

Program: Executive Office
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Scope

This policy applies to the Mayor and Councillors of Mackay Regional Council (MRC) when in the workplace and/or when undertaking official duties, noting that the role of a Councillor does not have a defined start and finish time or designated place of work.

Where a Councillor is not undertaking official duties, they are not required to comply with the Code of Conduct for Councillors in Queensland or this policy.

Objective

To provide a safe, healthy, and productive workplace whilst eliminating risks associated with the adverse effects of alcohol and other drugs in the workplace by:

- preventing, where possible, drug and alcohol-related incidents;
- ensuring that Councillors adversely affected by substances do not create a negative perception of the Council; and
- ensuring Councillors are in a fit state to undertake their official duties.

In addition, this policy provides a framework for Councillors to comply with behavioural standard 1.5 as contained in the 'Code of Conduct for Councillors in Queensland':

“Ensure that their behaviour or capacity to perform their responsibilities as a Councillor is not impaired by the use of substances that may put them or others at risk while performing their duties (for example, alcohol, illegal drugs or prescribed/nonprescribed and/or restricted substances”.

Policy Statement

MRC is committed to ensuring its Councillors will not be impaired by drugs and/or alcohol whilst undertaking their official duties.

Council considers that to the extent this policy engages and limits, or potentially limits, any human rights, that limitation is reasonable in that it is proportionate and justified.

 This process to remain in force until otherwise determined
 by Mackay Regional Council

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1.0 Fitness for Duty

Councillors are expected to undertake their official duties free from the impairment of drugs and/or alcohol. Councillors must not present themselves for official duty or to any workplace whilst impaired.

Drugs and/or alcohol shall not be consumed at any workplace, in any MRC vehicle or plant, or at any time whilst a Councillor is undertaking their official duties unless an exemption under this policy applies.

Councillors must not remain at the workplace if they are under the influence or if there is a risk of them becoming under the influence.

2.0 Identification and Testing

2.1 Reasonable Suspicion

Where there is a reasonable suspicion or concern that a Councillor is impaired due to the effects of drugs and/or alcohol while at the workplace or undertaking their official duties, it should be raised with the CEO.

Where there remains reasonable suspicion or concern of a Councillor being impaired, the CEO may request the Councillor undergo testing and/or leave the workplace.

2.2 Initial Discussion

Where there is a reasonable suspicion or concern that a Councillor is under the influence while at the workplace, it should be privately raised by the CEO (or delegate) directly with the Councillor to determine if they should remain in the workplace based on the observations undertaken.

2.3 Formal Action

Where a positive test result has been established and/or the Councillor has refused testing and has been instructed to leave or stay away from the workplace or official duties, the CEO is required (in accordance with the provisions of the *Local Government Act 2009*) to notify the Office of the Independent Assessor about the suspected conduct of the subject Councillor.

2.4 Formal Complaints

Where a complaint is made by any person that a Councillor is under the influence, it is required in accordance with the provisions of the *Local Government Act 2009* to refer any complaints about the conduct of a Councillor to the Office of Independent Assessor.

2.5 Drug and Alcohol Testing Triggers

Councillors will be required to undergo drug and alcohol testing in the following circumstances:

2.5.1 *Random Testing*

All Councillors will be tested at a minimum of twice a year on a date that will be randomly selected at the discretion of the CEO.

Should a Councillor be absent for any advised random testing, a further random test date will be selected at the discretion of the CEO for this Councillor only if doing so is required to meet the minimum testing requirements.

2.5.2 *Post-Incident and Mandatory Testing*

MRC has the discretion to impose mandatory drug and/or alcohol testing.

A Councillor will be required to undergo a drug and/or alcohol test if they were involved in any of the following workplace incidents:

- where there is a reasonable belief that drugs and/or alcohol may have been involved as a contributing factor;
- in situations where there has been a significant event;
- a requirement to be tested under legislation or regulations;
- an incident that is notifiable to the regulator;
- an incident causing the death of a person;
- an incident causing admission to the hospital as an in-patient for an injury;
- injury incidents causing, or likely to cause, permanent injury to health; or
- a significant or repeated incident involving vehicles/plant and a third-party vehicle, plant, or property.

Counselling (via MRC's Employee Assistance Program), treatment and rehabilitation services are available externally to enable Councillors who identify as having problems to seek effective solutions and treatment of their choosing.

2.5.3 *Voluntary Testing*

Councillors may choose to voluntarily undertake drug and/or alcohol testing:

- a) any time where they may wish to demonstrate compliance with this policy and the 'Code of Conduct for Councillors in Queensland';
- b) where a reasonable suspicion has been established that they may be under the influence of alcohol or drugs.

Where a voluntary test is undertaken, a Councillor shall be considered in breach of this policy if a sample collected and analysed in accordance with the relevant Australian Standards indicates the presence of a substance at or above the limits identified in that Standard.

2.5.4 *Positive Test Results*

Where a positive test result has been returned, arrangements will be made to transport the Councillor to their residence safely. The Councillor will not be permitted to return to the workplace until they can either demonstrate they are no longer adversely affected or return a negative result.

2.6 Testing Method

Any required drug and/or alcohol testing will be undertaken in accordance with the appropriate Australian Standards.

All test results are treated with the strictest confidentiality.

2.6.1 *Tolerance Levels - Alcohol*

The tolerance for alcohol for all Councillors is a breath alcohol concentration (BAC) of not more than 0.00g/100ml (0.00%).

Note: See clause 3.0 *Endorsed Locations, Events and Social Functions for exemption for the consumption of alcohol will be made.*

2.6.2 *Tolerance Levels - Drugs*

A confirmed drug test reporting levels of drugs or metabolites that exceed designated cut-off levels constitutes a positive test. Cut-off levels will conform to the relevant Australian Standard, where such a standard has been issued in relation to the drug concerned.

2.6.3 *Testing Results*

a) *Negative test result*

If the test results are negative, no further action is required.

b) *Non-negative results from a declared prescription or pharmacy medication*

If a Councillor declares the use of prescription or pharmacy medications prior to presenting for testing and the test results are non-negative for a substance known to be in that medication, the Councillor must be allowed to continue with their official duties if the actual medication does not cause any impairment, risk, or impairment, or place them outside the legal limits for operating motor vehicles.

This sample may be sent to an approved testing facility to confirm the declaration. Should the laboratory result contradict the prescription of pharmacy medication declared by the Councillor, this will be treated as a positive result.

c) *Positive test result*

If a Councillor returns a positive test result for either drugs or alcohol, the Councillor will not be permitted to return to the workplace or undertake any official duties until such time a negative sample is provided.

A positive test will be deemed a breach of this policy and will be dealt with in accordance with clause 2.3.

2.7 Assistance

MRC recognises drug and/or alcohol dependency as a treatable condition. Councillors who suspect they have an issue with drugs and/or alcohol are encouraged to seek advice regarding appropriate treatment options. Councillors can access the services of the Employee Assistance Program (EAP).

2.8 Option to Challenge Test Result

If at any time a Councillor disputes the test result, the Councillor has the right to appeal that result. This may mean immediately attending their medical provider for further alcohol testing or transportation of their urine sample to an alternative NATA (National Association of Testing Authorities) accredited laboratory for further drug testing.

Any appeal testing is to be organised by the Councillor and conducted at their own cost. When confidential results are returned to the CEO, results may require the initiation of an interview. This should occur as soon as possible.

3.0 Endorsed Locations, Events and Social Functions

An exception for the consumption of alcohol will be made for:

- a) special occasions or locations as determined by the CEO or
- b) where the provision of alcoholic beverages is within the bounds of normal customary hospitality (e.g., attendance at a conference, function or social event in their Official Capacity where alcoholic beverages are served, either held by Council or another group or organisation).

While these exception areas have been identified, Councillors are still reminded of their duty per the 'Code of Conduct for Councillors in Queensland'.

With this in mind, and as a guide, not as a policy position, Councillors should aim to meet a breath alcohol concentration (BAC) of less than 0.05g/100ml (0.05%) when participating in such exempted situations.

4.0 Definitions

To assist in interpretation, the following definitions shall apply:

BAC shall mean Breath Alcohol Concentration.

CEO shall mean the Chief Executive Officer. A person who holds an appointment under section 194 of the *Local Government Act 2009*. This person includes a person acting in this position.

Council shall mean all elected representatives of Mackay Regional Council.

Councillors shall mean an individual elected representative of Mackay Regional Council.

Drug shall mean any illegal, medically prescribed or over-the-counter substance that may cause a Councillor not to be fit to work.

Human Rights Complaint shall mean a complaint about an alleged contravention of section 58-1 by a public entity in relation to an act or decision of the public entity.

Impairment shall mean a symptom of reduced quality, strength, or effectiveness of a person because of drugs and/or alcohol consumption whilst performing Official Duties.

Intoxicated/Intoxication, in accordance with the *Liquor Act 1992*, a person may be taken to be unduly intoxicated if-

- a). the person's speech, balance, coordination, or behaviour is noticeably affected; and

- b). there are reasonable grounds for believing the affected speech, balance, coordination, or behaviour is the result of the consumption of liquor, drugs, or another intoxicating substance.

MRC shall mean Mackay Regional Council.

Negative Test Result shall mean either a drug sample indicating no substance or a blood alcohol concentration less than the tolerance level.

Non-Negative Test Result shall mean the test indicates the presence of a substance declared prior to the test.

Official Capacity shall mean where a Councillor is invited to an event or function to represent the Council and not in a personal capacity.

Official Duties shall mean where a Councillor is undertaking their legislated role as a Councillor in accordance with the provisions of the *Local Government Act 2009*.

The following non-exhaustive list provides examples of what would normally be considered Official Duties in which Councillors are required to always represent the Council in a positive light whilst attending:

- Attending formal or informal meetings, including ordinary and special meetings, committee meetings, briefing sessions, and workshops
- Any meeting that directly has the primary purpose of discussing Council or Council business.
- Attendance at community meetings
- Formal engagements where a Councillor is representing Council in an Official Capacity.
- Attendance at a conference.
- Formal meetings between Councillors about Council business.
- Meeting with or undertaking discussions with residents either in the workplace or on-site.
- Travel to and from any Official Duties listed above.

Positive Test Result shall mean a blood alcohol reading greater than 0.00g/100ml blood unless attending an endorsed event or social function identified in clause 3.0.

In relation to a position test result for Drugs. Cut-off levels will conform to the relevant Australian Standard/New Zealand Standard, where such a standard has been issued in relation to the Drug concern.

Random shall mean no specific pattern, purpose, or objective.

Under the influence shall mean a Councillor who is adversely affected by alcohol or illicit drugs if they are unfit to perform their Official Duties and responsibilities safely and productively.

The effects of alcohol or Drug consumption can lead to:

- Increased risk of incidents;
- Impaired coordination;
- Decreased ability to concentrate and communicate;
- Lack of thoughtful decision-making;
- Impairment of memory and other cognitive functions;

- Delayed reaction time;
- impaired performance related to coming down from illicit Drug use or experiencing the effects of a hangover; and
- the terms 'Intoxicated/Intoxication as defined within this Definitions section.

Workplace shall mean a workplace or work location of any MRC building, telecommuting, working from home, work endorsed events, work social functions and whilst operating MRC-owned vehicles.

It also encompasses the definition of 'workplace' in the *Work Health and Safety Act 2011*.

Workplace Incident shall mean an incident in the workplace as defined by the *Work Health and Safety Act 2011*.

5.0 Review of Policy

This policy will be reviewed when any of the following occurs:

- The related documents are amended or replaced.
- Other circumstances are determined from time to time by a resolution of the Council.

Notwithstanding the above, this policy will be reviewed at intervals of no more than three (3) years.

6.0 Reference

- *Liquor Act 1992*
- *Local Government Act 2009*
- *Local Government Regulations 2012*
- *Human Rights Act 2019*
- *Information Privacy Act 2009*
- *Work Health and Safety Act 2011*
- *Work Health and Safety Regulation 2021*
- Code of Conduct for Councillors in Queensland
- MRC 001.3 Human Rights – Corporate Standard
- Australian Standard 4760-2019 – Procedure for specimen collection and the detection and quantification of drugs in oral fluid
- Australian Standard 4308:2008 – Procedure for specimen collection and the detection and quantitation of drugs of abuse in urine.
- Australian Standard 3547:2019 – Breath Alcohol Testing Devices

Version Control:

Version	Reason / Trigger	Change	Endorsed / Reviewed	Date
1	New Policy		ORD-2022-259	24/8/2022
2	Review of Policy		ORD-2024-49	24/04/2024