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**NARROMINE SHIRE COUNCIL**  
**ORDINARY MEETING BUSINESS PAPER – 13 DECEMBER 2023**  
**REPORTS TO COUNCIL – GENERAL MANAGER**

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**1. 2022/2023 ANNUAL REPORT**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.3.1 Operate and manage Council in a financially sustainable manner that meets all statutory and regulatory compliance and Council policies. DP – 4.3.1.1 – Implementation of the Delivery Program and Operational Plan including Budget and Asset Management Plan on an annual basis.

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**Executive Summary**

This report is presented to Council to note the publication of Council's 2022/2023 Annual Report. The Annual Report may be downloaded from Council's website.

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**Report**

Council must prepare an Annual Report within five months of the end of the financial year. The report must outline Council's achievements in implementing its Delivery Program. Council's Annual Report must also contain its audited financial statements. A copy of the report is to be published on Council's website with the notification of publication provided to the Minister.

The following information is required to be included in Council's Annual Report (as per the Regulations): -

- Details of overseas visits by Councillors and Council Staff
- Details of Mayoral and Councillor fees, expenses and facilities
- Contracts of \$150,000 and above awarded by the Council
- Amounts incurred in relation to legal proceedings
- Private works and financial assistance
- Details of external bodies, companies and partnerships
- Statement of total General Manager's total remuneration
- Statement of total remuneration of all Senior Staff
- Statement of total number of employees on Wednesday 23 November 2022
- Information on stormwater levies and charges
- A statement of the activities undertaken by the Council to implement its equal employment opportunity management plan
- A statement of Council's activities to enforce and comply with the Companion Animals Act
- Include information about induction training and ongoing professional development for Councillors
- Information on government information public access and public interest disclosure activity
- Private swimming pool inspections
- Information on the implementation of Council's Disability Inclusion Action Plan
- Contain a copy of Council's audited Financial Reports

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**1. 2022/2023 ANNUAL REPORT (Cont'd)**

**Key Achievements for the Year**

**Major Capital Works Undertaken**

- Cale Oval Clubhouse and Grandstand Construction
- Construction of two new hangars at the Narromine Aviation Business Park
- Return and Earn Facility
- Refurbishment of Trangie Main Street Public Facilities
- Tomingley Water Treatment Plant
- Narromine Rotary Park Boat Ramp
- Narromine Rotary Park Public Facilities
- Storm Water Drainage Improvements on Local Road Culverts
- Various Local Road Repairs from flood and storm damage
- Completion of Tullamore Road Realignment at Oaks Bridge
- Water Main Upgrade Aerodrome
- Development of New Taxiway – Narromine Aerodrome
- Wentworth Parklands Subdivision

**Successful Grants**

- Resources for Regions Round 9 – \$4,026,811
- Regional and Local Roads Repair Program – \$3,056,154
- Stronger Country Communities Round 5 – \$1,026,938
- Local Government Recovery Grant to assist Councils impacted by flooding – \$1,000,000
- Fixing Local Pothole Repair Round – \$575,608
- Floodplain Management Program, Levee Feasibility Study – \$499,660
- Crown Reserve Improvement Fund, Racetrack surface upgrades Trangie Racecourse – \$39,212
- Active Transport: Get NSW Active Program 2022/23 – Pedestrian Access and Mobility Plan (PAMP) – \$30,150
- Regional Youth Holiday Break Programs 2022/23 – \$32,313
- Dollar for Dollar Native Fish Stocking Program – \$4,000
- LLS Landcare Riparian Restoration Project – \$6,036
- National Japanese Encephalitis Virus (JEV) response plan funding – \$5,500
- Community War Memorials fund – \$3,000

**Delivery Program Targets**

- 97.3% of targets in the 2022/2023 Delivery Program achieved.

**Challenges**

- Delays with Projects due to wet weather during the first half of 2022/23
- Staff turnover/resourcing
- Disruptions to Council's supply chain
- Contractor availability
- Change in Government

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**1. 2022/2023 ANNUAL REPORT (Cont'd)**

***Financial Implications***

Council's Audited Financial Statements are included in Annexure One of the Annual Report. Council reported a net operating result of \$7.5M. Total revenue of \$33.2M was recognised for the financial year, with the largest contribution from operating and capital grants. Council spent \$42.9M between operating and capital projects. As at 30 June 2023, Council's assets were valued at \$445M.

Council continues to monitor its financial performance to ensure the long-term viability of the Shire.

***Legal and Regulatory Compliance***

Sections 404, 428 and 428A of the Local Government Act 1993  
Clause 217 of the Local Government (General) Regulation 2021  
Integrated Planning and Reporting Guidelines

***Risk Management Issues***

Nil – Council's Annual Report has been prepared in accordance with the Regulations and Integrated Planning and Reporting guidelines, and the Minister notified accordingly. The financial information contained within the 2022/2023 Annual Report has been verified by Council's external auditors.

***Internal/External Consultation***

Internal consultation with relevant personnel  
External auditors

Attachments

Nil

**RECOMMENDATION**

That the report be noted.

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## **2. OFFICE CLOSURE – CHRISTMAS/NEW YEAR PERIOD**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.2.2 Ensure ongoing skills development of Council staff and professional development for Councillors DP – 4.2.2.3 – Provide policies, programs and initiatives that support employee work/life balance

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### **Executive Summary**

This report is presented to Council to advise the closure of the Council Chambers and Council's Customer Service and Payments Centre from 20 December 2023 to 2 January 2024 inclusive.

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### **Report**

The General Manager, under delegated authority, will close the Depot facilities, Council Chambers, and Customer Service and Payments Centre from 5pm Tuesday 19 December 2023 and reopen at 8.30am Wednesday 3 January 2024.

All other facilities (including Swimming Pools and Waste Depots) are closed on Christmas Day and re-open during the rest of the Christmas and New Year period but may operate with changes to the hours of operation. Council continues to provide essential services to ensure the health and safety of the community i.e. kerbside garbage collection, CBD cleaning and cleaning of public facilities e.g. toilets, BBQs.

Council will still provide appropriate on-call officers to respond to urgent maintenance work or emergency situations.

### **Financial Implications**

Organisational leave liabilities must be managed at sustainable levels for minimum impact on funds in reserve required for other organisational requirements.

### **Legal and Regulatory Compliance**

Local Government (State) Award 2023  
Section 335 (i) of the Local Government Act 1993

### **Risk Management Issues**

Maintaining staff health and wellbeing is critical to a productive working environment. Given that the Government and commercial sectors close for several weeks over Christmas/New Year, Council's contracted projects will be unaffected by the proposed closure.

### **Internal/External Consultation**

Employee consultation

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## **2. OFFICE CLOSURE – CHRISTMAS/NEW YEAR PERIOD (Cont'd)**

### Attachments

Nil

### **RECOMMENDATION**

That the information be noted.

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## **3. DATA BREACH POLICY**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.3.1 Operate and manage Council in a financially sustainable manner that meets all statutory and regulatory compliance and Council policies

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### **Executive Summary**

This report is presented to Council to consider and adopt the Data Breach Policy.

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### **Report**

The Mandatory Notification Data Breach (MNDB) Scheme came into effect on 28 November 2023.

The MNDB Scheme requires agencies to satisfy data management requirements including to maintain an internal data breach incident register and have a publicly accessible Data Breach Policy.

Under the MNDB Scheme agencies must: -

- Immediately make all reasonable efforts to contain a data breach
- Undertake an assessment within 30 days where there are reasonable grounds to suspect there may have been an eligible data breach
- During the assessment period, make all reasonable attempts to mitigate the harm done by the suspected breach
- Decide whether a breach is an eligible data breach or there are reasonable grounds to believe the breach is an eligible data breach
- Notify the Privacy Commissioner and affected individuals of the eligible data breach
- Comply with other data management requirements

### **3. DATA BREACH POLICY (Cont'd)**

An eligible data breach is defined as unauthorised access to or disclosure of personal information held by Council in circumstances that are likely to result in unauthorised access to, or unauthorised disclosure of, the information, and a reasonable person would conclude that the access or disclosure of the information would be likely to result in serious harm to an individual to whom the information relates.

In 2018 Council established its Data Breach Plan, which was subsequently reviewed in 2022. This is an internal document providing staff a response framework in the event of a data breach. The procedures within the Plan have now been incorporated into the attached Data Breach Policy, in preparation for the MNDB Scheme requirements (**see Attachment No. 1**).

Council's Privacy Management Plan must now make reference to Council's Data Breach Policy. It is therefore recommended that the following paragraph be included in Council's Privacy Management Plan: -

**Data Breach Policy** – separate to this Plan, Council has a Data Breach Policy that sets out Council's procedures for managing a data breach including assessment and notification requirements for the Mandatory Notification of Data Breach Scheme under the PIPPA.

#### **Financial Implications**

There are no identified financial implications in the consideration and adoption of the Data Breach Policy.

#### **Legal and Regulatory Compliance**

Amendments to the Privacy and Personal Information Protection Act 1998 including:

-

- Creating a MNDB Scheme which requires public sector agencies to notify the Privacy Commissioner and affected individuals of data breaches involving personal or health information likely to result in serious harm.
- Reviewing and updating the Privacy Management Plan to include a reference to the Data Breach Policy.
- Agencies are required to have a public notification register which must be made publicly available for at least 12 months after the date of publication.

#### **Risk Management Issues**

Compliance with legislative requirements.

Council has uploaded its existing Data Breach Plan to the website. This will be replaced with the Data Breach Policy once endorsed by Council.

#### **Internal/External Consultation**

There is no requirement to place this policy on public exhibition.

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### **3. DATA BREACH POLICY (Cont'd)**

#### Attachments

- Data Breach Policy

#### **RECOMMENDATION**

That Council: -

1. Adopt the Data Breach Policy as presented.
2. Amend Council's Privacy Management Plan to include reference to the Data Breach Policy.

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### **4. UNREASONABLE CONDUCT BY A COMPLAINANT POLICY**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.3.1 Operate and manage Council in a financially sustainable manner that meets all statutory and regulatory compliance and Council policies

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#### **Executive Summary**

This report is presented to Council to consider and adopt the revised Unreasonable Conduct by a Complainant Policy.

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#### **Report**

Council's Managing Unreasonable Conduct by Complaints Policy adopted 11 March 2020 has been reviewed to accord with the NSW Ombudsman's latest Model Policy of 2022. The Model Policy provides a clear, standardised, and consistent model that councils can use to inform and support their policy development processes.

The revised policy (**see Attachment No. 2**) now includes reference to cultural and linguistic factors that may need to be considered when deciding to change or restrict a complainant's access to Council services. Other proposed changes to the Policy are minor in nature and do not change the context of the document.

Complainants have a right to make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate. Although relatively few people who make complaints behave unreasonably, their behaviour can have profound effects on organisational resources and efficiency levels, as well as staff productivity, safety and wellbeing.

#### **4. UNREASONABLE CONDUCT BY A COMPLAINANT POLICY (Cont'd)**

Unreasonable conduct by a complainant is categorised as: -

- Unreasonable persistence
- Unreasonable demands
- Unreasonable lack of cooperation
- Unreasonable arguments
- Unreasonable behaviours

The Unreasonable Conduct by a Complainant Policy provides the framework to all staff members to respond to and manage unreasonable conduct. Generally, incidents will be managed by limiting the ways Council will interact with or deliver services to complainants by: -

- Changing or restricting access to Council's services
- Limiting the complainant to a sole contact point
- Restricting the subject matter of communications that Council will consider
- Limiting when and how a complainant can contact Council
- Limiting face to face interviews to secure areas
- Completely terminating access to Council services

#### ***Financial Implications***

There are no identified financial implications in the consideration and adoption of the Unreasonable Conduct by a Complainant Policy.

#### ***Legal and Regulatory Compliance***

Workplace Health and Safety Act 2011

NSW Ombudsman Unreasonable Conduct by a Complainant Model Policy 2022

NSW Ombudsman Managing Unreasonable Conduct by a Complainant Manual (2021)

#### ***Risk Management Issues***

Council has a zero-tolerance policy in relation to any harm, abuse or threats directed towards its staff. Any conduct of a criminal nature will be reported to the Police, and in certain cases legal action may also be considered.

To ensure transparency, accountability, fairness, and consistency in the management of unreasonable complainant conduct, it is essential for Council to have a written policy for its staff. A written policy also provides a reference point for complainants – as well as review bodies, courts or tribunals that may be subsequently tasked with reviewing their application.

#### ***Internal/External Consultation***

There is no requirement to place this policy on public exhibition.



#### **4. UNREASONABLE CONDUCT BY A COMPLAINANT POLICY (Cont'd)**

##### Attachments

- Unreasonable Conduct by a Complainant Policy

#### **RECOMMENDATION**

That Council adopts the Unreasonable Conduct by a Complainant Policy as presented.

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#### **5. ALCOHOL AND OTHER DRUGS POLICY**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.3.1 Operate and manage Council in a financially sustainable manner that meets all statutory and regulatory compliance and Council policies

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#### **Executive Summary**

This report is presented to Council to consider and adopt the revised Alcohol and Other Drugs Policy.

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#### **Report**

Council adopted the Alcohol and Other Drugs Policy at its Ordinary Meeting held on 12 December 2018 (**Resolution No 2018/304**).

The policy has been reviewed in line with CASA safety findings from a recent audit. Amendments have been made accordingly to align with CASA requirements and are marked up for ease of reference (**See Attachment No. 3**).

It is noted that the policy and attached procedures provide specific guidance to management, workers and others in dealing with alcohol and drug related work issues.

#### **Financial Implications**

Nil

**5. ALCOHOL AND OTHER DRUGS POLICY (Cont'd)**

***Legal and Regulatory Compliance***

Section 19 Work Health and Safety Act 2011 - Council has a duty to ensure the health, safety and welfare of its workers and other people in the workplace.

Sections 28 and 29 Work Health and Safety Act 2011 - Workers and Others are required to take reasonable care for their own health and safety and comply with reasonable instructions. Workers are also required to take reasonable care for the health and safety of others and cooperate with reasonable policies and procedures.

***Risk Management Issues***

A comprehensive alcohol and other drugs policy assists in addressing the use of substances in the workplace. Alcohol and drug testing in the workplace helps to reduce the likelihood of substance related work injuries or fatalities.

***Internal/External Consultation***

The revised Alcohol and Other Drug Policy has been considered by Council's Health and Safety Committee.

The Policy and Procedure have also been developed by the USU, LGEA, DEPA and LGNSW industry parties to be used as a resource by the Local Government Industry in NSW.

Attachments

- Alcohol and Other Drugs Policy

**RECOMMENDATION**

That Council adopts the Alcohol and Other Drugs Policy as presented.

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**6. APPOINTMENT OF AUDIT RISK AND IMPROVEMENT COMMITTEE CHAIR**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.2.1 Strive for business excellence through continuous improvement and creativity DP – 4.2.1.3 Effective use of Audit Risk and Improvement Committee

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**Executive Summary**

This report is presented to Council to appoint the Chair of the Audit Risk and Improvement Committee.

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**Report**

The Chair of Council's Audit Risk and Improvement Committee (ARIC) has resigned from his position as an Independent Member of the Committee.

In accordance with the Office of Local Government's draft guidelines for Risk Management and Internal Audit for Local Government in NSW, Chairs and members of the ARIC are appointed by a resolution of the governing body of Council.

The governing body should first appoint the Chair of the Audit, Risk and Improvement Committee, who is to then assist in the selection and appointment of the other independent committee members. The initial term of a Chair is four years.

The position of the Chair is to act as the interface between the committee and the General Manager and other staff, the governing body, the external auditor and the internal audit function.

The Chair must: -

- Have strong leadership qualities.
- Be able to raise and deal with tough issues and express opinions frankly.
- Maintain effective working relationships.
- Keep the governing body and General Manager informed and brief them on strategic and technical aspects of internal audits and risk and control issues.
- Lead effective meetings.
- Oversee the internal audit function and be alert to external accountability and internal audit concerns etc.

Council's ARIC members are Mr Grahame Marchant and Mr Ross Earl.

Mr Marchant has been a member of Council's ARIC for 12 months, and Mr Earl is newly appointed. Both members meet the eligibility requirements to be appointed Chair.

**6. APPOINTMENT OF AUDIT RISK AND IMPROVEMENT COMMITTEE CHAIR (Cont'd)**

***Financial Implications***

Council has determined the following fees be paid: -

- Independent Member – \$1,500 excluding GST per meeting
- Chair - \$2,000 excluding GST per meeting.

Fees are inclusive of travel costs.

Provision for these fees has been included in Council's 2023/2024 Operational Plan.

***Legal and Regulatory Compliance***

Local Government Act 1993 – Sections 23A, 428A

Local Government (General) Regulation 2021

Draft Guidelines for Risk Management and Internal Audit for Local Government in NSW (OLG)

It is a requirement under the Act that all councils have an ARIC that comprises one independent member who meets the independence and eligibility criteria for an ARIC chair, and at least two independent members who meet the independence and eligibility criteria for ARIC members.

***Risk Management Issues***

Compliance with legislative requirements

***Internal/External Consultation***

General Manager

ARIC Independent Members

Attachments

Nil

**RECOMMENDATION**

That Council appoints Mr Grahame Marchant as Chair of the Audit Risk and Improvement Committee for a four-year term.

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**7. LOCAL GOVERNMENT REMUNERATION TRIBUNAL REVIEW**

<b>Author</b>	Director Governance
<b>Responsible Officer</b>	General Manager
<b>Link to Strategic Plans</b>	CSP – 4.3 A financially sound council that is responsible and sustainable DP – 4.3.1 Operate and manage Council in a financially sustainable manner that meets all statutory and regulatory compliance and Council policies

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**Executive Summary**

This report is presented to Council for consideration.

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**Report**

The Local Government Remuneration Tribunal has commenced its review for the 2024 annual determination.

The Tribunal is required to make an annual determination on the fees payable to Councillors and Mayors. The determination is to take effect from 1 July 2024.

The minimum and maximum fee levels for each category will be assessed by the Tribunal as part of the 2024 review process.

The tribunal is now inviting submissions from individual councils as part of this review.

Narromine Shire Council is categorised as a Rural Council. Current fees effective 1 July 2023 for Rural Councils are: -

<b>Councillor Member Annual Fee</b>		<b>Mayor/Chairperson Additional Fee</b>	
<b>Minimum</b>	<b>Maximum</b>	<b>Minimum</b>	<b>Maximum</b>
9,850	13,030	10,490	28,430

Should Council wish to make a submission as part of the review, the submission is to be endorsed by the governing body of Council. Submissions are to be received no later than 21 December 2023.

The Tribunal undertook a review of the categories and allocation of councils into each category in 2023. The tribunal is only required to determine categories at least once every three years and will consider the model, criteria applicable to each category and the allocation of councils in detail in the 2026 review.

***Legal and Regulatory Compliance***

Local Government Act 1993 – Section 241

**7. LOCAL GOVERNMENT REMUNERATION TRIBUNAL REVIEW (Cont'd)**

***Financial Implications***

Operational Plan 2023/2024

***Risk Management Issues***

Should Council wish to make a submission it must be endorsed by the governing body of Council. Any material provided to the Tribunal may be made available under the Government Information (Public Access) Act 2009.

***Internal/External Consultation***

Nil

Attachments

Nil

**RECOMMENDATION**

For Council's consideration.

Jane Redden  
**General Manager**



## DATA BREACH POLICY – DRAFT

<b>Version No</b>	<b>Created By</b>	<b>Adopted by Council</b>	<b>Review Date</b>
1.0	IT Manager		December 2027

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## 1.0 Introduction

The Privacy and Personal Information Protection Act 1998 (NSW) (PIIP Act) establishes the NSW Mandatory Notification of Data Breach (MNDB) Scheme which requires public sector agencies to notify the Privacy Commissioner and affected individuals of eligible data breaches.

Agencies are required to prepare and publish a Data Breach Policy for managing such breaches as well as maintaining an internal data breach incident register and public register of eligible data breaches.

## 2.0 Purpose

This policy outlines Council's approach to complying with the MNDB Scheme, the roles and responsibilities for reporting data breaches and the strategies for containing, assessing and managing eligible data breaches.

## 3.0 Scope

This policy applies to all Councillors, staff and consultants engaged by Council to perform the role of a public official.

## 4.0 Related Legislation and Council Documents

Privacy and Personal Information Protection Act 1998  
Government Information (Public Access) Act 2009  
Health Records and Information Privacy Act 2022  
Council's Privacy Management Plan  
Council's Business Continuity Plan

## 5.0 Roles and Responsibilities

The following staff have identified roles under this Policy: -

### 5.1 General Manager

The General Manager has ultimate responsibility for ensuring Council complies with the MNDB Scheme, authorising any corrective actions and providing a report to the Audit and Risk Management Committee if required.

### 5.2 Directors

Directors are responsible for receiving notifications of suspected or actual data breaches and coordinating containment of the breach. Directors are also responsible for undertaking an assessment of the suspected or actual data breach and escalating it to the Data Breach Response Team (DBRT) if necessary.

### 5.3 Data Breach Response Team

The DBRT consists of the Executive Leadership Team and is responsible for determining whether a data breach constitutes an eligible data breach, any notification requirements, fully investigating the cause of the data breach and recommending preventative actions.

### 5.4 Council Officials

All Council officials have a responsibility for reporting a suspected or actual data breach in accordance with this policy.

## 6.0 What is a Data Breach?

A data breach occurs when information held by Council (whether held in digital or hard copy) is subject to unauthorised access, unauthorised disclosure or is lost in circumstances where the loss is likely to result in unauthorised access or unauthorised disclosure. A data breach may occur as a result of malicious action, systems failure, or human error.

Examples of data breaches include: -

### 6.1 Human Error

- When a letter or email is sent to the wrong recipient
- When system access is incorrectly granted to someone without appropriate authorisation
- When a physical asset such as a paper record, laptop, USB stick or mobile phone containing personal information is lost or misplaced
- When staff fail to implement appropriate password security, for example not securing passwords or sharing password and log in information.

### 6.2 System Failure

- Where a coding error allows access to a system without authentication, or results in automatically generated notices including the wrong information being sent to incorrect recipients.
- Where systems are not maintained through the application of known and supported patches.

### 6.3 Malicious or criminal attack

- Cyber incidents such as ransomware, malware, hacking, phishing or brute force access attempts resulting in access to or theft of personal information.
- Social engineering or impersonation leading to inappropriate disclosure of personal information.
- Insider threats from agency employees using their valid credentials to access or disclose personal information outside the scope of their duties or permissions.
- Theft of a physical asset such as a paper record, laptop, USB stick or mobile phone containing personal information.

## 7.0 What is an Eligible Data Breach?

The MNDB Scheme applies where an eligible data breach has occurred. For a data breach to constitute an eligible data breach: -

- there is unauthorised access to, or unauthorised disclosure of, personal information held by Council or there is a loss of personal information held by Council in circumstances that are likely to result in unauthorised access to, or unauthorised disclosure of, the information, and
- a reasonable person would conclude that the access or disclosure of the information would be likely to result in serious harm to an individual to whom the information relates.

### 7.1 Personal Information

Information or an opinion about an identified individual, or an individual who is reasonably identifiable: whether the information or opinion is true or not; and whether the information or opinion is recorded in material form or not.

Examples of include: -

- Sensitive information – racial or ethnic origin, political opinion, religious beliefs, sexual orientation or criminal record
- health information
- credit information
- employee record information
- tax file number information

## 7.2 Serious Harm

The term serious harm is not defined in the Privacy and Personal Information Act. Harm that can arise as the result of a data breach is context-specific and will vary based on: -

- the type of personal information accessed, disclosed or lost, and whether a combination of the types of personal information might lead to increased risk
- the level of sensitivity of the personal information accessed, disclosed or lost
- the amount of time the information was exposed or accessible, including the amount of time the information was exposed prior to Council discovering the breach
- the circumstances of the individuals affected and their vulnerability or susceptibility to harm (that is, if any individuals are at heightened risk of harm or have decreased capacity to protect themselves from harm)
- the circumstances in which the breach occurred, and
- the actions taken by the agency to reduce the risk of harm following the breach.

Harm to an individual includes physical harm; economic, financial or material harm; emotional or psychological harm; reputational harm; and other forms of serious harm that Council would identify as a possible outcome of the breach.

## 8.0 Systems and processes for managing data breaches

Council has established a range of systems and processes for preventing data breaches. Council's IT network and infrastructure is managed by the Department of Finance and Corporate Strategy who have implemented a number of cyber security measures to mitigate the risk of data breaches. This has included projects to increase cyber security maturity, cyber security training for all staff, data loss prevention, and procedures for the sharing of personal and sensitive information.

Council will ensure all third-party service providers who store personal and health information on behalf of Council are aware of the MNDB Scheme and the obligations under this policy to report any data breaches to Council.

The loss of IT systems as a result of a cyber security incident is included in Council's Business Continuity Plan. Council also conducts cyber security exercises to test the responsiveness of the Business Continuity Plan to a cyber attack and includes cyber security and information security experts in the exercise.

Council established its voluntary Data Breach Response Plan in 2018. The Plan was reviewed in 2022 and is now incorporated into this Policy. This Policy sets out procedures and clear lines of authority for Council staff in the event Council experiences a data breach (or suspects that a data breach has occurred).

## 9.0 Responding to a Data Breach

There is no single method of responding to a data breach. Data breaches must be dealt with on a case by case basis, by undertaking an assessment of the risks involved, and using that risk assessment to decide the appropriate course of action. Depending on the nature of the breach, the DBRT may need to include additional staff or external experts, for example an IT specialist/data forensic expert or human resources advisor etc.

When responding to a data breach, the following steps should be considered: -

1. Initial report
2. Contain the breach
3. Assess and mitigate
4. Notify
5. Review

Each step is set out in further detail below. The first four steps should be carried out concurrently where possible. The last step provides recommendations for longer-term solutions and prevention strategies.

### 9.1 Step One – Initial Report

A suspected data breach may be discovered by a Council staff member, Councillor or third-party provider or Council may be otherwise alerted (e.g., by a member of the public or media).

If an employee becomes aware of, or is notified of a suspected or actual data breach, they must notify their Director within one business day of becoming aware of it and provide information about the type of data breach as detailed in Section 6.0 of the Policy.

Members of the public may also report any data breaches to Council in writing by using the contact details available on Council's website [www.narromine.nsw.gov.au](http://www.narromine.nsw.gov.au).

### 9.2 Step Two – Contain the breach

The Director should co-ordinate any immediate action to contain the breach and minimise any resulting damage. For example, recover the personal information, shut down the system that has been breached, suspend the activity that led to the breach, or revoke or change access codes or passwords. If copies have been made by a third party, ensure that all copies are recovered. This can include receiving written confirmation from a third-party that the copy of the data that they received in error, has been permanently deleted.

### 9.3 Step Three – Assess and mitigate

The Director will seek the following information about the data breach on order to assess whether the data breach is to be escalated to the DBRT: -

- The date, time, duration and location of the breach
- The type of personal information involved in the breach
- How the breach was discovered and by whom
- The case and extent of the breach
- A list of the affected or possibly affected individuals
- The risk of serious harm to the affected individuals
- The risk of other harm.

Some data breaches may be comparatively minor and be able to be dealt with easily without action from the DBRT e.g., an email sent containing personal information to the wrong recipient. Depending on severity of the contents of the email, if the email can be recalled, or if the officer can contact the recipient and obtain an assurance that the recipient has deleted the email, it may be that there is no utility in escalating the issue to the response team.

The Director should consider the following questions: -

- Are multiple individuals affected by the breach or suspected breach?
- Is there (or may there be) a real risk of serious harm to the affected individual(s)?
- Does the breach or suspected breach indicate a systemic problem in Council's processes or procedures?
- Could there be media or stakeholder attention as a result of the breach or suspected breach?

If the Director decides that a data breach or suspected data breach requires escalation to the DBRT, they must co-ordinate the convening of the response team, ideally on the same working day.

#### 9.4 Step Four – Notify

The DBRT is to determine whether the breach constitutes an eligible data breach. If there are reasonable grounds to believe an eligible data breach has occurred, the DBRT must promptly notify the NSW Privacy Commissioner using the IPC Mandatory Data Breach Reporting Form available online at [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au)

Individuals/organisations affected by an eligible data breach will be notified as soon as practicable. Where all individuals affected by an eligible data breach cannot be notified, or where direct notification is prohibitively expensive or could cause further harm, the DBRT will consider issuing a public notification.

A record of any public notification of a data breach will be published on Council's website and recorded on the Public Data Breach Register for a period of 12 months.

Notifications should include: -

- The date the breach occurred
- A description of the breach
- How the breach occurred
- The type of breach that occurred
- The personal information included in the breach
- The amount of time the personal information was disclosed for
- Actions that have been taken or are planned to secure the information, or to control and mitigate the harm
- Recommendations about the steps an individual should take in response to the breach
- Information about complaints and reviews of Council's conduct
- The name of the agencies that were subject to the breach
- Contact details for the agency subject to the breach or the nominated person to contact about the breach

The DBRT will also consider whether notification is required to engaging with or notifying external stakeholders (in addition to the NSW Privacy Commissioner), where an eligible data breach occurs. Depending on the circumstances these could include: -

- NSW Police Force, where Council suspects a data breach is a result of criminal activity
- Cyber Security NSW where the data breach is a result of a cyber security incident

- Office of the Australian Information Commissioner where a data breach may involve agencies under Federal jurisdiction
- Any third-party organisations or agencies whose data may be affected
- Financial services providers, where a data breach includes an individual's financial information
- Professional associations, regulatory bodies or insurers where a data breach may have an impact on these organisations, their functions and their clients.
- Australian Cyber Security Centre where a data breach involves malicious activity from a person or organisation based outside Australia.

### 9.5 Step Five – Review

The DBRT will further investigate the circumstances of the breach to determine all relevant causes and consider what short or long-term measures could be taken to prevent any reoccurrence. Depending on the nature of the breach this step may be completed as part of the assessment of the first four steps and mitigation of the breach as detailed in step three.

Preventative actions could include a: -

- Review of Council's IT systems and remedial actions to prevent future data breaches
- Security audit of both physical and technical security controls
- Review of policies and procedures
- Review of contractual obligations with contracted service providers

Any recommendations to implement the above preventative actions are to be approved by the General Manager and documented in Council's electronic recordkeeping system.

Consideration will be given to reporting relevant matters to Council's Audit Risk and Improvement Committee.

## 10. Communication Strategy

Council will aim to notify affected individuals, and external reporting agencies within 5 business days of an eligible data breach of Council information being reported. Notification to individuals will have regard to this Policy (see Appendix B) as well as Council's Privacy Management Plan.

Council's Business Continuity Plan contains template communication messaging for specific incidents including a cyber security incident.

## 11. Records Management

Documents created by the Director and/or the DBRT, including post breach and testing reviews, should be saved under the following classification in CM9: -

Risk Management – Risk Assessment – Identification and Assessment of Risks

### 12.0 Testing the Procedures

The DBRT should test the procedures within this policy biennially. This may be done in conjunction with the testing of Council's Business Continuity Plan.

### 13.0 Policy Review

This Policy will be reviewed regularly to ensure compliance with legislative and regulatory requirements.

Appendix 1 - Data Breach Checklist

<p><b>STEP 1</b> Initial Report (24 hrs)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Employee to notify Director of suspected/actual data breach and type of breach i.e.               <ul style="list-style-type: none"> <li><input type="checkbox"/> Human error</li> <li><input type="checkbox"/> System failure</li> <li><input type="checkbox"/> Malicious or criminal attack</li> </ul> </li> </ul>
<p><b>STEP 2</b> Contain the Breach</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Director to immediately coordinate containing breach i.e.               <ul style="list-style-type: none"> <li><input type="checkbox"/> Shutdown system</li> <li><input type="checkbox"/> Recover records</li> <li><input type="checkbox"/> Stop unauthorised practice</li> <li><input type="checkbox"/> Revoke or change access codes or passwords</li> </ul> </li> </ul>
<p><b>STEP 3</b> Assess and Mitigate (24 hrs)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Director to seek following data breach information               <ul style="list-style-type: none"> <li><input type="checkbox"/> Date, time, duration and location of breach</li> <li><input type="checkbox"/> type of personal information involved in the breach</li> <li><input type="checkbox"/> how the breach was discovered and by whom</li> <li><input type="checkbox"/> the cause and extent of the breach</li> <li><input type="checkbox"/> a list of affected or possibly affected individuals</li> <li><input type="checkbox"/> the risk of serious harm to the affected individuals</li> <li><input type="checkbox"/> the risk of other harm</li> </ul> </li> <li><input type="checkbox"/> Director to assess whether data breach is serious enough to escalate to the DBRT. Consider               <ul style="list-style-type: none"> <li><input type="checkbox"/> the number of individuals affected</li> <li><input type="checkbox"/> if there a real risk of serious harm to the affected individuals</li> <li><input type="checkbox"/> if the breach indicates a systemic problem in Council's processes or procedures</li> <li><input type="checkbox"/> the cause and extent of the breach</li> <li><input type="checkbox"/> if there could be media or stakeholder attention as a result</li> </ul> </li> <li><input type="checkbox"/> Director to keep appropriate records of suspected breach and actions taken</li> <li><input type="checkbox"/> Director to escalate to DBRT and convene meeting if necessary</li> </ul>
<p><b>STEP 4</b> Notify (5 days)</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> DBRT to determine if breach is an eligible data breach</li> <li><input type="checkbox"/> Notify               <ul style="list-style-type: none"> <li><input type="checkbox"/> Individuals</li> <li><input type="checkbox"/> Public notification</li> <li><input type="checkbox"/> Privacy Commissioner</li> <li><input type="checkbox"/> Other agencies</li> </ul> </li> <li><input type="checkbox"/> DBRT to keep appropriate records of eligible data breach and actions taken of DBRT</li> </ul>
<p><b>STEP 5</b> Review</p>	<ul style="list-style-type: none"> <li><input type="checkbox"/> DBRT to fully investigate cause of the data breach and consider preventative actions               <ul style="list-style-type: none"> <li><input type="checkbox"/> Review of IT systems and remedial actions</li> <li><input type="checkbox"/> Security audit of security controls</li> <li><input type="checkbox"/> Review of policies and procedures</li> <li><input type="checkbox"/> Review of contractual arrangements</li> <li><input type="checkbox"/> Review staff training practices</li> </ul> </li> <li><input type="checkbox"/> General Manager to report to Audit Risk and Improvement Committee if necessary</li> </ul>

## Appendix 2 - Template Notification

Dear (Name)

Council is writing to you with important information about a recent data breach involving your personal information/information about your organisation. Council became aware of this breach on (date).

The breach occurred on or about (date) and occurred as follows: -

- A brief description of what happened.
- Description of the data that was inappropriately accessed, collected, used or disclosed.
- Risk(s) to the individual/organisation caused by the breach.
- Steps the individual/organisation should take to protect themselves from potential harm from the breach.
- A brief description of what Council is doing to investigate the breach, control or mitigate harm to individuals/organisations and to protect against further breaches.

We have established a section on our website (insert link) with updated information and links to resources that offer information about this data breach.

We take our role in safeguarding your data and using it in an appropriate manner very seriously. Please be assured that we are doing everything we can to rectify the situation.

Please note that under the (PIIP Act/HRIP Act/GIPA Act) you are entitled to register a complaint with the NSW Privacy Commissioner or NSW Information Commissioner with regard to this breach.

Complaints may be forwarded to the following: -

(insert details)

Should you have any questions regarding this notice or if you would like more information, please do not hesitate to contact me.

Yours faithfully

**General Manager**





# Unreasonable Conduct by a Complainant Policy

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## 1. INTRODUCTION

### 1.1 Statement of support

Narromine Shire Council is committed to being accessible and responsive to all complainants who approach Council regardless of ethnic identity, national origin, religion, linguistic background, sex, gender expression, sexual orientation, physical ability or other cultural or personal factors. At the same time the success of Council depends on:

- its ability to do its work and perform functions in the most effective and efficient ways possible
- the health, safety and security of its staff, and
- its ability to allocate resources fairly across all the complaints received.

When complainants behave unreasonably, their conduct can significantly affect the successful conduct of Council's work. Council will act proactively and decisively to manage any complainant conduct that negatively and unreasonably affects Council and will support Council staff to do the same in accordance with this policy.

## 2. OBJECTIVES

### 2.1 Policy aims

This policy has been developed to assist all staff members to better manage unreasonable conduct by complainants ('UCC'). It aims to help staff:

- Feel confident and supported in taking action to manage UCC.
- Act fairly, consistently, honestly and appropriately when responding to UCC.
- Understand their roles and responsibilities in relation to the management of UCC and how this policy will be used.
- Understand the types of circumstances when it may be appropriate to manage UCC using one or more of the following mechanisms:
  - The strategies to change or restrict a complainant's access to Council's services.
  - Alternative dispute resolution strategies to deal with conflicts involving complainants and members of Council.
  - Legal instruments such as trespass laws or other legislation to prevent a complainant from coming onto Council premises, and orders to protect specific staff members from any actual or apprehended personal violence, intimidation or stalking.
- Understand the criteria that will be considered before Council decides to change or restrict a complainant's access to Council's services.
- Be aware of the processes that will be followed to record and report UCC incidents as well as the procedures for consulting and notifying complainants about any proposed action or decision to change or restrict their access to Council's services.
- Understand the procedures for reviewing decisions made under this policy, including specific timeframes for review.

## 3. DEFINING UNREASONABLE CONDUCT BY A COMPLAINANT

### 3.1 Unreasonable conduct by a complainant

Most complainants act reasonably and responsibly in their interactions with Council, even when they are experiencing high levels of distress, frustration and anger about their complaint. However, despite Council's best efforts to help them, in a very small number of cases some complainants display inappropriate and unacceptable behaviour. They can be aggressive and verbally abusive towards staff, threaten harm and violence or bombard Council's offices with unnecessary and excessive phone calls and emails. They may make inappropriate demands on Council time and resources and refuse to accept Council decisions and recommendations in relation to their complaints. When complainants behave in these ways (and where there are no cultural factors that could reasonably explain their behaviour), Council considers their conduct to be 'unreasonable'.

In short, unreasonable conduct by a complainant is any behaviour by a current or former complainant which, because of its nature or frequency raises substantial health, safety, resource or equity issues for Council, its staff, other service users and complainants or the complainant themselves.

UCC can be divided into five categories of conduct:

- Unreasonable persistence
- Unreasonable demands
- Unreasonable lack of cooperation
- Unreasonable arguments
- Unreasonable behaviours

### **3.2 Unreasonable persistence**

Unreasonable persistence is continued, incessant and unrelenting conduct by a complainant that has a disproportionate and unreasonable impact on Council, staff, services, time or resources. Some examples of unreasonably persistent behaviour include:

- An unwillingness or inability to accept reasonable and logical explanations, including final decisions that have been comprehensively considered and dealt with (even when it is evident the complainant does understand the information provided).
- Persistently demanding a review simply because it is available, and without arguing or presenting a case for one.
- Pursuing and exhausting all available review options, even after Council has explained that a review is not warranted and refusing to accept that Council cannot or will not take further action on their complaint.
- Reframing a complaint in an effort to get it taken up again.
- Multiple and repeated phone calls, visits, letters, emails (including cc'd correspondence) after Council has repeatedly asked them not to.
- Contacting different people within or outside Council to get a different outcome or a more sympathetic response to their complaint – this is known as internal and external 'forum shopping'.

### **3.3 Unreasonable demands**

Unreasonable demands are any demands expressly made by a complainant that have a disproportionate and unreasonable impact on Council, staff, services, time or resources. Some examples of unreasonable demands include:

- Issuing instructions and making demands about how to handle their complaint, the priority it should be given, or the outcome to be achieved.
- Insisting on talking to a senior manager or the General Manager personally when the reasons that this is not appropriate or warranted have been carefully explained to the complainant.
- Emotional blackmail and manipulation resulting in intimidation, harassment, shaming, seduction or portraying themselves as being victimised when this is not the case.
- Insisting on outcomes that are not possible or appropriate in the circumstances – e.g. asking for someone to be fired or prosecuted, or for an apology or compensation when there is no reasonable basis for this.
- Demanding services of a nature or scale that Council cannot provide, even after Council has explained this to them repeatedly.

### 3.4 Unreasonable lack of cooperation

Unreasonable lack of cooperation is when a complainant is unwilling or unable to cooperate with Council, staff, or the complaints processes that results in a disproportionate and unreasonable use of Council services, time or resources. Some examples of unreasonable lack of cooperation include:

- Sending Council a constant stream of complex or disorganised information without clearly defining the issue at hand or explaining how the material provided relates to their complaint (where the complainant is clearly capable of doing this).
- Providing little or no detail around their complaint or providing information in 'drips and drabs'.
- Refusing to follow or accept Council instructions, suggestions, or advice without a clear or justifiable reason for doing so.
- Arguing that a particular solution is the correct one in the face of valid contrary arguments and explanations.
- Unhelpful behaviour such as withholding information, acting dishonestly, misquoting others.

### 3.5 Unreasonable arguments

Unreasonable arguments include any arguments that are not based on any reason or logic, that are incomprehensible, false or inflammatory, trivial or delirious and that disproportionately and unreasonably impact upon Council, staff, services, time, or resources. Arguments are unreasonable when they:

- fail to follow a logical sequence that the complainant is able to explain to staff
- are not supported by any evidence or are based on conspiracy theories
- lead a complainant to reject all other valid and contrary arguments
- are trivial when compared to the amount of time, resources and attention that the complainant demands
- are false, inflammatory or defamatory.

### 3.6 Unreasonable behaviour

Unreasonable behaviour is conduct that is unreasonable in all circumstances (regardless of how stressed, angry or frustrated that a complainant is) because it unreasonably compromises the health, safety and security of Council staff, other service users or the complainant themselves. Some examples of unreasonable behaviours include:

- Acts of aggression, verbal abuse, derogatory, racist, or grossly defamatory remarks.
- Harassment, intimidation or physical violence.
- Rude, confronting and threatening correspondence.
- Threats of harm to self or third parties, threats with a weapon or threats to damage property including bomb threats.
- Stalking in person or online.
- Emotional manipulation.

All staff should note that Council has a zero-tolerance policy towards any harm, abuse or threats directed towards them. Any conduct of this kind will be dealt with under this policy, and in accordance with Council's duty of care and work health and safety responsibilities.

## 4. ROLES AND RESPONSIBILITIES

### 4.1 All staff

All staff are responsible for familiarising themselves with this policy as well as the *Individual Rights and Mutual Responsibilities of the Parties to a Complaint* in Appendix A. Staff are also encouraged to explain the contents of this document to all complainants, particularly those who engage in UCC or exhibit the early warning signs for UCC.

Staff are also encouraged and authorised to use the strategies and scripts provided at the NSW Ombudsman's website – see Part 2 of the *Managing unreasonable conduct by a complainant Manual (3<sup>rd</sup> edition)*:

- Strategies and scripts for managing unreasonable persistence
- Strategies and scripts for managing unreasonable demands
- Strategies and scripts for managing unreasonable lack of cooperation
- Strategies and scripts for managing unreasonable arguments
- Strategies and scripts for managing unreasonable behaviours

Any strategies that change or restrict a complainant's access to Council's services must be considered by the General Manager as provided in this policy.

Staff are also responsible for recording and reporting all UCC incidents they experience or witness (as appropriate) to their Director within 24 hours of the incident occurring, using the Sample UCC incident form in Appendix B. A file note of the incident should also be copied into Council's electronic document records management system.

## **4.2 The General Manager**

The General Manager, in consultation with relevant staff, has the responsibility and authority to change or restrict a complainant's access to Council's services in the circumstances identified in this policy. When doing so they will consider the criteria in Part 7.2 below (adapted into a checklist in Appendix C) and will aim to impose any service changes or restrictions in the least restrictive ways possible. Their aim, when taking such actions will not be to punish the complainant, but rather to manage the impacts of their conduct.

When applying this policy, the General Manager will also aim to keep at least one open line of communication with a complainant. However, Council does recognise that in extreme situations all forms of contact may need to be restricted for some time to ensure the health, safety and security of Council staff or third parties.

The General Manager is also responsible for recording, monitoring and reviewing all cases where this policy is applied to ensure consistency, transparency and accountability for the application of this policy. They will also manage and keep a file record of all cases where this policy is applied.

## **4.3 Directors**

All Directors are responsible for supporting staff to apply the strategies in this policy, as well as those in the manual. Directors are also responsible for ensuring compliance with the procedures identified in this policy, and that all staff members are trained to deal with UCC – including on induction.

After a stressful interaction with a complainant, Directors should provide affected staff members with the opportunity to debrief their concerns either formally or informally. Directors will also ensure that staff are provided with proper support and assistance including medical or police assistance, and if necessary, support through programs such as Employee Assistance Program (EAP).

Directors may also be responsible for arranging other forms of support for staff, such as appropriate communication or intercultural training.

## 5. RESPONDING TO AND MANAGING UCC

### 5.1 Changing or restricting a complainant's access to Council's services

UCC incidents will generally be managed by limiting or adapting the ways that Council interacts with or delivers services to complainants by restricting:

- **Who they have contact with** – limiting a complainant to a sole contact person or staff member in Council.
- **What they can raise with Council** – restricting the subject matter of communications that Council will consider and respond to.
- **When they can have contact** – limiting a complainant's contact with Council to a particular time, day, or length of time, or curbing the frequency of their contact with Council.
- **Where they can make contact** – limiting the locations where Council will conduct face-to-face interviews to secured facilities or areas of the office.
- **How they can make contact** – limiting or modifying the forms of contact that the complainant can have with Council. This can include modifying or limiting face-to-face interviews, telephone and written communications, prohibiting access to Council premises, contact through a representative only, taking no further action or terminating provision of Council services altogether.

When using the restrictions provided in this section, Council recognises that discretion will need to be used to adapt them to suit a complainant's personal circumstances such as level of competency, literacy skills, and cultural background. In this regard, Council also recognises that more than one strategy may be needed in individual cases to ensure their appropriateness and efficacy.

### 5.2 Who – limiting the complainant to a sole contact point

Where a complainant tries to forum shop within Council, changes their issues of complaint repeatedly, constantly reframes their complaint, or raises an excessive number of complaints, it may be appropriate to restrict their access to a single staff member (a sole contact point) who will manage their complaint(s) and interaction with Council. This may help ensure they are dealt with consistently and may minimise the incidence of misunderstandings, contradictions, and manipulation.

To avoid staff 'burnout', the sole contact officer's supervisor will provide them with regular support and guidance as needed. The General Manager will review the arrangement every six months to ensure that the officer is managing/coping with the arrangement.

Complainants who are restricted to a sole contact person will, however, be given the contact details of one additional staff member who they can contact if their primary contact is unavailable – e.g. if they go on leave or are otherwise unavailable for an extended period of time.

### 5.3 What – restricting the subject matter of communications that Council will consider

Where complainants repeatedly send letters, emails, or online forms that raise trivial or insignificant issues, contain inappropriate or abusive content, or relate to an issue that has already been comprehensively considered or reviewed (at least once) by Council, Council may restrict the issues the complainant can raise with Council. For example, Council may:

- Refuse to respond to correspondence that raises an issue that has already been dealt with that raises a trivial issue or is not supported by evidence. The complainant will be advised that future correspondence of this kind will be read and filed without acknowledgement unless Council decides that it needs to pursue it further in which case, Council may do so on its 'own motion'.
- Restrict the complainant to one complaint or issue per month. Any attempts to circumvent this restriction, (for example by raising multiple complaints or issues in the one letter) may result in modifications or further restrictions being placed on their access.
- Return the correspondence to the complainant and require them to remove any inappropriate content before Council will agree to consider its contents. Council will also keep a copy of the inappropriate correspondence for its records to help identify repeat UCC incidents.

## 5.4 When and how – limiting when and how a complainant can contact Council

If a complainant's contact with Council places an unreasonable demand on Council's time or resources or affects the health, safety and security of Council staff because it involves behaviour that is persistently rude, threatening, abusive or aggressive, Council may limit when or how the complainant can interact with Council. This may include:

- Limiting their telephone calls or face-to-face interviews to a particular time of the day or days of the week.
- Limiting the length or duration of telephone calls, written correspondence or face-to-face interviews. For example:
  - Telephone calls may be limited to 10 minutes at a time and will be politely terminated at the end of that time period.
  - Lengthy written communications may be restricted to a maximum of 15 typed or written pages, single sided, font size 12 or it will be sent back to the complainant to be organised and summarised – This option is only appropriate in cases where the complainant is capable of summarising the information and refuses to do so.
  - Limiting face-to-face interviews to a maximum of 45 minutes.
- Limiting the frequency of their telephone calls, written correspondence, or face-to-face interviews. Depending on the nature(s) of the service(s) provided Council may limit:
  - Telephone calls to 1 every 2 weeks/month.
  - Written communications to 1 every 2 weeks/month.
  - Face-to-face interviews to 1 every 2 weeks/month.

For irrelevant, overly lengthy, disorganised or very frequent written correspondence Council may also:

- Require the complainant to clearly identify how the information or supporting materials they have sent to Council relates to the central issues that Council has identified in their complaint.
- Restrict the frequency with which complainants can send emails or other written communications to Council.
- Restrict a complainant to sending emails to a particular email account (e.g. Council's main email account) or block their email access altogether and require that any further correspondence be sent through Australia Post only.

### **'Writing only' restrictions**

When a complainant is restricted to 'writing only' they may be restricted to written communications through:

- Australia Post only
- Email only to a specific staff email or Council's general office email account
- Fax only to a specific fax number
- Some other relevant form of written contact, where applicable.

If a complainant's contact is restricted to writing only, the General Manager will clearly identify the specific means that the complainant can use to contact Council (e.g. Australia Post only). If it is not appropriate for a complainant to enter Council's premises to hand deliver their written communication, this must be communicated to them as well.

Any communications received by Council in a manner that contravenes a 'writing only' restriction will either be returned to the complainant or read and filed without acknowledgement.

## 5.5 Where – limiting face-to-face interviews to secure areas

If a complainant is violent or overtly aggressive, unreasonably disruptive, threatening or demanding or makes frequent unannounced visits to Council's premises, Council may consider restricting face-to-face contact with them.



These restrictions can include:

- Restricting access to particular secured premises or areas of the office such as the reception area or secured room or facility.
- Restricting their ability to attend Council's premises to specified times of the day or days of the week only – for example, when additional security is available or to times or days that are less busy.
- Allowing them to attend Council's offices on an 'appointment only' basis, and only with specified staff (for these meetings, staff should enlist the support and assistance of a colleague for added safety and security).
- Banning the complainant from attending Council premises altogether and allowing some other form of contact – e.g. 'writing only' or 'telephone only' contact.

### **Contact through a representative only**

In cases where Council cannot completely restrict contact with a complainant and their conduct is particularly difficult to manage, Council may require them to contact Council through a support person or representative only. The support person may be someone nominated by the complainant but must be approved by the General Manager.

When assessing a representative or support person's suitability, the General Manager should consider factors such as their level of competency and literacy skills, demeanour and behaviour, and relationship with the complainant. If the General Manager determines that the representative or support person may exacerbate the situation with the complainant, the complainant will be asked to nominate another person and Council may assist them in this regard.

## **5.6 Completely terminating a complainant's access to Council's services**

In rare cases, and as a last resort when all other strategies have been considered, the General Manager may decide that it is necessary for Council to completely restrict a complainant's contact or access to Council's services.

A decision to have no further contact with a complainant will only be made if it appears that the complainant is unlikely to modify their conduct, or their conduct poses a significant risk for Council staff or other parties because it involves one or more of the following:

- Acts of aggression, verbal or physical abuse, threats of harm, harassment, intimidation, stalking, assault.
- Damage to property while on Council premises.
- Threats with a weapon or common office items that can be used to harm another person or themselves.
- Physically preventing a staff member from moving around freely either within their office or during an off-site visit – e.g. entrapping them in their home.
- Conduct that is otherwise unlawful.

In these cases, the complainant will be sent a letter notifying them that their access has been restricted as outlined in Section 7.4 below.

A complainant's access to Council's services and premises may also be restricted (directly or indirectly) using the legal mechanisms such as trespass laws and other legislation or legal orders to protect members of staff from personal violence, intimidation or stalking by a complainant.

## **6. ALTERNATIVE DISPUTE RESOLUTION**

### **6.1 Using alternative dispute resolution strategies to manage conflicts with complainants**

If the General Manager determines that Council cannot terminate its services to a complainant in a particular case or that Council or its staff bear some responsibility for causing or exacerbating their conduct, they may consider using alternative dispute resolution strategies (ADR) such as mediation and conciliation to resolve the conflict with the complainant and attempt to rebuild Council's relationship with them. If an ADR is considered to be an appropriate option in a particular case, it will be conducted by an independent third party to ensure transparency and impartiality.

However, Council recognises that in UCC situations an ADR may not be an appropriate or effective strategy particularly if the complainant is uncooperative or resistant to compromise. Therefore, each case will be assessed on its own facts to determine the appropriateness of this approach.

## 7. PROCEDURE TO BE FOLLOWED WHEN CHANGING OR RESTRICTING A COMPLAINANT'S ACCESS TO COUNCIL'S SERVICES

### 7.1 Consulting with relevant staff

When the General Manager receives a UCC incident form from a staff member, they will contact the staff member to discuss the incident. They will discuss:

- The circumstances that gave rise to the UCC/incident, including the complainant's situation, personal and cultural background, and perspective
- The impact of the complainant's conduct on Council, relevant staff, Council's time, resources, etc.
- The complainant's response to the staff member's warnings or requests to stop the unreasonable behaviour.
- What the staff member has done to manage the complainant's conduct, (if applicable).
- Any suggestions made by relevant staff on ways that the situation could be managed.

### 7.2 Criteria to be considered

Following a consultation with relevant staff the General Manager will search the Council's document management system for information about the complainant's prior conduct and history with Council. They will also will consider the following criteria:

- Whether the conduct in question involved overt anger, aggression, violence or assault (which is unacceptable in all circumstances).
- Whether the complainant's case has merit.
- The likelihood that the complainant will modify their unreasonable conduct if they are given a formal warning about their conduct.
- Whether changing or restricting access to Council's services will be effective in managing the complainant's behaviour.
- Whether changing or restricting access to Council's services will affect the complainant's ability to meet their obligations, such as reporting obligations.
- Whether changing or restricting access to Council's services will have an undue impact on the complainant's welfare, livelihood or dependents etc.
- Whether the complainant's personal circumstances have contributed to the behaviour -For example, the complainant's cultural background may mean their communication patterns differ from those of staff or Council's standards, or the complainant is a vulnerable person who is under significant stress as a result of one or more of the following:
  - homelessness
  - physical disability
  - illiteracy or other language or communication barrier
  - mental or other illness
  - personal crises
  - substance or alcohol abuse.
- Whether the complainant's response or conduct was moderately disproportionate, grossly disproportionate, or not at all disproportionate in the circumstances.
- Whether there any statutory provisions that would limit the types of limitations that can be put on the complainant's contact with, or access to Council's services.

Once the General Manager has considered these criteria, they will decide on the appropriate course of action. They may suggest formal or informal options for dealing with the complainant's conduct which may include one or more of the strategies provided in the manual and this policy.

See **Appendix C** – Sample checklist for the General Manager to consider when deciding to modify or restrict a complainant's access.

### 7.3 Providing a warning letter

Unless a complainant's conduct poses a substantial risk to the health and safety of staff or other third parties, the General Manager will provide them with a written warning about their conduct in the first instance. If the complainant is unable to read the letter, it will be followed/accompanied by a telephone call, using an interpreter if necessary.

The warning letter will:

- Specify the date, time and location of the UCC incident(s).
- Explain why the complainant's conduct/ UCC incident is problematic.
- List the types of access changes and/or restrictions that may be imposed if the behaviour continues. (Note: not every possible restriction should be listed but only those that are most relevant).
- Provide clear and full reasons for the warning being given
- Include an attachment of the Council's ground rules and/or briefly state the standard of behaviour that is expected of the complainant. See Appendix A. – Individual rights and mutual responsibilities of parties to a complaint.
- Provide the name and contact details of the staff member who they can contact about the letter.
- Be signed by the General Manager.

See **Appendix D** – Sample warning letter.

### 7.4 Providing a notification letter

If a complainant's conduct continues after they have been given a written warning or in extreme cases of overt aggression, violence, assault, or other unlawful/unacceptable conduct, the General Manager has the discretion to send a notification letter immediately restricting the complainant's access to Council's services (without prior or further written warning). If the complainant is unable to read the letter (due to literacy issues, non-English speaking, etc.) the letter will be followed or accompanied by a telephone call, using an interpreter if necessary.

This notification letter will:

- Specify the date, time and location of the UCC incident(s).
- Explain why the complainant's conduct is problematic.
- Identify the change and/or restriction that will be imposed and what it means for the complainant.
- Provide clear and full reasons for this restriction.
- Specify the duration of the change or restriction imposed, which will not exceed 12 months.
- Indicate a time period for review.
- Provide the name and contact details of the senior officer who they can contact about the letter and/or request a review of the decision.
- Be signed by the General Manager

See **Appendix E** – Sample letter notifying complainants of a decision to change or restrict their access to Council's services.

### 7.5 Notifying relevant staff about access changes/restrictions

The General Manager will notify relevant staff about any decisions to change or restrict a complainant's access to Council's services, in particular reception, in cases where a complainant is prohibited from entering Council's premises.

The General Manager will also update the Council's electronic document records management system with a record outlining the nature of the restriction imposed and its duration.

## **7.6 Continued monitoring/oversight responsibilities**

Once a complainant has been issued with a warning letter or notification letter the General Manager will review the complainant's record/restriction every 3 months, on request by a staff member, or following any further incidents of UCC that involve the particular complainant to ensure that they are complying with the restrictions/the arrangement is working.

If the General Manager determines that the restrictions have been ineffective in managing the complainant's conduct or are otherwise inappropriate, they may decide to either modify the restrictions, impose further restrictions, or terminate the complainant's access to Council's services altogether.

## **8. APPEALING A DECISION TO CHANGE OR RESTRICT ACCESS TO COUNCIL'S SERVICES**

### **8.1 Right of appeal**

People who have their access changed or restricted are entitled to one appeal of a decision to change or restrict their access to Council's services. This review will be undertaken by a Director who was not involved in the original decision to change or restrict the complainant's access. This staff member will consider the complainant's arguments and personal circumstances, including cultural background, along with all relevant records regarding the complainant's past conduct. They will advise the complainant of the outcome of their appeal by letter. The Director will then refer any materials or records relating to the appeal to the General Manager to be kept in the appropriate file.

If a complainant is still dissatisfied after the appeal process, they may seek an external review from an oversight agency such as the Ombudsman. The Ombudsman may accept the review (in accordance with its administrative jurisdiction) to ensure that Council has acted fairly, reasonably and consistently and has observed the principles of good administrative practice including, procedural fairness.

## **9. NON-COMPLIANCE WITH A CHANGE OR RESTRICTION ON ACCESS TO COUNCIL'S SERVICES**

### **9.1 Recording and reporting incidents of non-compliance**

All staff members are responsible for recording and reporting incidents of non-compliance by complainants. This should be recorded in a file note in Council's electronic document records management system and a copy forwarded to the General Manager who will decide whether any action needs to be taken to modify or further restrict the complainant's access to Council's services.

## **10. PERIODIC REVIEWS OF ALL CASES WHERE THIS POLICY IS APPLIED**

### **10.1 Period for review**

All cases where this policy is used will be reviewed every 3 months or 6 months (depending on the nature of the service provided) and not more than 12 months after the service change or restriction was initially imposed or upheld.

### **10.2 Notifying the complainant of an upcoming review**

The General Manager will ask complainants if they would like to participate in the review process unless they determine that this invitation will provoke a negative response from the complainant (ie further UCC). The invitation will be given, and the review will be conducted in accordance with the complainant's access restrictions.

See **Appendix F** – Sample letter notifying a complainant of an upcoming review.

### 10.3 Criteria to be considered during a review

When conducting a review the General Manager will consider:

- Whether the complainant has had any contact with the organisation during the restriction period.
- The complainant's conduct during the restriction period.
- Any information or arguments put forward by the complainant for review.
- Any other information that may be relevant in the circumstances.

The General Manager may also consult any staff members who have had contact with the complainant during the restriction period.

Sometimes a complainant may not have a reason to contact Council's office during their restriction period. As a result, a review decision that is based primarily on the fact that the complainant has not contacted Council during their restriction period may not be an accurate representation of their level of compliance/reformed behaviour. This should be taken into consideration, in relevant situations.

See **Appendix G** – Sample checklist for reviewing an access change or restriction.

### 10.4 Notifying a complainant of the outcome of a review

The General Manager will tell the complainant of the outcome of their review using the appropriate method of communication, as well as a written letter explaining the outcome. The review letter will:

- Briefly explain the review process.
- Identify the factors that have been considered during the review.
- Explain the decision or outcome of the review and the reasons for it.

If the outcome of the review is to maintain or modify the restriction the review letter will also:

- Indicate the nature of the new or continued restriction.
- State the duration of the new restriction period.
- Provide the name and contact details of the General Manager or relevant staff member who the complainant can contact to discuss the letter.
- Be signed by the General Manager.

See **Appendix H** – Sample letter advising the complainant of the outcome of a review.

### 10.5 Recording the outcome of a review and notifying relevant staff

The General Manager is responsible for keeping a record of the outcome of the review, updating Council's electronic document records management system and notifying all relevant staff of the outcome of the review including if the restriction has been withdrawn.

See Sections 4.2 and 7.5 above.

## 11 MANAGING STAFF STRESS

### 11.1 Staff reactions to stressful situations

Dealing with demanding, abusive, aggressive or violent complainants can be extremely stressful, distressing and even frightening for Council. It is perfectly normal to get upset or stressed when dealing with difficult situations.

Council has a responsibility to support staff members who experience stress as a result of situations arising at work and will do its best to provide staff with debriefing and counselling opportunities, when needed. However, to do Council also needs help of all staff to identify stressful incidents and situations. All staff have a responsibility to tell relevant supervisors and Directors about UCC incidents, and any other stressful incidents that they believe require management to be involved.

## 11.2 Debriefing

Debriefing means talking things through following a difficult or stressful incident. It is an important way of dealing with stress. Many staff members do this naturally with colleagues after a difficult telephone call, but staff can also debrief with a supervisor or Director (or as a team) following a significant incident. Council encourages all staff to engage in an appropriate level of debriefing, when necessary.

Staff may also access an external professional service if required. All staff can access the Employee Assistance Program – a free, confidential counselling service.

## 13. TRAINING AND AWARENESS

Council is committed to ensuring that all staff are aware of and know how to use this policy. All staff who deal with complainants in the course of their work will also receive appropriate training and information on using this policy and on managing UCC on a regular basis and, in particular, on induction. This should include training to support culturally appropriate communication.

## 14. POLICY REVIEW

All staff are responsible for forwarding any suggestions they have in relation to this policy to the General Manager, who along with Directors will review it biennially (every 2 years).

## 15. SUPPORTING DOCUMENTS AND POLICIES

### 15.1 Statement of compliance

This policy is compliant with and supported by the following documents:

- Council's Work, Health and Safety Policy
- Council's Complaint Handling Policy
- Managing unreasonable conduct by a complainant manual (3<sup>rd</sup> edition)
- Unauthorised entry onto agency premises – applying the provisions of the Enclosed Lands Protection Act 1901 (NSW)
- Orders to address violence, threats, intimidation or stalking by complainants

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Prepared By: Governance Department  
Version No: 4.0  
Adopted Date:  
Review Date:

## Appendix A

### Individual Rights and Mutual Responsibilities of the Parties to a Complaint

In order for Council to ensure that all complaints are dealt with fairly, efficiently and effectively and that work health and safety standards and duty of care obligations are adhered to, the following rights and responsibilities must be observed and respected by all of the parties to the complaint process.

#### Individual rights<sup>1</sup>

##### **Complainants have the right:**

- to make a complaint and to express their opinions in ways that are reasonable, lawful and appropriate, regardless of cultural background, national origin, sex, sexual orientation, gender expression, disability or other cultural or personal characteristics<sup>2</sup>
- to a reasonable explanation of Council's complaints procedure, including details of the confidentiality, secrecy or privacy rights or obligations that may apply
- to a fair and impartial assessment and, where appropriate, investigation of their complaint based on the merits of the case<sup>3</sup>
- to a fair hearing<sup>4</sup>
- to a timely response
- to be informed in at least general terms about the actions taken and outcome of their complaint<sup>5</sup>
- to have decisions that affect them explained to them
- to at least 1 review of the decision on the complaint<sup>6</sup>
- to be treated with courtesy and respect
- to communicate valid concerns and views without fear of reprisal or other unreasonable response.<sup>7</sup>

##### **Staff have the right:**

- to determine whether, and if so how, a complaint will be dealt with
- to finalise matters on the basis of outcomes they consider to be satisfactory in the circumstances<sup>8</sup>
- to expect honesty, cooperation and reasonable assistance from complainants
- to expect honesty, cooperation and reasonable assistance from organisations and people within jurisdiction who are the subject of a complaint
- to be treated with courtesy and respect
- to a safe and healthy working environment<sup>9</sup>
- to modify, curtail or decline service (if appropriate) in response to unacceptable behaviour by a complainant.<sup>10</sup>

##### **Subjects of a complaint have the right:**

- to a fair and impartial assessment and, where appropriate, investigation of the allegations made against them
- to be treated with courtesy and respect by Council staff
- to be informed (at an appropriate time) about the substance of the allegations made against them that are being investigated<sup>11</sup>
- to be informed about the substance of any proposed adverse comment or decision
- to be given a reasonable opportunity to put their case during the course of any investigation and before any final decision is made<sup>12</sup>
- to be told the outcome of any investigation into allegations about their conduct, including the reasons for any decision or recommendation that may be detrimental to them
- to be protected from harassment by disgruntled complainants acting unreasonably.

### **Mutual responsibilities**

Complainants are responsible for:

- treating Council staff with dignity and respect
- clearly identifying to the best of their ability the issues of complaint, or asking for help from Council staff to assist them in doing so
- providing Council, to the best of their ability, with all the relevant information available to them at the time of making the complaint
- being honest in all communications with Council
- informing Council of any other action they have taken in relation to their complaint<sup>13</sup>
- cooperating to the best of their ability with the staff who are assigned to assess/investigate/resolve/determine or otherwise deal with their complaint.

If complainants do not meet their responsibilities, Council may consider placing limitations or conditions on their ability to communicate with staff or access certain services.

Council has a zero-tolerance policy in relation to any harm, abuse or threats directed towards its staff. Any conduct of this kind may result in a refusal to take any further action on a complaint or to have further dealings with the complainant.<sup>14</sup> Any conduct of a criminal nature will be reported to police, and in certain cases legal action may also be considered.

### **Staff are responsible for:**

- providing reasonable assistance to complainants who need help to make a complaint and, where appropriate, during the complaint process
- dealing with all complaints, complainants and people or organisations the subject of complaint professionally, fairly and impartially
- giving complainants or their advocates a reasonable opportunity to explain their complaint, subject to the circumstances of the case and the conduct of the complainant
- giving people or organisations the subject of complaint a reasonable opportunity to put their case during the course of any investigation and before any final decision is made<sup>15</sup>
- informing people or organisations the subject of investigation, at an appropriate time, about the substance of the allegations made against them<sup>16</sup> and the substance of any proposed adverse comment or decision that they may need to answer or address<sup>17</sup>
- keeping complainants informed of the actions taken and the outcome of their complaints<sup>18</sup>
- giving complainants reasons that are clear and appropriate to their circumstances and adequately explaining the basis of any decisions that affect them
- treating complainants (and people who are the subject of complaints) with courtesy and respect at all times and in all circumstances
- taking all reasonable and practical steps to ensure that complainants<sup>19</sup> are not subjected to any detrimental action in reprisal for making their complaint<sup>20</sup>
- giving adequate warning of the consequences of unacceptable behaviour.

If Council or its staff fail to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

### **Subjects of a complaint are responsible for:**

- cooperating with Council staff who are assigned to handle the complaint, particularly where they are exercising a lawful power in relation to a person or body within their jurisdiction<sup>21</sup>
- providing all relevant information in their possession to Council when required to do so by a properly authorised direction or notice
- being honest in all communications with Council and its staff
- treating Council staff with courtesy and respect at all times and in all circumstances
- refraining from taking any detrimental action against the complainant<sup>22</sup> in reprisal for them making the complaint.<sup>23</sup>



If subjects of a complaint fail to comply with these responsibilities, action may be taken under relevant laws or codes of conduct.

**Council is responsible for:**

- having an appropriate and effective complaint handling system in place for receiving, assessing, handling, recording and reviewing complaints
- decisions about how all complaints will be dealt with
- ensuring that all complaints are dealt with professionally, fairly and impartially<sup>24</sup>
- ensuring that staff treat all parties to a complaint with courtesy and respect
- ensuring that the assessment and any inquiry into the investigation of a complaint is based on sound reasoning and logically probative information and evidence
- finalising complaints on the basis of outcomes that the organisation, or its responsible staff, consider to be satisfactory in the circumstances<sup>25</sup>
- implementing reasonable and appropriate policies, procedures and practices to ensure that complainants<sup>26</sup> are not subjected to any detrimental action in reprisal for making a complaint<sup>27</sup>, including maintaining separate complaint files and other operational files relating to the issues raised by individuals who make complaints
- adequately considering any confidentiality, secrecy or privacy obligations or responsibilities that may arise in the handling of complaints and the conduct of investigations.

If Council fails to comply with these responsibilities, complainants may complain to the NSW Ombudsman.

## ENDNOTES

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<sup>1</sup> The word 'rights' is not used here in the sense of legally enforceable rights (although some are), but in the sense of guarantees of certain standards of service and behaviour that a complaint handling system should be designed to provide to each of the parties to a complaint.

<sup>2</sup> Differences of opinion are normal: people perceive things differently, feel things differently and want different things. People have a right to their own opinions, provided those opinions are expressed in acceptable terms and in appropriate forums.

<sup>3</sup> While degrees of independence will vary between complaint handlers, all should assess complaints fairly and as impartially as possible, based on a documented process and the merits of the case.

<sup>4</sup> The 'right to be heard' refers to the opportunity to put a case to the complaint handler/decision-maker. This right can be modified, curtailed or lost due to unacceptable behaviour, and is subject to the complaint handler's right to determine how a complaint will be dealt with.

<sup>5</sup> Provided this will not prejudice on-going or reasonably anticipated investigations or disciplinary/criminal proceedings.

<sup>6</sup> Such a right of review can be provided internally to the organisation, for example by a person not connected to the original decision.

<sup>7</sup> Provided the concerns are communicated in the ways set out in relevant legislation, policies and/or procedures established for the making of such complaints/allegations/disclosures/etc.

<sup>8</sup> Some complaints cannot be resolved to the complainant's satisfaction, whether due to unreasonable expectations or the particular facts and circumstances of the complaint [see also Endnote 25].

<sup>9</sup> See for example WH&S laws and the common law duty of care on employers.

<sup>10</sup> Unacceptable behaviour includes verbal and physical abuse, intimidation, threats, etc.

<sup>11</sup> Other than where there is an overriding public interest in curtailing the right, for example where to do so could reasonably create a serious risk to personal safety, to significant public funds, or to the integrity of an investigation into a serious issue. Any such notifications or opportunities should be given as required by law or may be timed so as not to prejudice that or any related investigation.

<sup>12</sup> Depending on the circumstances of the case and the seriousness of the possible outcomes for the person concerned, a reasonable opportunity to put their case, or to show cause, might involve a face to face discussion, a written submission, a hearing before the investigator or decision maker, or any combination of the above.

<sup>13</sup> For example whether they have made a similar complaint to another relevant person or body or have relevant legal proceedings on foot.

<sup>14</sup> Other than in circumstances where the organisation is obliged to have an ongoing relationship with the complainant.

<sup>15</sup> See Endnote 11.

<sup>16</sup> Other than where an allegation is so lacking in merit that it can be dismissed at the outset.

<sup>17</sup> See Endnote 11.

<sup>18</sup> See Endnote 5.

<sup>19</sup> 'Complainants' include whistleblowers/people who make internal disclosures.

<sup>20</sup> 'Complaints' includes disclosures made by whistleblowers/people who make internal disclosures.

<sup>21</sup> This does not include any obligation to incriminate themselves in relation to criminal or disciplinary proceedings, unless otherwise provided by statute.

<sup>22</sup> See Endnote 19.

<sup>23</sup> See Endnote 20.

<sup>24</sup> See Endnote 3.

<sup>25</sup> Once made, complaints are effectively 'owned' by the complaint handler who is entitled to decide (subject to any statutory provisions that may apply) whether, and if so how, each complaint will be dealt with, who will be the case officer/investigator/decision-maker/etc, the resources and priority given to actioning the matter, the powers that will be exercised, the methodology used, the outcome of the matter, etc. Outcomes arising out of a complaint may be considered by the complaint handler to be satisfactory whether or not the complainants, any subjects of complaint or the organisation concerned agrees with or is satisfied with that outcome.

<sup>26</sup> See Endnote 19.

<sup>27</sup> See Endnote 20.

**Appendix B**  
**Sample UCC incident form**

This form should only be completed if staff encounter unreasonable conduct by a complainant and consider that steps may need to be taken to change or restrict a complainant's access to Council services.

Complete this form and send it electronically or by hand to the General Manager within 24 hours of a UCC incident. They will decide on the necessary and appropriate course of action for responding to and managing the complainant's conduct.

Date: \_\_\_\_\_ Case officer's name: \_\_\_\_\_

Name of complainant: \_\_\_\_\_ Complainant's case file no: \_\_\_\_\_

Details of the complainant's conduct/incident including whether emergency services were contacted:

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Why do you consider this conduct to be unreasonable?

For example – has it occurred before/repeatedly, caused significant disruptions to Council, has or could raise significant health and safety issues for Council staff or other persons.

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What action, if any, have you taken to manage the complainant's conduct?

For example – warning the complainant 'verbally' about their conduct, previous attempts to manage the behaviour etc.

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What do you think should be done to effectively manage the complainant's conduct?

Note – the final decision on the appropriate course of action will be made by the General Manager

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Is there any other information that might be relevant to this case? Please include information on any personal or cultural background issues that may have affected the complainant's conduct. If necessary, attach any supporting documentation.

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**Appendix C**  
**Sample checklist to modify or restrict a complainant's access**

- I have received a signed and completed incident form from the case officer(s) involved (attach copy).
- I have spoken with relevant case officer(s) to obtain further information, as needed.
- I have reviewed the complainant's record and all the relevant information in it.
- I have referred to and considered Section 7.2 Criteria to be considered which includes an assessment of the following:
  - The merits of the complainant's case  
\_\_\_\_\_  
\_\_\_\_\_
  - The complainant's circumstances  
\_\_\_\_\_  
\_\_\_\_\_
  - Jurisdictional issues  
\_\_\_\_\_  
\_\_\_\_\_
  - Proportionality  
\_\_\_\_\_  
\_\_\_\_\_
  - Organisational or case officer responsibility  
\_\_\_\_\_  
\_\_\_\_\_
  - Responsiveness, including previous conduct  
\_\_\_\_\_  
\_\_\_\_\_
  - Case officer's personal boundaries  
\_\_\_\_\_  
\_\_\_\_\_
  - Conduct that is unreasonable in all circumstances (assault, threats of harm etc.)  
\_\_\_\_\_  
\_\_\_\_\_
- Along with the case officer concerned and the Directors, I have considered all reasonable options for managing the complainant's conduct, including those that do not involve restricting their access to Council's services.  
\_\_\_\_\_  
\_\_\_\_\_
- The complainant has been warned about their conduct in writing and the letter signed by the General Manager.
- The complainant has been advised in writing, and if required by other culturally, linguistically, or personally appropriate means, of Council's decision to restrict their access to Council, and the letter has been signed by the General Manager.

Attachment No. 2

- I have made a record of my assessment and decision about the complainant's conduct and all relevant staff members have been notified of my decision.
- An electronic alert has been created in Council's electronic document records management system that notifies any staff dealing with this complainant of the nature of the conduct that caused us to be concerned, the nature of the restriction that has been placed on their access, its duration, how they are to deal with the complainant (including who they should direct any communications from the complainant to).

Date: \_\_\_\_\_ Signature: \_\_\_\_\_

## Appendix D Sample warning letter

To be signed by the General Manager

[Date]

[Name of complainant]

[Address of complainant]

Dear [name of complainant]

### **Your contact with Narromine Shire Council**

You recently had [state the form of contact – e.g. telephone, written or face-to-face] with staff at my office on [date]. [During/In that telephone call/appointment/letter,] I understand that you [explain the nature of the conduct that has caused the organisation to be concerned].

Council considers this type of behaviour to be inappropriate and it must stop. If you continue to behave in this way or in any other way that my staff consider to be unreasonable, Council will impose restrictions on your contact with Council's office. This may involve restricting your contact to [apply the relevant option(s)]:

- 'Writing only' – this means that Council will only accept communications from you in writing, delivered by Australia Post [if online or other written communications are preferred then explain].
- 'Telephone contact only' – this means that you will only be able to contact us by telephone on a specified time and day of the week.
- 'Face-to-face contact only' – this means that your contact will be limited to scheduled face-to-face meetings with a specified member of Council staff.

Or any other restriction that Council considers to be appropriate in the circumstances.

I have attached a copy of a document called [Individual rights and mutual responsibilities of the parties to a complaint] for your reference. Council expects everyone who complains to this office to act in the ways described in this document.

If you have any questions about this letter, contact me on 6889 9999.

Yours faithfully,

General Manager

## Appendix E

### Sample letter notifying a complainant of a decision to change or restrict their access to Council's services

To be signed by the General Manager

[Date]

[Name of complainant]

[Address of complainant]

Dear [name of complainant]

#### **Decision to restrict your contact with Narromine Shire Council**

It has come to my attention that you [describe the nature of the unreasonable conduct and its impact – e.g. if the complainant has been sending emails to several members of my staff on a daily basis...]

I understand that my staff have previously told you that Council considers this conduct to be unreasonable and unwarranted.

I also wrote to you on [date] and asked you to stop this behaviour. In that letter I advised you that if your behaviour continued, I would restrict your contact with Council. At the time I also attached a copy of Council's [Individual rights and mutual responsibilities of the parties to a complaint] which outlines your responsibilities as a complainant.

Because your behaviour has continued, I now consider it necessary to impose certain restrictions on your future contact with Council. I therefore give you notice that from [date], and with the exception(s) detailed below, Council will only accept communication from you [identify permissible form of contact, if any].

#### **What this means**

This means that you are only to contact Council using [describe the restriction in further details]. Any communications that do not comply with this restriction will be [describe what will happen – e.g. phone calls will be terminated immediately or emails/written communications will be read and filed without acknowledgment, emails will be blocked or deleted, no interviews will be granted, etc].

[Note: the complainant should be clearly informed how they can contact the organisation and how the organisation will contact them].

#### **Your existing complaint (if applicable)**

This organisation currently has [one] file open in your name. This relates to [state the subject of complaint and describe complaint]. This file is being handled by [name of officer and position title]. While you are able to contact [name of officer] [state nature of contact – e.g. by email] about this specific matter, all other contact with Council, including any future complaints, must be [state restriction – e.g. in writing through Australia Post] [provide contact details – e.g. address of organisation where post can be sent].

#### **Review of this decision**

My decision to restrict your contact with Council is effective immediately and will last for [ 3 months/6 months/12 months]. At that time Council will review your restriction and decide if it should be maintained, amended or withdrawn.

I take these steps with the greatest reluctance, but *[state reason for restriction – e.g. the equity and safety of other complainants and my staff]*, leaves me no alternative.

If you have any questions about this letter, you can contact *[provide name and phone number of the Director]*.

Yours faithfully

General Manager



## Appendix F

### Sample letter notifying a complainant of an upcoming review

To be signed by the General Manager

[Date]

[Name of complainant]

[Address of complainant]

Dear [name of complainant]

#### **Upcoming review of the decision to restrict your contact with Narromine Shire Council**

It has now been [3 months/6 months/12 months] since restrictions were [imposed/upheld] on your contact with Council's office. As advised in Council's letter dated [date], Council is now reviewing its decision to ascertain whether the restrictions should be maintained, amended or withdrawn.

Council considers it important to give you an opportunity to participate in the review process, and therefore invites you to [apply the relevant option(s)]:

- make submissions in writing through Australia Post [include contact person's name and address]
- schedule a face-to-face interview with [include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]
- schedule a telephone interview with [include name of staff member and provide instructions on how they should go about scheduling the appointment – e.g. calling though the reception line on xxx-xxx-xxxx]

In your letter, you should include information that would be relevant to Council's review. This includes information about [.....]/During the interview which will not last more than 30 minutes, Council will discuss whether:

- you have complied with the current contact restrictions
- the current contact restrictions should be removed
- the current contact restrictions should be amended to better suit your personal circumstances
- the current contact restrictions should be maintained
- any other information that is relevant to Council's decision.

Council must receive your letter by [time and date]/you should confirm your interview with [name of case officer] by [time and date]. If Council does not receive it/hear from you by this date, Council will assume that you do not wish to participate in this review and will undertake the review based on the information that Council has available.

Once the review is completed, Council will contact you again by letter notifying you of Council's decision.

If you have any questions about this letter, you can contact [provide name and phone number of the Director].

Yours faithfully

General Manager

**Appendix G**  
**Sample checklist for reviewing a decision regarding an access change/restriction**

- The complainant has been sent a letter, or if necessary has been contacted by a more culturally and linguistically appropriate means, notifying them of the review.
- The complainant will/will not participate in the review.
  - the complainant has/has not scheduled a face-to-face interview
  - the complainant has/has not made written submissions
  - the complainant has/has not scheduled a telephone interview
- I have reviewed all the information in the *[case management system]* from the last 12 months *[or relevant period of the restriction]* about the complainant's:
  - contact with the office (explain form of contact)

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- conduct during that contact (explain if conduct reasonable or unreasonable)

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- I have spoken with the case officers who have had contact with the complainant during the last 12 months about the complainant's conduct during that period.
- I have considered the arguments/statements made by the complainant, including the impact of the restrictions on them (explain complainant's position, including if their circumstances have changed etc.) *Note: if the complainant is arguing that their circumstances have changed, they should be required to submit evidence to support this claim.*

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- I have considered whether there are other more reasonable/suitable options for managing the complainant's conduct, including those that do not involve restricting their access to Council's services (list all that apply).

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- I consider that the restriction should be (explain):
  - maintained – e.g. *because the conduct has continued or is likely to continue, is disproportionate etc.*
  - removed – e.g. *because the complainant has complied with the restrictions etc.*
  - amended – e.g. *because the complainant's circumstances have changed and the current restriction is no longer appropriate.*

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- I have discussed my decision with *[other Directors]*
- The complainant has been advised in writing of my decision to maintain/remove/amend the restriction and this letter has been signed by the General Manager.
- The *[electronic document records management system]* has been updated to reflect my decision.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

## Appendix H

### Sample letter advising the complainant of the outcome of a review

To be signed by the General Manager

[Date]

[Name of complainant]

[Address of complainant]

Dear [name of complainant]

#### **Review of your contact with Narromine Shire Council**

I am writing about a review that was undertaken by my organisation on [date] concerning your contact with this office. I understand that you [participated/did not participate] in that review.

#### **Process of review**

During the review you were given an opportunity to [explain in general terms how the review was undertaken].

#### **Considerations**

After your [interview/reading your submissions], Council considered the concerns and suggestions raised in your [interview/letter, etc.], particularly your concerns about [include information that would be relevant – e.g. the complainant said their circumstances had changed]. Council also reviewed its records of your conduct and contact with Council's office over the last 12 months. Council's records showed that [provide summary of relevant information – e.g. Council's records show that you have continued to send emails to Council, sometimes up to four times a day, throughout the period of your restriction].

[apply if relevant]: These communications were in direct violation of your restriction which limited your contact with Council to [state nature restriction] [explain what the purpose of the restriction was, if appropriate, and the impact of their conduct].

[apply if relevant]: Council's records show that you have complied with the restrictions that were imposed on your contact with Council.

#### **Decision**

[apply if relevant]: Due to [explain reasoning for the decision – e.g. the number of emails that you have sent to Council in the last 12 months and ...] I consider it necessary to maintain the restrictions on your contact with Council for a further 12 months, effective immediately.

[apply if relevant]: Due to [explain reasoning for the decision] I consider it necessary to amend the restrictions on your access to better suit your personal circumstances [explain, including providing clear instructions on how the complainant is to contact us and how Council will contact them]. The new restrictions will be effective immediately and will last for 12 months. If your circumstances change again during this period, you may [explain how the complainant can notify of the change].

[apply if relevant]: Due to [explain reasoning for the decision] I consider it appropriate to remove the restrictions that have been placed on your access with Council, effective immediately. You may contact Council using any of our normal servicing options.

If you have any questions about this letter, you can contact *[provide name and phone number of the nominated Director]*.

Yours faithfully

General Manager



# Alcohol and Other Drugs Policy and Procedure

Version No	Responsible Department	Prepared By	Date First Created	Next Review Date	Endorsed
2.0	Work Health & Safety	Ashley Bullock WH&S Coordinator	1.11.2013		13.11.2013 – Council Resolution No 2013/414
3.0	Work Health & Safety	Ashley Bullock WH&S Coordinator			12.12.2018 – Council Resolution No 2018/304
4.0	Work Health & Safety	Ashley Bullock WH&S Coordinator		3.11.2020	08.09.2021 – Council Resolution No 2021/186
5.0	Work Health & Safety	Ashley Bullock WH&S Coordinator		20.4.2025	8.11.2022 – General Manager
<u>6.0</u>	<u>Work Health &amp; Safety</u>	<u>Ashley Bullock WH&amp;S Coordinator</u>		12.12.2026	

## 1. Introduction

This Policy is part of the Narromine Shire Council Work, Health and Safety system and reflects Council's commitment to the NSW Work Health and Safety Act 2011. Narromine Shire Council must ensure, so far as reasonably practicable the health and safety of workers while the workers are at work.

Workers have a duty to take reasonable care for their own health and safety and the health and safety of others in the workplace. Workers also have a duty to cooperate with any reasonable policy and procedure relating to health and safety at the workplace.

## 2. Aim

The aim of this policy is to provide a ~~clear~~clearly documented guide regarding Narromine Shire Council's alcohol and other drug issues in the workplace and to define the role of management, workers and others in dealing with alcohol and other drug related work issues:

- To ensure Narromine Shire Council meets its legal obligations by providing a safe working environment for workers and others in the workplace.
- To increase the awareness of the harmful effects of alcohol and other drug use and inform workers of the availability of referral, assessment, and treatment services.
- All workers are trained in the dangers of alcohol or drug misuse in the workplace.
- Provide a working environment which is conducive to productivity and achievement of objectives by minimising the potentially harmful impact of alcohol and other drug consumption, which impairs workers ability to safely perform their duties.
- Provide appropriate counselling for workers who recognise that they have a dependency problem with alcohol or drugs and who request assistance to address their dependency.
- To ensure that all workers (includes contractors, work experience persons and volunteers) are aware that breaches of this policy may lead to disciplinary action including termination of employment.

## 3. Responsibilities

### **General Manager and Directors must:**

Provide a safe working environment and safe systems of work so that, as far as reasonably practicable, workers and others are safe from injury and risks to health.

### **Managers, Overseers and Team Leaders must:**

- Provide workers and other persons with information, instruction, training of the alcohol and other drugs procedure.

- Ensure that no worker commences or continues duty if the worker appears to be affected by alcohol, illegal or legal drugs, or other substances.

**Workers while at work must:**

- Make themselves aware about the effect of alcohol and other drugs has on their ability to work safely.
- Present and remain, while at work, fit for work.
- Comply with Council's alcohol and other drugs policy and procedure.
- Ensure their activities away from work do not impact on their ability to perform their duties safely when at their workplace.

**4. References**

NSW Work Health and Safety Act 2011  
NSW Work Health and Safety Regulations 2017  
[Civil Aviation Safety Regulations 1998](#)

**5. Appendix**

Alcohol and Other Drugs Procedure

## Appendix 1- Alcohol and Other Drugs Procedure

This procedure shall be reviewed:

- Three years from the date of adoption, or
- Immediately if any provision is contrary to law.

### Foreword

This Alcohol and other Drug Procedure has been developed by the USU, LGEA, DEPA and LGSA ('the industry parties') to be used as a resource by the Local Government Industry in NSW.

[This Alcohol and Other Drug Procedure has been updated to include the additional requirements of the CASA Safety Regulations 1998.](#)



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## 1. Introduction

A person conducting a business or undertaking (PCBU) has a duty to ensure the health, safety and welfare of their workers and other people in the workplace (Section 19, Work Health, and Safety Act 2011). Workers have a duty to take reasonable care for their own health and safety, as well as for the health and safety of other people in the workplace and to co-operate with their employer in providing a safe working environment (Section 28, Work Health, and Safety Act 2011).

It is recognised that there may be reasons why employees feel uncomfortable about nominating other employees whose behaviour is risky to themselves and others. Narromine Shire Council supports a rehabilitative and benign approach to managing these issues, rather than a punitive approach.

Workers are obliged to present themselves for work in a fit state so that in carrying out their work activities they do not expose themselves, their co-workers, or other people in the workplace to unnecessary risks to health and safety.

The welfare of the individual and the health and safety of other people in the workplace needs to be considered.

There are penalties, under legislation for employers and through the application of disciplinary procedures in the Local Government Award, for workers who fail to take their work health and safety responsibilities seriously.

## 2. Scope

This procedure applies to all Council workers, temporary staff, contractors, workers of contractors, Safety Sensitive Aviation Activities (SSAA) employees and volunteers in the workplace.

## 3. Objective

The objective of this procedure is to deal with alcohol and other drugs and their effect on workers' fitness for work whilst performing duties at Narromine Shire Council (the "Council") and to ensure that Council has a mechanism to appropriately manage the misuse of alcohol and other drugs in the workplace through training, education and where required, rehabilitation.

It is the goal of Council to:

- eliminate the risks associated with the misuse of alcohol and other drugs, thereby providing a safer working environment.
- to reduce the risks of alcohol and other drugs impairment in the workplace; and
- to promote a supportive culture that encourages a co-operative approach between management and workers and builds on the shared interest in workplace health and safety.

## 4. References

Australian Standards

- AS3547:2019 - Breath alcohol devices for personal use. (~~AS3547:2019~~)
- ~~AS4760:2019~~ - Procedures for specimen collection and the detection and quantity of drugs in oral fluid. (~~AS4760:2019~~)
- AS/NZS 4308:2008 Procedures for specimen collection and the detection and quantitation of drugs of abuse in urine

Road Transport Act 2013 (NSW)

Work Health and Safety Act 2011 (NSW)

Work Health and Safety Regulation 2017 (NSW)

CASA Safety Regulations 1998

Flowcharts documenting each process covered in this procedure are contained in [Appendix 3](#) of this document.

## 5. Definitions

**BAC** means blood alcohol content.

**Certified Laboratory** means a laboratory which meets minimum Australian performance standards set by an accrediting agency being the National Australian Testing Authority (NATA).

**Confirmatory Test** means a second analytical test performed to identify the presence of alcohol and/or other drugs in accordance with Australian Standard ~~AS3547:2019, 1997, and AS4760:2019, 06 and AS/NZ 4308:2008.~~

The confirmatory test is a retest of a second sample from the original sample taken at the original collection time. Nothing in this Procedure shall prevent the carrying out of a second independent test, by a method chosen by the person who tested ~~non~~ negative/positive.

For drugs this means any confirmatory sample returning a result at, or ~~in excess of more~~ than, the levels contained in AS4760: ~~2006~~ 2019.

For alcohol this means any confirmatory sample returning a result at, or ~~in excess of more~~ than, the levels prescribed in NSW for the operation of motor vehicles. NSW has three blood alcohol content limits: zero, >0.02 grams per 100 Millilitres and >0.05 grams per 100 Millilitres.

The limit which applies to workers at Council is dependent on the category of the worker's licence and the type of vehicle the worker is required to operate.

### **Zero applies to:**

ALL learner drivers.

ALL Provisional 1 drivers. ALL Provisional 2 drivers. ALL visiting drivers holding an overseas or interstate learner, provisional or equivalent licence.

All employees who are employed to perform any SSAA (Safety Sensitive Aviation Activities)

**0.02 applies to:**

Drivers of vehicles of "gross vehicle mass" greater than 13.9 tonnes. Drivers of vehicles carrying dangerous goods.

Drivers of public vehicles such as taxi or bus drivers.

**0.05 applies to:**

ALL other licences (including overseas and interstate licence holders) not subject to a 0.02 or zero limit.

Any employee who is not required to drive as part of their role or who is unlicensed is required to meet the .05 limit whilst at work for the purposes of this procedure.

**Council** means Narromine Shire Council ABN 99 352 328 405

**Employer** has the same meaning as a person conducting a business or undertaking under Section 5 of the Work Health and Safety Act 2011.

**Reasonable Suspicion Procedure** refers to indicators of impairment and includes the observable indicators of impairment contained in [Appendix 1](#) and [Appendix 2](#) of this Procedure which are used to determine whether a reasonable suspicion exists that a person is impaired by alcohol and/or other drugs.

**Post Reportable Incident** is defined as any accident or event that occurs in the course of work which results in personal injury, vehicle damage, property damage and/or any incident that has the potential for significant risk of harm or injury to persons or equipment.

**Responsible person** means a worker who is suitably trained and can assess, in accordance with Australian Standards, the fitness for work of persons in the workplace.

**Initial Testing** is defined as a valid method used to exclude the presence of alcohol and/or a drug or a class of drugs as provided by Australian Standard AS3547:2019 ~~and AS4760:2019 and AS4308:2008-~~

**Limited Random Testing** means a period of random testing of a worker in the case where the worker either:

- (a) fails a drug or alcohol test; and/or
- (b) unreasonably refused a drug or alcohol test ~~as a result of~~because of a reportable incident or random testing program; and/or
- (c) following a determination of impairment ~~as a result of~~because of an impairment assessment.

**~~Non-Negative~~Positive Result** means an initial positive test ~~as yet yet~~ unconfirmed by confirmatory testing by an accredited tester.

**Negative Result** means a result at or below the nominated or target concentration used for initial testing.

**Medical Review Officer (MRO)** is a registered medical practitioner with both knowledge and understanding of drug and alcohol test results and (their interpretation) and substance use disorders.

**Random Testing** means a structured program of randomly testing workers across the entire workforce in accordance with the standards as provided by Australian Standard AS3547:2019 and AS4760: 2019. Anyone who performs (or are available to perform) a safety sensitive aviation activity (SSAA) can be tested without notice or as part of Council testing.

**SSAA** means Safety Sensitive Aviation Activities

**Tester** means a person authorized by Council and trained to conduct breath analysis, ~~and Oral Swab~~ and urine testing in accordance with Australian Standard AS3547:2019~~1997~~ ~~and~~ AS4760:2019~~06~~ ~~and~~ AS4308:2008.

**Worker** has the same meaning as Worker under Section 7 of the Work Health and Safety Act 2011, being:

- (a) an employee, or
- (b) a contractor or subcontractor, or
- (c) an employee of a contractor or subcontractor, or
- (d) an employee of a labour hire company who has been assigned to work in the person's business or undertaking, or
- (e) an outworker, or
- (f) an apprentice or trainee, or
- (g) a student gaining work experience, or
- (h) a volunteer, or
- (i) a person of a prescribed class.

**Workplace** means a place where work is carried out for a business or undertaking and includes any place where a worker goes, or is likely to be, while at work. Place includes:

- (a) a vehicle, vessel, aircraft, or other mobile structure, and
- (b) any waters and any installation on land, on the bed of any waters or floating on any waters, in accordance with Section 8 of the Work Health and Safety Act 2011.

## 6. Objectives

The objectives of the Alcohol and Other Drugs Procedure are to:

- Create a safe and healthy work environment for all workers, contractors and visitors that is free from the hazards associated with the inappropriate use of alcohol and/or other drugs.
- Create a supportive workplace culture that acknowledges and encourages workers to accept individual responsibility for workplace health and safety and to acknowledge that participating in the nominating of workers who may be regarded as a risk to other workers is appropriate, encouraged by legislative obligations in the WHS Act and is supported by the Council and the unions.
- Provide support for workers who may have difficulty addressing alcohol and/or drug related issues.
- Ensure rehabilitation program is provided for workers who may have difficulty addressing alcohol and/or drug related issues.
- Foster an attitude and culture amongst all workers that it is not acceptable to come to work under the influence of alcohol and/or any other drug that will prevent them from performing their duties in a safe manner.
- Ensure the Council meets its legal obligations by providing a safe working environment for its workers and the ~~general public~~ public.

- If any disciplinary action is required, ensure all disciplinary processes are consistently managed in accordance with the Local Government Award and any subsequent Award or Agreement.

## 7. Confidentiality

The Council will endeavour to ensure that the highest levels of confidentiality are maintained in the application of this procedure. The following minimum conditions shall apply:

- All testing will be conducted in a private location that maintains the privacy and dignity of the individual.
- All testing will be conducted by trained staff and/or accredited providers in accordance with Australian Standards.<sup>1</sup>
- Workers who record a ~~non-negative~~ positive result will ~~treated at all times~~ always be treated in a respectful and non-judgmental manner by all involved in the management of the matter.
- Council records pertaining to test results shall be regarded as confidential information and use/access/dissemination of the results shall be restricted to those who have a genuine requirement to access the confidential results of the drug and/or alcohol test. No information related to drug and/or alcohol testing shall be disclosed to any person or persons other than those properly authorized officers of the Council and authorized worker representative/s.
- The General Manager is authorized under this procedure to access, delegate, and assign authority for access and use of the information obtained under this procedure, including but not limited to authorized government agencies, insurers (for claims submissions, where applicable).
- Where the General Manager has authorized the release of confidential test results to external parties who are legally able to access this information, the worker/s that are involved are to be notified in writing detailing:
  - (a) who the information will be released to.
  - (b) when and for what purposes the information will be released.

A copy of all information released is to be provided to the worker/s involved with this notification. The notification must be given to the workers prior to information being released to the external parties.

## 8. Duty of Care, Responsibilities and Obligations

Under this procedure the duty of care, responsibilities, and obligations of workers, the Council, and others at workplace are derived from obligations under the Work Health and Safety Act 2011 (NSW), Civil Aviation Safety Regulations 1998 and the specified responsibilities detailed in this procedure.

It is recognized that there may be reasons why employees feel uncomfortable about nominating other employees whose behaviour is risky to themselves and others. This Council supports a rehabilitative and benign approach to managing these issues, rather than a punitive approach.

## 8.1 Employer

Under Section 19 of the Work Health and Safety Act 2011, Council must provide a safe and healthy workplace for workers or other persons. Management must ensure:

- safe systems of work.
- a safe work environment.
- accommodation for workers, if provided, is appropriate.
- safe use of plant, structures and substances.
- facilities for the welfare of workers are adequate.
- notification and recording of workplace incidents.
- adequate information, training, instruction, and supervision is given.
- compliance with the requirements under the work health and safety regulation.
- effective systems are in place for monitoring the health of workers and workplace conditions.

## 8.2 Workers

Under Section 28 of the Work Health and Safety Act 2011, a worker must, while at work:

- take reasonable care for their own health and safety, and
- take reasonable care for the health and safety of others, and
- comply with any reasonable instruction by the PCBU, and
- cooperate with any reasonable policies and procedures of the PCBU.

## 8.3 Other Persons

Under Section 29 of the Work Health and Safety Act 2011, a person at a workplace must:

- take reasonable care for his or her own health and safety; and
- take reasonable care that his or her acts or omissions do not adversely affect the health and safety of other persons; and
- comply, so far as the person is reasonably able, with any reasonable instruction that is given by the employer to allow the PCBU to comply with the Work Health and Safety Act 2011.

## 8.4 Supervisor and Worker Obligations

It is the responsibility of all Supervisors and workers to ensure that no worker commences or continues duty if the worker appears to be affected by alcohol, illegal or legal drugs, or other substances which may reasonably be considered to lead to a safety risk or an inability to fulfil the requirements of the position or are not fit to work.

Workers are obliged to present for work in a fit state, so that in carrying out normal work activities they do not:

- expose themselves or their co-workers, visitors and/or the public to unnecessary risks to health or safety, and/or
- inhibit their ability to fulfil the requirements of the position, and/or
- present a poor public image of Council, and/or
- cause damage to property and/or equipment.

The worker is responsible for any criminal penalty which results from being under the influence of drugs or alcohol in the workplace.

## 8.5 Authorised Functions

### 8.5.1 Work Functions

Alcohol will not be permitted to be consumed on any worksite ~~with the exception~~ ~~of~~ ~~except~~ ~~for~~ approved functions. Where a work function is organized and where the activity is being held at a Council workplace, the activity must be approved by the General Manager under the following conditions: -

- Light alcohol beer is available.
- Non-alcoholic drinks are available.
- Provision of food appropriate to the function
- Employees are reminded of their obligations by law not to drink and drive.
- Responsible consumption of alcohol is a requirement.
- Responsible service of alcohol

Generally, work functions held at a Council workplace should be for a maximum of 3 hours and be held after 5pm.

### 8.5.2 Council Sponsored Functions

Narromine Shire Council has a duty to provide a safe and healthy workplace for all employees. This duty extends to Council sponsored functions at the workplace or elsewhere. It is possible that where a worker is injured following a Council function, the Council's act of supplying alcohol or failing to take steps to prevent the worker driving, may render them negligent and a contributing factor to the accident.

When organizing a Council sponsored function consideration should be given to the quantity of alcohol supplied to minimize excessive consumption. The function host will remind workers of their obligation by law not to drink and drive and ensure that there is provision of low alcohol drinks, non-alcoholic alternatives, and ~~sufficient quantities~~ ~~of~~ ~~enough~~ food.

The function host or most senior Council officer present should encourage and model responsible behaviour and reinforce the message that people are responsible for their own actions.

Senior Council officers should take reasonable steps to ensure that guests leave the premises in a safe manner at the completion of the function.

## 9. Consultation Communication and Information

Council will ensure that the development of the Alcohol and Other Drugs Policy and Procedure occurs in consultation with the unions, all stakeholders including the Consultative Committee and Work Health and Safety Committee, which may make recommendations based on consensus.

Other communication processes in the workplace may include toolbox meetings, newsletters, Union meetings and the use of communication boards.



## 10. Education and Training

Council recognizes that it is important to develop a workplace culture through education, where workers are prepared to encourage each other to be safe and not under the influence or impaired at work. Council will provide this education and awareness information to its workers at all levels.

Existing workers will receive education in this policy and the accompanying procedure within 3 months of its official adoption by Council. Contractors and volunteers will also be informed of the requirements within this timeframe.

New workers will receive education at induction on commencement with Council. Council will also provide practical guidelines and training to Managers, Supervisors, Overseers and Team leaders for dealing with persons who may be affected by alcohol or other drugs, including the correct application of disciplinary sanctions and the need for maintaining strict confidentiality.

## 11. Employee Assistance and Information

If a worker has issues of concern including those related to alcohol and other drugs Council encourages workers to make use of the Employee Assistance program (EAP) and seek appropriate support and assistance. The service is provided on a confidential basis.

Council utilizes the services of ~~Interact Group~~[Converge International](#) to provide their EAP Program. Services are free to staff and their immediate family and are confidential. Employees may contact ~~Interact Group~~[Converge International](#) directly on 1300 ~~851-300687~~ [327](#) as per the EAP Program.

Information about the effects of alcohol and other drugs and the EAP is available from the Manager Human Resources and through the staff Intranet.

## 12. Alcohol and Other Drugs Testing Program

Council has established a program of testing that will:

- provide people with information about the effects of alcohol and other drugs.
- discourage people from coming to work where they may be unfit for work because of alcohol or other drugs; and
- assist in identifying people who may be unfit for work.

The options are:

- voluntary, and
- post reportable incident, and
- reasonable suspicion; and
- random; and
- Targeted random (for workers who have given a confirmed positive result for alcohol and other drugs).

A business card detailing Council's contact details and outlining the drugs which may be detected during drug testing is available for each employee to assist them with discussing the effects of drugs on their fitness for work with their healthcare providers. A copy of the card is contained in [Appendix 4](#) of this procedure.

## 12.1 Voluntary Testing

Voluntary testing provides workers with the ability to volunteer to be tested either for drugs and/or alcohol.

Workers who engage in voluntary testing who produce a ~~non-negative~~ positive confirmatory test confirmed will be expected to actively participate in a structured rehabilitation program in accordance with the limited random testing process.

Voluntary testing returning ~~non-negative~~ positive confirmatory test results will be managed on a case-by-case basis and Council may explore opportunities available within Council for suitable duties to be actively sought for staff during their rehabilitation program.

Such opportunities must be by agreement and in consultation with the affected worker and their Union or other representative.

Immunity for disclosure from disciplinary action will be provided to the worker on the condition that they comply with the rehabilitation program and do not report for work and commence work in an unfit state in future.

These workers should request a voluntary or self-test if in doubt, prior to commencing duties.

## 12.2 Post Reportable Incident Testing

After a reportable incident at the workplace, the worker, or worker's supervisor in consultation with the Work Health and Safety Coordinator or HR Manager may require a worker to undergo an initial alcohol or other drug test. ~~For the purpose of~~ For Post Incident Testing, a reportable incident is defined as any accident or event that occurs in the course of work which results in personal injury, vehicle damage, property damage and/or any incident that has the potential for significant risk of harm or injury to persons or equipment.

Post Reportable Incident Testing will take place no later than 12 hours after the incident where a reportable incident falls within the following criteria. If an employee fails to report an incident, as defined, immediately as required and testing is unable to be undertaken within 12 hours ~~as a result of~~ because of this failure, the testing will be conducted under Reasonable Suspicion.

Incident Type	Definition	Excluding
<b>Injury</b>	Any injury caused <del>during the course of</del> during work for which the worker requires treatment over and above first aid only treatment.	Testing will <b>not</b> be undertaken by Council where it is identified: <ul style="list-style-type: none"> <li>• the incident was not within the control of the worker involved and the correct procedures were followed.</li> <li>• first aid treatment only is required unless the worker develops a pattern of reporting first aid only injuries which subsequently require medical treatment.</li> <li>• journey accidents (before the start of the shift or after the shift has finished)</li> <li>• a member of the NSW Police Force <del>attend</del>attends an accident site, irrespective of <del>whether or not</del>whether the worker is tested for alcohol or other drugs by the police officer.</li> <li>• the injury is hearing loss, skin cancer or other occupationally induced disease.</li> <li>• the injury is of a diagnosable psychological condition.</li> </ul>
<b>Vehicle</b>	Any work-related incident involving a Council vehicle (vehicle includes any type of road registrable plant) where damage to the vehicle and/or third-party property is sustained	Testing will <b>not</b> be undertaken by Council where it is identified: <ul style="list-style-type: none"> <li>• that the incident was not within the control of the worker involved</li> <li>• journey accidents (before the start of the shift or after the shift has finished)</li> <li>• minor damage where the worker is not at fault (e.g. taillight, less than \$2,000, minor scratch) unless a pattern develops of minor incidents involving a specific worker.</li> <li>• a member of the NSW Police Force attends an accident site, irrespective of <del>whether or not</del>whether the worker is tested for alcohol or other drugs by the police officer.</li> </ul>

<b>Property Damage</b>	Any incident resulting in equipment, property, or environmental damage	Testing will <b>not</b> be undertaken by Council where it is identified: <ul style="list-style-type: none"> <li>• that the incident was not within the control of the worker involved and the correct procedures were followed.</li> <li>• minor damage where the worker is not at fault (e.g. taillight, less than \$2,000, minor scratch) unless a pattern develops of minor incidents involving a specific worker.</li> <li>• a member of the NSW Police Force attends an accident site, irrespective of <del>whether or</del> <del>not</del> whether the worker is tested for alcohol or other drugs by the police officer.</li> </ul>
<b>Any incident that has the potential for significant risk of harm or injury to persons or equipment</b>	Dangerous occurrences or behaviour that could have resulted in injury or property damage	Testing will <b>not</b> be undertaken by Council where it is identified: <ul style="list-style-type: none"> <li>• that the incident was not within the control of the worker involved and the correct procedures were followed</li> <li>• The potential was for minor damage where the worker is not at fault (e.g. taillight, less than \$2,000, minor scratch) unless a pattern develops of minor incidents involving a specific worker.</li> <li>• first aid treatment only is likely to have been required</li> </ul>

Where an incident occurs that falls within the definitions, all workers directly involved in the incident may be tested.

Where a subsequent investigation has identified that the true cause or causes of an incident were not properly reported and fell into the category requiring a test, then a drug and alcohol test will be organized. Late or incorrect reporting of incidents will be investigated, and similar action will be undertaken.

### 12.3 Worker and Supervisor Responsibility

The worker(s) concerned will notify the reportable incident in accordance with the Incident Reporting Procedure of Council. This includes notifying their supervisor when an incident occurs immediately.

If the incident falls within the defined criteria for post reportable incident testing, then they are to undertake a post incident test.

If the incident is excluded by the defined criteria for post reportable incident testing, the Supervisor must ask the worker if they have consumed any drugs and/or alcohol within the past 12 hours, or if they believe that any other worker involved in the incident may be impaired by drugs or alcohol. If the worker indicates they have taken drugs and/or consumed alcohol, or believe that they or another worker involved, are impaired in any way, they will remain where they are and their Supervisor, or other nominated management representative, and/or Responsible Person will attend the scene and arrange for an alcohol and other drug test to occur, irrespective of whether or not it is required under the criteria nominated in the table in 12.2.

Post incident testing should be conducted as soon as possible and when it is safe to do so, within 12 hours.

Incidents that occur as the person travels to a designated Council location to commence their work shift or as the person is travelling to another location once their work shift has been completed will not be tested. Please note that where an incident occurs that meets the post reportable incident definitions when travelling between Council work sites, this will require testing, unless the police are involved in dealing with the incident.

This test should be undertaken as soon as possible after the incident has occurred. In the absence of the Work Health and Safety Coordinator, the Supervisor must consult with the Manager Human Resources as to whether a test is required.

Testing of apprentices, trainees, or work experience persons under the age of 18 is to be referred to Manager Human Resources and an appropriate parent or guardian informed that testing is to take place.

An injured person who requires immediate medical attention may only be tested when it is appropriate. This will be determined in consultation with suitably trained medical personnel. In such cases, testing procedures other than breath or saliva may be used in accordance with the appropriate Australian Standards.

#### **12.4 Fitness for Work**

If a person is not deemed fit for work following a visual assessment in accordance with the Reasonable Suspicion Procedure outlined in this document, the worker will be requested to undergo an initial alcohol and/or drug test in accordance with the relevant Australian Standards.

If a worker refuses to undergo an initial test without an appropriate reason, then the worker may be stood down until they can provide medical evidence to justify their fitness for work, or they undertake the test.

Workers stood down can apply to take paid leave in accordance with the provisions of the relevant Award or Agreement for suspended workers.

### **12.5 Requirements relating to SSAA employees ceasing SSAAs**

- (1) Council will not permit an employee to perform, or be available to perform, an applicable SSAA in any of the following circumstances:
- (a) if a positive result for an initial drug test has been recorded for the employee and the employee has not, in respect of that test result, recorded a test result for a confirmatory drug test that is not a positive result.
  - (b) if Council is aware that a positive result for an initial alcohol test has been recorded for the employee and the employee has not, in respect of that test result, recorded a test result for a confirmatory alcohol test that is not a positive result.
  - (c) if Council is aware that:
    - (i) a positive result for a confirmatory drug test or a confirmatory alcohol test conducted under a drug and alcohol testing program has been recorded for the employee; and
    - (ii) a Council medical review officer has not determined that the result recorded could be because of legitimate therapeutic treatment or some other innocuous source.
  - (d) if Council is aware that a SSAA employee after having been required to take a drug or alcohol test:
    - (i) refused to take the test; or
    - (ii) interfered with the integrity of the test.
- (2) Council must not permit a SSAA employee to perform or be available to perform an applicable SSAA in the following circumstances:
- (a) if a supervisor suspects the employee's faculties may be impaired due to the person being under the influence of a testable drug or of alcohol.
  - (b) if an accident or serious incident has occurred involving the employee while he or she is performing or available to perform an applicable SSAA and either of the following apply:
    - (i) for the period that suitable test conditions exist for conducting drug or alcohol tests on the employee--a test has not been conducted.
    - (ii) if tests have been conducted under suitable test conditions--the Council has not been notified of the test results.

### **12.65 Random**

Random testing for alcohol and/or other drugs for Council's workers may be conducted at any time throughout the worker's hours of work (including overtime).

Random testing will be conducted in an appropriate area which contains adequate facilities for testing. The testing will be done privately.

All workers will be eligible for selection for random testing. Workers will be selected for testing by using a simple random selection process, involving the selection of a worker, location or group of workers located in a specific area. Council's independent testing provider will provide advice on and assist with the random selection process.

Workers who are selected will be required to present themselves for testing immediately.

### 13. Reasonable Suspicion Procedure

The following procedure is for use by appropriately trained staff to assess fitness for work. These trained Council staff members are referred to as '*responsible persons*'.

The guidelines are to be applied fairly, objectively, and equitably. It is important that responsible persons act in an ethical and professional manner and with consistency across all workers and on each occasion, they are required to conduct a fitness for work assessment.

#### 13.1 When and how should this procedure be used?

This procedure is for use when a responsible person reasonably suspects that a worker is impaired by alcohol and/or other drugs in the workplace. Reasonable suspicion of impairment **must** be based on the list of objective indicators set out at [Appendix 1](#).

If another staff member is concerned that a person on Council premises, or worksites, is impaired, they should report their suspicion to their Manager or a *responsible person*. The responsibility to make a formal assessment of a person's impairment remains with the *responsible persons*.

The basis for this procedure is a test of reasonable suspicion that a worker is impaired by alcohol and/or other drugs. This means a suspicion that is reasonably held (using the observable indicators of impairment set out in [Appendix 1](#)) by two *responsible persons*.

There is an obligation on management to be aware that changes in the normal appearance or behaviour of a person may indicate that the person is impaired by drugs or alcohol. It is not the responsibility of Managers, Supervisors, or worker representatives to diagnose personal or health problems or determine what the cause of impairment may be.

Assessment of a worker's impairment is to be made in accordance with the list of observable indicators ([Appendix 1](#)) and is to be made in the context of **changes** to a worker's behaviour. The assessment is **not** to be made on assumptions based on a worker's previous behaviour or work record.

At least one (1) of the *physical indicators* in [Appendix 1](#) must be satisfied and agreed between the *responsible persons* for reasonable suspicion to be established. Emotional effects (as contained in the second part of the table) should **not** be used as indicators of reasonable suspicion but may be recorded as additional information on the relevant records.

#### 13.2 Consulting with the worker

The responsible persons are to request a discussion with the worker in a private location away from other workers, where possible. The worker should be given an opportunity to have a Union delegate or other person attend the discussion. The privacy of the worker is a priority at all times.

The responsible person should use wording such as:

*"I am concerned that you are behaving unusually today because I have observed [list indicators forming basis of reasonable suspicion]. Is there a reason for this?"*

Workers should be clearly informed by the responsible persons of the indicator or indicators upon which reasonable suspicion was based.

Responsible persons should speak assertively. Judgmental or confrontational language is not to be used and debate is not to be entered into with the worker.

### 13.3 Mitigating Factors

Mitigation factors are to be taken into consideration.

The worker is to be given an opportunity to explain their behaviour. A person may appear to be impaired from alcohol or other drugs but not necessarily have taken any such substances. For example, the worker may be suffering the side effects of medication prescribed by their treating doctor or suffering from sleep deprivation because of a personal trauma or concern. Such a situation is a *mitigating factor* for the purposes of this policy.

Mitigating factors include things such as, but not limited to:

- Unexpected impairment from prescription or over the counter medication.
- Side effects from medical treatment or an illness or injury.
- Impairment from fatigue due to a personal trauma, sleep deprivation or other issue; or
- Any similar factor that may cause impairment but is not the result of inappropriate alcohol or other drug consumption.

Where the responsible persons are satisfied that a person is impaired due to a mitigating factor no disciplinary action is to be taken. Repeated presentation at work by a staff member whilst impaired from over-the-counter medication may result in a breach of policy being recorded. Any staff member identified as impaired from this cause is to be reminded that any impairment is a safety risk and that they should not present for work impaired. Where prescribed or over the counter medication is taken, staff are encouraged to notify their supervisor or Manager in advance. Repeated failure to notify may result in a breach of policy being recorded.

Where the responsible persons assess that the worker is not fit to continue working ~~as a result of~~because of the fit for work assessment, they will:

- Direct the worker to take personal or other leave until they are fit to resume duties, or
- Consider short- or long-term alternative duties or other control measures to ensure the workers own safety and the safety of others in the workplace.

## 14. Testing Procedure - Alcohol

### 14.1 Conducting the Test

Workers identified to participate in alcohol testing will be required to carry out a supervised alcohol analysis test, using a calibrated breath testing device as per the Australian Standard AS3547:2019 - Breath alcohol devices for personal use. The test will be administered by a suitably qualified person.

The worker may have a Union delegate or other representative present during the testing procedure.



Unless medically required, no food or drink is to be consumed for 15 minutes prior to the test. Smoking shall also not be permitted as it may distort the test results.

~~In the event that~~ if a ~~non-negative~~ positive result is registered, a subsequent test will be carried out 15 minutes after the first test. During this 15-minute period, the worker is to be ~~supervised continually at all times~~ always be supervised by the person conducting the tests.

Workers with a ~~non-negative~~ positive second breath analysis test results will be presumed unfit for work and arrangements will be made to transport the person to their home. The worker will then be required to submit for a further test at the first available opportunity on the next working day before being able to resume their normal duties.

Where a person presents a negative result or result lower than the acceptable levels identified in this procedure the person will be permitted to commence or resume their normal duties. A worker who refuses to undertake an initial and/or second test will be presumed to be, and treated as if, a second ~~non-negative~~ positive test result was received.

A confirmatory breath test result of equal to the limits set out in 5. Definitions, *Confirmatory Test* of this Procedure, will be determined to be a positive alcohol test result.

## **15. Testing Procedure – Other Drugs**

### **15.1 Conducting the Test**

Workers identified to participate in a drug test will be required to undergo an oral swab test as per the Australian Standard ASNZS 4760 (2019). The test will be administered by a suitably qualified person.

Regular SSAA employees may also be required to undertake urine testing as per AS/NZS 4308:2008.

### **15.2 Workers with prescribed medication**

It is recognised that certain prescription medication may return positive results during testing, and it is the responsibility for any worker, in accordance with Council's work health and safety policies and procedures, to inform their supervisor if they are taking any prescription medication that may cause impairment whilst at work.

Where practicable, the tester shall provide a list of medications which may provide a false positive result.

Any worker required to undertake drug testing can choose to declare any medication taken immediately prior to the test being conducted or can declare following the initial test if an initial ~~non-negative~~ positive result is obtained. Such information is to be kept confidential and only to be used in determining if such medication has contributed to or caused a false positive.

If the worker declares the medication prior to any testing being conducted, and the drug class(es) declared is consistent with the drug class(es) detected at the initial screening test, then a fitness for work assessment is to be conducted by two responsible persons.

If the worker is assessed as being unfit to continue in their normal role, temporary re-deployment into alternate suitable duties may be available and Council will actively explore any opportunities that may be available at the time that would be suitable to the individual.

If the worker is assessed to be fit for work the worker will be permitted to return to work and will be allocated low risk tasks pending the results of the confirmatory test. There may be circumstances ~~as a result of~~because of the fit for work assessment, where a worker who normally operates or drives a Council vehicle or heavy/mobile plant will be unable continue to do so.

If the person is assessed to be unsafe to continue to operate vehicle or heavy/mobile plant or work in their normal position, then arrangements will be made to transport the person to their home or a safe place unless an acceptable form of public transport is available.

Council may request further information such as a medical certificate from the worker's doctor. If the person did not declare the medication prior to the testing being conducted, or if the drug class(es) declared is inconsistent with the drug class(es) detected, or there are methamphetamines present, then the person will be assessed as unfit for work and arrangements will be made to transport the person to their home or a safe place.

### **15.3 Confirmatory Test is ~~Non-Negative~~Positive and Consistent with Medication**

A confirmatory ~~non-negative~~positive test result for other drugs will be determined by the Australian Standard AS4760:2019.

The accredited testing laboratory will forward all test results to the Manager Human Resources in writing, identifying the confirmatory test was positive but consistent with medication declared.

If the worker has previously been allocated low risk duties, their fitness for work will be reassessed and the worker will either return to normal duties or remain on low-risk duties for the duration of the use of the medication, providing the duration of the use of the medication is a reasonable timeframe.

If the worker has been stood aside pending the confirmatory test results, the Manager Human Resources will contact them and request that they return to work once results have been received. On return to work, the Manager Human Resources in consultation with either the Supervisor and/or Manager will reassess their suitability for duties.

### **15.4 Confirmatory Test is ~~Non-Negative~~Positive and Not Consistent with Medication**

Once the accredited testing laboratory has forwarded the results to the Manager Human Resources the ~~worker or SSAA -and employee and~~ the applicable Manager will be advised in writing that the confirmatory test was ~~non-negative~~positive but inconsistent with the medication disclosed by the worker.

The letter of confirmation forwarded by Council to the worker confirming the test result will set out a nominated time and date when the worker and, if requested, their Union or other representative, will discuss further action with their relevant Manager(s). If the worker requests access to paid leave entitlements such as personal, annual, or long service leave, as part of the further action discussion, agreement to access to relevant leave entitlements will depend on the circumstances and will be managed in accordance with the Local Government (State) Award.

### **15.5 Confirmatory Test is Negative**

The accredited testing laboratory will forward the results to the Manager Human Resources who will then advise the worker and their supervisor that the confirmatory test result was negative.

If the worker has been stood down pending the outcome of the confirmatory test, the Manager Human Resources will contact them to arrange the workers return to work.

Any loss of pay or use of paid leave ~~as a result of~~because of being stood down will be reimbursed and reinstated in full by Council.

## **16. Refusal or Tampering of Tests**

### **16.1 Refusal**

The Manager Human Resources or other senior Manager shall use the following procedure if a person refuses to take an initial drug or alcohol test:

1. The authorised collector will inform the worker who has refused the test that the refusal will have the same consequences as a ~~non-negative~~positive result, i.e. that the worker will be deemed to be under the influence of drugs and/or alcohol.
2. The worker will be offered the test again. This would be the second request to be tested.
3. If the worker still refuses, the authorized collector will notify the relevant Manager and the Manager Human Resources ~~Officer~~ of the refusal to take the test. After discussion between the Manager and the worker, the Manager will re-offer the test to the worker. The Manager should discuss the refusal and likely consequences with the worker, try to determine the reasons for refusal and then re-offer the test. This will be the third and final offer to be tested.
4. If the worker still refuses, the refusal will be recorded as 'Refused Test'.
5. Arrangements will be made to transport the person to their home or a safe place.
6. The worker concerned will not be permitted to return to work until a discussion is held with the relevant Manager and the Manager Human Resources and a negative test result is obtained.
7. Whilst this result is being achieved, workers may be stood down and be entitled to access their own personal leave entitlements if available and if not, other available accrued leave entitlements in accordance with the Local Government Award.

## 16.2 Tampering

Any attempt to tamper with samples and introduce or alter the concentration of alcohol or other drugs in their own, or another's saliva, ~~or~~ breath or urine may constitute serious misconduct and be dealt with according to Council's Disciplinary Procedure.

"Adulteration Sticks" may be used at the testing stage ~~in the event that~~ if a sample appears suspicious at the discretion of the accredited laboratory securing the sample.

## 17. Procedure for ~~Non-Negative~~Positive Results

The relevant Manager, in consultation with the Manager Human Resources, is accountable for monitoring the frequency of targeted random testing for a worker who provides a ~~non-negative~~positive confirmatory result and shall determine the appropriate action in accordance with the following on a case-by-case basis. Targeted random testing will only be required:

- for drugs where the ~~non-negative~~positive confirmatory result was not in accordance with declared prescribed medication levels and
- for alcohol where a ~~non-negative~~positive result above the relevant blood alcohol limit applicable to the worker has occurred.

At all times during the positive test result process, the worker is entitled to have a Union representative or other representative of their choosing present at all discussions and/or disciplinary meetings should they so choose.

The relevant Manager will afford the worker procedural fairness and discuss the ~~non-negative~~positive result with the person. The relevant Manager will provide an opportunity for the worker to provide any information or comments that may be a mitigating factor when considering the confirmatory test result.

After consideration of this information the worker will be advised if they are required to participate in a targeted random testing process. The worker will be advised of counselling services available and, if necessary, or by the workers own request, be referred to an appropriate service.

Before a worker returns to work, they will be required to provide a negative test result. Whilst this result is being achieved, workers may be stood down and be entitled to access their own personal leave entitlements if available and if not, other available accrued leave entitlements.

Council may initiate disciplinary actions in accordance with the Local Government Award if the worker returns a second or third positive test within a two-year period.

Workers participating in voluntary self-testing have immunity from disciplinary action on the condition that they comply with the rehabilitation program and do not report for work and commence work in an unfit state after submitting for the initial voluntary test.

Any disciplinary action taken is to be in accordance with the provisions of the Local Government Award and inability to perform normal duties during any period ~~as a result of~~because of this procedure may result in a review of the worker's<sup>ss</sup> pay rate during this period which could result in a reduction in pay.

## **18. Reportable Offences**

It is an offence under the Road Transport Act 2013 NSW to drive or attempt to drive a motor vehicle, truck, or mobile equipment when under the influence of alcohol or other drugs in excess of legal limits.

## **19. Dealing with Aggressive or Abusive Behaviour**

If a worker displays aggressive or violent behaviour when required to ~~undertaken~~undertake an alcohol and/or other drug test, the Supervisor or Manager should remain calm and not argue with or mirror the worker's behaviour.

Emphasis should be placed on getting the worker to calm down and discussion kept away from personal issues. The worker should be asked to comply with the management direction and be informed that the worker will have the opportunity to dispute the decision through the normal grievance process utilized by Council.

If the worker refuses to modify their behaviour, the worker should be advised that the discussion is terminated and that they must leave the workplace immediately. The worker should be reminded that acts of aggression or violence in the workplace are in breach of the Code of Conduct and may result in dismissal.

In the case of actual or apprehended violent behaviour, the worker is to be advised that the police will be called. This option is to be used as a last resort.

## **20. Rehabilitation**

The worker's Manager and/or the Manager Human Resources may assist the individual worker in developing a rehabilitation plan to manage their fitness for work issue. The details of the plan should be agreed between the parties and may include the aim of the plan, the actions to be taken, the progress reporting procedure, the review date, and the timeframe for return to work.

The parties may also include, at the workers request, their Union representative or a representative of their choice to assist in the development of this plan.

With the approval of Council, personal leave benefits, long service leave, annual leave (where accrued) or unpaid leave may be available to the worker undertaking alcohol and/or other drugs rehabilitation or counselling. Such approval shall not to be unreasonably withheld. A rehabilitation plan template is included in this procedure at [Appendix 5](#).

## **21. Review and Audit**

The policy will be reviewed periodically by Council in consultation with interested parties including the Local Government unions (USU, DEPA, LGEA), the Work Health and Safety and Consultative Committees. It is understood that as new testing technology becomes available for alcohol and other drugs testing it should be considered in any review, provided it is based upon levels of drugs and alcohol which indicate impairment at work.

No alteration of this procedure is to occur prior to the conclusion of consultation and agreement being reached.

## **22. Other Council Policies and Procedures**

Other staff related policies and procedures should be read in conjunction with this procedure where required.

## **23. Grievances/Disputes Relating to this Policy**

Any dispute relating to the application of this procedure shall be settled in accordance with the Grievance and Dispute Settlement Procedure of the Local Government Award.

**APPENDIX 1 - Fitness for Work Assessment Observable Indicators of Impairment**

Assessment of a person is to be made in accordance with this list of observable indicators in the context of changes to a person's behaviour. At least 2 responsible persons must participate in the assessment.

At least one (1) of the physical indicators must be satisfied and agreed between the responsible persons for reasonable suspicion to be established.

Emotional effects (the second part of the table) should not be used as indicators of reasonable suspicion but may be recorded as additional information.

Name of person being assessed:		Name of Responsible Persons:	
Name of attending representative (if requested):		Date / Time:	

**Assessment Triggers**

Behaviour / actions / observations reported prior to this assessment:

<b>PHYSICAL INDICATOR</b>	<b>OBSERVED</b>
Strong smell of alcohol on breath	
Slurred, incoherent or disjointed speech (losing track)	
Unsteadiness on the feet	
Poor coordination/muscle control	
Drowsiness or sleeping on the job or during work breaks	
Inability to follow simple instructions	
Nausea/vomiting	
Reddened or bloodshot eyes	
Jaw clenching	
Sweating/hot and cold flushes	

<b>EMOTIONAL EFFECTS (Not a basis for reasonable suspicion)</b>	
Loss of inhibitions	
Aggressive or argumentative behaviour	
Irrational	
Intense moods (sad, happy, angry)	
Quiet and reflective	
Talkative	
Increased confidence	
Appearance or behaviour is 'out of character'	



**Observation Checklist – Physical Indicators**

BREATH	Smell of intoxicating liquor on breath: Nil ~~ Slight ~~ Strong~~
SKIN	Sweating/hot and cold flushes ~~
EYES	Reddened or bloodshot ~~
SPEECH	Normal ~~ Disjointed ~~ Slurred ~~ Confused Fast ~~ Slow ~~ ~~
BALANCE	Unsteady ~~ Swaying ~~ Slumping ~~Falling ~~
MOVEMENTS	Poor coordination/muscle control ~~
AWARENESS	Drowsiness or sleeping on the job or during work ~~~ breaks ~~~ Inability to follow simple instructions ~~
OTHER PHYSICAL SIGNS	Nausea/vomiting ~~ Jaw clenching ~~

**Questions**

Questions:	Response:
Can you give any reason for your appearance and behaviour as noted above:	
Could you be under the influence of drugs and / or alcohol?	
Have you consumed drugs and / or alcohol since the commencement of the shift?	

**Assessment Result**

No testing required (alternate action if applicable – note in comments section) ~

Testing required – at least one (1) physical indicator in evidence ~

Both Responsible Persons agree: Yes / No

\_\_\_\_\_

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**Comments** (including mitigating factors noted or explained by the person, emotional factors identified (refer to Appendix 1 *Observable indicators of impairment*), further actions to be taken etc.):

Signature of Person being assessed: Date / /

Signatures of Responsible Persons: Date / /

Date / /

Signature of attending representative (if attended): Date / /

.

**APPENDIX 2 - Indicators of Impairment by Drug (for information only)**

<b>Indicator (Physical)</b>	<b>Alcohol</b>	<b>Cannabis</b>	<b>Amphetamines</b>
Smell on the breath	x		
Slurred speech/speech disjointed (lose track)	x	x	
Unsteadiness	x	x	x (dizziness)
Poor coordination/muscle control	x	x	
Drowsiness / sleepy	x	x	
Can't follow instructions	x	x	
Blurred vision	x	x	
Lack of judgement	x	x	
Confused	x	x	x
Nausea/vomiting	x		x
Reddened eyes		x	
More awake and alert			x
Jaw clenching			x
Sweating/hot and cold flushes			x
<b>Effect Emotional)</b>	<b>Alcohol</b>	<b>Cannabis</b>	<b>Amphetamines</b>
Loss of inhibitions	x	x	
Aggressive or argumentative	x		x
Irrational	x	x	x
Intense moods (sad, happy, angry)	x	x	x
Quiet and reflective		x	
Talkative			x
Increased confidence	x		x
Appearance or behaviour is 'out of character'	x	x	x

## APPENDIX 3- Alcohol and other Drugs Policy and Procedure – Flowcharts

### AIM

The aim of the Alcohol and other Drugs policy and subsequent procedure is to assist the Council in addressing risks to health and safety in the workplace associated with the inappropriate use of alcohol and/or other drugs. This will also assist the Council in having a process to manage the misuse of alcohol and other drugs in the workplace through training, education, and where required rehabilitation.

The integration of the Alcohol and other Drugs Policy and procedure into Council's Safety Management System will assist with the continual improvement of workplace safety. It will assist with the management and promotion of fitness for work of staff (including contractors and volunteers) to be part of the Council's standard processes.

### TESTING IN USE

The Council in cooperation with the relevant unions (USU, LGEA and DEPA) and the LGSA have adopted the use of oral swab testing (to be completed as per the requirements of AS4760) for drug testing as it will generally detect the presence of a substance that was consumed within a matter of hours as opposed to testing such as urine where a substance was consumed days or weeks ago. A positive result in this case may not have a bearing on whether the person is unfit for work.

Drugs to be tested via the oral swab testing will be:

- Cocaine
- Opiates
- Methamphetamine
- THC

For alcohol testing a standard breathalyser meeting the requirements of AS3547 will be used. The following cut off points for blood alcohol content (BAC) will apply: 0.02 or greater for heavy plant operators (>13.9 tonne) or truck drivers (>4.5 tonne) or mobile plant operators. This will apply only for personnel who are undertaking these specific duties at the time of any testing.

0.05 or greater for all other staff to be in accordance with relevant state legislation. Where the person has a provisional licence (P plates) then the current BAC limits for P plates must be followed if they drive vehicles and/or trucks.

### COMMON DEFINITIONS

- **Confirmatory test:** means a second analytical test performed to identify the presence of specific alcohol and/other drugs. The confirmatory test is a retest of a second sample from an original collection if the initial test result is disputed.
- **Negative result:** a result other than a positive
- **Unconfirmed results:** is where a potential result for drugs has been obtained on the initial oral swab and the collection is sent to a certified laboratory for further confirmation.

- **Over the counter medication:** non-prescription ~~type~~type of medication that if consumed before a test is undertaken may influence the result shown.
- ~~Non-Negative:~~**Positive:** an initial positive test ~~as yet~~yet unconfirmed by confirmatory testing by an accredited tester.
- **Confirmed Positive:** where the initial test result has been confirmed by further testing that the person is under the influence of alcohol and/or drugs above a prescribed limit as per current legislation and/or Australian standards
- **Prescription medication:** medication that is prescribed by a doctor.
- **Random testing list:** persons will be added to this list who have either failed (tested ~~non-negative~~positive) a test or refused unreasonably a request for a drug and/or an alcohol test. Individuals placed onto the limited random list can be targeted tested at any time, in addition to the standard random testing undertaken by the council.
- **Responsible person:** A responsible person is a person who is appointed and trained in the identification of signs of impairment. The responsible person can ~~make an assessment of~~assess reasonable suspicion impairment utilising the objective indicators.

## TYPES OF TESTING

There are four types of testing that may be undertaken, these are:

- Voluntary Testing – Workers can elect to submit to voluntary testing and seek assistance from Council to rehabilitate if they believe they have a substance abuse problem.
- Random – Workers will be selected using a random number generation system.
- Post Reportable Incident – certain criteria of incidents have been selected where testing will be completed, for example certain treatments by a doctor, where a vehicle has sustained damage, skylarking etc. Further information is available in the procedure and Drug Testing Flowchart 002 (*Post Incident*). Contractors and volunteers will be tested for Post Incidents during the trial period.
- Reasonable Suspicion – this is where a report has been received that a worker is exhibiting strange or unusual behaviour and there is suspicion that they may be under the influence of alcohol and/or drugs. Two *Responsible persons* will be involved in the determination on whether a test for alcohol and/or drugs is required. Further information is available in the procedure and Drug Testing Flowchart 003 (*Reasonable Suspicion*).
- Targeted Random - (for workers who have given a confirmed positive result for alcohol and other drugs).

Testing will be undertaken by external providers who meet the current requirements contained within AS4760 and AS3547.

## **MEDICATION**

Any worker required to undertake drug testing can choose to declare any medication taken immediately prior to the test being conducted or can declare following the initial test if an initial ~~non-negative~~ positive result is obtained. Such information is to be kept confidential and only to be used in determining if such medication has contributed to or caused a false positive.

- If the drug test result is an unconfirmed result consistent with the medication disclosed then after consultation with the relevant Manager, the external provider and the person concerned, they will be returned to appropriate duties. The sample will still be sent for a confirmatory test as per the usual process. If this test shows that the result is not consistent with the medication declared, then the appropriate disciplinary action may be undertaken.
- If the drug test result is an unconfirmed result that is inconsistent with the medication disclosed, then the person will be assessed as unfit for work and arrangements made to transport home or to a safe place.

Further information is available in the procedure and Drug Testing Flowchart 009 (*Medication*).

## **REFUSAL TO UNDERGO A TEST**

Any person who refuses to undergo testing will be given the opportunity to explain their reasons, these will be discussed with the relevant manager, Human Resources, and the external provider. There will be a process implemented where if the person refuses to undergo a reasonable request test three (3) times in succession, this will be recorded as a *Refused test* and the person will be treated as if they have provided a test result of an unconfirmed result. For further information refer to the procedure and Drug Testing Flowchart 004 (*Refusal*).

## **TAMPERING**

Any person found to be tampering or have tampered with a test in will be dealt with as per the current disciplinary procedures that the Council has in place.

## **EMPLOYEE ASSISTANCE PROGRAM (EAP)**

EAP will be available under current guidelines for employees to seek support and assistance ~~in regards to~~ regarding alcohol and/or drug use.

## **DISCIPLINARY MEASURES**

Persons who have provided a result that is an unconfirmed result (including refusing to undergo a test) will in most instances be suspended for an initial 24 hours and will have to provide a negative result before they can return to work. If the subsequent result from the confirmatory test is a positive, then the person may face further disciplinary action as determined by the relevant manager and HR. The person will also be placed onto the limited random testing list.

The person who has been suspended will be able to access leave entitlements that they are entitled to as per the current award or contract.

Continual positive results and/or refusal to undergo tests will result in further disciplinary action being considered and undertaken.

Any person who has been suspended on an initial test result of a ~~non-negative~~positive that now is deemed a negative after the confirmatory test has been completed will have all time lost reimbursed with no penalty.

Further information is available in the procedure and Drug Testing Flowchart 008 (*Disciplinary Action*).

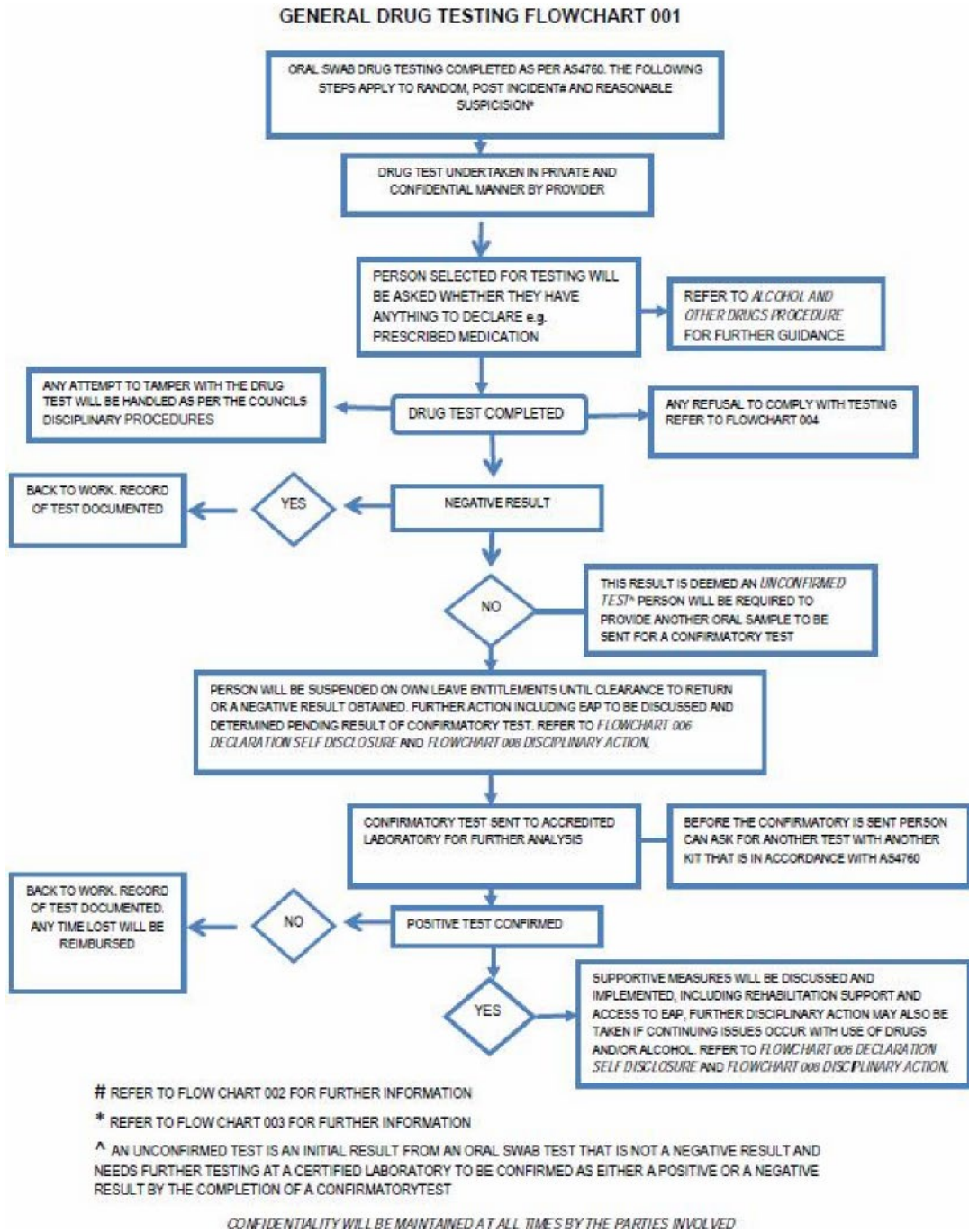
## **REHABILITATION**

Workers who have declared that they have a problem with the use of drugs (illegal and legal) and/or alcohol will be ~~provided assistance~~helped by the Council as per the current EAP arrangements or as determined appropriate by their manager. This will involve the development of a confidential Drug & Alcohol Rehabilitation plan that will outline general treatment steps, assistance to be sourced, personnel to be involved etc. The plan will be used to assist the person to be able to present themselves at work in a state where there is no impairment to them working safely.

Persons who have been found to have a positive result from a drug and/or alcohol test and who have not declared that they may have consumed a drug and/or alcohol or who have presented themselves to work in a state that is not safe to do so, will also have a confidential Drug & Alcohol Rehabilitation plan implemented.

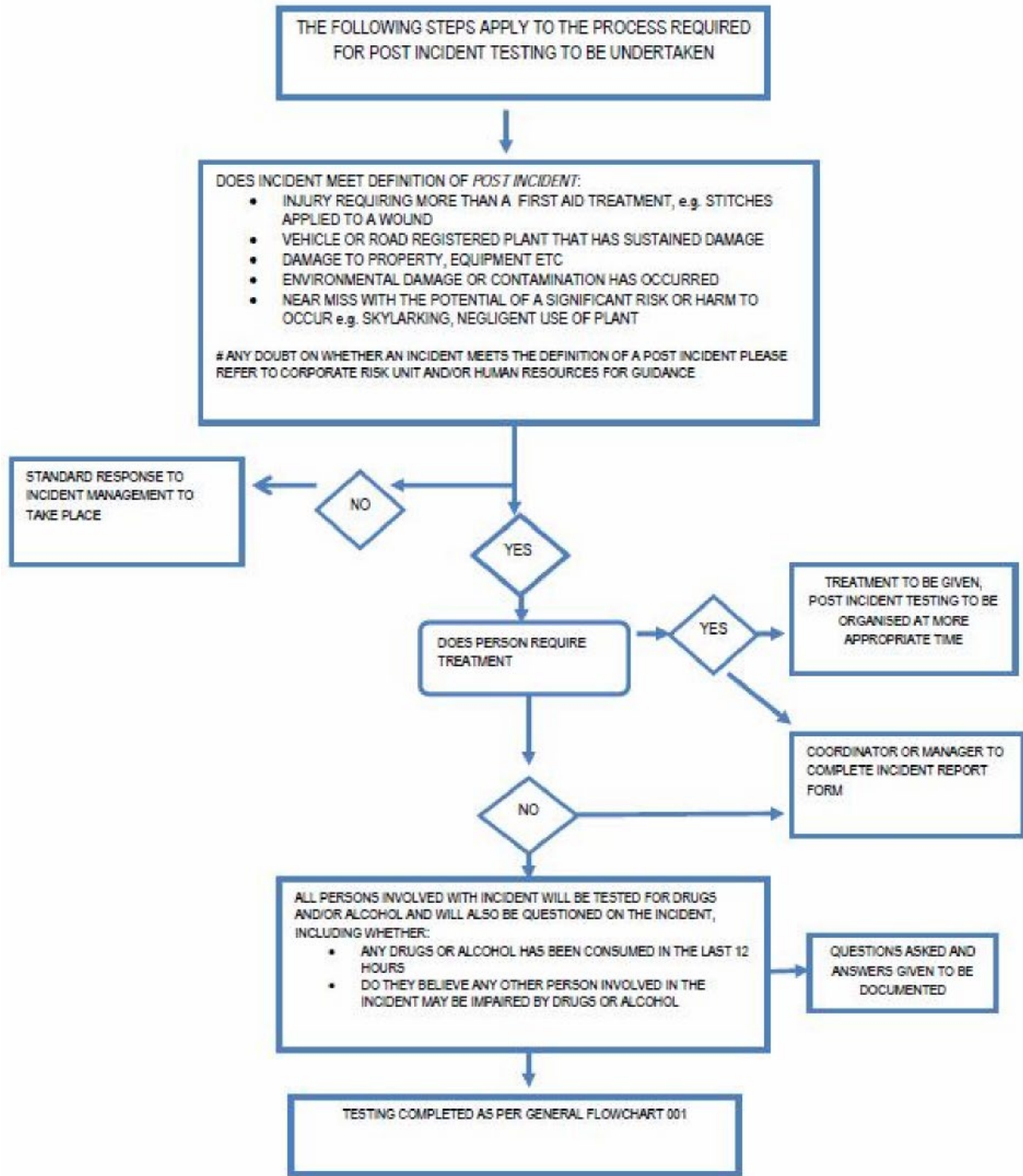
Further information is available in the procedure and Drug Testing Flowchart 006 (*Declaration*)

If you have any questions or concerns, please discuss with your manager, Human Resources and/or union representative.



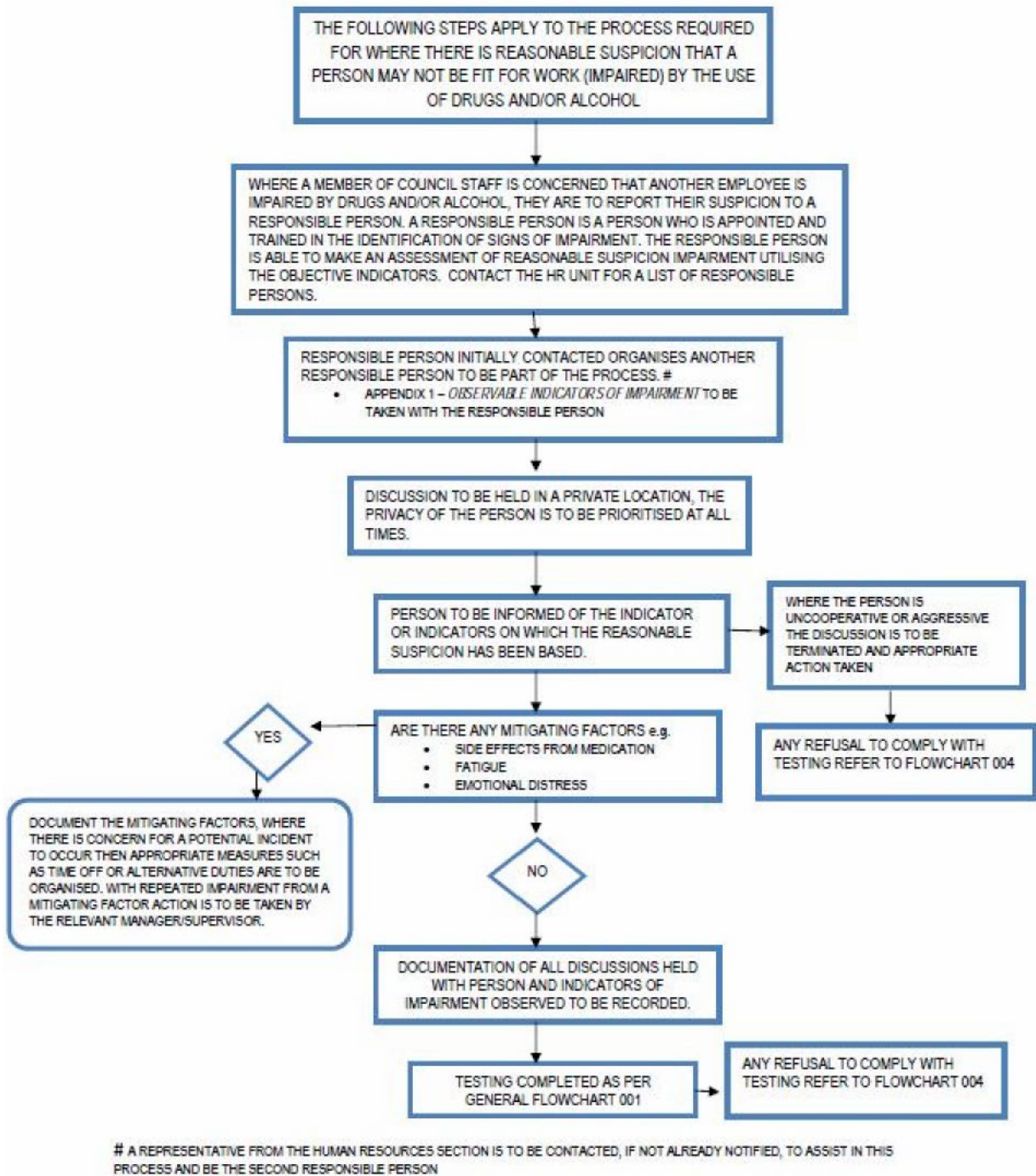


**POST INCIDENT TESTING FLOWCHART 002**



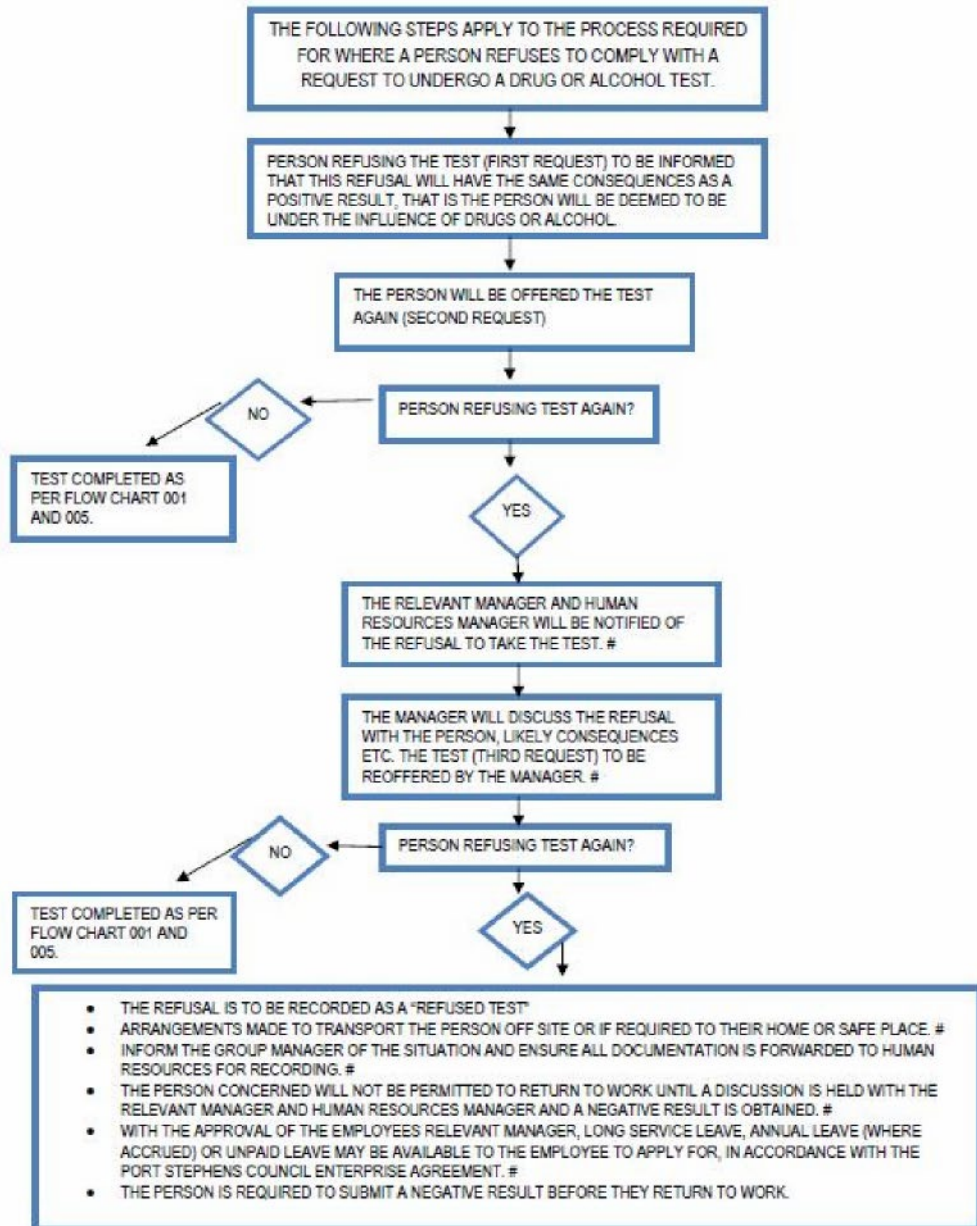
*CONFIDENTIALITY WILL BE MAINTAINED AT ALL TIMES BY THE PARTIES INVOLVED*

**REASONABLE SUSPICION FLOWCHART 003**



CONFIDENTIALLY WILL BE MAINTAINED AT ALL TIMES BY THE PARTIES INVOLVED

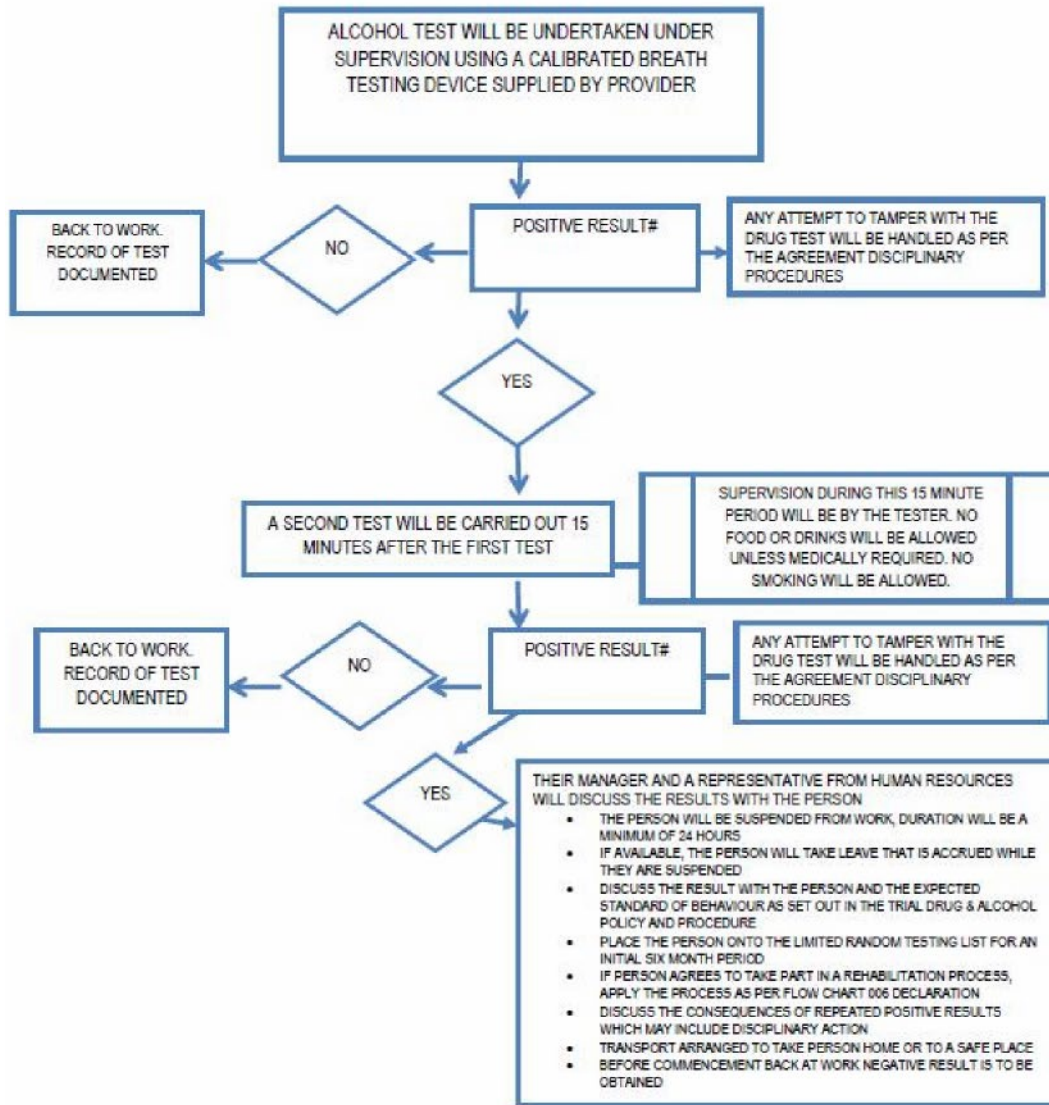
REFUSAL TO UNDERGO A DRUG OR ALCOHOL TEST FLOWCHART 004



# FOR CONTRACTORS THEIR EMPLOYER IS TO BE CONTACTED TO ASSIST IN THIS PROCESS

CONFIDENTIALITY WILL BE MAINTAINED AT ALL TIMES BY THE PARTIES INVOLVED

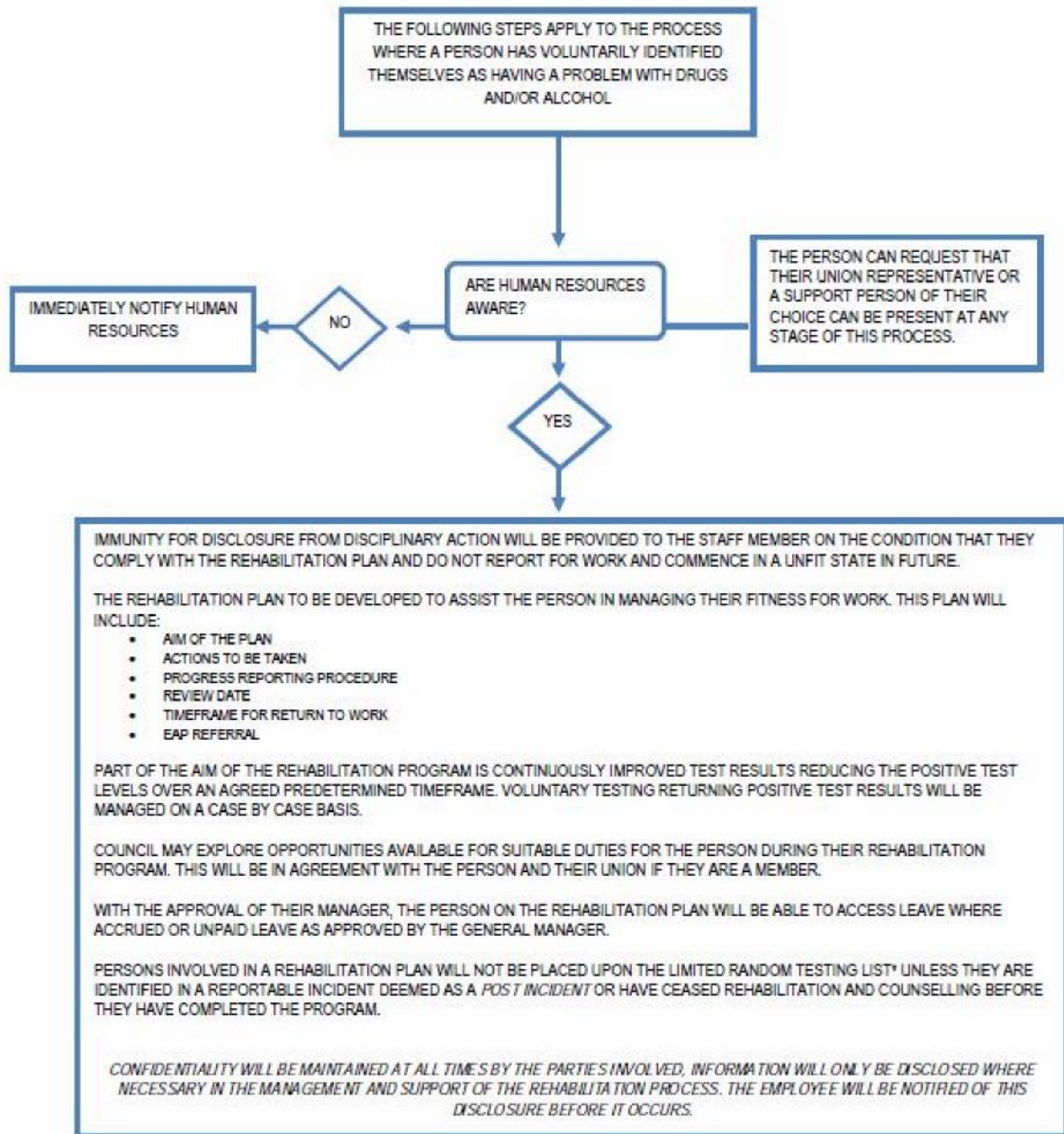
**ALCOHOL TESTING FLOWCHART 005**



# 0.02 OR GREATER BLOOD ALCOHOL CONTENT (BAC) FOR HEAVY PLANT OPERATORS (>13.9 TONNE) OR TRUCK DRIVERS (>4.5 TONNE) OR MOBILE PLANT OPERATORS – THIS WILL APPLY ONLY FOR PERSONNEL WHO ARE UNDERTAKING THESE SPECIFIC DUTIES AT THE TIME OF ANY TESTING.  
 0.05 OR GREATER BLOOD ALCOHOL CONTENT (BAC) FOR ALL OTHER STAFF TO BE IN ACCORDANCE WITH RELEVANT STATE LEGISLATION.  
 WHERE THE PERSON HAS A PROVISIONAL LICENCE (P PLATES) THEN THE CURRENT BAC LIMITS FOR P PLATES MUST BE FOLLOWED IF THEY ARE DRIVE VEHICLES/TRUCKS.

CONFIDENTIALITY WILL BE MAINTAINED AT ALL TIMES BY THE PARTIES INVOLVED

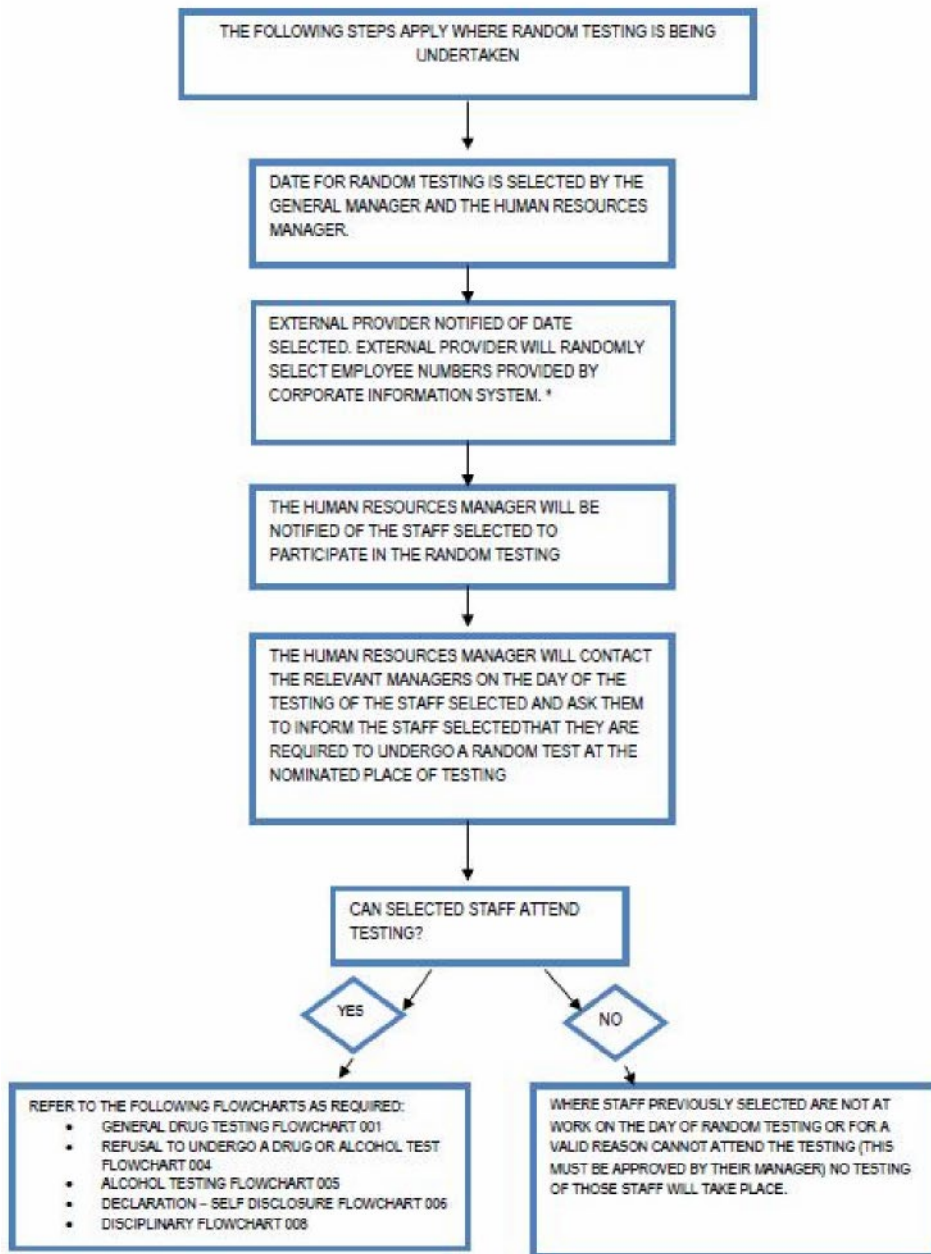
**DECLARATION – SELF DISCLOSURE FLOWCHART 006**



\* THE LIMITED RANDOM LIST WILL BE LIMITED TO THOSE INDIVIDUALS WHO HAVE EITHER FAILED A DRUG AND/OR ALCOHOL TEST OR WHO REFUSED UNREASONABLY A TEST THAT HAS BEEN REQUESTED. INDIVIDUALS PLACED ONTO THE LIMITED RANDOM LIST CAN BE TARGETED TESTED AT ANY TIME, IN ADDITION TO THE STANDARD RANDOM TESTING UNDERTAKEN BY THE COUNCIL.

THE INITIAL PERIOD FOR LISTING IS SIX (6) MONTHS. AT THE COMPLETION OF THIS SIX (6) MONTHS, IF THERE ARE NO FURTHER POSITIVES OR UNREASONABLE REFUSALS, THE PERSON WILL BE REMOVED FROM THE LIMITED RANDOM LIST. WHILE ON THE LIST ANY FURTHER POSITIVE RESULTS OR UNREASONABLE REFUSAL WILL RESULT AN EXTENSION OF TWO (2) YEARS OF THE PERSON BEING ON THE LIST. THIS WILL DATE FROM THE MOST RECENT FAILED TEST OR UNREASONABLE REFUSAL TO COMPLY WITH TESTING. AT THE COMPLETION OF THIS TWO (2) YEAR PERIOD, IF THERE ARE NO FURTHER POSITIVES OR UNREASONABLE REFUSALS, THE PERSON WILL BE REMOVED FROM THE LIMITED RANDOM LIST.

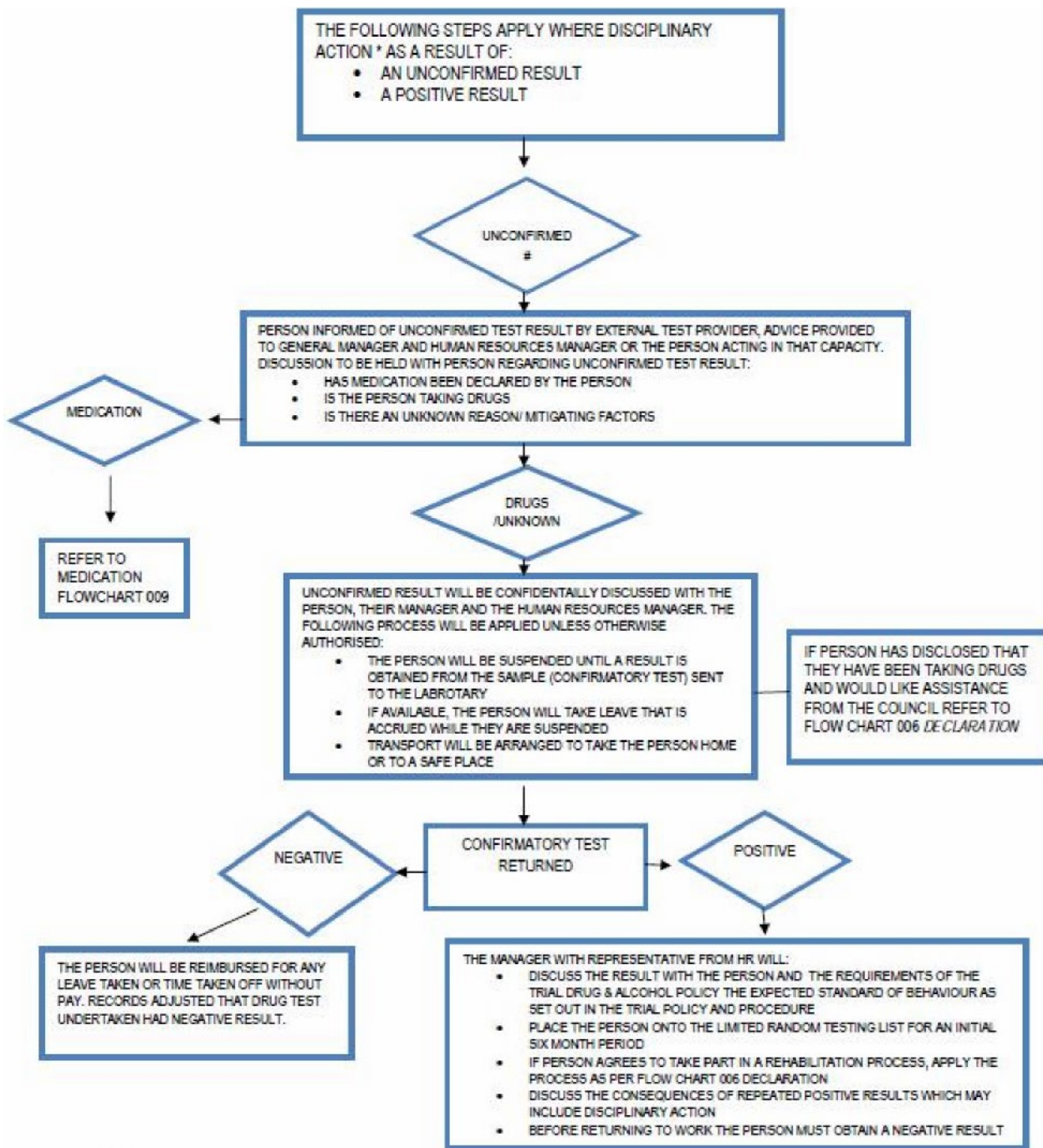
**RANDOM TESTING FLOWCHART 007**



\*THE EXTERNAL PROVIDER WILL USE STAFF EMPLOYEE NUMBERS TO RANDOMLY SELECT A PREDETERMINED NUMBER OF STAFF FOR RANDOM TESTING. THIS SELECTION WILL ALSO INCLUDE AN ADDITIONAL NUMBER OF STAFF AS A BACKUP IN CASE STAFF SELECTED ARE NOT AVAILABLE. AT NO STAGE WILL STAFF NAMES BE KNOWN BY THE EXTERNAL PROVIDER WHILE THEY ARE SELECTING RANDOM ENTRIES. STAFF NAMES WILL ONLY BE KNOWN TO THE EXTERNAL PROVIDER AT THE TIME OF THE RANDOM TEST.

*CONFIDENTIALLY WILL BE MAINTAINED AT ALL TIMES BY THE PARTIES INVOLVED*

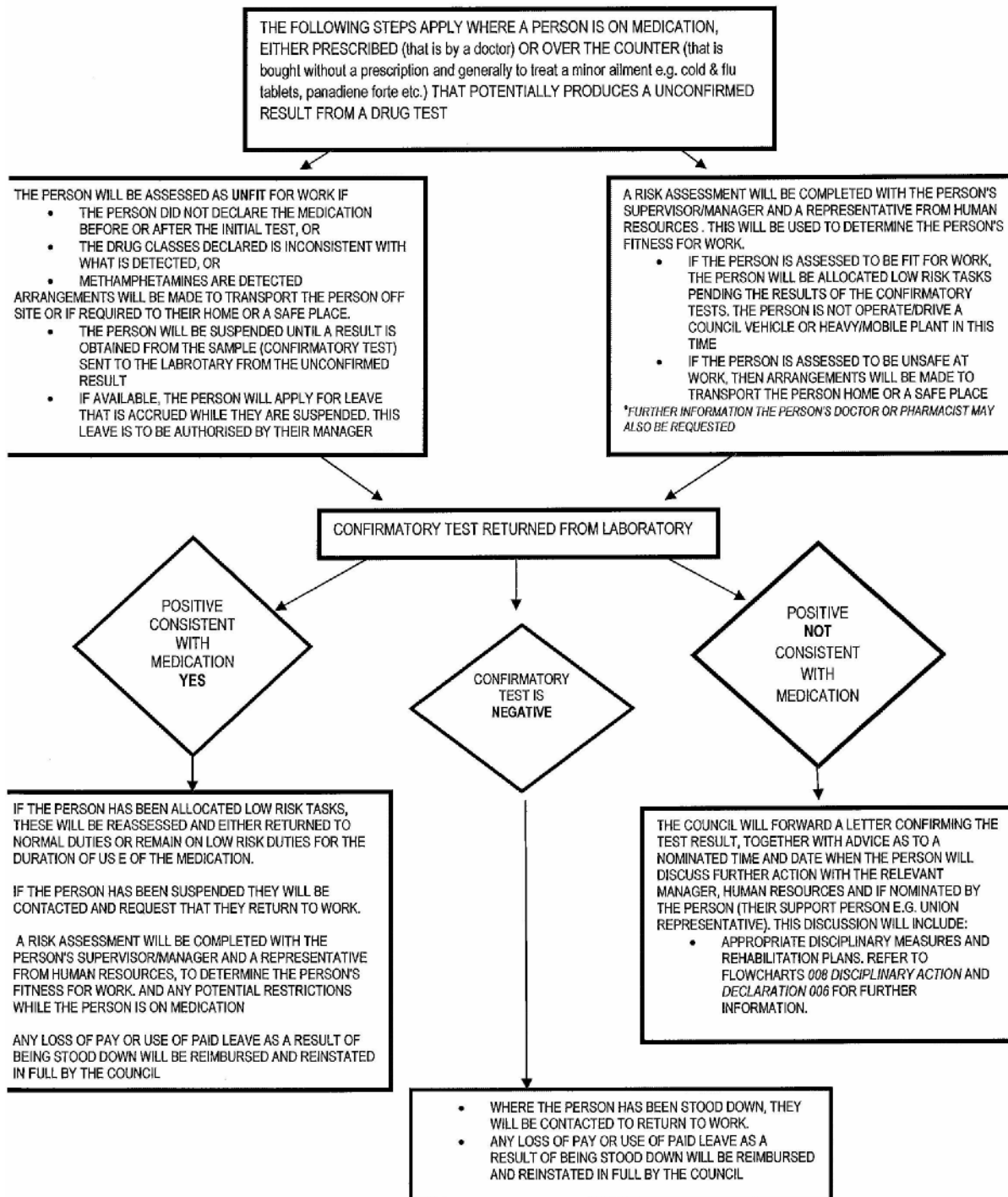
**DISCIPLINARY ACTION FLOWCHART 008**



\* FOR ALCOHOL TESTING AND SUBSEQUENT DISCIPLINARY PROCESS PLEASE REFER TO ALCOHOL TESTING FLOWCHART 005  
 # AN UNCONFIRMED TEST IS AN INITIAL RESULT FROM AN ORAL SWAB TEST THAT IS NOT A NEGATIVE RESULT AND NEEDS FURTHER TESTING AT A CERTIFIED LABORATORY TO BE CONFIRMED AS EITHER A POSITIVE OR A NEGATIVE RESULT BY THE COMPLETION OF A CONFIRMATORY TEST

*CONFIDENTIALITY WILL BE MAINTAINED AT ALL TIMES BY THE PARTIES INVOLVED*

**PERSONS ON MEDICATION WITH UNCONFIRMED RESULT FLOWCHART 009**



CONFIDENTIALITY WILL BE MAINTAINED AT ALL TIMES BY THE PARTIES INVOLVED



## **APPENDIX 4**

### **Dear Doctor/Pharmacist Card**

*This should be printed on the back of Council's normal business card template and distributed to all staff for them to carry with them so they can discuss drug effects with their Doctor or Pharmacist.*

Dear Doctor/Pharmacist

The holder of this card may be subject to a drug screen as part of their employer's Fitness for Duty program. Can you please advise the holder if their medication(s) contain any of the following drug groups:

- Opiates (including codeine)
- Amphetamines (including pseudoephedrine)
- Benzodiazepines

**APPENDIX 5****Drug & Alcohol Rehabilitation Plan - Confidential**

The following Rehabilitation Plan has been developed for:

**Employee:**

**Phone:**

**Goal:** to present to work and during work to be in a fit state without impairment that would prevent them from being able to undertake their duties in a manner that is safe and to current legislation.

**Current rehabilitation issues:** *can be what has been tested positive for, concerns or issues that they have with their addiction etc*

**Steps that have been agreed:** *for example, to take time off for an initial review of their addiction, factors affecting their addiction, make appointments with EAP provider, seek further counselling/intervention from organizations that may provide more specific addiction counselling such as alcoholics anonymous, a time frame for these steps to be commenced, review and completion*

**Agreed costs:** *what the council has agreed to fund, e.g. fees for extra counselling above normal EAP sessions, type of leave to be accessed etc*

**Persons involved:** *who are the personnel involved with this rehabilitation plan that will have access to information contained, who can authorize (with the person's permission) additional persons etc*

**Comments:**

The following parties have agreed to the above Rehabilitation Plan:

Employee: \_\_\_\_\_ Date: / /

Supervisor/Manager: \_\_\_\_\_ Date: / /

Manager HR (or authorized HR representative): \_\_\_\_\_ Date: / /

Doctor (if applicable): \_\_\_\_\_ Date: / /

Union Representative: \_\_\_\_\_ Date / /

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