

Title:	4.40 Formal Discipline and Dismissal
Previous No:	
File No:	
Statutory Environment:	
Minute No:	8.1.4 032017.OM
Last Updated:	March 2017
Review Date:	September 2019

OBJECTIVE(S)

The objective of this policy and procedure is to outline how the Shire will manage employee discipline and dismissal.

Policy

The Shire aims to ensure that any issue or concern regarding unacceptable performance or behaviour and any consequential disciplinary action, will be handled fairly and consistently. The Shire expects all employees to undertake their work duties and behave in accordance with the town's organisational standards.

This Policy provides guidelines for the formal disciplinary process or dismissal in order to ensure fair and equitable management of employees in accordance with employer obligations.

“Behaviour” is unacceptable where an employee:

- Breaches policies or regulations;
- Contravenes the Shire's Workplace Behaviour Policy;
- Ignores or fails to comply with occupational safety and health policies and procedures;
- Is absent without entitlement or appropriate explanation or whose punctuality in attending work is poor;
- Harasses or discriminates against or bullying other employees, contractors or other persons; and
- Does not meet required personal presentation standards.

“Disciplinary action” includes:

- Counselling or coaching
- Provision of a formal written warning
- Termination of employment
- Summary dismissal

“Performance” includes:

- the conduct, output and outcomes of an employee's duties
- not performing or inadequately performing the tasks required in their role
- not following established or instructed procedures or not acting in accordance with Town policies or delegations

“Serious Misconduct” includes;

- wilful or deliberate behaviour inconsistent with a continuation of employment
- conduct causing serious and imminent risk to the health and safety of a person
- theft or fraud
- assault or bullying
- under the influence of alcohol or non prescribed drugs at work

(1) The primary aims of disciplinary action are:

- (a) to improve the work performance of the staff member to the desired standard; and
- (b) To ensure that the staff member conforms to important organisational rules and policies.

(2) Disciplinary action will generally only be used as a last resort. It is preferable that the desired behaviour is achieved through counselling or training (or retraining), however, it is recognised that this will not always be possible and in some cases disciplinary action will be necessary.

(3) Where an employee in question has a disability or other additional needs their needs and supports must be taken into consideration in all stages of the disciplinary process.

(4) Should circumstances require the application of employee discipline the relevant industrial agreements applicable to the employee's employment should be consulted and the guidelines adhered to.

(5) The employee should be advised that the Grievance Procedure may be followed if the employee is dissatisfied with either the process or the outcome.

PROCEDURE

Should circumstances require the application of employee discipline the relevant industrial agreements applicable to the employee's employment should be consulted and the guidelines adhered to.

Initial Investigation

(1) Regardless of whether the problem is poor performance or an allegation of a breach of policy or procedures, some investigation will be required before the individual is interviewed.

(2) The Manager or CEO is to be fully briefed on the nature of the problem, the outcome of the investigation and provided with copies of all relevant documentation.

- (3) If the situation is one of repeated performance problems the individual responsible for conducting the investigation should:
 - (a) Provide examples of poor performance;
 - (b) Establish that the poor performance has continued over a period of time without improvement; and
 - (c) Prove that counselling and/or training has failed to remedy the problem.
- (4) In situations where allegations are made concerning a breach of policy or procedure or serious misconduct, it is vital that the facts are established before an interview takes place rather than action being taken based on generalisations or unsubstantiated rumours.

The Interview

- (1) If there is a possibility that disciplinary action may result from the process, the staff member is to be advised, prior to the interview that they have a right to have a representative of their choice present during the interview if they wish.
- (2) The staff member should be given reasonable notice of the interview to enable them to organise for a representative to be present.
- (3) The Manager or CEO must be consulted **prior** to any disciplinary interviews or discussions.
- (4) Information concerning the allegation/s or poor performance may be relayed verbally or in writing, however, in either case care should be taken to ensure that the staff member is given sufficient information for them to be able to respond. In some cases, it may be appropriate to provide the staff member with the information prior to the interview to allow them sufficient time to prepare their response.
- (5) The interview should be conducted in a private setting which is free from interruptions.
- (6) The purpose of the interview is to:
 - (a) Provide the staff member with full details of the allegation/s or poor performance specifying clearly and precisely the unacceptable behaviour or poor performance and if necessary explaining why it is unacceptable;
 - (b) Attempt to find out the reasons for the behaviour or unsatisfactory performance by talking through the situation with the staff member;
 - (c) Ensure the staff member has an opportunity to respond to any allegations or concerns about performance;
 - (d) Discuss and prepare an action plan (if applicable) to improve performance (including performance criteria, if appropriate) and nominate a review date; and

- (e) Explain the procedural consequences if performance does not improve to an acceptable level during the review period.

Disciplinary Action

- (1) If after conducting the disciplinary interview it is concluded that disciplinary action is warranted, then consideration should be given to the appropriate action to be taken.
- (2) In effecting disciplinary action any of the following courses of action may be taken:
 - (a) Issuing a verbal warning;
 - (b) Issuing a first written warning;
 - (c) Issuing a second written warning;
 - (d) Issuing a third and final written warning; and
 - (e) Instant dismissal.

Verbal Warnings

- (1) Verbal warnings are considered appropriate in relation to less serious matters e.g. in relation to punctuality or in more serious cases where it is the first warning in relation to a matter. Verbal warnings should be given in a private meeting, free from any interruptions. It is also preferable that the warning be given with a third person present.
- (2) When a verbal warning is issued a written record of the warning should be completed and signed by the Manager/Supervisor and the staff member. A copy should be given to the staff member and the original should be forwarded to the CEO for retention on the staff member's personal file. If the staff member declines to sign, the Manager/Supervisor should make note to this effect on the record. The staff member may attach a statement to the warning.
- (3) The staff member should be advised that the Shire's Grievance procedure may be followed if the staff member is dissatisfied with either the process or the outcome.

Written Warning

- (1) In cases of more serious performance problems, breaches of policy or unacceptable conduct, a written warning may be issued.
- (2) A written warning may be issued even if a verbal warning has not been given previously. A written warning is also appropriate where a verbal warning/s does not result in performance improvement or the desired change in behaviour. Written warnings are to be issued only after consultation with the relevant Manager.
- (3) If at the conclusion of the disciplinary interview it is decided to issue a written warning, the written warning should be recorded in a warning letter. The

warning letter should clearly outline the reason/s for the warning, the improvement expected and the time frame in which the improvement is expected. The warning should also indicate the staff member's failure to respond to previous warning(s) where appropriate.

- (4) Both the first and second warnings must clearly state that termination of employment could result if the desired improvement does not occur within the timeframes agreed to.
- (5) The original written warning should be given to the staff member personally. The warning must be handed to the person in front of the CEO or Manager (where practicable). The signed copy should then be forwarded to the CEO for retention on the staff member's personal file.
- (6) The staff member should be advised that the Grievance Procedure may be followed if the staff member is dissatisfied with either the process or the outcome.

Third and Final Warning

- (1) In cases where previous warnings have not resulted in improved performance or the desired adherence to policies or procedures, a final warning letter may be issued.
- (2) Final warnings may also be issued in cases of serious misconduct even though no previous warnings have been issued.
- (3) A final warning letter should be signed by the Chief Executive Officer and should contain:
 - (a) reason/s for the final warning;
 - (b) a record of previous warnings, if any;
 - (c) an outline of the improvement expected and time frame for improvement (if appropriate);
 - (d) A statement to the effect that termination of employment has been effected because the desired improvement has not occurred and/or been sustained.

Termination

- (1) Termination should only be effected where the procedures outlined above have been followed and other appropriate options have been considered (e.g. a transfer).
- (2) Terminations are only to be effected after consultation with the Chief Executive Officer and the Manager

Natural Justice

In carrying out disciplinary action all individuals involved should ensure that the principles of natural justice are applied (i.e. that the staff member concerned is given adequate opportunity to explain his/her actions and put forward his/her side of the situation).

General

- (1) In some instances, cases of unsatisfactory service may follow a pattern of a verbal warning/s, followed by a written warning/s, followed by a final warning, then dismissal.
- (2) However, disciplinary action does not necessarily have to follow all of these steps. For example, in some cases the initial conduct may be sufficiently serious to warrant an immediate written warning in lieu of a verbal warning. In extreme cases e.g. in cases of serious misconduct, the behaviour may be sufficient to warrant summary dismissal. In both these cases the Chief Executive Officer and the Manager must be consulted prior to taking any action.
- (3) The decision as to which disciplinary measure is the most appropriate should be made with regard to the seriousness of the offence and whether previous warnings have been issued.