

NORTHERN MIDLANDS COUNCIL
HUMAN RESOURCES POLICIES & PROCEDURES



Procedure Name: Issue Resolution Procedure
Procedure Owner: Human Resources Officer
Originated Date: August 2015
Amended Date/s:
Review Date: December 2016
Publication Sources: 15/013 - Human Resources Policies & Procedures
02/03/01/01 – Human Resources – Employee
Infonet / Documents / HR – Policies
Works Depot & Childcare Facility

1. AUTHORITY & APPLICATION:

Definitions

As per the Issue Resolution Policy.

Training

Council will provide all persons covered by this Procedure with the appropriate training so they are made aware of their responsibilities and obligations under the Procedure.

Amendment

Council retains the sole discretion to reasonably vary, terminate or replace this Procedure from time to time. Council will consult before amendments are made and will notify and train those the amendments apply to.

Interpretation of Procedure

The singular includes the plural and vice versa.

A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacement or re-enactments of any of them.

A reference to a policy or procedure means any approved policies or procedures of Council unless otherwise stated.

‘Including’ and similar expressions are not words of limitation.

A reference to a document (including this document) is to that document as amended, novated or replaced unless otherwise stated.

Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

Examples used in this Procedure are for illustrative purposes only and are not intended to be exhaustive.

Unless expressly provided for, this Procedure is not in any way incorporated as part of any enterprise agreement and does not form part of any employee's contract of employment and any applicable enterprise agreement or contract of employment will prevail over this Procedure to the extent of any inconsistency.

It is not intended that this Procedure impose any obligations on the Council or those covered by it that are unreasonable or contrary to the operation so applicable laws. Any obligation, direction, instruction or responsibility imposed by this Procedure must be carried out in a manner that an objective third party would consider to be fair and reasonable taking into account and in the context of all the relevant applicable laws, operational and personal circumstances.

Questions relating to the interpretation, application or enforcement of this Procedure should be directed to the person's manager or the Human Resources Officer.

2. GUIDELINES:

General Guidelines

This Procedure will take into account applicable and relevant circumstances to ensure that all issues are treated on their individual merits. This Procedure does not limit Council's right to take reasonable action in a reasonable manner.

Particular processes and outcomes will be utilised as considered reasonably necessary by Council depending in the individual circumstances. The exact nature of procedural fairness will be applied according to the individual circumstances of each case including confidentiality and privacy considerations and obligations and noting that this is a non-disciplinary procedure.

Contact officers are an integral part of the issue resolution process and are available to workers and other persons at the workplace who would like to understand/discuss an issue, seek the resolution of an issue, or respond to an issue being raised about them. Their role is to:

- listen to the person (not act as a support person or as an advocate)

- explain and provide information about what can constitute infringing workplace behavior
- provide information about the options available to deal with the persons concerns, the likely results and the advantages and disadvantages of each and possible strategies for resolving the issues with the other person(s)
- refer the employee to the Employee Assistance Program (EAP) or other support or advice services if necessary
- ensure that relevant person has access to or are provided with copies of relevant policies and procedure

For the avoidance of doubt Contact Officers are not on any one person's side. They represent a resource for workers and others persons at the workplace and their role will facilitate the resolution of issues where reasonably practicable to do so for all parties.

Support person – worker or other person at the workplace will be advised of the opportunity to have a support person during this process. The role of the support person is to assist the person by providing emotional support, aiding the person's understanding or by taking notes, asking appropriate questions, or requesting breaks. An appropriate support person is a person who is not a party to a process or involved as a potential witness or otherwise has a conflict of interest. Where the support person is a Union official or other professional advocate they may speak or write on behalf of the person but only as to:

- matters of interpretation (e.g. legislation, industrial instrument etc) and/or
- resolution of the issue
- issues are to be resolved at the lowest possible level with minimum formality as appropriate and safe to do so
- issues in the form of a complaint made is not necessary given Council's duty of care under section 19 of the *Workplace Health and Safety Act 2010 (TAS)* to, in general terms, provide a safe workplace.

3. GUIDELINES FOR PROCESSES:

Treat fairly and seriously – assess all matters on their merits and facts. Any issue resolution process should be thorough enough and obtain relevant and credible evidence as is reasonably necessary to ensure substantive fairness by:

- providing particulars of issues and available evidence (including a copy of any complaints if available and not otherwise inappropriate to provide on legitimate work health and safety grounds) so participants understand the context of the process in which they are being required to participate
- providing workers and/or other persons at the workplace with a reasonable opportunity to respond to issues, findings, proposed resolution, subsequent or additional information (whether in writing and/or in person as appropriate) or other processes
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- making factual findings that are reasonably open to be made (e.g. specific behaviours and their context and surrounding circumstances)
- making conclusions or characteristics (e.g. breaches of policies which are serious) that can be objectively drawn from those factual findings
- notify workers and/or other persons at the workplace of the findings relevant to them and any proposed resolution action (if any)
- taking into account the nature and extent of the issue, a workers and/or other persons at the workplace personal circumstances and employment record including prior disciplinary action, any mitigating circumstances, Council requirements and any other
- relevant matters to ensure that any issue resolution is appropriate in the circumstances and
- notifying workers and/or other persons at the workplace of the issue resolution (if any) which will be imposed and when

Act promptly – issue resolution matters should be dealt with courteously, respectfully and within appropriate timelines on a case by case basis. All relevant parties should be provided with reasonable estimates of timeframes and be kept reasonably informed of the progress. Extensions of time may be appropriate in complex matters where justified. If additional time beyond the initial estimate is reasonably required to address the issues, all relevant parties should be advised of the additional time required and, in a manner appropriate, the reasons for the delay.

Support all parties – employees involved in the process should be told what support is available including the Employee Assistance Program (EAP).

Be neutral - impartiality towards everyone involved (i.e. persons seeking to impose a resolution to an issue, witnesses, affected parties, and responding persons). Participants should also avoid any personal or professional bias (perceived or actual). If a preliminary enquiry or workplace investigation is undertaken, the investigator may be internal or external to Council and must be a person who is:

- objective and neutral and impartial (i.e. avoid real or perceived bias)
- competent having regard to the particular circumstances
- available to conduct a preliminary enquiry or workplace investigation and report in a timely manner and
- not a potential witness or who has had prior dealings with parties that creates a real or perceived bias

Communicate process and outcomes - all parties should be reasonably informed of the process, and what they can expect will happen during an issue resolution process and potential outcomes. Council will provide all parties with clear reasons for any actions taken or not taken. Details of issue resolution matters should only be disclosed in a manner to

those parties that need to know, provided that such disclosure does not create an unreasonable risk to their health and safety.

Maintain confidentiality - the process should ensure appropriate confidentiality for all parties involved and consider individual requests for confidentiality subject to Council's duty to provide a safe workplace.

Keep records as appropriate - some form of record should be made of the issue resolution process and matters dealt with under this Procedure including details of issue, written responses or submissions from those involved, the process adopted and any outcomes.

Seeking external advice – participants are entitled to obtain advice of their choice and have a support person present during any meetings they are required to attend at their own cost.

Appropriate interim arrangements – it is necessary to preserve the integrity of the issue resolution process being undertaken and having regard to the seriousness of allegations or to reasonably ensure the health and safety of any persons at the workplace. While in the process of resolving any issue, the parties must reasonably ensure that there is no interruption to work. Council may impose appropriate interim arrangements which may include any combination of the following:

- stand down with pay (unless otherwise specifically provided for in an industrial instrument). Employees responding to an issue (any other employees where considered appropriate)
- providing alternative duties to employees
- directing temporary changes to work arrangements (including reporting lines and location)
- preventing or restricting communication between employees, workers and other persons at the workplace
- imposing, for legitimate work health and safety reasons only, confidentiality obligations on employees, workers and other persons at the workplace (which does not preclude the taking of bona fide advice from a Union official or other professional advocate)
- preserving evidence - if necessary secure part of the workplace, obtain photographs or take any other steps to preserve physical evidence that may otherwise be lost and
- reporting to relevant authorities – e.g. Police, Regulators, Work Safe Tasmania etc

Any action taken under stand down with pay is an interim measure only and is not a disciplinary outcome and is without loss of pay or other entitlements (unless otherwise specifically provided for in an industrial instrument).

4. PROCESSES:

General

Workers and other persons at the workplace may seek to utilise any of the Issues Resolution Processes. However, managers with support from the Human Resources Officer will decide and implement any of the following processes appropriate to the circumstances in any combination.

References to a worker's manager under this paragraph (Processes) should be to their immediate manager or if not applicable or appropriate then to the General Manager or Mayor as applicable.

Self management

Workers or other persons at the workplace should first raise issues directly with the person the issues relate to where appropriate to do so being mindful of safety and the possibility of reprisals.

A person may not be confident or comfortable to raise or discuss issues directly with the person involved. They may prefer to raise issues with another person in the workplace first and not progress with any self-management process.

Making a person aware of issues may give all persons involved a chance to consider and, where appropriate, change their behavior and reduce the possibility of issues progressing past this stage.

Self-management may be effective where the issues are likely to be non-contentious and where all persons involved may be unaware of the effect of their behaviours or particular circumstances. In these circumstances this process can focus immediately on desired outcomes without adverse consequences to anyone.

Self-management will not be suitable for circumstances including:

- serious or contentious issues or
- where it is appropriate for the issues to be dealt with under the Disciplinary Procedure or other policy or procedure or
- serious health and safety risks at the workplace

Workers utilising self-management should consider notifying their manager so they can monitor the situation as far as is reasonably practicable to ensure there are no ongoing risks to health and safety. The manager should keep the Human Resources Officer informed of the same.

Indirect approach

Workers or other persons at the workplace may, with or without a support person, raise issues with:

- their manager (if applicable)
- the manager of the person the issues relate to
- the Human Resources Officer or
- Council's Contact Officers

A person may not be confident or comfortable to raise or discuss issues directly with the person involved. They may prefer to raise issues with another person in the workplace first.

This process is useful for enabling workers or other persons at the workplace to:

- receive useful advice to give them tools to better understand a situation, adjust to or deal with the issues with the person direct
- just 'tell someone' who can understand, provide context and monitor the situation or
- have an appropriate person approach the person who is the subject of the issues to resolve the issues or take other action whilst keeping their identity confidential and without their being any adverse findings or disciplinary processes

An indirect approach may also be effective in similar circumstances where self-management has not been effective.

This process will not be suitable for circumstances including where self-management is not appropriate or where it is necessary for the person who is the subject of the issues to be aware of the identity of the person raising the issues and detailed particulars before it can be resolved.

Direct approach (voluntary)

A person may raise issues with the relevant manager who will then determine the appropriate process, with support from the Human Resources Officer. This may include an approach similar to self-management except the manager, with that person's consent, will discuss the issues direct with relevant persons and take reasonable action to resolve the issues.

This process will often involve agreement between the relevant persons as to the process adopted and outcome implemented.

Direct approach (escalating)

An Issue Resolution Form (included at the end of this Procedure) may be lodged with Council by:

- a worker or other persons at the workplace at any stage or
- a manager if self-management, indirect approach or direct approach do not resolve the issues or the manager considers direct approach (escalating) to be appropriate at any stage

A manager, with support from the Human Resources Officer may deal with issues even if a worker or other person at the workplace fails or refuses to lodge the Issue Resolution Form if considered appropriate in circumstances including:

- Council considers this appropriate to discharge its duty to provide a safe workplace or to appropriately manage its workers and/or other persons at the workplace
- making appropriate decisions in relation to issues or potential issues and
- minimising further issues

If an Issue Resolution Form has been lodged or Council otherwise considers it appropriate, Council may adopt a process including:

- conducting initial interviews or requiring initial written responses
- preserving evidence if it is appropriate to secure the scene, obtain photographs or take any other steps to preserve physical evidence that may otherwise be lost
- implementing appropriate interim arrangements and
- conducting a preliminary enquiry or workplace investigation

5. DETERMINATION PROCESS:

Council may conduct a preliminary enquiry which may consist of obtaining detailed statements and interviews of persons directly relevant to the issues and a report without making findings where there is disputed evidence. Council may do so in circumstances including where it is unable to immediately form a reasonable suspicion to deal with the issues under the Disciplinary Procedure or it requires further factual circumstances or the issues are not particularly serious or may be better resolved with a preliminary enquiry.

Council may conduct a general workplace investigation under a scope it considers appropriate to potentially resolve the issues. This does not involve making allegations of infringing workplace behavior in which case the issues will be dealt with under the Disciplinary Procedure. Council may do so in circumstances including where:

- there may be significant outcomes for Council such as work health and safety, reputation or costs considerations
- it may be more effective to ascertain a particular workplace culture or custom or practice or
- there are key disputed facts or other factual matters in dispute that are material

Council may not conduct a preliminary enquiry or workplace investigation if it is reasonably satisfied that the issues and findings of fact can be determined and conclusions can be objectively drawn. Examples of this include where there is no dispute as to the material facts or they can be easily determined for the purpose of resolving the issues.

6. OUTCOMES:

As part of any of the processes, Council may implement any combination of the following outcomes as it considers appropriate in the circumstances:

- obtain commitment to cease the behaviour (e.g. undertaking)
- provide communication to individuals, groups or Council-wide
- provide training (e.g. communication skills, diversity awareness, interpersonal skills) to individuals, groups or Council-wide
- remedial actions for any worker adversely affected (e.g. re crediting leave or specialist training or counselling)
- providing coaching, counselling support and/or mentoring
- review a policy that is the subject of an issue
- mediation or any other facilitated process
- structured program to reintegrate a worker into the workplace
- amend work arrangements including removing or restricting communication or interaction between workers
- implement action in accordance with any other policy including Performance Management Policy
- commence a disciplinary process under the Disciplinary Policy or
- other lawful and reasonable directions considered appropriate for the circumstances

7. LODGING AN ISSUE RESOLUTION FORM:

Step 1 – Lodging an issue

Complete the Issue Resolution Form attached to this Procedure.

Step 2 - Initial response

A manager, the Human Resources Officer or person appointed by Council will meet separately with all parties as soon as practicable and explain the process and their rights and responsibilities.

Council may determine to attempt to resolve the issues by utilising other processes under the Procedure or under another policy or procedure in which case persons will be notified as appropriate.

Step 3 - Appropriate interim arrangements

Council will implement appropriate interim arrangements whilst conducting the process.

Step 4 - The determination process

Council may conduct an appropriate process in a reasonable manner to determine the issues. Depending on the circumstances, this may involve a preliminary enquiry or workplace investigation.

Step 5 - Findings and report

The manager, Human Resources Officer or person appointed by Council (e.g. investigator)

will provide a report consistent with the required scope including findings and other matters appropriate to resolve the issues. The findings should be communicated to the parties in writing as considered appropriate for the circumstances.

Step 6 – Outcome

Council will implement an outcome after it has provided the parties with a reasonable opportunity to respond to the findings and any proposed outcome.

Step 7 – Post outcome

Council will implement:

- appropriate reporting to other persons
- processes to monitor the outcome and
- other appropriate actions as necessary

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ISSUE RESOLUTION FORM:

Worker or other persons at the workplace details (the person seeking the issue to be resolved).

Name: _____

Position Title: _____

Department: _____

Manager's Name: _____

Type of Issue (please tick):

Please consider Council's Workplace Behaviour Policy to ensure which issue this resolution form pertains to. Please seek advice from the Human Resources Officer or your manager if assistance is required.

- Inappropriate workplace behaviour
- Bullying
- Equal opportunity, discrimination, harassment
- Sexual harassment
- Victimisation
- Vilification
- Conflict with another employee
- Conflict with other persons at the workplace
- Work, health and safety matter
- Fitness for work
- Employee Code of conduct
- Communications & Social Media
- Other matter not categorised above. Please list below:

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Respondent(s) Details: (the person against whom the issue has been raised)

Name(s): _____

Position Title: _____

Department: _____

Manager's Name: _____

Details of Issue/s: (attach an additional sheet if required)

Date and time of performance, behaviour and/or conduct:

Location of performance, behaviour and/or conduct:

Names of Witnesses: (if any)

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Issues details (be precise, chronological and use facts. Do not use opinion, beliefs or conclusions):

Basis of issues (include why you are lodging form, your beliefs or conclusions):



Other relevant details:

What resolution would you like to occur as a result of raising the issue including any proposed process or outcome?

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Declaration and Acknowledgement:

I declare / understand that:

The details I have provided in this form are correct to the best of my knowledge.

An issue is encouraged to be attempted to be resolved at the workplace level before any external agencies are notified or involved although Council respects a person's lawful right to do so.

Disciplinary action can be brought against me for making vexatious, false or frivolous claims or claims not made in good faith against another person.

Signature: _____

Date: _____

This form and the subsequent process will be treated with the appropriate confidence.