

S-W3 Fitness for Work Policy

Purpose

The aims of this Policy are to:

- ensure that Council provides a safe and healthy Workplace and all Employees are fit for work;
- direct and guide Employees at the Workplace to achieve and maintain fitness for work and not to expose Workers or Other Persons at the Workplace to unreasonable risks to their health and safety;
- provide a fair and flexible approach to work, health and safety which takes into consideration individual, operational and environmental circumstances;
- provide a reference and framework for the Fitness for Work procedure;

Department	Workplace Health and Safety	
File No.	PER/0500	
Council Meeting Date	29 March 2022	
Minute Number	66.03.2022	
Next Review Date	Four (4) years from Council Resolution Date	
Review History	06.01.2016	21 January 2016
	66.03.2022	29 March 2022

1 Definitions

Assessor	The medical practitioner or allied health professional appointed by Council to examine and assess the Employee's fitness for work.
Council	Flinders Council
Councillor	An elected member of Council known as a Councillor or otherwise meeting the definition of a 'councillor' as defined under section 3 of the Local Government Act 1993 (TAS)
Employee	A person who carries out work for Council as an employee of Council.
EAP	Employee Assistance Program - A confidential, professional counselling service available to Council employees.
General Manager	The general manager of Council as appointed under section 61 of the Local Government Act 1993 (TAS).
Infringing Workplace Behaviour	Any act or omission, which amounts to a breach of any Council policy, Federal or State Legislation, contractual obligation or misconduct at common law.
Manager	A person at the Workplace who is appointed to a position that has management responsibilities for others or their appropriately nominated or authorised delegate.
Other Persons at the Workplace	Any person at the Workplace who is not a Worker including visitors and ratepayers.
Policy	This Fitness for Work Policy
Procedure	The Fitness for Work Procedure
Worker	A person, who carries out work in any capacity for Council, including work as:

	<ul style="list-style-type: none"> a) an Employee; b) a Councillor; c) a contractor or sub-contractor; d) an employee of a contractor or subcontractor; e) an employee of a labour hire company who has been assigned to work at Council; f) an outworker; g) an apprentice or trainee; h) a student gaining work experience; or g) a volunteer.
Workers with Prescribed Limits	<p>Classes of workers who 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"> a) legislation; b) accreditation requirements of their position; c) licensing requirements of their position; and/or d) other express regulation
Workplace	A place where work is carried out for Council.
Training	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.
Amendment	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.
Interpretation of Policy	<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 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. (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. (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. <p>Questions relating to the interpretation, application or enforcement of this Policy should be directed to a person's Manager.</p>
Reporting of Breaches	<p>Persons covered under paragraph Error! Reference source not found. (Scope) must reasonably report breaches of Infringing Workplace Behaviour as follows:</p> <p>For breaches by</p>

	<ul style="list-style-type: none"> a) an Employee (other than the General Manager), or other Workers, the report must go to the reporting person's applicable Manager; b) an Other Person at the Workplace, to the General Manager; and/or c) the General Manager the report must go to the Mayor (or if unavailable to the next appropriately delegated Councillor); d) a Councillor report must go to the Mayor; e) The Mayor's report must go to the General Manager; and f) as otherwise required or permitted by Applicable Laws.
Breach of Policy	<p>Persons covered under paragraph Error! Reference source not found. (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> <ul style="list-style-type: none"> (a) exposing individuals to legal proceedings; and (b) making Council vicariously liable for conduct of others.

2 Objective

Flinders Council has a duty of care to ensure that all individuals are fit for work while they are on Council property or undertaking activities on Council's behalf.

An individual's fitness for work may be impaired by a variety of factors including the adverse effects of medical conditions, level of physical fitness, fatigue, occupational stress or the use of alcohol and other drugs.

Where it is believed that an individual may not be fit for work, then intervention is required to ensure that the risk to health or safety is managed.

3 Scope

- (a) This Policy covers and applies to Workers in relation to capacity for work where the illness or injury is not compensable under the *Workers Rehabilitation & Compensation Act 1988* (TAS).
- (b) This Policy does not cover or apply to behaviours that amount to or are dealt with by Council as:
 - (i) performance, which is dealt with under Council's Performance Management Policy; or
 - (ii) disciplinary matters, which are dealt with under Council's Disciplinary Policy.

4 Policy

4.1 Requirements

- a) Employees must comply with this Policy.

- b) Managers must communicate and implement this Policy within their area of responsibility.

4.2 Role responsibilities

4.2.1 Managers are responsible for:

- a) taking steps to ensure the health, safety and welfare at work of Workers and Other Persons at the Workplace;
- b) identifying and responding to concerns regarding a Worker's ability to safely perform the requirements of their role;
- c) treating all matters that relate to a Worker's health and fitness for work, seriously, respectfully, impartially and confidentially;
- d) ensuring consultation with Workers in injury, incapacity and illness management, rehabilitation and return to work planning;
- e) providing Workers with access to information about their entitlements, rights and responsibilities regarding their capacity for work;
- f) considering practicable adjustments to the Workplace to enable Workers to perform the inherent requirements of their role;
- g) considering alternative duties where practicable on either a temporary or permanent basis; and
- h) follow the Fitness for Work Procedure to manage Worker's fitness for work.

4.2.2 Workers are responsible for:

- a) performing the requirements of their position;
- b) not attending for work if they are not fit to perform the requirements of their position;
- c) not performing any work-related tasks that creates an unreasonable risk to the health and safety of themselves, Workers or Other Persons at the Workplace;
- d) notifying their Manager of any matter (which may include the medication they are taking) that may affect their ability to meet the requirements of their role or places the health and safety of themselves, Workers or Other Persons at the Workplace at risk;

- e) managing individual factors which may adversely affect their fitness for work, such as ensuring adequate rest between periods of work;
- f) complying with any reasonable and lawful directions that are reasonably necessary to assess or manage risks to safety which arise from or relate to fitness for work. This may include for example attending assessments to determine fitness for work and providing information in reasonable time frames to Council; and
- g) notifying their Manager if they have any concerns regarding the fitness for work of another Worker or Other Persons at the Workplace and keeping any information confidential.

4.3 Seeking Advice

Council and/or the Worker may seek advice from a medical or allied health practitioner to ensure compliance with this Policy.

4.4 EAP

- a) Council will provide wellbeing support through the provision of counselling and other relevant assistance where reasonable and appropriate.
- b) Access to the EAP is either by self-referral or recommendation by Council's nominated appropriate person.

4.5 Privacy and Confidentiality

- a) All information related to fitness for work is considered sensitive and will be treated as strictly confidential.
- b) Council will not use personal information collected from Workers in a manner that contravenes the Applicable Laws or this Policy.
- c) Personal information obtained in accordance with this Policy shall not be released to any person not involved in the management of the Worker, unless the release of the personal information is authorised by the Worker, except:
 - i. in accordance with or as required by the Applicable Laws;
 - ii. if the personal information is necessary or relevant in relation to a dispute between Council and/or the Worker in which case the information can be released as is reasonably necessary for the purposes of resolving the dispute.

4.6 Managing fitness for work

- a) The Fitness for Work Procedure provides for appropriately managing fitness for work.
- b) Council may implement the Fitness for Work Procedure in a manner that a Manager considers reasonable in the circumstances to ensure compliance with this Policy.
- c) Fitness for work is managed by an Worker's immediate Manager.
- d) Despite this, Council may decide, taking into consideration the relevant circumstances, to utilise instead or in addition to the Employee's immediate Manager:
 - i. a more senior Manager; or
 - ii. an external person.

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)
- *Privacy Act (1988)* (Cth)
- *Racial Discrimination Act 1975* (Cth)
- *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
- Issue Resolution Policy
- Performance Management Policy
- Workplace Behaviour Policy

6 Responsibility

The responsibility for this policy rests with the General Manager.