

Performance Improvement & Misconduct Policy

1. Policy Statement

To ensure that we have effective, consistent, fair and timely management of Employee performance or misconduct in line with governing legislation, so that all Employees maintain the required standard of performance and behaviour.

Communication about job performance and conduct (behaviour) is critical to the on-going management and development of staff. Inappropriate conduct or unsatisfactory performance will be addressed in accordance with this Policy and the Performance Improvement and Misconduct Procedure. The Performance improvement procedure should only be utilised when it becomes clear to the Manager that a work performance or a conduct problem has not been corrected through relatively informal discussion between the Manager and staff member. Instances of alleged misconduct or serious misconduct however, do not require a previous informal discussion.

In managing instances of unsatisfactory performance, misconduct or serious misconduct, it is essential that the principles of procedural fairness and natural justice underpin all actions undertaken by Managers.

2. Scope

This policy will apply to all management of performance improvement and misconduct of all employees.

3. Definitions

| Term | Definition |
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| Employee | A person employed by the Council on a permanent full time, part time or casual basis, or a limited tenure full time, part time or casual basis. |
| Fair Procedure | The process of conducting the investigative, disciplinary and termination procedures ensuring fairness and consistency. |
| HR | Human Resources |
| Investigation | Investigation of the facts and recommendation for action. |
| Manager | Positions within the organisation that are held accountable for their own work, but also accountable for the output and performance of others (ie- their direct reports) |

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| Misconduct | Occurs where there is an incident involving a breach of policy, procedure or general obligations and duties as an Employee. |
| Performance | The ability of the Employee to meet the stated accountabilities of the position. This includes the objective requirements of the position such as accountabilities, work quality, productivity, timeliness or attendance. It also includes an assessment of the Employee's behaviour. |
| Performance Improvement Plan | A formal Performance Improvement Plan is a document that contains details of the unsatisfactory performance, details the performance standards to be achieved, a review period and is aimed at helping the staff member to meet required |
| Procedural fairness: | <p>The process of conducting the investigative, disciplinary and termination procedures ensuring fairness and consistency. This includes:</p> <ul style="list-style-type: none"> the Employee has been provided with specific details regarding his/her alleged unsatisfactory performance or misconduct; the Employee has been given a reasonable opportunity to consider and respond to the above allegations; that where necessary, those responses are properly investigated and assessed; that prior to any decisions being made as to the appropriate outcome, mitigating circumstances and the Employee's employment history with the Organisation is taken into account; where appropriate, the Employee has been given an opportunity and a reasonable timeframe to improve their work performance or conduct (not in cases of serious misconduct); where appropriate, the Employee is made aware that continued unsatisfactory performance or conduct will lead to disciplinary action, up to and including, termination of employment (not in cases of serious misconduct); or that in disciplinary or termination meetings, the Employee is given an opportunity to have a witness, representative or support person present. |

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| Term | Definition |
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| Serious | <p>Serious misconduct is an act(s) that is so serious as to cause an irretrievable breakdown (where trust is broken) in the employment relationship and therefore warrants dismissal without notice (fair procedure still applies). It includes, but is not limited to:</p> <ul style="list-style-type: none"> • any deliberate or negligent unsafe act or omission that could adversely affect the health safety or welfare of personnel in the workplace;* • serious breaches of the relevant Acts, City of Playford Code of Conduct or City of Playford Policies or Procedures; • any illegal act committed as an Employee; • deliberate vandalism, sabotage or damage to property; • dishonesty; • physical or verbal abuse against another Employee or a member of the public; • insubordination which includes refusing to obey a reasonable instruction and/or verbally abusing a Manager; • fighting in the workplace; • breach of duty regarding confidential information; • representation by an Employee, on application for employment, that he/she holds particular skills and/or qualifications and this is found not to be true; • serious acts of discrimination, harassment or workplace bullying; • theft and/ or any dishonest act designed to provide personal gain. |

***Note:** *In respect of alleged breaches of the WHS Drug and Alcohol Policy and Procedure, the City of Playford acknowledges that the circumstances surrounding the use of illegal drugs, the illicit use of prescription medication and consumption of alcohol in breach of the WHS Drug and Alcohol Procedure, are varied and accordingly potentially present some unique consideration. Consistent with the principles outlined in the Performance Improvement and Misconduct Policy and this procedure, all relevant circumstances need to be taken into account when determining whether, and the extent of any disciplinary action that is imposed upon an employee who has returned a positive test result. These circumstances include but are not limited to:*

- (i) *The personal circumstances of the employee such as family and financial stressors;*
- (ii) *Admission of drug and/or alcohol addiction and whether the employee has taken steps, including engaging in an active rehabilitation treatment programme, to deal with any such problems;*
- (iii) *Relevant physical/medical conditions which may affect the impact of drugs and alcohol;*
- (iv) *Whether the employee should have reasonably foreseen the impact of their drug and/or alcohol use on their safety and the safety of others;*

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- (v) Whether the employee has subsequently submitted a negative test; and
- (vi) The employee's employment record including whether the employee has had previously returned one or more positive test results.
- (vii) The employee's expressed and demonstrated commitment to rehabilitation treatment.

| Term | Definition |
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| Invalid Reason for Termination | <p>An invalid reason for termination as defined by the Fair Work Act. According to the Act, the following shall not constitute valid reasons for termination:</p> <ul style="list-style-type: none"> • temporary absence from work due to illness or injury; • membership or non-membership of a trade union or participation in trade union activities; • involvement in acting as a representative of an Employee; • involvement in the filing of a complaint in relation to employment or participation in proceedings under a workplace law; • race, sex, sexuality, age, physical or intellectual impairment, marital status, family responsibilities, pregnancy, political or religious beliefs or social origin; or • absence from work during maternity leave or other parental leave; |
| Valid reason(s) | <p>The Organisation's requirements are based on a reasonable belief about a situation concerned with the Employee's conduct, performance or operational requirements of the business. Reasons for taking action against an Employee, including termination, must not be invalid.</p> |

4. Legislation and References

Australian Privacy Act 1988

City of Playford Enterprise Agreement

Local Government Act 1999

- Chapter 7, Part 3.

Fair Work Act

- Schedule 7

Racial Discrimination Act 1975

Performance Improvement & Misconduct Procedure

Sex Discrimination Act 1984

WHS Act 2012

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5. Policy

Council will ensure that the performance and behaviours of each Employee are effectively managed so that the Organisation achieves its business objectives. All Employees have the right to be treated in a fair, just and equitable manner. To this end Council has implemented the Performance Improvement & Misconduct Policy and Procedure and Performance Improvement & Misconduct – Guidelines for Managers which along with manager education aims to ensure that Council follows a fair procedure and there are valid reasons for investigative, disciplinary and termination processes.

Where unsatisfactory work performance or unsatisfactory behaviour is identified, emphasis should be initially placed on a positive resolution through objective feedback, guidance, support and assistance. If behaviour or performance then does not improve to the required standard, the formal disciplinary process will occur. The Performance Improvement & Misconduct Procedure will be used to ensure that the Organisation follows a consistent and fair process should formal disciplinary process occur.

In managing instances of unsatisfactory performance, misconduct or serious misconduct, it is essential that the principles of procedural fairness underpin all actions and are based on valid reasons.

- All issues will be investigated thoroughly, justly and in a timely manner.
- Standards will be made clear to the Employee by documentation or during discussions.
- Where applicable and appropriate, achievable and realistic goals will be set with timeframes, in order to provide an objective process that will indicate success or failure.
- The Employee will be made aware of the likely next steps in the event that satisfactory performance or conduct is not achieved.
- The Employee has the right to be accompanied by a support person or representative of their choice at meetings that may lead to disciplinary action or termination of employment.

When a complaint about performance or conduct is brought to the Manager's attention by a third party, the substance of the complaint will be verified as per the Performance Improvement and Misconduct Procedure before any action is taken on the matter

5.1 Records

Managers must record all investigative, disciplinary and termination documentation forms to maintain compliance with the *Local Government Act*.

Warnings issued through the application of this Policy and related Procedure will have a term of two years and will expire two years from

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the date of issue of the most recent applicable warning (i.e. if an employee receives a first, then a subsequent related warning the expiration of both warnings will only occur after a period of two years from the subsequent warning).

5.2 Appeals

Appeals in relation to the processes and outcomes included within this policy can be addressed following the Grievance and Dispute Resolution Policy and Procedure and Enterprise Agreement.

6. Responsibilities

6.1 Responsibilities of Managers

Managers are responsible for:

- ensuring they understand and are trained on this Policy and associated Procedures;
- communicating and implementing this Policy and associated Procedures in their area of responsibility and accountability;
- developing, improving and implementing the skills and knowledge to consistently drive the performance management standards required;
- providing all Employees with a Position Description, which defines both the responsibilities and behaviours (as necessary to reflect the Organisation's values) of his/her position;
- communicating the required performance and behavioural standards to Employees during induction, the probationary period and at performance review meetings;
- ensuring all Employees are aware of and understand the Code of Conduct and the Performance Improvement and Misconduct Procedure;
- providing Employees with suitable instruction, training, equipment and supervision to meet the required standards;
- identifying and addressing unsatisfactory performance or misconduct when it occurs;
- keeping accurate records of any investigations or procedures enacted under this Policy to maintain compliance with the *Local Government Act*;

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- seek industrial advice from Human Resources before commencing formal disciplinary proceedings, issuing letters of allegation or determining a final disciplinary outcome; and
- seek industrial advice from Human Resources and approval from Manager Once Removed and CEO, before proceeding with a decision of termination of employment.

6.2 Responsibilities of Employees

Employees are responsible for:

- implementing and abiding by this Policy and associated Procedures in their area of responsibility and accountability
- objectively assessing and reviewing their own performance and behaviour based on feedback from their Manager/Coordinator or peers;
- reporting incidents of unacceptable performance and / or misconduct promptly and honestly to the Manager;
- cooperating fully and honestly in any disciplinary investigation;
- cooperating and participating constructively in the improvement of work performance, conduct and any other outcomes identified during the performance improvement or misconduct process;
- participating in any training or re-training required as an outcome of a workplace investigation or to achieve the performance objectives;
- maintaining confidentiality of the details of any investigation information;
- discussing any potential barriers to meeting the performance expectations and assisting with finding solutions; and
- where practical, assisting the Manager to identify changes to workplace practices or procedures which would prevent the incident occurring again.

6.3 Responsibilities of Human Resources

Human Resources are responsible for:

- overseeing the implementation of this policy;

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- providing explanation on steps of procedure, if requested by employees;
- providing advice and support at any step of the process, if requested, to assist Managers develop, improve and implement the skills and knowledge to consistently drive the performance management standards required;
- ensuring all managers are trained, educated and aware of their responsibilities within this framework; and
- regularly reviewing the Performance Improvement and Misconduct practices and ensure continuous improvement.

7. Relevance to Council Plan

Strategy 5- Building our Capabilities

8. Supporting Documentation

Performance Improvement and Misconduct Procedure

9. Approval and Change History

| Version | Approval Date | Approval by | Change |
|---------|------------------|--|--|
| 1 | 15 October 2015 | Practice Manager Corporate Consulting | Previous Policy rewritten and procedural components separated and placed into new procedure. |
| 3 | 12 December 2016 | Senior Manager Organisational Development | Updated by working committee reviewing Drug and Alcohol Procedure under direction by SAIRC |

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