Resources Coordinator is also available to provide additional support.

Yours faithfully

Manager's Name & Job Title

cc: All Attendees





Appendix 3

Incident Investigation Form

Employee Name: _____ Date: _____

Department: _____

Venue: _____ Time: _____

In Attendance: _____

Reason for attendance:

Employer's statement:

Supervisors Signature: _____

Employee's statement:

Employees Signature: _____

Recommendations:

Placed on personal file?

Yes	No
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Is there a suspension period established?

Yes	No
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Length of suspension period?

	Weeks / Months
--	-------------------

Is there to be a follow up review?

Yes	No
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Date of next review.

Date	
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Supervisor Signed: _____ Date: _____

I agree/disagree that the above content is an accurate reflection of all the issues that were discussed

Employee Signed: _____ Date: _____

Director/General Manger Signed: _____

Date: _____

Independent/H R Coordinator Signed: _____

Date: _____