



Gladstone Regional Council

Council Policy

Title	DISCIPLINARY POLICY
Policy Number	P-2014/4
Responsible Directorate	OFFICE OF THE CHIEF EXECUTIVE OFFICER
Responsible Officer	MANAGER PEOPLE AND PERFORMANCE
Date of Adoption	16 DECEMBER 2014
Resolution Number	G/14/2270
Date Review Due	16 DECEMBER 2017

1.0 PURPOSE:

The purpose of this policy is to establish clear guidelines for disciplinary processes within the context of Gladstone Regional Council ("Council"). This policy and associated corporate standards is to be used in conjunction with relevant legislation and award provisions.

2.0 SCOPE:

This policy applies to all award coverage employees except the Chief Executive Officer and Executive Staff who are on individual contract and whose disciplinary procedures are outlined in their contracts. This also includes staff in their probation period.

3.0 RELATED LEGISLATION:

- Local Government Act 2009 (QLD)
- Local Government and Other Legislation Amendment Act 2012
- Local Government (Operations) Regulation 2012
- Industrial Relations Act 1999
- Crime & Corruption Act 2001
- Public Sector Ethics Act 1994
- Work Health & Safety Act 2011

4.0 RELATED DOCUMENTS:

The following has been developed to help facilitate the implementation of this policy:

- Gladstone Regional Council Certified Agreement 2012
- Code of Conduct Policy
- Anti-Discrimination Policy
- Anti-Harassment Policy
- Managing Underperformance & Unacceptable Behaviour Corporate Standard
- Reporting Corrupt Conduct Corporate Standard
- Investigating Allegations & Complaints Corporate Standard
- Employee Assistance Program Corporate Standard

5.0 DEFINITIONS:

To assist in interpretation of this policy the following definitions apply:

- **Advocate** means a person who speaks on behalf of, or in favour of, someone or something (process/decision) who is not able or willing to do so for themselves.
- **Allegation** means a stated belief or claim that is yet to be substantiated on the balance of probabilities or provided evidence. 'Allegation' relates to work performance, conduct or behaviour.
- **Balance of probabilities** means the civil standard of proof when the Chief Executive Officer or delegate assesses the direct evidence to determine whether or not it is more probable than not that a contested fact/s exists. The degree of probability necessarily varies according to the seriousness of the issues involved e.g. the more serious the allegation the higher the degree of probability that is required. (Beyond Reasonable Doubt is reserved for legal proceedings not disciplinary proceedings.)
- **Behaviour** includes how an employee behaves when performing their duties. Behaviour is not acceptable if it is not in accordance with standards of behaviour at work or in connection with work, as reasonably determined or expected by Council.
- **Corrupt Conduct** means, conduct of a person, regardless of whether the person holds or held an appointment, would, if proved, be
 - a) a criminal offence, or
 - b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment as per Section 15 (d) of the Crime and Corruption Act 2001.
- **Corruption** involves wrongdoing by a public sector official in carrying out their official duties or exercising their powers.
- **Disciplinary action** means formal outcomes which may consist of one or more warnings and if warranted can result in termination of employment.

- **Disciplinary process** means *the method used to determine whether or not disciplinary action is warranted and the taking of disciplinary action. The process commences from the receipt of the allegations/complaints and concludes by notifying the employee of the decision made by the CHIEF EXECUTIVE OFFICER or Director.*
- **Employee Assistance Program (EAP)** means *a confidential counselling and referral service for Council employees. The EAP provides short term personal counselling to all employees and/or immediate family members for personal and work-related problems.*
- **Improper Conduct** means *disgraceful or improper conduct in an official capacity or disgraceful or improper conduct in a private capacity that reflects seriously or adversely on Council.*
- **Performance** means *the conduct of the employee's duties and the output and outcomes of an employee's role. Conduct at work is not acceptable if it does not meet with the standards as outlined by the Code of Conduct, the employee's position description, Council policies and corporate standards, or employment contract.*
- **Support person** means *someone who the employee requests to be present during the interview with the investigating officer. The support person cannot advocate (speak) on behalf of the employee; however they may assist by taking notes or quietly prompting or giving advice to the employee. The support person cannot be disruptive or obstruct the process. Their role is to provide emotional and moral support to the employee.*
- **Union Representative** is *able to intercede on behalf of Employees. Union Representatives may assist by asking questions, take notes, respond to questions on behalf of the Employee and act as a sounding board for the Employee. This must be done respectfully and appropriately.*

6.0 POLICY STATEMENT:

Performance management ensures that not only are business requirements of Council met, but Employees are informed about what is expected of them and in particular what is acceptable behaviour in the workplace. Managing poor performance or inappropriate behaviour in the workplace can also prevent low morale amongst other Employees.

6.1 Key Principles

The following key principles apply to the disciplinary process in Council:

- The decision to commence the disciplinary process will be made with regard to the grounds for discipline (refer to 6.5)
- The principles of natural justice are to be applied through the disciplinary process (refer to 6.4)
- The standard of proof to be applied in making a finding in relation to a disciplinary matter is on the balance of probabilities or evidence supplied

- All decisions are made in a timely manner
- An employee is advised that they can access the employee assistance program (EAP) if desired
- The matters surrounding the disciplinary process are confidential. Employees or family members are entitled to discuss the matter with a support person, advocate, union representative or legal representative
- All stages of the disciplinary process are to be documented and stored confidentially as per the Records Management Policy
- There is a distinction between criminal process and disciplinary process. Therefore an employee charged with a criminal offence, whether subsequently convicted or not, may still be subject to disciplinary action

6.2 Employee rights and responsibilities

- To cooperate fully, truthfully and openly in any proceedings under this policy in a timely manner.
- To have access to their personnel file and take notes and/or obtain copies of the contents of the file
- To be entitled to sight, note and/or respond to any information placed on their personnel file that may be regarded as adverse
- To be entitled to make application to delete or amend any disciplinary or other record mentioned on their personnel file, which the employee believes is incorrect, out of date, incomplete or misleading
- To be entitled to request the presence of a union representative or witness and/or the involvement of their union at any or all formal meetings.
- To be entitled to appeal any disciplinary action taken against them in accordance with Council's grievance and dispute settling procedure under the Gladstone Regional Council Certified Agreement 2012 and the Local Government Regulations 2009

6.3 Employer rights and obligations under this policy

- In order for this policy to operate effectively Council must ensure that expected levels of performance and conduct are made clear to all employees and that all employees are aware of the operational procedures, corporate standards, safety requirements, employment policies, job performance standards and delegated authorities in relation to their position with Council
- Council's actions must always be in proportion to the seriousness of the incident
- To maintain accurate and complete records of all issues to which this policy applies
- To properly conduct and efficiently conclude any investigation under this policy
- Council, at its discretion, may conduct an investigation internally or use an external investigator.

6.4 Natural Justice

The principles of natural justice are to be applied when undertaking the disciplinary process. Any decisions made during the discipline process are to be:

- In accordance with relevant legislation and/or applicable policy
- Supported by objective evidence which has taken into account all relevant materials
- In accordance with the principles of natural justice

Natural justice has two rules:

1. Rule against bias: decision-makers are to be objective, free of bias, and have no personal interest in the matter being decided
2. Hearing rule: an individual is to be informed of the substance of an allegation/s against them and have the opportunity to present their case prior to a decision being made.

6.5 Grounds for Discipline

The disciplinary process may be applied to an employee in situations when:

- The employee, despite management action, fails to adequately address unsatisfactory work performance, workplace conduct or workplace behaviour
- Allegations of unacceptable, disgraceful or improper conduct or workplace behaviour, including behaviour prescribed in the Local Government (Operations) Regulation 2012 are made and reasonable evidence exists to support the allegations.

Examples of this type of behaviour by employees may include, but not limited to:

- Performed their duties carelessly, incompetently or inefficiently
- Been guilty of improper conduct
- Been absent from duty without approved leave and without reasonable excuse
- Contravened, without reasonable excuse, a direction given to them as an employee by a person with authority to give the direction
- Used, without reasonable excuse, alcohol, illegal substances or over the counter medication to an extent that they have adversely impaired or affected the competent performance of the employees ability to carry out their duties
- Contravened, without reasonable excuse, a Council Policy, corporate standard or documented internal procedures
- Contravening the Code of Conduct for Employees
- Ignoring or not complying with Workplace Health & Safety policies or corporate standards
- Absenteeism when there is no entitlement or appropriate explanation and/or poor punctuality in attendance for work
- Harassing or discriminating against other employees or any other person

- Not meeting the required personal presentation standards.

6.6 Informal and Formal Disciplinary Process

In regards to managing underperformance and unacceptable behaviour as well as allegations and complaints, the informal process outlined in the corporate standard will be followed, in most cases, prior to the formal disciplinary process. However, it is at the Chief Executive Officer or delegate's discretion as to what stage in the disciplinary process action will commence. The seriousness of the performance and/or behaviour in question will determine this decision.

6.7 Disciplinary Outcomes

The Chief Executive Officer or delegate will make a determination following consideration of all relevant matters including:

- The employee's responses to the allegations
- Any evidence collected
- The seriousness of the offence
- Any previous disciplinary action
- The employees length of service, work record and level of performance
- Any training and development provided to the employee
- Risk to personal safety in relation to the employee, other staff and members of the public
- Any extenuating or mitigating circumstances
- Any precedents
- All relevant workplace corporate standards and policies
- The Gladstone Regional Council Certified Agreement 2012
- Relevant industrial relations legislation.

The Chief Executive Officer or Delegate may discipline a Local Government Employee in accordance with Local Government (Operations) Regulation 2012 and may elect to take other reasonable management action, including:

- Taking no further action
- Change of duties
- Closer supervision
- Denial or removal of personal privileges or benefits
- Withholding of advancement
- Change of work location
- Lateral transfer
- Formal or Final Warning
- Counselling Session.

7.0 RESPONSIBILITIES:

1. It is the responsibility of Managers and Supervisors to monitor performance and to implement performance management and improvement measures when required. It is also their responsibility to

address any alleged or confirmed breaches of applicable legislation, Council policies or corporate standards.

2. It is the responsibility of employees to make every effort to improve unsatisfactory work performance or conduct when a need has been identified and co-operate with supervisors to implement improvement programs. It is also their responsibility to ensure they do not wilfully or intentionally breach any applicable legislation, Council policies, or corporate standards.
3. Human Resources staff will provide advice and assistance to all parties involved in a disciplinary process.

8.0 ATTACHMENTS:

Nil.

9.0 REVIEW TRIGGER:

This policy will be reviewed when any of the following occur:

1. The related legislation/documents are amended or replaced
2. Other circumstances as determined from time to time by a resolution of Council
3. Periodic Review - 3 years from date of adoption.

TABLE OF AMENDMENTS		
Originally Adopted	6 April 2010	10/108
Amendment 1	16 December 2014	G/14/2270
Amendment 2	<INSERT DATE COUNCIL MEETING>	<INSERT RESOLUTION NUMBER>
Amendment 3	<INSERT DATE COUNCIL MEETING>	<INSERT RESOLUTION NUMBER>

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STUART RANDLE
CHIEF EXECUTIVE OFFICER