



Policy Title: **DISCIPLINARY POLICY AND PROCEDURES**

Policy Type: **HUMAN RESOURCES**
 (Statutory, Financial, Administrative, Human Resources)

Policy Number: **HR003**

Approved by Council	Last Review	Current Review	Next Review
	19 May 2020	18 May 2021	17 May 2022
	Resolution #	Resolution #	Resolution #
	20.6632	21.6948	
Approved by CEO/Director:	Bernie McCarthy – CEO	 Signature.	
Effective Date	18 May 2021		
Implementation Department		Officer Position	
Corporate Services		Human Resources Manager	
Revision #:	Document Management File #.		
6.0	01-03-HR003		

1. Policy Background/Scope

This Policy is to define the principles for the management of disciplinary matters at Aurukun Shire Council. The objectives of this policy are to:

- set standards for disciplinary action where unsatisfactory work performance or conduct exists; and
- promote fairness and order in the treatment of individuals and in the conduct of employee relations matters; and
- ensure procedural fairness and the adequacy of steps taken in coming to a decision to discipline or dismiss an employee, and
- ensure compliance with guidelines set out by the Crime and Corruption Commission of Queensland (CCC) on reportable matters.

2. Policy Provisions

The Council is committed to the fair and equitable management of the workforce. Employees will be counselled and where necessary disciplined for unsatisfactory work performance or conduct.

Unsatisfactory work performance and conduct may typically include:

- a) proven inefficiency or incompetence in the performance of duties or failure to follow Council policies or Supervisory directions; and
- b) punctuality and attendance problems, leaving the place of employment without permission, extended meal breaks, and absenteeism; and
- c) failure to observe safe work practices or instructions issued by Supervisory staff for the safe operation of Council's plant and equipment.

Policy breaches of the Workplace Health and Safety Policies and Procedures could lead to termination, under unsatisfactory work performance and/or conduct.

3. Unsatisfactory Work Performance and/or Conduct:

The procedure outlined herein provides a step-by-step process and should be adhered to when counselling or disciplining staff for unsatisfactory conduct or work performance.

It is recognised that the employee can request representation from the appropriate support person at any stage throughout these proceedings. Where the employee is not a Union member or does not wish the Union to be involved, a work associate or colleague may be invited to participate in the proceedings.

Failure to follow these procedures will not nullify the ramifications of any misconduct which would justify a later step in the proceedings, even though an earlier step has not been carried out.

Employees will be ***instantly dismissed for acts of serious misconduct***. Some examples of Serious Misconduct:

- **Disobedience**: Willful disobedience to any lawful and reasonable directive given by a Supervisor. An employee has an obligation to obey all fair and reasonable instructions. If the employee does not do so, they may be dismissed. Although an isolated act of disobedience may not be sufficient to justify instant dismissal.
- **Theft/Vandalism**: An employee may be instantly dismissed for proven theft or vandalism of Council property. In these situations, it would be desirable for the proper authorities to be advised immediately of the situation.
- **Intoxication**: The Aurukun Alcohol Management Plan strictly forbids the carriage, consumption or making of alcohol within the Shire. Severe penalties apply. Transgression of the Alcohol Management Plan will result in immediate dismissal. (Refer also Council's Drug and Alcohol Policy)
- **Negligence**: Where an employee's negligence results in damage to Council's plant, product or other property or injury to other employees (or the risk of either), Council may have the rights to dismiss. The test of negligence is not so much the extent of the damage or injury, but the nature of the act. Ignoring work rules or safety instructions, particularly where there is a past history of negligence, may justify instant dismissal due to negligence.
- **Misconduct**: ***Instant dismissal for misconduct*** shall be on the grounds of: physically assaulting a fellow employee, or a member of the public; insubordination, insolence or abuse of the employer, including abusive language to the public; dishonesty by the employee in carrying out the duties for which they were engaged.
- **Offences outside the Workplace**: In some situations, an employee's conduct, behavior or offences committed outside the workplace may warrant instant dismissal, as a general rule an employee's behavior must be compatible with a faithful discharge of their duty to an employer. For example, a cashier handling Council's funds who is convicted of misappropriating funds outside of Council.

The CEO has an obligation to report items of crime and misconduct as identified by the Crime and Corruption Commission of Queensland (CCC) including but not limited to official misconduct and in accordance with CCC guidelines.

4. Definitions

Conduct: An employee or employer's performance or behaviour in the workplace.

Counselling: A process of communication between more than one person to remedy a problem or issue affecting the workplace and the employee/ employer's performance.

Dismissal: Termination of employment.

Misconduct: Unsatisfactory behaviour or performance by an employee or employer in the workplace.

Support Person: An appropriate representative elected by the employee to participate in any of the outlined processes and communications.

5. The Standard Disciplinary Process

The standard disciplinary process will encompass the following steps:

Step One – Informal Warning

On the first occasion where poor performance or conduct becomes a matter of concern, the immediate Supervisor should speak to the employee and give an informal warning. A record of the discussion should be made in the Supervisor's work diary. This first step in this process is usually an informal warning and is not a precondition to a formal warning.

Step Two – First Formal Verbal and Written Warning

If poor performance or conduct persists after the informal warning, or is of such nature that an informal warning would be inappropriate, the following more formal approach, which involves counselling the employee(s) and issuing a formal written warning, should be taken. All formal warnings must be signed by the Chief Executive Officer (CEO).

- a) The immediate Supervisor and Director will agree on a strategy to counsel the employee on the performance or conduct issues of concern. The objective of the counselling shall be to endeavor to remedy the unsatisfactory work performance or conduct to the mutual satisfaction of both Council and the employee. This approach will also assist to ensure that the employee has every opportunity to continue in employment and make a meaningful contribution to satisfying organisational and personal objectives.
- b) Such counselling and formal warning must clearly identify and outline as appropriate:
 - i. The standard of work or conduct expected of the employee;
 - ii. The area of job requirements or conduct where the employee is failing to meet the required standard;
 - iii. The period within which the employee must improve their work performance or conduct such period shall not, as a general rule, be more than three (3) months; and
 - iv. The severity of the situation (i.e. whether the employee may be dismissed or suffer some other form of disciplinary action should their work performance not improve).
- c) The Manager and/or Supervisor should provide a documented account of the counselling which includes a proposed course of action to address specific problems, and a summary of the circumstances surrounding the discussions. Copies of documentation signed and acknowledged by the employee should be provided to the employee and placed on their Personal File.
- d) In every case where a warning is given to an employee in writing the Director is to ensure that the review of the warning at the expiration date is undertaken. The Chief Executive Officer must provide written approval for the issue of a formal warning. Where improved performance is achieved and the Director is satisfied, appropriate written notification will be given to the employee and a copy placed on the employee's Personal File.

Step Three – Final Formal Warning

If at the expiration of the period determined in Step 2 above, there is no evidence that the employee's work performance or conduct is improving, the Supervisor should take the matter to the relevant Director. The Chief Executive Officer must give approval to proceed with a final formal warning.

The immediate Supervisor and the Director should then interview the employee concerned. At this interview, the employee should be advised of the seriousness of the circumstances and that failure to effect an immediate improvement may lead to dismissal. Details of this discussion should also be recorded and a formal advice provided to the employee. Copies of this documentation are to be signed by the Director and acknowledged by the employee, a copy should be provided to the employee and a copy placed on the Personal File.

Step Four - Dismissal

Should there be no further improvement after all endeavours have been pursued through Steps 1-3 above, the Supervisor will recommend and discuss the matter further with the Director regarding the termination of the employee's services with the Council. The Chief Executive Officer must approve and sign all actions of dismissal.

The Director, upon being satisfied on the Supervisor's recommendation that there has been no improvement in the employee's performance in accordance with the warnings received, shall serve a Notice of Termination on the employee, which is to be signed by the Chief Executive Officer.

6. Serious Misconduct Disciplinary Process

The Serious Misconduct disciplinary process will encompass the following steps:

Instant Dismissal/ Serious Misconduct

There are occasions where the conduct of an individual is such that would not warrant the utilisation of the procedure outlined earlier in this Policy, as the seriousness of the offence would be at such a level that it may warrant instant dismissal. The circumstances or behaviors are listed in the Scope and Application of this Policy V. Misconduct above; such as insubordination, dishonesty by the employee in carrying out the duties for which they were engaged whilst not designed to be an exhaustive list identifies various examples of actions or behaviors that may constitute grounds for instant dismissal due to serious (gross) misconduct.

Prior to initiating an instant dismissal, the Director must be certain that the circumstances warrant the action taken. The manner of dismissal is relevant to the issue of whether the dismissal is harsh, unjust or unreasonable and the adequacy of the procedural steps taken to dismiss an employee will be considered by Industrial Tribunals in any assessment of an allegation of harsh, unjust or unreasonable termination of employment.

Accordingly, a thorough investigation of the issues should be under taken and the following procedural steps should be followed.

Step One

The immediate Supervisor is to inform the Director and the Human Resources Manager of the employee's alleged misconduct. The Chief Executive Officer must approve any further action.

Step Two

The immediate Supervisor and Director will conduct a preliminary investigation of the circumstances. This process must provide an opportunity for the employee or employees in question to answer the allegations. If, based on preliminary investigations, the Director decides that the performance or conduct may warrant instant dismissal, such a recommendation should be made to the Chief Executive Officer. Chief Executive Officer approval is required before any dismissal of any employee.

In circumstances relating to alcohol refer to the Alcohol Management Plan.

Where there is any doubt whatsoever as to the seriousness of the situation, the employee(s) may be suspended with pay in order that a more thorough investigation can be undertaken. Chief Executive Officer approval must be given for the suspension.

Step Three

The Chief Executive Officer, upon being satisfied on the Director's and Supervisor's recommendation that the circumstances warrant immediate dismissal, and having carried out policy Steps 1-2 above, shall authorise the preparation and service of a Notice of Termination to the employee which is to be signed by the Chief Executive Officer.

- i. The Notice of termination should outline the reason for instantly dismissing the person, rather than merely stating that they have been terminated for misconduct.
- ii. Where these statements may involve allegations of impropriety, such as theft or embezzlement, a determination may be required to establish if legal advice may be required as part of the process, to ensure that the Council's legal position is protected.

NOTE:

All activities conducted during this phase of the Procedure should be well documented. It is recognised that the employee can request representation from a support person at any stage throughout these proceedings. Where the employee is not a Union member or does not wish the Union to be involved, a work associate or colleague may be invited to participate in the proceedings.

Depending on the gravity of the allegations, it may be appropriate for the employee(s) to seek legal assistance during these proceedings. However, it would not be appropriate for an employee to be legally represented in earlier stages of the investigative process.

7. Abandonment of Employment

If an employee does not attend work for more than 3 days without notification to Council, a letter will be sent to the employees last known address requesting an explanation of their unapproved absence, if no response is received within 5 working days of the letter being sent the employment contract will be terminated on the basis on abandonment.

8. Community Obligations

All employees are required to maintain a high level of social behaviour both in and outside the workplace in Aurukun, Weipa and other Cape York communities. Any behaviour that leads to bringing the reputation of Aurukun Shire council into disrepute may result in disciplinary action, up to and including termination of your employment.

9. Matters referred to the Crime and Corruption Commission (CCC)

The Crime and Corruption Commission is an independent law enforcement commission set up to combat major crime in Queensland, including organized crime and pedophilia, and official misconduct in the Queensland Public Sector.

Official misconduct refers to any conduct by the public official, related to the official's duties, that is dishonest or lacks impartiality, involves a breach of trust, or is a misuse of officially obtained information. The conduct must amount to a criminal offence or be serious enough to justify dismissal.

The CCC does not usually become involved in case of minor misconduct by public servants, such as rudeness or inefficiency. The conduct must be official misconduct i.e. dishonest, unfair or betray a trust - that amounts to a criminal offence or is serious enough to justify dismissing the person.

The CCC's official misconduct jurisdiction covers Queensland government departments and agencies, schools, universities, hospitals, prisons, local governments, Police, and elected officials of State and Local government.

Crime matters are usually referred to the CCC for investigation by a specially constituted Crime References Committee, which comprises law enforcement experts and community representatives.

Official misconduct investigations are decided by an Assessment Unit; within the CCC. These matters can come to the attention of the CCC through their own intelligence work, through referrals by CEO's and police, or through any member of the public.

The CEO has an obligation to report matters of crime or official misconduct to the CCC that are reported. Reported items do not have to be substantiated with evidence.

It is a requirement of the CCC that all reported matters undergo a formal investigation process. The CCC may request this process to be handled internally by the CEO (who may delegate the investigation to the Director) and the outcome must be reported to the CCC. Alternatively, the CCC may determine to conduct their own formal Investigation.

10. Related Documentation:

Code of Conduct

Dispute and Grievance Policy

Alcohol Management Plan

Misconduct or Non-Performance Report

Appendix A: Notice of intention to undertake disciplinary action

Appendix B: Letter of warning

Appendix C: Final warning

Appendix A – Notice of intention to undertake disciplinary action

(Insert date)

Insert Employee's name
Address
Suburb
State Postcode

Dear (insert Employee's name)

This letter is to invite you to a meeting scheduled for ("insert date and time" providing seven days' notice) to discuss concerns relating to ("unsatisfactory performance" or "conduct" insert as appropriate).

(If this matter was a result of a previous verbal warning provide details of this discussion in this letter).

(Insert specific details of the concerns citing the Code of Conduct and associated policies and procedures where relevant).

You can invite a support person to be present at the meeting to provide support to you during the interview process. If you would like to discuss this matter further prior to the scheduled meeting, please contact your Manager (insert name) on (insert contact details).

Yours sincerely

Chief Executive Officer
Aurukun Shire Council

Appendix B – Letter of Warning (sample)

(Insert date)

Insert Employee's name

Address

Suburb

State Postcode

Dear (insert Employee's name)

This letter is to officially warn you that your conduct has not complied with the standards specified in the Aurukun Shire Council Code of Conduct (also state specific policies and procedures that have been breached where relevant).

I have noted the explanation and comments provided by you at the meeting held (insert date and persons present) in relation to the matters raised and they have been considered fully prior to the issue of this warning. (Make reference to any explanation/mitigating factors if necessary).

(Insert specific details of misconduct, stating the specific facts which determined the disciplinary decision. Example: You requested vacation on July 3, and the request was denied. When you called in on July 3 to say you were too ill to come to work, you were required to bring in a medical verification that you were unable to perform your job tasks. When you returned to work, you told everyone about the trip you had taken.)

This conduct is in direct breach of the (insert specific clause/s within the Aurukun Shire Council Code of Conduct).

The Council will assist you to meet the required standards by providing you (insert details of how support will be provided).

(Insert only as required) The Council is desirous of giving you an opportunity to develop as an effective and productive employee of the Council. To that end, you are required to remedy the above conduct by (state the time frame for the performance/ behaviour to be addressed) when the matter will be reviewed.

If you fail to meet the required standard of conduct specified in our Code of Conduct, you may be subject to further disciplinary action.

The Council requires that the confirmation of receipt (provided below) is signed and returned to:

“Private and Confidential”.

(Insert name of Manager).

Aurukun Shire Council

(Insert Address)

If you would to discuss this matter further, please contact the (insert manager's name) on (insert contact details).

Yours sincerely

Chief Executive Officer
Aurukun Shire Council

Confirmation of receipt

I, (insert employee name), have read this warning letter. I understand that this is considered as a (first or subsequent “insert as appropriate”) warning as set out in the Aurukun Shire Council Disciplinary Policy and Procedures.

Signature: _____

Date: ____/____/____

Appendix C – Final warning

(Insert date)

Insert Employee's name

Address

Suburb

State Postcode

Dear (insert Employee's name)

I refer to the letter dated (insert date) in which Council required you to make a significant improvement in the following area / s:- (Insert the information provided in the previous letter).

Council is not satisfied that you have made the necessary improvements, particularly in regard to the following areas:-

(Insert specific description of the behaviour / performance that has not improved or been addressed).

In the course of this process you were given the opportunity to advise of any reasons, circumstances or other mitigating factors which may be affecting your work performance. However, your comments offered in response are not accepted for the following reasons:

If necessary - (Insert response to any information put forward by the employee and why the reasons are not acceptable.)

Council intends to keep your performance under review. In that respect you are to address the performance / behavioral issues raised in this disciplinary notice immediately.

Should you fail to respond to this warning, you will be subject to further disciplinary action up to and including the termination of your employment.

The Council requires that the confirmation of receipt (provided below) is signed and returned to:

“Private and Confidential”.

(Insert name of Manager).

Aurukun Shire Council

(Insert Address)

If you would to discuss this matter further, please contact the (insert Managers name) on (insert contact details).

Yours sincerely

Chief Executive Officer
Aurukun Shire Council

Confirmation of receipt

I, (insert employee name), have read this warning letter. I understand that this is considered as a final warning as set out in the Aurukun Shire Council Disciplinary Policy and Procedures.

Signature: _____

Date: ____/____/____