

DISCIPLINARY ADMINISTRATIVE POLICY

<p>Related Legislation and Applicable Laws</p> <p><i>NB Council and Workers and Others at the Workplace have legal obligations to comply with the requirements of the Related Legislation. Breaches of the Related Legislation are unlawful and may subject the infringing individual entity to fines, penalties, requirements for specific performance, and imprisonment depending on the circumstances. Breaches also make Council vicariously liable for some conduct of some persons.</i></p>	<p><i>All laws in connection with the carrying out of work or the Workplace including:</i></p> <ul style="list-style-type: none"> • <i>Local Government Act 1993 (Tas)</i> • <i>Fair Work Act 2009 (Cth)</i> • <i>Work Health & Safety Act 2012 (Tas)</i> • <i>Workers Rehabilitation & Compensation Act 1988 (Tas)</i> • <i>Anti-Discrimination Act 1998 (Tas)</i> • <i>Racial Discrimination Act 1975 (Cth)</i> • <i>Sex Discrimination Act 1984 (Cth)</i> • <i>Disability Discrimination Act 1992 (Cth)</i> • <i>Age Discrimination Act 2004 (Cth)</i> • <i>Australian Human Rights Commission Act 1986 (Cth)</i> • <i>Associated Regulations (if any of the above)</i> • <i>Successors of any of the above.</i>
<p>Related Council Documents</p>	<p>This policy should be considered in the context of the following policies and procedures:</p> <ul style="list-style-type: none"> • Employee Code of Conduct Administrative Policy • Social Media Guidelines • Work Health and Safety Policy • Workplace Behaviour Administrative Policy • Performance Management Administrative Policy • Issue Resolution Administrative Policy • ICT Usage Administrative Policy
<p>Scope and Application</p>	<p>This policy covers and applies to Workers and Others at the Workplace in accordance with Section 2 Coverage.</p>
<p>Commencement Date</p>	<p>July 2020</p>
<p>Review Date</p>	<p>July 2022</p>
<p>Source of Approval</p>	<p>General Manager, Kingborough Council</p>

Previous Policies replaced by this Policy	Disciplinary Administrative Policy 2018
Department responsible for the operation of the policy	Organisational Development (induction of new employees and appropriate action for breach of the guidelines including potential disciplinary action).
Council	Kingborough 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 <i>Local Government Act 1993</i> (TAS).
EAP	Employee Assistance Provider, currently 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 <i>Local Government Act 1993</i> (TAS).
Industrial Instrument	An instrument recognised under the <i>Fair Work Act 2009</i> that has legal application with respect to minimum entitlements to those Employees covered within its scope (e.g. an 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.

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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 Disciplinary Administrative Policy including the 'Authority and Application'.
Procedure	The Disciplinary Procedure including the "Authority and Application."
Worker	<p>A person who carries out work in any capacity for Council, including work as:</p> <ul style="list-style-type: none"> (a) an Employee; (b) a contractor or subcontractor; (c) an employee of a contractor or subcontractor; (d) an employee of a labour hire company who has been assigned to work at Council; (e) an outworker; (f) an apprentice or trainee; (g) a student gaining work experience; (h) a volunteer; or (i) a Councillor.
Workplace	A place where work is carried out for Council.

PURPOSE

This aims of this Policy are to:

- (a) recognise that all Employees are responsible for their behaviours;
- (b) to set and maintain standards of conduct within Council and help and encourage Employees to achieve and maintain those satisfactory standards;
- (c) enable Council to appropriately deal with Infringing Workplace Behaviour fairly, consistently and transparently having regard to the individual circumstances and other relevant factors;
- (d) provide opportunities for Employees to correct behaviours unless immediate dismissal is appropriate;
- (e) provide a reference and framework for the Disciplinary Procedure; and
- (f) operate with Applicable Laws and Related Council Documents.

1 COVERAGE

- (a) 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.
- (b) This Policy does not cover or apply to behaviours that amount to or are dealt with by Council as performance management, which is dealt with under Council's Performance Management Policy.
- (c) For the avoidance of doubt this Policy does not cover or apply to a Councillor.

2 REQUIREMENTS

- (a) Employees must comply with this Policy.
- (b) Managers/Supervisors must communicate and implement this Policy within their area of responsibility.

3 ROLE RESPONSIBILITIES

3.1 What are the Manager/Supervisor's Responsibilities?

Managers/Supervisors are responsible for:

- (a) ensuring appropriate management of Infringing Workplace Behaviours;
- (b) making appropriate records relating to disciplinary procedures;

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- (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.

3.2 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.

4 ENGAGING IN A DISCIPLINARY PROCESS AND OUTCOME

4.1 Council’s Disciplinary Procedure

Council’s Disciplinary Procedure provides for:

- (i) an appropriate disciplinary process to determine whether Infringing Workplace Behaviour has occurred and related facts and circumstances; and, if so
- (ii) appropriate disciplinary outcomes.

4.2 When may Council commence a disciplinary process?

Council may only commence a disciplinary process where it has formed a reasonable suspicion (i.e. there exists facts which are sufficient to induce a suspicion in a reasonable person) that an Employee has engaged in Infringing Workplace Behaviour.

4.3 What is the disciplinary process?

The Disciplinary Procedure provides for guidelines containing a number of different processes Council may utilise to appropriately determine Infringing Workplace Behaviour.

4.4 Is there a requirement to use a particular disciplinary process?

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.

4.5 Who conducts a disciplinary process?

- (a) A disciplinary process is conducted by the Employee’s immediate Manager/Supervisor.
- (b) Despite this, Council may decide, taking into consideration the relevant circumstances, to

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utilise instead or in addition to the Employee's immediate Manager/Supervisor:

- (i) a more senior Manager/Supervisor; and/or
 - (ii) an appropriate member of Council's Organisational Development staff; or
 - (iii) an external person with expertise appropriate to the particular circumstances.
- (c) In any event, a Manager/Supervisor engaged in a disciplinary process should consider early consultation with an appropriate member of Council's Human Resources staff if they need guidance regarding appropriate process and/or the issue is of higher complexity or difficulty than usual.

4.6 What is the disciplinary outcome?

The Disciplinary Procedure provides for guidelines containing a number of different outcomes Council may utilise to appropriately determine Infringing Workplace Behaviour.

4.7 Is there a requirement to implement a particular disciplinary outcome?

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

4.8 Who carries out a disciplinary outcome?

A disciplinary outcome will be carried out by an authorised Manager/Supervisor following a disciplinary process where there is a finding of Infringing Workplace Behaviour. This may, depending on the circumstances, range from the Employee's immediate Manager/Supervisor through to the General Manager. An appropriate member of Council's Human Resources staff should be either consulted or involved.

4.9 What if an Employee considers that a disciplinary outcome imposed on them is excessive or inappropriate?

Employees should discuss the outcome with their Manager/Supervisor. The Employee may also seek external advice regarding an appropriate appeal process (if any) in the circumstances.

5 TRAINING

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

6 INTERPRETATION

- (a) Unless expressly provide 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. Any applicable enterprise agreement or contract of employment will prevail over this Administrative Policy to the

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extent of any inconsistency.

- (b) 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.
- (c) Examples in this Policy are for illustrative purposes only and are not intended to be exhaustive.
- (d) Questions relating to the interpretation, application or enforcement of this Policy should be directed to a person's Manager/Supervisor.

7 REPORTING OF BREACHES

Persons covered under paragraph 2 (Coverage) must reasonably report breaches of Infringing Workplace Behaviour as follows:

For breaches by:

- a) an Employee (other than the General Manager), the report must go to the reporting person's applicable Manager/Supervisor; and/or
- b) 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.

8 BREACH OF POLICY

Persons covered under paragraph 2 (Coverage) who engage in Infringing Workplace Behaviour may (as is appropriate and as applicable) be subject to appropriate disciplinary action in accordance with Disciplinary Policy and Procedure (Employees). Infringing Workplace Behaviour may also amount to breaches of Applicable Laws:

- a) exposing individuals to legal proceedings; and
- b) making Council vicariously liable for the conduct of others.

9 REVIEW

This Policy will be reviewed every two years. Council retains the sole discretion to vary, terminate or replace this Administrative Policy from time to time. Council will consult before amendments are made and will notify and train those the amendments apply to.

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Approved:

Gary Arnold

General Manager

Date

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