

W3-P Fitness for Work Procedure

Purpose

Department Workplace Health and Safety

File No. PER/0500

Council Meeting Date 21 January 2016

Minute Number 06.01.2016

Next Review Date

Review History

Definitions	As per the Fitness for Work Policy
Training	Council will provide all persons covered by this Procedure with appropriate training, so they are made aware of their responsibilities and obligations under the Procedure.
Amendment	Council retains the sole discretion to reasonably terminate, replace or vary this Procedure from time to time. Council will consult before amendments are made and will notify and train those the amendments apply to.
Interpretation of Procedure	<ul style="list-style-type: none"> (a) The singular includes the plural and vice versa. (b) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements, or re-enactments of any of them. (c) A reference to policy or procedure means any approved policies or procedures of Council unless otherwise stated. (d) 'including' and similar expressions are not words of limitation. (e) A reference to a document (including this document) is to that document as amended, novated, or replaced unless otherwise stated. (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. (g) Examples used in this Procedure are for illustrative purposes only and are not intended to be exhaustive. (h) Unless expressly provided for, this Procedure is not in any way incorporated as part of any enterprise agreement and does not form part of any Worker's contract of employment and any applicable enterprise agreement or contract of employment will prevail over this Procedure to the extent of any inconsistency. (i) It is not intended that this Procedure 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 Procedure 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

	<p>relevant Applicable Laws operational and personal circumstances.</p> <p>Questions relating to the interpretation, application or enforcement of this Procedure should be directed to a person's Manager.</p>
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1. Guidelines

- a) The Fitness for work procedure is to be conducted with as little formality as possible. Particular processes in this Procedure will be utilised as considered reasonably necessary to ensure effectiveness.
- b) Procedural fairness appropriate to the circumstances should be provided to Workers by their Manager.
- c) The process should ensure appropriate confidentiality for all parties.
- d) A Worker may have a support person involved. The role of the support person is to assist Workers by providing emotional support, aiding the Worker's understanding or by taking notes, asking appropriate questions, or requesting breaks. A support person is not to be an advocate or speak on behalf of the Worker. An appropriate support person is a person who is not a party to a process or involved as a potential witness or who otherwise has a conflict of interest.
- e) A support person must maintain confidentiality and understand that a Worker's fitness for work is a private matter between the relevant parties, and the confidentiality of those processes should be respected at all times.

2. Procedure

2.1 Identify the risk or concern

2.1.1 Reasonable Grounds

- a) The first step is to consider whether Council has reasonable grounds to require a Worker to participate in a process to assess their fitness for work.
- b) Council will have reasonable grounds if there are reasonable concerns or issues that relate to the Worker's capacity to carry out the requirements of their current position in a way that ensures their safety and/or the safety of other Workers and Other Persons at the Workplace.
- c) For example:
 - i. there may already be evidence that provides a reasonable basis for a view that the Worker may not be fit to perform their role and it may be necessary to obtain further details;
 - ii. the Worker may be having performance issues that are not related to, for example, insufficient training, unreasonable

- time pressures or inadequate instructions about what they are required to do;
- iii. the Worker may be taking excessive amounts of unexplained leave or unauthorised absence;
 - iv. the Worker may have been absent from work because of illness or injury for a period of time, want to return to work but not have provided any or sufficient medical advice about their capacity to perform work safely;
 - v. the Worker may have been absent from work because of illness or injury for an extended period of time or have been certified as being incapacitated for an extended period in which case medical advice may be required to enable Council to make plans to accommodate the Worker's absence and return to work;
 - vi. Council may have conflicting or inconclusive expert advice or other evidence;
 - vii. there may be evidence from other Workers or Other Persons at the Workplace that Council has reasonably investigated that suggests that the Worker may not be fit to perform their role safely; or
 - viii. the Worker may claim that there are aspects of the Workplace or their work that are causing a risk to health or safety.

2.1.2 Temporary measures to ensure safety pending receipt of the Fitness for Work Assessment

- a) Where there are reasonable grounds, Council may need to identify whether any temporary working arrangements need to be put in place to ensure the Worker's safety or that of other Workers, or Other Persons in the Workplace pending receipt of the information required.
- b) Where Council has reasonable concerns about a Worker's fitness to return to work or to continue working it may, depending on the circumstances, direct the Worker to:
 - i. perform alternative duties; or
 - ii. stand down,while it obtains a fitness for work assessment.
- c) Council may pay a Worker who is stood down special paid leave providing that the Worker complies with any lawful and reasonable directions including reasonably co-operating with the procedure to obtain the fitness for work assessment.

2.1.3 Council's response to its fitness for work concerns

- a) The Worker should be notified that Council has identified a concern or risk and explain the reasons why it considers a fitness for work assessment is required.

- b) The explanation may include:
- i. that it is necessary to obtain appropriate evidence to assess the Worker's fitness for work and to ensure their safety;
 - ii. that the Worker's written consent will be required;
 - iii. that the costs associated with the assessment will be paid by Council;
 - iv. who the Assessor(s) will be;
 - v. that the Worker will need to attend an appointment and be examined;
 - vi. that a report will be produced by the person performing the assessment which will be provided to Council;
 - vii. that Council will consider the report and provide the Worker with a copy; and
 - viii. that Council will keep the Worker informed throughout the process and will consult with the Worker at each stage.
- c) This process may take place in one or more meetings, by email or telephone or any combination as appropriate in the circumstances.
- d) Council should consider any matters raised by the Worker and address any concerns.

2.2 Assess

2.2.1 Depending on the circumstances Council may obtain an assessment from a treating or non-treating medical practitioner or health professional or other relevant expert.

2.2.2 Requirements of the Assessment

- a) Council should prepare an appropriate letter to the Assessor(s) and provide the Worker with a copy.
- b) Letters to Assessor(s) may include the following depending on the circumstances:
 - i. relevant history;
 - ii. risks or concerns which provide reasonable grounds for the basis for the fitness for work assessment;
 - iii. a position description and/or task/duties list;
 - iv. relevant reports or other documents;
 - v. details of any reasonable modifications or adjustments to the current position or alternative positions that may be available;
 - vi. an invitation to the Assessor(s) to visit the Workplace and observe relevant tasks being performed; and
 - vii. what specific questions the Council requires the Assessor(s) to answer.

- c) Council may request the Assessor to address any relevant matter or specific matters including whether the Worker is:
 - i. fit to undertake the inherent requirements and job demands of their current position;
 - ii. fit to perform their current role with reasonable modifications or adjustments and/or a rehabilitation program (and for what period);
 - iii. presently unfit but will be fit to return to their current role at some stage in the foreseeable future;
 - iv. unfit for their current position now but will be fit to return to modified or alternative duties in the foreseeable future;
 - v. unfit for their current role but fit for alternative duties (and if so what) on a temporary or permanent basis; and
 - vi. permanently unable to carry out their current role and unable to do so into the foreseeable future.
- d) Council should consider any matters raised by the Worker regarding the requirements of the assessment.
- e) In some circumstances it may be reasonable for Council and the Worker to meet with the Assessor and discuss the fitness for work assessment in which case it will only do so with the Worker's consent which should not be unreasonably withheld. In some cases, this will allow the Assessor to better explain matters which are unclear and allow the information to be obtained faster. In these circumstances a written report may not be necessary.

2.3 Response to the Assessment

2.3.1 Consider potential outcomes from fitness for work assessment

- a) Council should consider the report(s), all relevant circumstances, and potential outcomes.
- b) Potential outcomes may include:
 - i. returning the Worker to their current position;
 - ii. returning the Worker to their current position with reasonable modifications or adjustments;
 - iii. implementing a return to work plan to return the Worker to their current position;
 - iv. the Worker returning to work in an alternative role either temporarily or permanently;
 - v. permanent incapacity – which may subsequently result in termination of employment;
 - vi. offering support to assist the Worker to find suitable employment elsewhere;

- vii. a period of authorised absence while the Worker receives treatment to recover from a temporary incapacity; or
- viii. any other relevant option appropriate in the circumstances.

2.3.2 Worker's response

- a) Council should provide the Worker with:
- b)
 - i. a copy of the Assessor's report(s) and any other evidence to be relied upon; and
 - ii. details of the potential outcome.
- c) Council should consider the appropriate process for providing this information. Generally, it will be sufficient to send the Worker a copy of the report and a letter explaining the potential outcome. There may be some circumstances where the report contains sensitive information and/or medical advice restricting what information should be provided to the Worker or how the information is provided to the Worker.
- d) For example, if the Worker is suffering from a mental illness, the report itself may aggravate their illness and steps may need to be taken to reduce that risk such as ensuring that they read the report in a safe environment with a support person or their general practitioner present.
- e) A follow-up meeting should be held with the Worker to consult about the report and the potential outcome. This allows the opportunity for the report to be explained in full to the Worker and for the Worker to propose alternative outcomes.
- f) After consideration Council will make a final decision and advise the Worker in a manner reasonable for the circumstances, setting out the reasons for the decision and providing any supporting documentation.

2.4 Implement the outcome

2.4.1 Fit for modified/alternative duties or with provision of services or facilities

- a) If a Worker is found to be fit for adjusted/modified or alternative duties Council should consider whether operationally those duties can be reasonably provided and utilised and if so those duties will be provided.
- b) If a Worker is able to perform the inherent requirements of their role after the provision of services or facilities Council should consider whether those services or facilities can be reasonably provided and if so make provision for them;
- c) If a Worker is to perform adjusted/modified or alternative duties or to use services or facilities provided, their Manager will take

reasonable steps to ensure that they are provided directions as to what they are reasonably permitted to do or how the services or facilities are to be used.

- d) The Manager will assess the Worker's ongoing fitness for work as reasonably required and provide directions as necessary.
- e) Where duties are changed to accommodate an incapacity, Council should make it clear in writing whether the change in duties is temporary or permanent. If it is temporary, timeframes for review should be agreed.
- f) If the Worker agrees to perform an alternative position on a permanent basis, a new contract of employment should be entered into.
- g) Any safer role or method of work, alternative duties, or alternative location must comply with any Applicable Laws and must be consistent with medical advice.
- h) A safer role or method of work, alternative duties, or alternative location may include:
 - i. the same job with different hours or modified duties;
 - ii. parts of the job the Worker was performing before the injury;
 - iii. different hours and/or modified duties;
 - iv. duties at the same worksite or a different worksite;
 - v. duties at the same Workplace or a different Workplace;
 - vi. a different job or duties;
 - vii. training opportunities; and
 - viii. any other reasonable alternative not described above.
- i) These methods will be identified after consultation with relevant parties and will be specified in writing.

2.4.2 Temporarily Unfit for Work

- a) If the Worker is:
 - i. temporarily unfit for work and not fit for modified or alternative duties; or
 - ii. is fit for modified or alternative duties but those duties cannot be reasonably provided; or
 - iii. would be able to perform their role with provision of services or facilities but it is not reasonable for those services or facilities to be provided,

they will be entitled to take an authorised period of absence.

- b) If the Worker has accrued paid personal leave entitlements they will be able to access those entitlements. If they have exhausted

their paid personal leave entitlements they may be entitled to authorised leave without pay.

- c) Council should implement a plan for regular reviews of the Worker's fitness for work as appropriate and/or as recommended by the Assessor(s).
- d) Council should keep in regular contact with the Worker to provide support which may include access to EAP.

2.4.3 Unfit for Work

There may be circumstances where the Worker is unfit for any work and it is reasonable for the Council to consider a fair process to terminate the employment. These circumstances may include where the Worker:

- a) is permanently unable to carry out the inherent requirements of their substantive position, is unable to do so for the foreseeable future or is unable to do so for a period that is longer than a temporary absence that cannot be reasonably accommodated;
- b) there are no reasonable adjustments or modifications to their substantive position that can be made or services or facilities that could be reasonably provided to allow them to continue to perform it; and
- c) there are no reasonable alternative duties.

2.4.4 Fit for Work

Where the Worker is fit to undertake the inherent requirements of their current position they should continue or recommence their current duties with monitoring as appropriate.

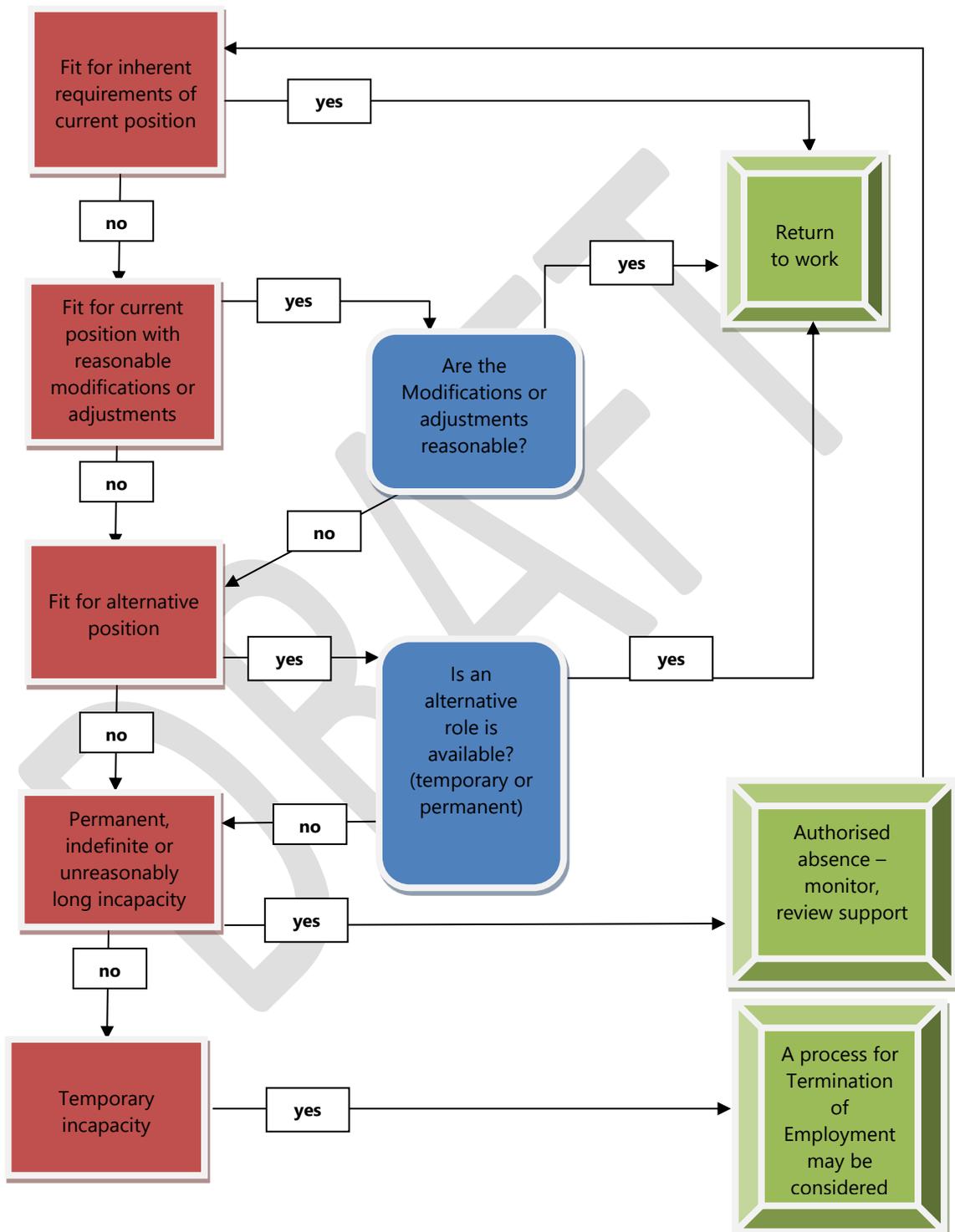
3. Related Legislation, Regulations and Policies

Fitness for Work Policy

4. Responsibilities

The responsibility of this policy rests with the General Manager.

SCHEDULE 1 FITNESS FOR WORK FLOWCHART



SCHEDULE 2

**AUTHORITY TO PROVIDE MEDICAL INFORMATION
FOR FITNESS FOR WORK ASSESSMENT**

To _____

Worker Details

Name _____

Date of birth _____

Address _____

Injury/illness _____

**Employer's
Details**

Name _____

Contact name _____

Address _____

Email _____

Telephone _____

I authorise you to provide medical opinion and information as requested by my employer that is relevant to my injury/illness and my capacity for work.

Signed _____

Name _____

Date _____