

Policy Reference Number:	2.13
Classification:	Legislative
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Next Review Date:	February 2019
Responsible Officer:	Chief Executive Officer
Applicable Legislation:	<i>Local Government Act 1999</i>
Relevant Policies:	
Related Procedures:	
Compliance Standard:	

Objectives

The aim of this policy is to establish a fair, equitable and consistent process for addressing unsatisfactory work performance and / or behavior and conduct.

Scope

This policy applies to all employees of Council except the Chief Executive Officer.

Rights

An employee of Council has the right to:

- (a) A properly conducted and speedily concluded investigation into the alleged unsatisfactory work performance or conduct;
- (b) Have the allegation(s) put to them;
- (c) Have the opportunity and sufficient notice to respond to the allegation(s)
- (d) Be given the opportunity to respond to the decision on a proposed penalty if the allegation is proved to be true;
- (e) Have access to their personnel files and may take notes and/or obtain copies of the content of the file;
- (f) To sight, note and/or respond to any information placed on their personnel file which may be regarded as adverse;
- (g) 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or amend any disciplinary or other record mentioned on their personnel file which the employee believes is incorrect, out-of-date, incomplete or misleading;
- (h) To request the presence of a representative and/or the involvement of their union at any stage;
- (i) To make application for accrued leave for whole or part of any suspension during the investigation process.

Council has the right to:

- (a) Suspend an employee with or without pay during the investigation process provided that:
 - (i) If, after investigation, the reasons for the suspension are found to be inappropriate, the employee shall not suffer any loss of pay for the period under suspension;
 - (ii) the suspension shall not effect the employee's continuity of service for the purpose of accruing leave entitlements;

- (iii) Council shall not unreasonably refuse an application for paid leave under this provision;
 - (iv) by agreement, an employee may be transferred to another position or place of work;
- (b) be entitled to take other disciplinary action before and/or during the procedures in cases of misconduct or where the employee's performance warrants such action;
 - (c) in appropriate circumstances, to terminate an employee's services;
 - (d) to request the presence of a union representative at any stage.

Definitions

Corruption

Corrupt conduct is defined to include the dishonest or partial exercise of official functions by a public official. Conduct of a person who is not a public official, when it adversely affects the impartial or honest exercise of official functions by a public official, also comes within the definition.

The most common form of corruption in the public sector is bribery. Other forms of corruption include sabotage of plant, equipment and other assets, providing confidential information to external parties, and generally anything that reduces the effectiveness or impairs the operations or reputation of Council.

Fraud

Fraud is a crime involving the dishonest obtaining of a financial benefit by deception. Some examples of fraud include:

- (a) Unauthorised use of Council plant and equipment;
- (b) Theft of money or goods from Council or its customers including computer programs and stationary;
- (c) Claiming unworked overtime or time in lieu on timesheets;
- (d) Providing confidential Council information to unauthorised people or organisations;
- (e) Allowing access to Council buildings and resources to unauthorised persons;
- (f) Obtaining benefits by use of a false identity or false qualifications;
- (g) Allowing contractors to not fully meet contract requirements.

Harassment

This is any unwelcome and/or offensive comment or action concerning a person's race, colour, language, accent, ethnic origin, gender, marital status, pregnancy, disability, political or religious conviction. It is behavior towards another employee or individual which is intimidating or embarrassing and adversely affects the work environment.

Behaviour which may constitute harassment includes, but is not limited to, staring, leering, touching or unwanted familiarity, taunts, insults, jokes, gestures and deliberate exclusion.

Unsatisfactory Work Performance or Conduct

Unsatisfactory work performance or conduct includes, but is not limited to, neglect of duties, breach of discipline, serious breach of policy and/or procedure, harassment, absenteeism, or deliberate non-compliance with safety standards.

Responsibilities

Line Managers/Supervisors

Maintaining day-to-day discipline is the responsibility of line management. An employee's immediate supervisor is responsible for initiating disciplinary actions when the employee's workplace performance is unsatisfactory due to, but not limited to, neglect, inefficiency, unacceptable behavior, non-compliance with safety standards and requirements, poor attendance, lack of punctuality and repeated insubordination and so on.

Senior Manager/Chief Executive Officer

For situations, such as serious misconduct, bringing the Council into disrepute, fraud and corruption, responsibility resides with the respective senior manager or with the Chief Executive

Officer.

Pursuant to Section 103(1) of the Local Government Act 1999, only the Chief Executive Officer is authorised to terminate employment.

Employees

It is the responsibility of all employees, regardless of their position in the organisation, to conduct themselves in an ethical manner, to abide by the law and by Council policies and procedures.

Unsatisfactory Work Performance or Conduct

In general, Council prefers to deal with unsatisfactory work performance matters through its performance management system. It will only resort to formal disciplinary action for unsatisfactory work performance in cases where there is a documented history of poor or inadequate work performance or from serious but previously undetected negligence.

Procedures

Disciplinary action, except in cases of serious misconduct, fraud and corruption, is an incremental process and can be terminated at any stage. The procedure for implementing disciplinary action is as follows:

Step 1 – Warning, Guidance, Counselling

- 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 standard that is required to be achieved.
- The employee will be interviewed by their immediate supervisor/manager. The employee has the option of having their on-site Union delegate present at this interview. The employee will have an opportunity to respond to the allegation(s).
- The purpose of the interview will be to identify the causes of the problem and agree on solutions. Where the problem is acknowledged by the employee, a corrective action/performance management plan will be agreed by the employee. A review date will also need to be agreed upon to allow reassessment of the employee to be discussed and assessed.
- Should the requisite improvement be forthcoming, it will be acknowledged by the supervisor/manager and no further action will be taken. If no satisfactory improvement occurs then the matter will proceed to step 2.
- A written record of the interview must be kept by the Chief Executive Officer or other authorized officer and a copy of the report is to be given to the employee concerned for their own records.

Step 2 – Formal Warning

- Where there is a recurrence of unsatisfactory work performance or conduct, the employee shall be warned formally in writing by the employee's departmental manager. The Chief Executive Officer is to be fully briefed on the situation.
- The employee shall also be counseled. Counselling should reinforce the standard of work or conduct that is expected and advise the severity of the situation and whether disciplinary action will follow if the employee's work performance or conduct does not improve. A suitable review period for monitoring the employee's performance will be set at this time.
- A written record shall be kept of this formal warning and counseling. The employee will be entitled to sight and sign this written record and add any notations regarding the contents of such record.

Step 3 – Final Warning

If the employee's unsatisfactory work 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.

Step 4 – Disciplinary Action

If, after careful consideration and investigation, the Chief Executive Officer reaches the conclusion that the alleged offender is guilty of a breach of discipline which warrants penalty, the Chief Executive Officer may impose one or more of the following:

- A change of duties
- Closer supervision
- Lateral transfer
- Demotion
- Suspension or termination of employment

Serious Misconduct, Fraud, Corruption

In cases of serious misconduct, fraud or corruption, the relevant procedures are set out in Council's *Fraud & Corruption Policy*.

In such situations, Council may suspend or terminate the employee as per this policy.

Investigation

If an investigation is required to establish the truth and accuracy of allegations, the Chief Executive Officer or other authorised officer, will require the relevant line manager or supervisor to provide full details of the allegations in writing, together with any supporting documentation or statements.

Council will conduct its own enquiry, even if the matter has been referred to the Police, the Anti-Corruption Investigators or the Ombudsmen. The inquiry will be conducted efficiently and by suitably qualified officers.

FURTHER INFORMATION

This policy will be available for inspection at the Council offices listed below during ordinary business hours and available to be downloaded, free of charge, from Council's internet site: www.robe.sa.gov.au

Royal Circus, Robe SA 5276

Copies will be provided to interested parties upon request. Email council@robe.sa.gov.au

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer of Council.

POLICY REVIEW

This policy may be amended at any time and must be reviewed at least every four years since its adoption (or latest amendment).