

POLICY NO AND TITLE	<b>1.2.1</b>	<b>Conditions of employment policy</b>
PROCEDURE	1.2.1(n)	Disciplinary action
VERSION AND DATE ADOPTED	1	
RESPONSIBLE OFFICER		Manager Human Resources

### Introduction

Council recognises that the need to take disciplinary action inevitably occurs in every organisation. Any disciplinary procedure should allow for re-education as well as ensuring that the facts to support any further actions are gathered and considered. It should also follow the conditions set out in the various State and Federal Acts/Awards and ensure that sufficient evidence is gathered for presentation to any Industrial and/or Civil Court if necessary. All new employees will be provided with a Summary of Council's disciplinary procedure during the induction process.

### Guidelines/ Procedures

Clause 27 of the Local Government (State) Award sets out clear procedures to be followed in terms of disciplinary procedures and the clause is reproduced in full :-

### Disciplinary Procedures

1. Where an employee's work performance or conduct is considered to be 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 or nominee of Council.

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.

2. Where there is a re-occurrence of the unsatisfactory performance or conduct, the employee shall be warned formally in writing by the appropriate office of council and counselled.

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 of 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.

3. If the employee's 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.

4. If the employee's performance or conduct does not improve after the final warning further disciplinary action shall be taken.
5. This shall not affect the rights of the council to take other disciplinary action before and/or during the above procedure in cases of misconduct or where the employee's performance warrants such action.
6.
  - (a) At any stage during this procedure council may immediately suspend an employee without pay.
  - (b) The suspension of an employee from duty does not prevent the council from granting to an employee accrued leave for whole or part for the period of the suspension.
  - (c) Suspension from duty shall not affect an employee's continuity of service for the purposes of accruing leave entitlements.
  - (d) If after investigation, the reasons for suspension are found to be inappropriate, the employee shall not suffer any loss of pay for the period under suspension.
7. At any stage during this procedure council shall be entitled to demote an employee to a lower position, provided that council shall give not less than two weeks notice in writing of its intention to demote.
8. Nothing in this clause prevents council from terminating an employee's service in accordance with Clause 30, Termination of Employment of this Award.
9. Either council or the employee may request the presence of a Union representative at any stage in the above procedure.
10. This procedure shall not affect either party's right to institute the Grievance and Dispute Procedure set out in Clause 26 of this award or to notify the Industrial Registrar as to the existence of an industrial dispute.
11. Employees shall have access to their personal files and may take note and/or obtain copies of the contents of the file.
12. In the event that any employee is of the opinion that any disciplinary or other record contained on their personal files is incorrect, out of date, incomplete or misleading, such employee may make application to the general manager, for the deletion or appropriate amendments of such record.

### **The Due Process of Discipline**

Before any consideration is given to initiating disciplinary action, pertinent facts must be gathered and unemotionally considered. This is the first element of the "due process of discipline." The emphasis is on facts, not opinions. An individual's observations (a supervisor's complaint, witnesses' statements) are to be in writing. Although the emphasis here is on accuracy, time is also important and any disciplinary action should occur as soon as possible after the event.

### **Stage 1: Counselling and Initial Reprimand**

The Manager or supervisor is to speak to the employee at the first transgression pointing out the error/s and/or point/s of unsatisfactory performance/conduct. It is important that the correct behaviour is emphasised.

The employee is to be reprimanded by his/her Manager/Supervisor. Advice and counsel must be given to assist the employee to improve. The employee must be advised that a record of disciplinary action will be placed on his/her personal file.

This action should cover:-

- a) A statement - this is a "Disciplinary Interview".
- b) A specific outline of the transgression.
- c) A statement as to why the performance/conduct is unacceptable.
- d) A description of the preferred/acceptable behaviour.
- e) The consequences if the preferred/acceptable behaviour is not followed are to be detailed.

Unsatisfactory work performance or conduct will include neglect of duty/s, breach of discipline, absenteeism, non-compliance with safety standards/procedures.

A written record of the counselling and initial reprimand (Stage 1) is to be detailed. The employee is entitled to sight and sign such written record and add notations regarding the content of such record. The original only is to be forwarded to the Human Resources section for advice and placement on the employee's personal file.

### **Stage 2: Second Warning - Written Warning and Interview**

Where there is a recurrence, or no improvement of the employee's unsatisfactory performance/conduct, a second warning will be issued in writing by the Manager and signed by the employee. If the employee declines to sign the record, this is to be noted. This warning will be recorded on the employee's personal file and a copy given to the employee. The employee is to be asked if a Union Representative or Interpreter is required to be present at this interview. If the employee declines the offer of having a Union Representative present, this must be noted in the record of disciplinary interview. The Human Resources Manager should be present at the interview.

### **Stage 3: Final Warning**

If the employee's unsatisfactory performance or misconduct continues or resumes following the Second Warning, it will result in the issuing of a "Final Warning" by the Manager in the presence of the employee's Union Representative and the Human Resources Manager.

This warning is to be recorded on the employee's personal file and carry the signatures of the employee, the Manager, the Union Representative and the Human Resources Manager. If any party declines to sign the record of Disciplinary Action this must be noted. It is essential that the employee be made aware that this is to be regarded as the "Final Warning". The record must indicate this.

#### Stage 4: Final Action

If the employees performance or conduct does not improve after the "Final Warning", the Manager recommends an appropriate course of action to the Director. If the recommendation is for dismissal, the General Manager is to be advised in writing. Dismissal must be authorised by the General Manager.

#### Important General Information

- Employees shall have access to their personal files and may take notes and/or obtain copies of the contents of the file.
- At each stage of this procedure, where disciplinary action is contemplated it is important staff should be advised of their rights, as expressed in any applicable Industrial Award/Agreement - to be heard in the company of their Union. If a staff member declines to exercise this right, this must be stated on the documentation of interview.
- Managers are responsible to protect the Council against accusation of wrongful dismissal and to ensure employees are treated fairly on this account. To ensure uniformity of practice, Managers must refer all matters which may lead to dismissal to their Department Director and the Human Resources Manager.
- In the case of dismissal or suspension, Council must be protected against possible litigated action for damages on account of defamatory or slanderous statements. Under no circumstances should any statements and/or comments be made in the general workplace in connection with dismissal. It should always be remembered that it is the General Manager's decision to terminate an employee's service.
- In the event that an employee's record warrants further discipline and a period of 12 months has elapsed since a previous warning, this employee will remain at the same stage in the "Progressive Stages" procedures and shall not automatically proceed to the next stage.
- If an employee's record has been satisfactory to Council for a complete three (3) calendar year period, all former steps actioned in the "Progressive Stages" procedure will be eliminated and related papers will be removed from files..