

**NORTHERN MIDLANDS COUNCIL**  
**HUMAN RESOURCES POLICIES & PROCEDURES**



Policy Name:	Disciplinary Policy
Policy Owner:	People & Culture Business Partner
Originated Date:	August 2015
Amended Date/s:	September 2017
Review Date:	December 2018
Applicable Legislation:	<i>Age Discrimination Act 2004 (Cth)</i> <i>Anti-Discrimination Act 1998 (TAS)</i> <i>Australian Human Rights Commission Act 1986 (Cth)</i> <i>Disability Discrimination Act 1992 (Cth)</i> <i>Fair Work Act 2009 (Cth)</i> <i>Local Government Act 1993 (TAS)</i> <i>Racial Discrimination Act 1975 (Cth)</i> <i>Sex Discrimination Act 1984 (Cth)</i> <i>Work Health &amp; Safety Act 2012 (TAS)</i> <i>Workers Rehabilitation &amp; Compensation Act 1988 (TAS)</i>
Publication Sources:	15/013 - Human Resources Policies & Procedures 02/03/01/01 – Human Resources – Employee Infonet / Documents / HR – Policies Works Depot, Childcare Facility & Pool Locations

## **1. AUTHORITY & APPLICATION:**

This Policy should be considered in the context of the following policies and procedures:

- Communications & Social Media
- Employee Code of Conduct
- Fitness for Work
- Issue Resolution
- Performance Management
- Work Health & Safety
- Workplace Behaviour

### ***Definitions***

***Council*** - Northern Midlands Council.

***Councillor*** - an elected member of Council known as a Councillor or Alderman or otherwise meeting the definition of a Councillor as defined under section 3 of the *Local Government Act 1993 (TAS)*.

**EAP** – Employee Assistance Provider, Newport and Wildman.

**Employee** - a person who carries out work for Council as an employee of Council.

**General Manager** - the General Manager of Council as appointed under section 61 of the *Local Government Act 1993 (TAS)*.

**Industrial Instrument** – an instrument recognised under the *Fair Work Act 2009* that has legal application with respect to minimum entitlements to those employees covered within its scope (e.g. Award or Enterprise Agreement).

**Infringing Workplace Behaviour** - any act or omission, which amounts to a breach of any Council policy, contractual obligation or misconduct at common law.

**Manager/Supervisor** - a person at the workplace who is appointed to a position that has management/supervisory responsibilities for others or their appropriately nominated or authorised delegate.

**Other Persons at the Workplace** - any person at the workplace who is not a worker including visitors and ratepayers.

**Policy** - this Policy including the Authority and Application.

**Procedure** – the Disciplinary Procedure including the Authority and Application.

**Worker** - a person who carries out work in any capacity for Council, including work as:

- an employee
- a contractor or subcontractor
- an employee of a contractor or subcontractor
- an employee of a labour hire company who has been assigned to work at Council
- an outworker
- an apprentice or trainee
- a student gaining work experience
- a volunteer
- Councillor

**Workplace** - a place where work is carried out for Council.

### **Training**

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

### ***Amendment***

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

### ***Interpretation of Policy***

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 work or expression have a corresponding meaning.

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

Unless expressly provided for, this Policy 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 Policy to the extent of any inconsistency.

It is not intended that this Policy impose any obligations on the Council or those covered by it that are unreasonable or contrary to the operation of applicable laws. Any obligation, direction, instruction or responsibility imposed by this Policy 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 Policy should be directed to the person’s manager/supervisor or the People & Culture Business Partner.

### ***Reporting of Breaches***

Persons covered under the paragraph ‘Coverage’ must reasonably report breaches of infringing workplace behaviour as follows:

For breaches by:

- an employee (other than the General Manager or other workers) the report must go to the reporting person's applicable manager/supervisor
- the General Manager the report must go to the Mayor (or if unavailable to the next appropriately delegated Councillor) and

as otherwise required or permitted by applicable laws.

### ***Breach of this Policy***

Persons covered under the paragraph 'Coverage' who engage in infringing workplace behaviour may (as is appropriate) be subject to appropriate disciplinary action in accordance with the Disciplinary Policy and Procedure or removal from the workplace or termination of services (workers, other than employees and other persons at the workplace). Infringing workplace behaviour may also amount to breaches of applicable laws:

- exposing individuals to legal proceedings and
- making Council vicariously liable for the conduct of others

## **2. PURPOSE:**

The aims of this Disciplinary Policy are to:

- recognise that all employees are responsible for their behaviours
- to set and maintain standards of conduct within Council and help and encourage employees to achieve and maintain those satisfactory standards
- enable Council to appropriately deal with infringing workplace behavior fairly, consistently and
- transparently having regard to the individual circumstances and other relevant factors
- provide opportunities for employees to correct behaviours unless immediate dismissal is appropriate
- provide a reference and framework for the Disciplinary Procedure and
- operate with applicable laws and related Council documents

## **3. COVERAGE:**

This policy covers and applies to employees in relation to infringing workplace behaviour including poor performance that is not dealt with under Council's Performance Management Policy.

This policy does not cover or apply to behaviours that amount to or are dealt with by Council as:

- a) incapacity for work, which is dealt with under Council's Fitness for Work Policy or

- b) performance management, which is dealt with under Council's Performance Management Policy

For the avoidance of doubt this Policy does not cover or apply to a Councillor.

#### **4. REQUIREMENTS:**

Employees must comply with this policy.

Manager's/Supervisor's must communicate and implement this policy within their area of responsibility.

#### **5. ROLE RESPONSIBILITIES:**

##### ***What are the managers/supervisors responsibilities?***

Managers/Supervisors are responsible for:

- a) ensuring appropriate management of infringing workplace behaviours
- b) making appropriate records relating to disciplinary procedures
- c) making reasonable resources available to assist employees
- d) advising employees of reasonable internal and external support and
- e) identifying the appropriate support, training or experience and opportunities to avoid infringing workplace behaviours

##### ***What are the employee's responsibilities?***

Employees are responsible for:

- a) their own behaviours, including avoiding infringing workplace behaviours
- b) participating appropriately in disciplinary procedures and
- c) requesting or participating in the appropriate support, training or experience and opportunities to avoid infringing workplace behaviours

#### **6. ENGAGING IN A DISCIPLINARY PROCESS AND OUTCOME:**

Council's Disciplinary Procedure provides for an appropriate disciplinary process to determine whether infringing workplace behaviour has occurred and the related facts and circumstances and if so appropriate disciplinary outcomes.

Council may only commence a disciplinary process where it has formed a reasonable suspicion (i.e. facts exist which are sufficient to induce a suspicion in a reasonable person) that an employee has engaged in infringing workplace behaviour.

The Disciplinary Procedure provides guidelines containing a number of different processes Council may utilise to appropriately determine infringing workplace behaviour.

Council may use a particular disciplinary process that a manager/supervisor considers reasonable in the circumstances that is consistent with the Disciplinary Procedure and provides procedural fairness appropriate to the circumstances.

A disciplinary process is conducted by the employee's immediate manager/supervisor with support from the People & Culture Business Partner.

Despite this Council may decide, taking into consideration the relevant circumstances, to utilise instead or in addition to the employee's immediate manager/supervisor:

- a) a more senior manager
- b) the People & Culture Business Partner
- c) an external person with expertise appropriate to the particular circumstances
- d) in any event, a manager/supervisor engaged in a disciplinary process should consider early consultation with the People & Culture Business Partner if they need guidance regarding appropriate process and/or the issue is of a higher complexity or difficulty than usual.

The Disciplinary Procedure provides for guidelines containing a number of different outcomes Council may utilise to appropriately determine infringing workplace behaviour.

Council may implement a particular disciplinary outcome that a manager/supervisor considers reasonable in the circumstances that is consistent with the Disciplinary Procedure.

A disciplinary outcome will be carried out by an authorised manager/supervisor following a disciplinary process where there is finding of infringing workplace behaviour. This may, depending on the circumstances, range from the employee's immediate manager/supervisor, the People & Culture Business Partner to the General Manager.

Employees should discuss the outcome with their manager/supervisor before seeking external advice regarding an appropriate appeal process (if any) in the circumstances.