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# PERFORMANCE AND MISCONDUCT POLICY

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Human Resources  
YASC POL 05 – V6



2024

YARRABAH ABORIGINAL SHIRE COUNCIL  
56 Sawmill Rd Yarrabah, QLD 4871

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## **1. LEGISLATION AND AUTHORITY**

*The Local Government Act 2009 (Qld)*  
*Local Government Regulation 2012 (Qld)*  
*Industrial Relations Act 2016(Qld)*  
*Penalty and Sentences Act 1992 (Qld)*  
*YASC Code of Conduct*  
*YASC Anti-Discrimination & EEO Policy*  
*YASC Personal Grievance Policy*

## **2. COUNCIL'S STATEMENT**

Yarrabah Aboriginal Shire Council ('YASC') conducts its business with integrity, honesty and fairness. All employees are expected to work within the rules and actions of YASC will comply with all relevant laws, regulations, codes and corporate standards.

Everyone representing YASC must reflect the highest standards of behaviour. Our relationships are critical to the ongoing success of our organisation. Our leaders have responsibility for fostering a culture where ethical conduct is recognised, valued and applied at all levels.

This policy is to be read in conjunction with the Code of Conduct, which outlines our standards of behaviour and workplace culture are in accordance with Council's principles:-

## **3. PURPOSE**

The objectives of the YASC Performance and Misconduct Policy/Disciplinary Procedures are:

- correct and/or improve the standard of conduct of an employee where appropriate or necessary;
- provide any particular employee with an opportunity to correct unacceptable conduct (other than in situations where summary dismissal is appropriate);
- ensure that all employees are treated fairly, equally and consistently and in accordance with Local Government legislation; and
- ensure that each situation is reviewed and addressed on an individual basis and in relation to the particular facts of each circumstance.
- to outline the various types of disciplinary action which may be taken by Council.
- to ensure awareness, understanding and expectation of compliance to YASC Code of Conduct.

## **4. COMMENCEMENT OF POLICY**

This Policy replaces all other performance and misconduct policies of Council (whether written or not).

## **5. APPLICATION OF POLICY**

This Policy may be varied from time to time by YASC and does not form part of any employee's contract of employment.

This Policy is to be applied when dealing with necessary discipline arising from matters associated with poor performance and/or misconduct in any circumstances at, in connection with, or arising out of employment with YASC.

Circumstances that may be connected with or arising out of employment includes conduct at work-related functions. A work-related function may include work lunches, dinners, conferences, Christmas functions and client/customer functions. This Policy also applies when employees go to other

workplaces in connection with or arising out of employment performed for YASC, for example, when visiting a supplier, client or customer.

If conduct involves a potential breach of any Australian law, YASC may notify the police or other relevant government authority.

## **6. GROUNDS UPON WHICH DISCIPLINARY ACTION MAY BE TAKEN**

Disciplinary action may be taken in relation to:

- failure to perform responsibilities in accordance with an employee's contract of employment, YASC policies and procedures or the *Local Government Act 2009* (QLD) (Act); or
- the local government principles, which may include persistent poor performance; or
- action taken under the Act in a way that is not consistent with the local government principles, and which may include misconduct.

## **7. DISCIPLINARY PROCEDURE OVERVIEW**

The procedures outlined below are intended as a guide only to the disciplinary procedures which may be implemented by YASC. In every case, the actual disciplinary procedure to be adopted will be a matter of YASC discretion but in all circumstances YASC will comply with the requirements outlined by section 283 of the Local Government Regulation 2012 (Qld).

Nothing in this Policy prevents YASC, where YASC considers it appropriate in the circumstances, from issuing a first and final warning as an initial disciplinary step, subsequent to having carried out the disciplinary procedures outlined in this policy. Similarly, if the circumstances warrant, nothing in this Policy prevents YASC from dismissing an employee as a first and final disciplinary outcome, subsequent to having carried out the disciplinary procedures outlined below at clauses 8 and 9, where a circumstance may involve serious misconduct by an employee.

## **8. INVESTIGATION**

Depending on the circumstances, it may be necessary to conduct an investigation into incidents and/or allegations against a particular employee. This may involve collecting relevant data, interviewing relevant witnesses, such as the employee's co-workers or supervisors, or even customers and suppliers with whom the employee has had contact.

YASC will endeavour to investigate all allegations of unsatisfactory performance, unacceptable conduct, or wilful or serious misconduct by an employee promptly and fairly.

If YASC is satisfied, on reasonable grounds, that:-

- there appears to be sufficient evidence to support the allegations against an employee, and
- if those allegations were proven, will lead to disciplinary action of some form against the employee,

the employee may, if YASC believes this to be reasonably necessary in the circumstances, be suspended from duty on ordinary pay pending completion of an investigation.

In such circumstances, the employee should be informed in writing of the conditions of the suspension at the time of the suspension and must be paid the employee's full remuneration as at the start of the suspension for the period of suspension.

## 9. NOTICE OF PROPOSED DISCIPLINARY ACTION AND DISPLINARY INTERVIEW

If on the basis of the investigation and evidence discovered, YASC believes that there is a case to be answered by the employee against whom an allegation has been placed, before YASC can take any form of disciplinary action, the employee must be provided with a written 'Notice of Proposed Disciplinary Action', and be provided with a reasonable opportunity to respond to the information contained in that written notice.

YASC may require all responses to a 'Notice of Proposed Disciplinary Action' to be in writing, and in addition, the employee may be asked to attend a meeting to discuss the issue(s) of concern.

Details that must, as a minimum, be contained in a written 'Notice of Proposed Disciplinary Action' are as follows:

- the disciplinary action to be taken;
- the grounds on which the disciplinary action is taken;
- the particulars of conduct (*facts*) claimed to support the grounds;

In carrying out a proposed disciplinary interview subsequent to the provision of a written Notice of Proposed Disciplinary Action, the following procedure will generally be applied:

- The employee will be given advance notice of the meeting and what will be discussed at the meeting.
- The employee will be given a reasonable opportunity to have a support person present at the meeting.
- At the meeting the issue(s) of concern or allegations will be clearly put to the employee, including any evidence upon which those concerns or allegations are based, and this must be consistent with the details contained in the written Notice of Proposed Disciplinary Action.
- The employee is to be informed that they must address each of the allegations put to them in the Notice of Proposed Disciplinary Action, and if relevant, provide to YASC any evidence that the employee has in support of their response to each allegation.
- The employee will be given an adequate opportunity to respond to each allegation and to raise any concerns. If a support person is speaking for or on behalf of the employee, the support person and employee must be made aware that Council will make its decision about proposed disciplinary action based on what the support person has stated on behalf of the employee in response to each of the allegations.

At the conclusion of the interview the manager/supervisor conducting the interview will consider the employee's response, including written response to the Notice of Proposed Disciplinary Action, and make any further enquires or investigations that may be necessary.

After making any further enquiries or investigations which may be necessary, and after consideration of the response or explanation of the employee, the manager/supervisor will weigh up the evidence and determine whether it is more probable than not that the concern(s) or allegations have been proven.

Any additional facts or allegations that are brought to YASC's attention prior to the disciplinary interview are to be provided to the employee via the provisions of a further written 'Notice of Proposed Disciplinary Action', before these allegations can be addressed in a disciplinary interview

and the employee afforded a reasonable opportunity to respond to those additional facts or allegations.

At the conclusion of the disciplinary interview, if it is determined that all or some of the concerns or allegations are proven, and after consideration of:

- the seriousness of the poor performance/misconduct;
- the response or explanation given by the employee;
- the employee's employment history and record; and
- whether there are appropriate and reasonable alternatives to dismissal,

The CEO, manager/supervisor will make a decision on what, if any, disciplinary action is appropriate.

YASC may take disciplinary action against the employee in a form that it feels is appropriate in the circumstances.

## **10. DISCIPLINARY ACTION**

The type of disciplinary action taken may vary from case to case, depending upon all of the circumstances, including a consideration of whether the employee has received any prior verbal or written warnings in relation to their performance or conduct.

Regardless of whatever disciplinary action is imposed, where it does not lead to dismissal, such action may be relied on in future to support dismissal due to ongoing unsatisfactory performance, unacceptable conduct or misconduct of any kind.

Nothing contained in this policy prevents an employee from exercising their rights under the *Industrial Relations Act 2016* (Qld) or other applicable law if YASC takes disciplinary action against an employee.

## **11. FORMAL DISCIPLINE**

The types of formal disciplinary action which may be taken by YASC include, but are not limited to, the following:

- termination of employment;
- demotion, including a reduction in remuneration;
- a deduction from salary or wages of an amount of not more than 2 penalty units;
- a written reprimand or warning.

## **12. INFORMAL DISCIPLINE**

Other forms of disciplinary action which may be taken by YASC include, but are not limited to, the following:

- redirection, retraining;
- reorganisation/redeployment; and
- counselling.

Informal disciplinary action is not appropriate where the employee's conduct amounts to wilful or serious misconduct.

## **13. DISMISSAL**

If the decision is made by the CEO to dismiss the employee, the employee should be given:

- written notice of the day of the dismissal or payment in lieu of notice, except where dismissal is due to serious misconduct;
- payment of all accrued entitlements;
- payment of any outstanding entitlements;
- a Separation Certificate; and
- a Statement of Service, if one is requested.

On dismissal, the employee must immediately return all YASC property in the employee's possession or control to the employee's supervisor or manager.

#### **14. DEDUCTION FROM SALARY OR WAGES**

If disciplinary action taken against an employee consists of a deduction from the salary or wages, YASC may make the deduction of an amount not exceeding 2 penalty units – as defined by the *Penalty and Sentences Act 1992* (Qld) - unless an appeal of that proposed decision, in the form of a 'notification of industrial dispute', has been filed by the employee or their representative with the Queensland Industrial Relations Commission (QIRC) against YASC.

If a 'notification of industrial dispute' is brought against YASC to the QIRC in relation to the deduction from salary or wages of the employee, YASC may deduct the amount stated where, upon the resolution of that dispute, it would not otherwise be inconsistent with an agreement reached in resolution of that dispute, or otherwise with any order, decision or recommendation handed down by the QIRC in resolution of that dispute.

#### **15. WRITTEN/REPRIMAND OR WARNING**

If disciplinary action taken against an employee consists of a written warning or reprimand, it will form part of the employee's employment record and must as a minimum state the following:

- the employee's conduct that is disapproved of;
- the remedial action needed to rectify the conduct;
- the period within which the remedial action is to be taken; and
- the possible consequences for a repeat of the conduct by the employee.

#### **16. DOCUMENTATION**

YASC should make contemporaneous notes/recordings of disciplinary discussions, disciplinary interviews and subsequent actions.

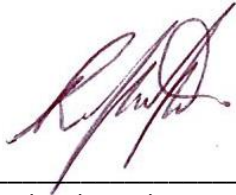
File notes should be placed on the employee's personnel file summarising the nature of the allegations, the details and outcome of any investigation undertaken, including any conversations with the employee, and the disciplinary action taken, including a copy of any warning or termination letters issued. Where possible the employee should be asked to sign any file notes associated with any conversations and/or disciplinary interviews as an acknowledgement that they have attended and acknowledge that the notes accurately reflect what was discussed. If the employee refuses to sign the file note, this should also be recorded on the file note along with the reason for the employee's objection if this is provided.

#### **17. VARIATIONS**

Council *reserves the right to vary, replace or terminate this policy from time to time.*

**18. DOCUMENT CONTROL**

Amended Date:	30 January 2020	Resolution No. 03:30/01/2020	Version No. 2
Amended Date:	17 February 2021	Resolution No. 05:17/02/2021	Version No. 3
Amended Date:	18 May 2022	Resolution No. 09:18/05/2022	Version No. 4
Amended Date:	29 June 2023	Resolution No. 11:29/06/2023	Version No. 5
Reviewed Date:	26 July 2024	Resolution No. 12:26/07/2024	Version No. 6
Next Review Date:	2025		
Responsible Officer:	Chief Executive Officer (CEO)		



Richard Wright  
Chief Executive Officer