

## S-W1-Alcohol and Other Drugs Policy

### Purpose

The aims of this Policy are to:

- a) Create a safe and healthy work environment for all workers, contractors and visitors which is free from the hazards associated with the inappropriate use of alcohol and/or other drugs.
- b) Create a supportive workplace culture that acknowledges and encourages employees to accept individual responsibility for workplace health and safety and to acknowledge that participating in the nominating of employees 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 relevant union.
- c) Provide support for workers who may have difficulty addressing alcohol and/or drug related issues.
- d) 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.
- e) Ensure the Council meets its legal obligations by providing a safe working environment for its workers and the general public.

<b>Department</b>	Workplace Health and Safety
<b>File No.</b>	PER/0500
<b>Council Meeting Date</b>	29 March 2022
<b>Minute Number</b>	66.03.2022
<b>Next Review Date</b>	Four (4) years from Council Resolution Date
<b>Review History</b>	309.08.09    20 August 2009 66.03.2022    29 March 2022

### 1 Definitions

<b>Alcohol</b>	The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols in methyl and isopropyl alcohol, no matter how it is packaged or in what form the alcohol is stored, utilised or found. (The only exception is products which contain alcohol and are used for legitimate reasons in the workplace.)
<b>Authorised Functions</b>	An Authorised Function is a function organised for a clear and defined purpose for Workers and/or Others in the Workplace – e.g. end of year/Christmas functions and retirement functions. Authorised Functions must be approved in writing by relevant Managers/Supervisors in accordance with their applicable written delegations/authority.
<b>Authorised Representative</b>	A person who has been given permission, in writing, to enquire, update, or act on your behalf.
<b>BAC</b>	The blood alcohol concentration as measured by breath analysis on an Australian Standard compliant breath testing device when operated by an Accredited Technician and/or by laboratory analysis of a saliva sample.
<b>Council</b>	Flinders Council
<b>Councillor</b>	An elected member of Council known as a Councillor or otherwise meeting the definition of a 'councillor' as defined under section 3 of the <i>Local Government Act 1993</i> (TAS)

<b>Drugs</b>	Medicine or other substance which has a physiological effect when ingested or otherwise introduced into the body and includes Illicit Drugs, Over The Counter (OTC) Drugs and Prescription Drugs.
<b>Employee</b>	A person who carries out work for Council as an employee of Council.
<b>EAP</b>	Employee Assistance Program - A confidential, professional counselling service available to Council employees.
<b>Fit For Work Limits</b>	The limits or cut off amounts prescribed by this Policy at clause 4.2 (Fit For Work Limits) when a person is deemed to be unfit for work.
<b>General Manager</b>	The general manager of Council as appointed under section 61 of the <i>Local Government Act 1993</i> (TAS).
<b>High Risk Worker</b>	Worker carrying out, or who could be reasonably expected to be available to perform High Risk Work.
<b>Illicit Drugs</b>	Has the same meaning as Prescribed Illicit Drug in the <i>Road Safety (Alcohol and Drugs) Act 1970</i> (TAS) and as prescribed in the <i>Road Safety (Alcohol and Drugs) Regulations 2009</i> (TAS).
<b>Infringing Workplace Behaviour</b>	Any act or omission, which amounts to a breach of any Council policy, contractual obligation, relevant Federal or State Legislation or misconduct at common law.
<b>Manager</b>	A person at the Workplace who is appointed to a position that has management responsibilities for others or their appropriately nominated or authorised delegate.
<b>Negative Test Result</b>	A result that indicates that a specimen did not exceed specified Fit For Work Limits.
<b>Nominated Council Delegate</b>	The General Manager, or a person delegated authority by the General Manager.
<b>Non-Negative Test Result</b>	A test result that is at or above the specified Fit For Work Limits or that indicates the result was adulterated (tampered with), substituted or invalid.
<b>Other Persons at the Workplace</b>	Any person at the Workplace who is not a Worker including visitors and ratepayers.
<b>OTC Drugs</b>	'Over the Counter' Drugs available to persons without a prescription.
<b>Policy</b>	This Alcohol and Other Drugs Policy including the 'Application and Authority'.
<b>Powered Mobile Plant</b>	Plant or equipment that is provided with some form of self-propulsion which is ordinarily under the direct control of the operator.
<b>Prescription Drug</b>	Drug prescribed by an individual person's treating medical practitioner for a medical condition.
<b>Random Testing</b>	Testing performed to assess Fit For Work Limits by the Testing Organisation on Workers and Other Persons at the Workplace who are chosen on a "neutral-selection" basis without advance notice. Random Testing is conducted by selecting for testing a random number of participants determined by Council from the total number of participants in the random pool.
<b>Reasonable Grounds</b>	An objectively justifiable suspicion based on specific facts or circumstances that justifies a request for testing at the time. The facts or circumstances are not necessarily medically based and are consistent with the published potential effects of being under the influence of drugs and/or alcohol.
<b>Rehabilitation Program</b>	A program offered and run by a reputable organisation directed at addressing Alcohol and/or Drug abuse with its purpose being to rehabilitate program participants
<b>Testing Organisation</b>	An organisation that offers services for Alcohol and/or Drug testing in the Workplace conducted in accordance with applicable Australian Standards. This organisation is chosen at Council's discretion, may include Council (ie internal testing) and may be amended from time to time.
<b>Worker</b>	A person, who carries out work in any capacity for Council, including work as: <ul style="list-style-type: none"> <li>a) an Employee;</li> <li>b) a Councillor;</li> <li>c) a contractor or sub-contractor;</li> <li>d) an employee of a contractor or subcontractor;</li> <li>e) an employee of a labour hire company who has been assigned to work at Council;</li> </ul>

	<ul style="list-style-type: none"> <li>f) an outworker;</li> <li>g) an apprentice or trainee;</li> <li>h) a student gaining work experience; or</li> <li>g) a volunteer.</li> </ul>
<b>Workers with Prescribed Limits</b>	<p>Classes of employees who, after consultation with Workers, are determined to reasonably fall within the categories of Workers who have their maximum allowable BAC prescribed by:</p> <ul style="list-style-type: none"> <li>a) legislation;</li> <li>b) accreditation requirements of their position;</li> <li>c) licensing requirements of their position; and/or</li> <li>d) other express regulation</li> </ul>
<b>Workplace</b>	A place where work is carried out for Council.
<b>Training</b>	Council will provide all persons covered by this Policy with appropriate training so they are made aware of their responsibilities and obligations under the Policy.
<b>Amendment</b>	Council retains the sole discretion to vary, terminate or replace this Policy from time to time. Council will consult before amendments are made and will notify and train those the amendments apply to.
<b>Interpretation of Policy</b>	<ul style="list-style-type: none"> <li>(a) The singular includes the plural and vice versa.</li> <li>(b) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.</li> <li>(c) A reference to policy or procedure means any approved policies or procedures of Council unless otherwise stated.</li> <li>(d) 'Including' and similar expressions are not words of limitation.</li> <li>(e) A reference to a document (including this document) is to that document as amended, novated or replaced unless otherwise stated.</li> <li>(f) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.</li> <li>(g) Examples used in this Policy are for illustrative purposes only and are not intended to be exhaustive and depending on the circumstances may or may not amount to Infringing Workplace Behaviour.</li> <li>(h) Unless expressly provided for this Policy is not in any way incorporated as part of any enterprise agreement and does not form part of any Employee's contract of employment and any applicable enterprise agreement or contract of employment will prevail over this Policy to the extent of any inconsistency.</li> <li>(i) It is not intended that this Policy impose any obligations on the Council or those covered by it that are unreasonable or contrary to the operation of Applicable Laws. Any obligation, direction, instruction or responsibility imposed by this Policy must be carried out in a manner that an objective third party would consider to be fair and reasonable taking into account and in the context of all the relevant Applicable Laws, operational and personal circumstances.</li> </ul> <p>Questions relating to the interpretation, application or enforcement of this Policy should be directed to a person's Manager.</p>
<b>Reporting of Breaches</b>	<p>Persons covered under paragraph <b>Error! Reference source not found.</b> (Scope) must reasonably report breaches of Infringing Workplace Behaviour.</p> <p>For breaches by:</p> <ul style="list-style-type: none"> <li>a) an Employee (other than the General Manager), or other Workers, the report must go to the reporting person's applicable Manager;</li> <li>b) an Other Person at the Workplace, to the General Manager; and/or</li> <li>c) the General Manager, the report must go to the Mayor (or if unavailable to the next appropriately delegated Councillor);</li> <li>d) a Councillor report must go to the Mayor;</li> <li>e) The Mayor's report must go to the General Manager; and</li> </ul>

<b>Breach of Policy</b>	<p>f) as otherwise required or permitted by Applicable Laws.</p> <p>Persons covered under paragraph. (Scope) who engage in Infringing Workplace Behaviour may (as is appropriate and as applicable) be subject to appropriate disciplinary action in accordance with Disciplinary Policy and Procedure (Employees), or removal from the Workplace or termination of services (Workers [other than Employees] and Other Persons at the Workplace). Infringing Workplace Behaviour may also amount to breaches of Applicable Laws:</p> <p>(a) exposing individuals to legal proceedings; and  (b) making Council vicariously liable for conduct of others.  (*See section 4.6 (Breach of this Policy for more explanation)</p>
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## 2 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 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:

- a) eliminate the risks associated with the misuse of alcohol and other drugs, thereby providing a safer working environment;
- b) to reduce the risks of alcohol and other drugs impairment in the workplace; and
- c) 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.

## 3 Scope

3.1 This Policy covers and applies to Workers and Other Persons at the Workplace in relation to:

- a) behaviour at the Workplace;
- b) the performance of work for or in connection with Council; and
- c) conduct outside the Workplace or working hours if the acts or omissions:
  - i. are likely to cause serious damage to the relationship between Council and Workers or Other Persons at the Workplace;
  - ii. are incompatible with a Worker's or Other Person at the Workplace's duty to Council; or
  - iii. damage or are likely to damage Council's interests or reputation.

3.2 This Policy is to be read and applied in conjunction with Council's Fitness for Work Policy.

## 4. Policy

### 4.1. Requirements

- a) Workers and Other Persons at the Workplace are required to meet their duty of care obligations and to be accountable for their own safety and the safety of others at the Workplace.
- b) Workers must present for work in a state where they are not under the influence of Alcohol or Drugs and must not exceed the Fit For Work Limits.
- c) Workers and Other Persons at the Workplace (unless otherwise notified in writing) are required to adhere to lawful and reasonable directions, policies and procedures regarding compliance with this Policy.
- d) Managers are required to promote this Policy within their area of responsibility and take reasonable steps to ensure that any potential breaches of this Policy are identified, taken seriously and acted upon appropriately.
- e) Workers and Other Persons in the Workplace must not possess, sell, distribute or consume Illicit Drugs in the Workplace.
- f) Workers and Other Persons in the Workplace must not sell or distribute Prescription Drugs in the Workplace to any other person.
- g) Workers and Other Persons in the Workplace are only permitted to possess or consume Prescription Drugs in the Workplace in accordance with a prescription/ other medical authority and where it does not represent an unreasonable health and safety risk.
- h) Workers and Other Persons in the Workplace must not sell, or unless a designated First Aid Officer, distribute OTC Drugs in the Workplace to any other person.
- i) Workers and Other Person in the Workplace must not possess, sell, distribute or consume Alcohol in the Workplace except where such possession, sale, distribution or consumption is:
  - i. related to or in connection with an Authorised Function;
  - ii. in the case of possession, where the Alcohol is not intended for consumption at the Workplace or during working hours and is not in fact consumed at the Workplace or during working hours; or
  - iii. with the permission of the Worker's Manager.

## **4.2. Fit For Work Limits**

### **4.2.1. Alcohol**

Workers must have a BAC which does not exceed 0.00 grams of Alcohol per 100 millilitres of blood at work.

### **4.2.2. Illicit Drugs**

Workers must not have Illicit Drugs present in their system at any time while at work and/or carrying out work.

### **4.2.3. Prescription Drugs and/or OTC Drugs**

Workers must not have any OTC Drugs and/or Prescription Drugs present in their system at any time while at work and/or carrying out work in any quantity which renders them unfit for work and/or affects the Worker's ability to perform work safely.

### **4.3. Prescription Drugs and/or over the counter drugs**

#### *4.3.1. Fitness for work*

- a) The use of some OTC Drugs and/or Prescription Drugs may impact on a Worker's ability to perform work safely.

#### *4.3.2. Disclosure of OTC Drugs and/or Prescription Drugs*

- a) If a Worker is required to participate in Drug testing, prior to participating in the test, the Worker, may disclose to the testing organisation if they are using, taking or have recently taken or used OTC Drugs and/or Prescription Drugs.
- b) If the test returns a Non-Negative Test Result and the Worker has not disclosed that they are taking or have recently taken OTC Drugs and/or Prescription Drugs prior to the test, the Worker will be asked if they are taking or have recently taken OTC Drugs and/or Prescription Drugs. If the answer is "yes", the Worker will be required to complete and sign a disclosure detailing the OTC Drugs and/or Prescription Drugs they are taking or have taken recently.

### **4.4. When Council May Conduct Testing**

#### *4.4.1. Pre-employment testing*

Council may require Workers to participate in an Alcohol and/or Drug test before appointing the Worker to carry out work for Council to determine whether the Worker can complete the inherent requirements of the proposed work.

#### *4.4.2. Random testing*

Council may, at its absolute discretion, conduct Random Testing to determine Fit For Work Limits at any time immediately before the Worker commences work or during a period of time which the Worker is carrying out work.

#### *4.4.3. Casual testing*

- a) Post Reportable Incident Testing
  - i. Council may require a Worker to participate in testing for Alcohol and/or Drugs if the Worker has been involved in a Workplace incident which is a:
    - A. lost time injury;
    - B. incident whilst driving any motor vehicle;
    - C. incident whilst operating any item of Powered Mobile Plant;
    - D. notifiable incident under the Applicable Laws; or
    - E. near miss which, had it eventuated, would have been a notifiable incident under the Applicable Laws.
  - ii. 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 this failure, the testing will be conducted under Reasonable Grounds.

b) Reasonable Grounds

Council may require a Worker to participate in testing for Alcohol and/or Drugs where it is suspected by a Manager on reasonable grounds that a Worker has consumed/used/taken Alcohol and/or Drugs beyond Fit For Work Limits or is adversely affected by the consumption of Alcohol and/or Drugs at any time immediately before the Worker commences work or during a period which the Worker is carrying out work.

In such cases, for the purposes of maintaining the integrity of the process, the Manager who has suspected on reasonable grounds that a Worker has consumed/used/taken Alcohol and/or Drugs beyond Fit For Work Limits or is adversely affected by the consumption of Alcohol and/or Drugs will also be required to participate in testing for Alcohol and/or Drugs.

Where Council requires testing as a result of either 4.4.3(a) or 4.4.3(b) the Worker will be stood down without loss of pay until the requisite testing process is completed.

*4.4.4. Prescribed testing*

Council may require a Worker to participate in a series of scheduled or random tests for Alcohol and/or Drugs over a period of time determined by Council as part of:

- a) a rehabilitation program;
- b) return to work program; and/or
- c) any action taken in accordance with the Fitness for Work Policy; and/or
- d) if a Worker has previously returned a test from an Alcohol and/or Drugs test which exceeds the Fit For Work Limits.

*4.4.5. Compliance testing*

Council may- require a Worker to participate in testing for Alcohol and/or Drugs if Council is required or permitted to undertake testing in accordance with Applicable Laws.

**4.5. Authorised Functions**

*4.5.1. Guidelines for Authorised Functions*

- a) A Nominated Council Delegate may approve the moderate consumption and responsible serving of Alcohol during Authorised Functions.
- b) Workers who:

- i. are over the age of 18; and
- ii. who are not the holder of a provisional drivers licence and intending to drive after the Authorised Function

may consume Alcohol in moderation at Authorised Functions if Alcohol is made available and consumption of Alcohol is authorised by a Nominated Council Delegate.

- c) Authorised functions shall be conducted outside of working hours or, if during working hours, Workers will be directed not to return to work if they consume Alcohol.
- d) Authorised functions shall be supervised by a Nominated Council Delegate who shall be responsible for;
  - i. control of Alcohol distribution at the function;
  - ii. ending distribution of Alcohol at the designated time;
  - iii. offering and arranging transport for Workers who may be unable to return home safely (i.e. unable to drive) which may be at the Worker's own expense unless payment by the Council is specifically authorised by the General Manager (or their nominated delegate).
- e) If Alcohol is being offered at an Authorised Function, soft drink, water and other non-Alcohol alternatives will also be made available.
- f) Authorised functions may occur at the Workplace or at a public location.
- g) Workers are required to comply with reasonable directions regarding conduct and behaviour at Authorised Functions, in the same way as if the Worker was performing work. Such directions include, but are not limited to:
  - i. leaving the Authorised Function;
  - ii. organising their own, or accepting an offer of, safe transport home;
  - iii. not returning to work after consuming Alcohol; and
  - iv. ceasing consumption of Alcohol.
- h) Alcohol will not be displayed or offered at an Authorised Function in a manner which encourages excessive consumption.
- i) Alcohol drinking contests or games of any sort which involve the consumption of Alcohol are strictly prohibited at Authorised Functions.

#### **4.6. Breach of this Policy**

##### *4.6.1. Failure to comply with Fit For Work Limits*

- a) If an Employee fails to comply with Fit For Work Limits, Council will, at its discretion and having regard to the circumstances, take appropriate disciplinary action in accordance with Council's Disciplinary Policy.
- b) If a Worker (other than an Employee) or Other Person at the Workplace fails to comply with Fit For Work Limits Council will, at its discretion and having regard



to the circumstances, take appropriate action in accordance with its contractual, legislative or other obligations which may include removal from the Workplace or termination of services.

- c) Where a High Risk Worker exceeds the Fit For Work Limits on no more than two occasions within a 12 month period, the primary response from the Council will be to:
- i. allocate the Worker to a non-High Risk task where available; or
  - ii. where no non-High Risk tasks are available, require the Worker to access a period of personal leave;
- until such time as the Worker no longer exceeds the Fit For Work Limits.
- d) In considering the appropriate action Council recognises that Alcohol and other Drug abuse can be successfully managed and is committed to reasonably assisting Employees who suffer from these problems, whilst holding them responsible for their actions and ensuring the safety of all Workers and Others in the Workplace.
- e) Possible disciplinary or other action for Employees and/or responses for a failure to comply with Fit For Work Limits may include (but not limited to):
- i. exclusion from carrying out a particular type of work/ duties for Council;
  - ii. direction to return home at their own cost by the safest available alternative method to them driving their own or work vehicle;
  - iii. direction not to attend work (stand down) which may be with or without pay where specified in the applicable industrial instrument;
  - iv. requirement to undergo prescribed testing for Alcohol and/or Drugs as per 4.4.4 4.4.4 of this Policy;
  - v. recommendation to participate in EAP, action under Fitness for Work Policy, return to work program and/or a Rehabilitation Program;
  - vi. written warning;
  - vii. termination of employment; and/or
  - viii. a combination of any of the above or part thereof.

#### 4.6.2. *Other breaches and actions leading to action by Council*

- a) Council will, at its discretion and having regard to the circumstances, take appropriate action in accordance with Section 4.6 against any Worker who:
- i. refuses to participate in testing in accordance with this Policy;
  - ii. fails to disclose use of Prescription or OTC Drugs;
  - iii. avoids or attempts to avoid participating in Random Testing carried out in accordance with this Policy;
  - iv. tampers or attempts to tamper with a test sample;
  - v. lies or is dishonest in the conduct of any testing procedure or investigation arising out of a breach or an alleged breach of this Policy; or
  - vi. fails to comply with a direction or the guidelines for Authorised Functions set out in Part 9 of this Policy (Authorised Functions).

### 4.7. EAP/Rehabilitation

- a) To facilitate appropriate health outcomes and ensure that Workers are able to work in a manner that is not a risk to themselves, other Workers or Others in the Workplace, Council will, at Council's discretion and as reasonably appropriate in the circumstances, provide confidential support and assistance to Employees committed to addressing the abuse or inappropriate use of Alcohol and/or Drugs.
- b) For the purposes of a) above, Council may recommend that Employees contact the EAP and/or a Rehabilitation Program.

#### **4.8. Privacy and Confidentiality of Workers**

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:

- a) All testing will be conducted in a private location that maintains the privacy and dignity of the individual.
- b) All testing will be conducted by trained staff and/or accredited providers in accordance with Australian Standards.
- c) Workers who record a non-negative result will be treated at all times in a respectful and non-judgemental manner by all involved in the management of the matter.
- d) 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 authorised officers of the Council and authorised worker representative/s.
- e) The General Manager is authorised 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 authorised government agencies, insurers (for claims submissions, where applicable).
- f) Where the General Manager has authorised 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:
  - i. who the information will be released to;
  - ii. when and for what purposes the information will be released;
- g) 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.

#### **5 Legislation and Related Documents**

- *Age Discrimination Act 2004 (Cth)*
- *Anti-Discrimination Act 1998 (TAS)*
- *Australian Human Rights Commission Act 1986 (Cth)*
- *Disability Discrimination Act 1992 (Cth)*
- *Fair Work Act 2009 (Cth)*

- *Local Government Act 1993 (TAS)*
- *Marine Safety (Misuse of Alcohol) Act 2006*
- *Privacy Act (1988) (Cth)*
- *Racial Discrimination Act 1975 (Cth)*
- *Rail Safety National Law (Tasmania) Act 2012*
- *Road Safety (Alcohol & Drugs) Act 1970 (TAS)*
- *Sex Discrimination Act 1984 (Cth)*
- *Work Health & Safety Act 2012 (TAS)*
- *Workers Rehabilitation & Compensation Act 1988 (TAS)*
- Code of Conduct Policy
- Communications Policy
- Disciplinary Policy
- Fitness for Work Policy
- Issue Resolution Policy
- Performance Management Policy
- Workplace Behaviour Policy

## **6 Responsibility**

The responsibility for this policy rests with the General Manager.