

# HOPE VALE

## Performance, Misconduct and Discipline Policy

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ABORIGINAL  
SHIRE COUNCIL

## **PURPOSE OF POLICY**

The objective of Hope Vale Aboriginal Shire Council's (Council) Performance, Misconduct, and Discipline Policy is to:

- (a) correct and/or improve the standard of conduct and/or performance of an employee where appropriate or necessary;
- (b) provide any particular employee with an opportunity to correct unacceptable conduct and/or unsatisfactory performance (other than in situations of serious misconduct);
- (c) ensure that all employees are treated fairly, equally and consistently and in accordance with Local Government legislation and procedural fairness;
- (d) ensure that each situation is considered and determined, with regard for the particular facts of each circumstance; and
- (e) outline the various types of disciplinary action which may be taken by Chief Executive Officer or delegate.

## **COMMENCEMENT OF POLICY**

This Policy will commence from 1 January 2023. It replaces all other performance, misconduct and disciplinary policies of Council (whether written or not).

## **APPLICATION OF THE POLICY**

This policy applies to all employees of Council. This policy does not form part of any employee's contract of employment. The Policy is not intended to override the terms of any Award or contract that applies to an employee.

Council undertakes to regularly review this policy to take account of changes in legislation, activities, services and products. As a result of this review, changes may be made to this policy from time to time and all employees and contractors are required to comply with those changes.

This Policy is to be applied when dealing with necessary discipline arising from matters associated with poor performance, inappropriate conduct and/or misconduct, in connection with, or arising out of employment with Council, including conduct at work-related functions or where an employee is representing Council or identifiable as a Council employee.

Where an employee's conduct involves a breach, or suspected breach, of any Australian law, Council may notify the police or other relevant government authority.

## **POLICY STATEMENT**

### **1. GROUNDS UPON WHICH DISCIPLINARY ACTION MAY BE TAKEN**

Disciplinary action may be taken in relation to:

- (a) failure to perform responsibilities in accordance with an employee's contract of employment, the *Local Government Act 2009 (QLD)* (Act), and Council's policies and procedures; or
- (b) failure to perform responsibilities under the Act in accordance with the local government principles, which may include persistent poor performance; or

- (c) action taken under the Act in a way that is not consistent with the local government principles.

## **2. DISCIPLINARY PROCESS OVERVIEW**

The discipline and investigation process outlined below are intended as a guide only. The appropriate process to be adopted will remain at Council discretion in consideration of the circumstance of the matter, however, regardless of process, Council will comply with the requirements outlined by the *Local Government Regulation 2012* (QLD), specifically section 283, and will follow procedure fairness best practise.

## **3. INVESTIGATION**

Depending on the circumstances, it may be necessary to conduct an investigation into incidents and/or allegations against a particular employee or group of employees. Investigations may be undertaken internally or by appointment of an external investigator.

Investigations involve particularisation of the allegations made, collecting of relevant evidence and, where required, interviewing relevant witnesses, including complainants and respondents, such as the employee's co-workers or supervisors, or even members of the public and suppliers. The evidence is then considered to make a finding on each allegation, using the standard of proof for workplace matters which is "on the balance of probabilities".

If Council is satisfied, on the balance of probabilities, that there is sufficient evidence to support the allegation/s against an employee, this may lead to disciplinary process being follow.

Council will endeavour to ensure investigations are undertaken in a timely manner. Through out the investigation process appropriate procedural fairness principals will be adopted, including providing the respondent the opportunity to have a support person, providing reasonable opportunity and timeframes to respond to allegations and being provided sufficient information to allow response to allegations.

Once investigation findings have been made, and where allegation/s have been substantiated, a respondent will be provided an opportunity to respond to the findings.

## **4. SUSPENSION**

In accordance with section 282 of the Act, the Chief Executive Officer may suspend an employee on full pay when satisfied, on reasonable grounds, that a employee will be subject to disciplinary action.

If Council believes it to be reasonably necessary in the circumstances, an employee may be suspended from duty on ordinary pay pending the completion of an investigation or disciplinary process. In such circumstances, the employee should be informed in writing of the conditions of the suspension, and where possible, the reasons for the suspension.

## **5. DISCIPLINE PROCESS**

Where Council becomes aware of allegations of inappropriate conduct or misconduct against an employee, or where an investigation outcome supports allegations of poor performance, inappropriate conduct or misconduct, Council may determine to enact a disciplinary process.

In such circumstances, the responding employee will be provided the allegations and any evidence available, in writing, to allow their response. The written allegations may be delivered in a meeting between the Chief Executive Officer (or delegate), appropriate Council representatives, the responding employee and their support person (should the choose to have one).

Following the responding employee being given an opportunity to respond to the allegations, Chief Executive Officer (or delegate), and the relevant manager, will review the evidence, including any response, and determine if the allegations or the investigation findings, are substantiated, on the balance of probabilities.

Where it is considered that the employee's conduct is in breach of their employment obligations, detailed at Clause 1, Chief Executive Officer (or delegate), and the relevant manager, may determine if disciplinary action is going to be taken. Prior to disciplinary action being taken, and in accordance with Section 283 of the Act, the employee must be provided with a written 'Notice of Proposed Disciplinary Action' letter and be provided with a reasonable opportunity to respond. Council may choose to issue the letter at a meeting with the responding employee to explain the content of the letter and the process to be followed. The responding employee may choose to have a support person present.

Details that must, as a minimum, be contained in a written 'Notice of Proposed Disciplinary Action' letter 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;

Following the responding employee being given an opportunity to respond to the 'Notice of Proposed Disciplinary Action' letter, Chief Executive Officer (or delegate), and the relevant manager, will review all the information, including any response, and determine whether the disciplinary action will be issued. Council will consider:

- (a) the seriousness of the poor performance/inappropriate conduct/misconduct;
- (b) the response or explanation given by the employee;
- (c) the employee's employment history and record.

Where it is determined to take some other form of disciplinary action, other than that already proposed, Chief Executive Officer (or delegate) will issue the employee with another 'Notice of Proposed Disciplinary Action' letter for their further response.

A decision to implement disciplinary action will be provided to the employee in writing and placed on the employee's personnel file.

## **6. DISCIPLINARY ACTION**

The type of disciplinary action taken may vary from case to case, depending upon all 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.

## **7. TYPES OF DISCIPLINARY ACTION**

In accordance with the Act, the types of formal disciplinary action which may be taken by the Chief Executive Officer, or delegate, include the following:

- (a) termination of employment;

- (b) demotion, including a reduction in remuneration;
- (c) a deduction from salary or wages of an amount of not more than 2 penalty units;
- (d) a written reprimand or warning.

A written reprimand or warning letter must include:

- (a) the employee's conduct that is disapproved of;
- (b) the remedial action needed to rectify the conduct;
- (c) the period within which the remedial action is to be taken;
- (d) the possible consequences for a repeat of the conduct by the employee; and
- (e) is part of a local government employee's employment record.

#### **8. ALTERNATIVES TO DISCIPLINARY ACTION**

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

- (a) training;
- (b) mediation; and
- (c) counselling.

#### **9. DISMISSAL**

If the decision is made to dismiss the employee, the employee should be notified in writing of the decision, reasons for the decision, and any further information, including:

- (a) day the dismissal is to take effect;
- (b) that there will be a payment made in lieu of notice, except where dismissal is due to misconduct and in accordance with Section 121 of the *Industrial Relations Act 2016*;
- (c) advice that the termination will include payment of all accrued entitlements; and
- (d) date in which Council property needs to be returned and to whom.

#### **10. 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:

- (a) the employee's conduct that is disapproved of;
- (b) the remedial action needed to rectify the conduct;
- (c) the period within which the remedial action is to be taken; and
- (d) the possible consequences for a repeat of the conduct by the employee.

#### **11. DOCUMENTATION / CONFIDENTIALITY**

Council should make contemporaneous notes of investigation interviews and disciplinary meetings. Where required, the Council may choose to provide statements or transcripts to witnesses, respondents and complainants for their review and approval or for their information.

Investigation reports and disciplinary process letters should be stored confidentially on Human Resources files. Disciplinary action letters shall be placed on the responding employee's personnel file.

Throughout investigation and disciplinary processes, all employees involved, including support persons, are required to keep the matter confidential. Whilst this is Council's expectation, it is understood that information may need to be shared to ensure any respondent is afforded procedural fairness.

Breaches of confidentiality during or following an investigation or disciplinary matter, may result in Council taking disciplinary action against the employee responsible.

## **VARIATIONS**

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

## **ASSOCIATED DOCUMENTS**

- *Local Government Act 2009*
- *Local Government Regulation 2012*
- *Industrial Relation Act 2016*
- Work Health and Safety General Policy
- Code of Conduct for Employees
- Anti-Discrimination, Workplace Bullying and Harassment Policy