

## HR Protocol

# Alcohol and Other Drugs in the Workplace - Employees version 2.1

Adopted by the Executive Management Team at its meeting on Wednesday 16 September 2015

Minute No: 6

Division: Technology and Corporate Services  
Section: Human Resources  
File Reference: 9270 Policies & Procedures: Council  
Policies/Protocol/Procedure  
Historical Reference: Replaces Council's OHS Drug and Alcohol  
Protocol

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# Alcohol and Other Drugs in the Workplace

## 1.0 Objective

- 1.1 Tweed Shire Council is committed to providing a safe, healthy and productive workplace for all workers. As part of this commitment Council has established clear standards of acceptable behaviour along with corrective action steps regarding the management of alcohol and other drugs impacting on the workplace.
- 1.2 Under this policy all workers are obliged to present themselves for work in a fit state so that they don't expose themselves, their co-workers or other people in the workplace to unnecessary risks to health and safety.
- 1.3 Council acknowledges that staff are free to make their own lifestyle choices relating to alcohol and other drug use, however where those choices have the potential to impact directly on safety in the workplace they become a management issue and Council is required, under the NSW Work Health and Safety Act 2011, to take appropriate corrective action.
- 1.4 The objectives of this policy are to:
  - Create a safe, healthy and productive work environment for all workers which is free from the hazards associated with alcohol and other drugs;
  - Provide support for workers in understanding and addressing alcohol and/or other drug related issues;
  - Foster an attitude and culture within the workplace that it is not acceptable to work with levels of alcohol and/or other drugs in a person's system at levels that have the potential to impact on the safe performance of duties;
  - Create a supportive workplace culture that acknowledges and encourages employees to identify workers who may be a risk to others in the workplace as encouraged by legislative obligations in the WHS Act and as supported by both Council and the unions.
  - Ensure council meets its duty of care obligations in providing a safe work environment for workers and the general public;
  - Ensure that staff with a confirmed positive alcohol and/or other drug test result are managed in a fair and constructive manner;
  - Ensure that all information relating to positive alcohol or other drugs tests is kept confidential and that staff are at all times treated with courtesy and procedural fairness;
  - Ensure support is provided to employees who may have difficulty addressing alcohol and/or drug related issues;
  - Ensure all disciplinary processes are consistently managed in accordance with the Local Government (State) Award and Council Protocol.

## 2.0 Background

2.1 This Protocol has been developed with reference to the Local Government industry template Alcohol and Other Drugs Policy and Procedure documents prepared and endorsed by Local Government New South Wales (LG NSW); the New South Wales Local Government, Clerical, Administrative, Energy, Airlines and Utilities Union (USU); the Local Government Engineers Association (LGEA); and the Development and Environmental Professionals' Association (depa).

## 3.0 Scope

3.1 Council's Alcohol and other Drugs in the Workplace standards apply to all Council workers including: Employees, labour hire staff, group training apprentices and trainees, contractors, sub-contractors, work placement participants and volunteers.

3.2 This protocol details the application of these standards to Council employees.

3.3 The application of these standards to non-council employees is detailed in Council's Alcohol and Other Drugs in the Workplace - Non Council Employees Protocol.

3.4 Both protocols are available on Council's intranet.

## 4.0 Statements of Intent

### 4.1 Fitness for Work and General Conduct Obligations:

4.1.1 Under the New South Wales Work Health and Safety Act (2011) employers have a duty of care to ensure the health, safety and welfare of their workers and other people in the workplace, whilst workers have a duty to take reasonable care of their own health and safety, as well as for the health and safety of other people in the workplace and to cooperate with their employer in providing a safe working environment.

4.1.2 In this context 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;
- inhibit their ability to fulfill the requirements of their position;
- present a poor public image of Council; and/or
- cause damage to property and/or equipment

4.1.3 Penalties exist under legislation for employers and through the application of the disciplinary procedures of the Local Government (State) Award for employees who fail to take their work health and safety responsibilities seriously. It should also be noted that Workers Compensation claims may be declined where alcohol and/or drugs are a contributing factor to injury.

4.1.4 The general conduct provisions of the Code of Conduct also require that council employees must not conduct themselves, when carrying out their functions, in a manner that is likely to bring council or the employee into disrepute. By way of example, a worker may be in breach of their general conduct obligations under the Code of conduct if they:

- attend for work in breach of the workplace standards detailed in this protocol; or
- consume alcohol during work hours, including designated breaks; or
- conduct themselves in an inappropriate and/or unprofessional manner whilst at work, at a work related function, or whilst in Council uniform (which may be due to the effects of inappropriate alcohol and/or drugs use).

4.1.5 Council's overall approach to fitness for work issues is detailed within Council's HR Protocol - Fitness for Work, whilst this protocol focuses specifically on the impact and management of alcohol and other drugs in the work place. This focus on alcohol and other drugs stems from the fact that research indicates that across Australia up to 25% of all occupational injuries and 20% of fatal injuries in the workplace can be linked to alcohol and other drug use. It has also been well established that the use of drugs and alcohol can impair an individual's capacity to perform their job safely, efficiently and with respect for work colleagues and customers.

#### 4.2 Confidentiality and Respect:

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

- testing will be conducted in a private location to assist in maintaining the privacy and dignity of those undergoing testing;
- testing will be conducted by trained staff and/or accredited providers in accordance with Australian Standards;
- employees will be treated with respect and in a non-judgmental manner throughout the application of this protocol;
- council records pertaining to test results shall be regarded as confidential private and personal health records/information and as such will be managed in accordance with the provisions of the Health Records and Information Privacy Act 2002 (HRIPA), Privacy and Personal Information Act 1998 (PPIPA), Council's Privacy Management Plan, and the National Pathology Accreditation Advisory Council Requirements of the "Retention of Laboratory Records and Diagnostic Material.";
- information and the 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 authorised officers of the Council, the Accredited Collection agency appointed to perform the testing, a workers employer and authorised worker representatives, other than where access is required to be granted under the terms of applicable legislation;
- retention of the data will be in accordance with the requirements of the State Records Authority of NSW General Retention and Disposal Authority:

Local Government records (GA39), and the National Pathology Accreditation Advisory Council Requirements of the "Retention of Laboratory Records and Diagnostic Material.";

- the General Manager is authorised under this protocol to access, delegate and assign authority for access and use of the information obtained under this protocol;
- Council's Privacy Contact Officer is responsible for the oversight of Council process relating to the collection, use, storage, disclosure and destruction of personal information and health records/information held by Council;
- where the Privacy Contact Officer has authorised the release of confidential test results to external parties, other than those authorized by the worker, the worker(s) involved are to be notified in writing, prior to the release of the data, of who the information is to be released to and when and for what purpose the information is being released. Copies of the information released will be provided to the worker on request.

#### 4.3 Consultation, Communication and Education:

4.3.1 Internal consultation through a dedicated Alcohol and Other Drugs working group, Consultative Committee, Work Health and Safety Committees (Field and Office), Staff Notices and InsideOut Articles were undertaken as part of the development of this protocol.

4.3.2 Council recognises that it is important to develop a supportive culture where employees are able to seek assistance for alcohol and other drug related issues in a non-threatening environment and where employees are prepared to encourage each other to comply with the requirements of this protocol in the interests of establishing a safe workplace. Additionally, staff are encouraged to accept individual responsibility for workplace health and safety through disclosing to management the identity of workers who may be regarded as a risk to others. Such an approach is supported by Work Health and Safety Legislation and industry unions.

4.3.3 To assist in achieving this goal Council:

- recognises that the inappropriate use of alcohol and/or other drugs can be due to illness (e.g. dependency) or symptomatic of an illness (e.g. depression); and
- will in the first instance respond to breaches of this protocol through the provision of access to Council's Employee Assistance Program (EAP) and the provision of support to employees who recognise that they have an alcohol and/or other related problem; and
- ensure that clear and consistent processes are in place for addressing risks to health, safety and productivity in the workplace; and
- respect the privacy of workers by ensuring that appropriate systems are in place to maintain confidentiality; and
- provide education and awareness information to its employees at all levels:

- existing employees will receive education in relation to this protocol within 4 months of its official adoption;
- new workers will receive a copy of the protocol and education on its intent and application as part of their induction to Council;
- Fitness for Work Assessors and in-house testers will be provided with appropriate training in accordance with the relevant Australian standards;
- council will provide practical guidelines and training to Managers and Supervisors 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.

4.3.4 The application of this protocol will be overseen by the Human Resources Unit.

#### 4.4 Employee Assistance:

4.4.1 If an employee has issues of concern, including those related to alcohol and other Drugs, Council encourages the use of the Employee Assistance Program (EAP) as a means to seek appropriate support and assistance.

4.4.2 Council utilises the services of a number of local providers as part of its Employee Assistance program. Brochures on the program, including contact details, locations and areas of speciality of each provider are available from the intranet under Quicklinks Human Resources/Employee Assistance Program or from Depot Offices, Supervisors and union representatives.  
<http://tscdotnet/hruweb/EmployeeAssistance.aspx>

4.4.3 Additionally, there are a wide range of community services available to assist with drug and alcohol issues, many of which can be accessed through a Doctor.

## 5.0 Definitions

Alcohol	Refers specifically to the chemical substance ethanol which, in the context of the Australian Standard can occur in either a liquid or gaseous form.
Award	Local Government (State) Award
Breath Alcohol Concentration (B.A.C)	The concentration of alcohol in the breath expressed as a percentage of alcohol per 210 liters of expired breath.
Collection Agency:	The NATA accredited testing agency used to collect alcohol and other drug testing samples

Confirmatory Test	A second analytical test performed to identify the presence of alcohol and/or other drugs in accordance with Australian Standards AS3547:1997 and AS4760:2006
Confirmed Positive Result	Means that the level of alcohol or other drugs in the workers system has been confirmed by two separate tests as exceeding the acceptable limits as defined within this protocol.
Council	Tweed Shire Council
Drugs	Any substance whether legal or illegal, including over the counter or prescription medication and alcohol which has a physiological effect when ingested or otherwise introduced into the body and has the potential to impact on the safe performance of duties.
Fitness for Work Assessor	Means an authorised Council employee trained in accordance with Australian Standards, to assess the fitness for work of persons in the workplace.
Negative Result	Means a result below the nominated or targeted concentration used for initial testing. A negative result indicates that the level of alcohol or other drugs in the workers system is within the acceptable limits of this protocol.
Non-Negative Result	Means an initial positive test result as yet unconfirmed by a confirmatory test result.
Positive Result	Means that the level of alcohol or other drugs in the workers system has been confirmed by two separate tests as exceeding the applicable limits as defined within this protocol.
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.
Synthetic Drugs	Are products containing chemical substances artificially developed to mimic the effects of illegal drugs like cannabis, cocaine and methamphetamine.
Workers	Are defined under Section 7 of the Work Health and Safety Act 2011 as being: <ul style="list-style-type: none"> <li>• an employee, or</li> <li>• a contractor or subcontractor,</li> <li>• an employee of a contractor or subcontractor,</li> <li>• an employee of a labour hire company who has been assigned to work in the person's business or undertaking, or</li> <li>• an outworker, or</li> </ul>



- an apprentice or trainee, or
- a student gaining work experience, or
- a volunteer, or
- 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 vehicle, vessel, aircraft or other mobile structure, and
- 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;
- home workplaces.

## 6.0 Responsibilities

**General Manager** Is responsible for authorising the release of confidential test results to external parties who are legally able to access the information.

**Management** Is responsible for the consistent application of this protocol as a component of its obligations under the Work Health and Safety Act 2011 to provide a safe and healthy workplace for workers and other persons, and ensuring that all suspected breaches of this protocol are reported to the Manager Human Resources or delegate.

**Human Resources** Is responsible for the overseeing and coordination of this protocol.

**Privacy Contact Officer** Is responsible for the oversight of Council processes relating to the collection, use, storage, disclosure and destruction of personal information and health records/information held by Council

**Fitness for Work Assessors** Are responsible for assessing the fitness for work of workers in accordance with the provisions of this protocol, and escalating all identified fitness for work issues to Human Resources for the co-ordination of testing.

**Collection Agency** Is responsible for ensuring that all testing is undertaken by individuals trained in accordance with the Australian Standards training requirements and the Confirmatory levels stated in Australian Standard AS 4760:2006.

**Workers and Supervisors** It is the responsibility of all workers and supervisors to ensure that no worker commences or continues work if



they appear to be affected by alcohol, illegal or legal drugs, or other substances which may reasonably be considered to lead to a safety risk or inability to fulfill the requirements of the position or are not fit to work.

## 7.0 Related Documentation

- Work Health and Safety Act 2011 (NSW)
- Work Health and Safety Regulation 2011 (NSW)
- Local Government (State) Award
- WorkCover Alcohol and Other Drugs In The Workplace - Guide to Developing a Workplace Alcohol and Other Drugs Policy AS3547:1997 - Breath alcohol testing devices for personal use
- AS4760:2006 - Procedures for specimen collection and the detection and quantification of drugs in oral fluid
- Road Transport (Safety and Traffic Management ) Act 1999
- Responsible Service of Alcohol Regulation
- Health Records and Information Privacy Act 2002 (HRIPA)
- Privacy and Personal Information Act 1998 (PPIPA)
- State Records Authority of NSW General Retention and Disposal Authority: Local Government records (GA39)
- NSW Local Government Alcohol and other Drugs Policy
- NSW Local Government Alcohol and Other Drugs Procedure
- Privacy Management Plan
- Fitness for Work Protocol
- Disciplinary Protocol
- Leave Protocols
- Code of Conduct
- Employee Assistance Program
- National Pathology Accreditation Advisory Council "Requirements for the Retention of laboratory Records and Diagnostic Material (2013)

## 8.0 Protocol Implementation

### 8.1 Testing Methodology:

- 8.1.1 The testing methodology adopted within this protocol is consistent with the documented position of LG NSW, USU, LGEA and depa, all of whom support breath analysis for alcohol testing and oral fluid (saliva) testing for other drugs.
- 8.1.2 Breathalyser units are well accepted as a simple and reliable method of determining an individual's blood alcohol concentration.
- 8.1.3 Oral fluid testing has been chosen over other available methods as it can provide initial non-negative results immediately after use and the detection range is such that it indicates recent use and is therefore more likely to indicate potential and or

actual impairment when compared with other testing procedures. The exception is pre-employment drug testing which utilises a urine sample.

- 8.1.4 Test equipment and test methodologies utilised will accord with the relevant Australian Standards.
- 8.1.5 All testing will be undertaken by individuals trained in accordance with the applicable Australian Standards.
- 8.1.6 Alcohol testing can be conducted completely in-house or outsourced to an external provider as determined by management on a case by case basis.
- 8.1.7 Other drugs testing can be conducted in-house up to and including the initial screening test. Beyond this point, testing will be conducted by an external provider. Where a non-negative result is obtained from an in-house administered screening test, the testing process undertaken by the external provider will commence with a second initial drug screening test being administered.
- 8.1.8 All testing whether conducted in-house or by an external provider will be conducted in accordance with sections 8.11 Alcohol Test Procedure and 8.12 Other Drugs Testing Procedure of this protocol.
- 8.1.9 Where the worker to be tested is under the age of 18 the matter is to be referred to Human Resources and an appropriate parent or guardian, or the workers employing organisation is to be notified. Wherever practicable this notification is to occur before the testing is undertaken.

## **8.2 Applicable Alcohol and other Drug Limits:**

- 8.2.1 Council has adopted the following applicable limits for arrival at work:
  - the blood alcohol limits prescribed in NSW for the operation of motor vehicles, and
  - the confirmatory target concentrations of the Australian Standard AS 4760-2006 for drug detection.
- 8.2.2 Once having commenced work, the consumption of alcohol and or other drugs at any time during the working day (including designated breaks) is prohibited. Additionally, alcohol and illicit drugs are not to be consumed on Council worksites regardless of the time of day.
- 8.2.3 The exception to these rules are 'designated events' where the responsible consumption of alcohol is permitted within legal limits i.e. the blood alcohol limits prescribed in NSW for the operation of motor vehicles). Refer to section 8.3 for details relating to 'designated events'.
- 8.2.4 Under no circumstances are illicit drugs or synthetic drugs to be used, grown, sold, purchased, transferred, manufactured or brought to any Council workplace. Breaches of this nature will be reported to the Police and will be subject to

disciplinary action, up to and including instant dismissal, in accordance with Council's Disciplinary Protocol.

8.2.5 It should be noted that where Council staff are working at worksites owned or controlled by third party organisations, that have a more stringent alcohol and other drugs policy/protocol in place, the levels detailed in that protocol will apply. Information relating to these levels will be provided in association with a project briefing or site induction.

8.2.6 Similarly where staff are working across the NSW/Queensland border, in a rail corridor or at an airstrip the limits contained within the relevant legislation will apply.

- In Queensland a BAC of 0.00 applies in the following circumstances:
  - Learner and provisional drivers
  - RE motor cycle licence holders (for the first 12 months)
  - truck (any motor vehicle weighing over 4.5t)
  - a bus (built or fitted to carry more than 12 adults, including the driver)
  - an articulated motor vehicle (e.g. B-double, or road train)
  - a vehicle carrying a placard load of dangerous goods
  - a taxi, limousine, or public passenger vehicle
  - a tow truck, pilot vehicle or escort vehicle escorting an oversize vehicle
  - a vehicle being used by a driver trainer to give driver training
  - a specially constructed vehicle, including a tractor.
  
- Rail corridors have a BAC limit of 0.00.
- Airports have a BAC limit of <0.02

8.2.7 Alcohol Limits (Commencement of Work Limits):

0.00	<ul style="list-style-type: none"> <li>- Learner drivers ; and</li> <li>- Provisional drivers (irrespective of State or Country of issue)</li> </ul>
< 0.02	<ul style="list-style-type: none"> <li>- Drivers of heavy vehicles (&gt; 13.9 tonne)</li> <li>- Drivers of vehicles licensed to carry dangerous goods; and</li> <li>- Drivers of public vehicles such as taxi or bus drivers.</li> </ul>
< 0.05	<ul style="list-style-type: none"> <li>- All other licences</li> <li>- Any worker not required to hold a driver's licence as part of their role</li> <li>- Staff without a driver's licence.</li> </ul>



An indicative list of Council vehicles and plant that fall within the <0.02 alcohol limit category includes:

- Single Axle 15 Tonne Tippers
- Single Axle Bridge Maintenance Trucks
- Single Axle Beaver Tail Trucks
- Dual Axle 24 Tonne Tippers (including truck and dogs)
- Pavement Maintenance Trucks
- Jet Patcher Trucks
- Street Sweeper Trucks
- Prime Mover and Float
- Mobile Crane
- Road Graders
- Excavators (>13.9 Tonne)
- Self Propelled Smooth Drum Vibratory Road Rollers (>13.9 Tonne)
- Pad Foot Rollers

(This is an indicative list only and is subject to review without notice)

Once the working day has commenced the consumption of alcohol during working hours (including designated breaks) is prohibited. Additionally, alcohol is not to be consumed on Council worksites regardless of the time of day. The exception is the consumption of alcohol in accordance with protocol provisions relating to 'Designated Council Events'.

8.2.8 Illegal Drug Detection Limits:

Drug Type	Concentration for Positive Reading	Approx detection timeframes
Opiates	25ng/ml	3 days
Cocaine	25ng/ml	3 days
Cannabis	10ng/ml	1 day
Amphetamines	25 ng/ml	3 days
Methamphetamines	25ng/ml	3 days

The information contained in the table above should not be taken to in any way indicated Council's support for the use of illicit drugs or the safe levels of use to remain in compliance with the workplace standards detail in this protocol.

Once the working day has commenced the consumption of illicit drugs and/or synthetic drugs during working hours (including designated breaks) is prohibited. Additionally, illicit drugs and synthetic drugs are not to be consumed on Council worksites regardless of the time of day.



## 8.2.9 Synthetic Drugs:

- 8.2.9.1 The use, possession, sale, purchase or consumption of synthetic drugs during working hours and/or at Council workplaces is expressly prohibited. Breaches of this provision will be treated in the same manner as the use of an illegal drug.
- 8.2.9.2 Testing for synthetic drugs does not form part of Council's standard drug testing procedure, however Council reserves the right to test for synthetic drugs, where deemed appropriate.

## 8.2.10 Medication:

- 8.2.10.1 Over the counter and prescription medications although legal, can in certain circumstances pose a safety risk. As a consequence, any employee taking medication that has been identified by their prescribing Doctor or by the information provided with or on any packaging as having potential side effects that may inhibit in any way their ability to safely and/or competently conduct their duties, must report the taking of this medication to their supervisor/manager.
- 8.2.10.2 The supervisor/manager will record in their diary that the employee is taking medication, the potential side effects of the medication, and proposed/likely duration of treatment. Details of the medication being taken or the condition being treated are not to be recorded. Confirmation of the necessity of such medication may be requested from an appropriate medical professional where deemed appropriate.
- 8.2.10.3 A Fitness for Work assessment will then be undertaken to determine the individual's capability to perform their normal duties. Where fitness for work is deemed to be impacted, Council will explore the feasibility of deploying the worker to alternate suitable duties or light duties for the relevant period. Where no alternate suitable duties are available the employee will be stood down on sick leave.
- 8.2.10.4 The repeated non-disclosure of medication use that has the potential to impact safety and/or the competency of performance of duties may result in disciplinary action in accordance with Council's Disciplinary Protocol.

## 8.2.11 On Call and Call Out Employees

- 8.2.11.1 On Call staff whose role could result in them being called out are to comply with the provisions of this protocol at all times whilst On Call.
- 8.2.11.2 Staff accepting a Call Out are required to be within the applicable Alcohol and other drugs limits detailed within this protocol. Staff concerned that they may be in breach of the protocol, are to decline the Call Out.

### **8.3 Designated Events**

- 8.3.1 The General Manager may from time to time approve special occasions, functions or events, such as the staff Christmas Party, or official openings as 'designated events' where the responsible consumption of alcohol is authorised.
- 8.3.2 Out of hours work related functions such as conference dinners and council workshops/meetings have been deemed 'designated events'.
- 8.3.3 When attending 'designated events' staff are at all times to maintain appropriate standards of behaviour and are to drink responsibly. Inappropriate behavior at these events will be regarded as a breach of Council's Code of Conduct and disciplinary action taken accordingly.
- 8.3.4 Council reserves the right to refuse or withdraw alcohol service at Council run 'designated events' where there is a belief that an individual is not behaving responsibly.
- 8.3.5 The exceptions are 'designated events' held within work hours where some staff may be required to return to duties at the conclusion of a the event:
- Where return to work is to normal duties no alcohol is to be consumed:
  - Where duties to be performed are incidental and of short duration, such as packing up the event, locking premises etc:
    - up to 1 standard drink can be consumed by staff where a <0.05 BAC standard applies; and
    - no alcohol is to be consumed by staff where a 0.00 BAC or <0.02 BAC standard applies as a single drink could place the individual over the prescribed BAC.
- 8.3.6 The minimum requirements with regard to the management of council run 'designated events' are:
- the provision of low alcohol and non-alcohol alternatives to full strength alcoholic drinks;
  - the provision of food;
  - adherence to responsible service of alcohol provisions.
- 8.3.7 Employees who intend to consume alcohol at these events are to make suitable arrangements to ensure they are conveyed home safely.

### **8.4 Who can be tested?**

- 8.4.1 All Council workers are required to comply with this protocol and can be tested for compliance. This includes Award and contract employees, contractors, subcontractors, labour hire staff, outworkers, apprentices, trainees, work placement individuals, and volunteers.

8.4.2 Details relating to the application of this protocol to non-Council employees is detailed in Council's Alcohol and other Drugs in the Workplace Protocol - Non Employee Workers.

## **8.5 Under what circumstances can testing occur?**

8.5.1 Alcohol and/or other Drug testing of employees can occur in 6 specific circumstances:

- Pre-employment;
- Self-disclosure;
- Post reportable incident;
- Reasonable suspicion;
- Random; and
- Targeted Random.

### **8.5.2 Pre-employment**

8.5.2.1 As part of Council's pre-employment functional capacity testing, alcohol and other drug testing is undertaken as part of the recruitment screening process for external candidates. This testing is undertaken by an external provider. Positive alcohol or other illicit drug readings may preclude the applicant from further consideration for employment.

### **8.5.3 Self-Disclosure Testing**

8.5.3.1 Management encourages and supports staff with alcohol and/or other drug issues to self-disclose these issues as a first step to gaining assistance.

8.5.3.2 Where a staff member self discloses a problem with alcohol and/or other drugs the first step is to undergo voluntary confirmatory testing. This testing will be conducted in accordance with section 8.11 'Alcohol Test Procedure' and/or section 8.12 'Other Drugs Testing Procedure'.

8.5.3.3 Regardless of the result of this testing:

- the employee will be required to actively participate in a structured rehabilitation program and will be subject to additional testing in accordance with the 'targeted random' testing program; and
- will be exempt from disciplinary action on the condition that they comply with the rehabilitation program and do not report for work in an unfit state in the future.

8.5.3.4 Where the alcohol and/or other drug test results are confirmed as non-negative the employee will be stood down from work without pay for a minimum of the remainder of the day until such time as a follow up negative test result is obtained. Employees can elect to use accrued annual or long service leave to cover the period for which they are stood down.



- 8.5.3.5 Exemption from disciplinary action exists only where self-disclosure has occurred prior to initiation of random, post reportable incident or reasonable suspicion processes.
- 8.5.3.6 Management of self-disclosed problems will be determined on a case by case basis and may in some circumstances include the identification of suitable duties to be performed for a period of time in association with a return to work plan. The return to work plan will be established by mutual agreement and in consultation with the employee and their union or other representative.

#### 8.5.4 Post Reportable Incident Testing

- 8.5.4.1 After a reportable incident at the workplace, the Supervisor in consultation with a Work Health and Safety or Human Resources Representative may require a worker(s) to undergo an alcohol or other drug test. Any or all workers directly involved in an incident may be tested.
- 8.5.4.2 In determining whether testing is required it should be noted that testing will not normally be undertaken where:
- the incident was not within the control of the worker involved and the correct procedures were followed;
  - first aid treatment only is required unless the worker develops a pattern of reporting first aid only injuries which subsequently require medical treatment;
  - journey accidents;
  - a member of the NSW Police Force attends the accident site, irrespective of whether or not the worker is tested for alcohol and other drugs by the police officer;
  - minor damage only where the worker is not at fault (e.g. tail light, less than \$2,000, minor scratch).
- 8.5.4.3 This testing will occur as soon as reasonably practicable, but no later than 12 hours after the incident. Where an employee fails to report an incident immediately as required and testing is unable to be undertaken within 12 hours as a result of this failure to report, the testing will be conducted as if the grounds for Reasonable Suspicion were satisfied. As such the employee will be subject to a one off targeted random test.
- 8.5.4.4 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 organised. Late or incorrect reporting of incidents will be investigated and similar action will be taken. As such the employee will be subject to a one off targeted random test.
- 8.5.4.5 An injured employee who requires immediate medical attention may only be tested when it is appropriate. Where relevant 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.

- 8.5.4.6 Where an employee is involved in a reportable incident the incident is to be reported in accordance with Council's Incident Injury Hazard Near Miss and Investigation Protocol.
- 8.5.4.7 Where the incident falls within the defined criteria for post reportable incident testing then testing is to be undertaken.
- 8.5.4.8 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.
- 8.5.4.9 Where the employee 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 will contact Human Resources to arrange for a alcohol and other drug test to occur, irrespective of whether or not the incident falls within the criteria where testing will not normally occur.
- 8.5.4.10 Incidents that occur as an employee travels to a designated Council location to commence their work shift or is travelling to another location once their work shift has been completed will not be tested.
- 8.5.4.11 Where an incident occurs that meets the post reportable incident definitions, or where alcohol and/or other drug use is admitted, when travelling between Council work sites, this will require testing, unless the police are involved in dealing with the incident.

#### 8.5.5 Reasonable Suspicion Testing

- 8.5.5.1 Concerns relating to a worker's Fitness for Work are to be immediately reported to the relevant Supervisor or Manager, Human Resources or an authorised Fitness for Work Assessor.
- 8.5.5.2 Concerns can be reported anonymously.
- 8.5.5.3 In determining the validity of reported concerns a fitness for work assessment is to be conducted by two Fitness for Work Assessors.
- 8.5.5.4 Where this assessment identifies fitness for work issues the employee can be requested to undertake alcohol and/or other drugs testing.
- 8.5.5.5 In determining whether a worker is to be tested under reasonable suspicion the following physical indicators are used:
- Smell of alcohol on breath;
  - Sweating/hot and cold flushes;

- Reddened or bloodshot eyes;
- Slurred, incoherent, confused, or disjointed speech;
- Poor coordination, unsteady, swaying, slumping, falling;
- Drowsiness or sleeping on the job or during work breaks;
- Inability to follow instructions;
- Nausea/vomiting;
- Jaw clenching.

8.5.5.6 Other signs may include emotional effects such as:

- Loss of inhibitions;
- Aggressive or argumentative behaviour;
- Irrational behaviour;
- Intense moods (sad, happy, angry);
- Quiet and reflective;
- Talkative;
- Increased confidence;
- Appearance or behaviour is 'out of character'.

8.5.5.7 Fitness for Work Assessments are to be undertaken jointly by two trained and council authorised Fitness for Work Assessors. This assessment is to be made in accordance with the approved list of physical indicators (see above) and is to be made in the context of any changes to the employee's behaviour (see list of emotional effects above). The assessment is not to be made on assumptions based on an employee's previous behaviour or work record. At least one (1) of the physical indicators must be satisfied and agreed between the Fitness for Work Assessors for reasonable suspicion to be established. Emotional effects should not be used as indicators of reasonable suspicion but may be recorded as additional information on the relevant records.

8.5.5.8 It is not the responsibility of Managers, Supervisors or employee representatives to diagnose personal or health problems or determine what the cause of impairment might be.

8.5.5.9 In initiating a Fitness for Work assessment the Fitness for Work Assessors are to request a discussion with the employee in a private location away from other workers, where possible. The employee should be given the opportunity to have a union representative or other support person attend the discussion should they choose.

8.5.5.10 Where grounds for reasonable suspicion are confirmed, the employee should be informed of the indicator(s) upon which this decision is based and be provided with the opportunity to provide mitigating factors to be taken into consideration in the decision as to whether alcohol and /or other drug testing is to be initiated.

8.5.5.11 A person may be impaired from alcohol or other drugs but not necessarily have taken any such substances.

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

- unexpected impairment from prescription or over the counter medication;
- side effects from medical treatment or an illness or injury;
- impairment from fatigue due to 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.

8.5.5.12 Where the Fitness for Work Assessors are satisfied that a person is impaired due to a mitigating factor no disciplinary action will be taken under this protocol, however depending on the circumstances action may be taken in accordance with Council's Fitness for Work Protocol.

8.5.5.13 The employee is to be reminded that any impairment is a safety risk and that they are required to present for work fit to undertake all applicable duties. Repeated presentation at work whilst unfit for duties for any reason may result in disciplinary action under Council's Fitness for Work Protocol.

8.5.5.14 Where mitigating factors are accepted, but the Fitness for Work Assessors assess the employee as not fit to continue normal duties they will:

- advise the line Supervisor/Manager that the employee is to be stood down on sick leave or other leave until they are fit to resume duties, or
- where appropriate consideration can be given to the availability of alternate duties or other control measures to ensure the safety of the employee and others in the workplace.

8.5.5.15 Where concerns regarding fitness for work remain the employee is to be advised that they are required to submit to alcohol and/or other drug testing.

8.5.5.16 If an employee refuses to undergo testing they will be stood down until they undertake the test and a negative result is obtained.

8.5.5.17 This period of absence will be unpaid leave unless the employee chooses to access accrued annual or long service leave in accordance with Council protocol, or Council approves access to sick leave (such approval will be determined on a case by case basis).

## 8.5.6 Random Testing

8.5.6.1 Random testing for alcohol and other drugs may be conducted at any Council workplace at any time throughout an employee's hours of work, including all forms of overtime.

8.5.6.2 Random testing will be conducted in an appropriate area which contains adequate facilities for testing and provides a suitable level of privacy.

8.5.6.3 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.

- 8.5.6.4 Council's independent testing provider will determine the random selection of staff for testing, based on staffing/site lists provided by management.
- 8.5.6.5 Employees who are selected for random testing will be required to present themselves to the nominated testing location immediately and follow all instructions and requests by the authorised collector.
- 8.5.6.6 In exceptional circumstances where attendance at testing is deemed operationally impracticable, the General Manager's authority is required for the nominated employee to be excused attendance at the random testing event on the nominated date. An excused staff member will be subject to testing on an alternate undisclosed date within 4 weeks of the originally scheduled random testing event.
- 8.5.6.7 In order to preserve the integrity of the testing process, staff with prior knowledge of the date of random testing events (e.g. the Manager Human Resources), may be subject to targeted random testing at any time without notice, at the direction of the General Manager.

#### 8.5.7 Targeted Random Testing

- 8.5.7.1 Targeted random testing occurs once an employee has obtained a confirmed positive test result for alcohol and/or other drugs, or has refused testing.
- 8.5.7.2 For a first confirmed positive test result the employee is subject to without notice targeted random testing for up to 6 months from the date of the confirmed positive test result.
- 8.5.7.3 Whilst subject to targeted random testing any additional confirmed positive test results or refusal to undertaking testing will result in a 2 year extension to the period of targeted random testing.
- 8.5.7.4 The extension will date from the most recent confirmed positive test result or refusal to undertake testing.
- 8.5.7.5 Targeted random testing is designed to confirm the workers compliance with their treatment plan and this protocol.

#### **8.6 Right of Representation:**

- 8.6.1 At all stages relating to the implementation of this protocol employees will on request be given the opportunity to have a support person present. This support person may be a representative from the employee's union.
- 8.6.2 In relation to the conducting of the drug and alcohol tests, the support person must be available within a timeframe that does not unreasonably delay, or in any way compromise the integrity of the testing process and subsequent results.



8.6.3 Where a support person is to be present two authorised collectors or an authorised collector and a management representative will also need to be present.

### **8.7 Reporting Fitness for Work Concerns:**

8.7.1 To ensure that safety is not compromised, employees are encouraged to bring to the immediate attention of a suitable individual, concerns relating to the fitness for work of any worker at a council workplace.

8.7.2 Suitable individuals include:

- Supervisors;
- Managers;
- Safety Representatives;
- Fitness for Work Assessors;
- Union Representatives; and
- Human Resources Officers.

8.7.3 Concerns can be raised anonymously.

8.7.4 Concerns raised will be investigated in accordance with the Reasonable Suspicion or post Reportable Incident provisions of this protocol.

### **8.8 Refusal to Undergo Testing:**

8.8.1 Where an employee refuses a request to undertake alcohol and/or other drugs testing the authorised collector or requesting Council officer will in the first instance inform the employee of the consequences of refusing a lawful directive and reoffer the opportunity to agree to the testing.

8.8.2 If the employee again refuses testing, this constitutes a second refusal and the relevant Manager and Manager Human Resources are to be notified and they or their delegates(s) will meet with the employee to discuss the employee's reasons for refusal and the consequences of continued refusal. At the completion of this discussion the employee will again be offered the opportunity to agree to being tested. Except where situational specific extenuating circumstances exist e.g. urgent need to leave work to attend to an injured family member, where refusal is reiterated it will constitute a third refusal and it will be recorded that the worker has 'Refused Testing'.

8.8.3 Refusal to undertake alcohol and/or drug testing in accordance with the provisions of this protocol will be treated as a refusal to comply with a lawful directive, as well as a potential breach of Council's workplace standards. Actions taken as a consequence of a refusal to undergo testing will be the same as if the employee had obtained a confirmed positive test result.

## **8.9 Tampering:**

- 8.9.1 Any attempt by an employee or an external party to tamper with samples and introduce, or alter the concentration of alcohol or other drugs in their own, or another's saliva, breath, or collected sample may constitute serious misconduct and be dealt with according to Council's Disciplinary Protocol.
- 8.9.2 Testing for adulteration and/or the requirement to provide a second supervised sample may be implemented in circumstances where a sample appears suspicious.

## **8.10 Dealing with Aggressive or Abusive Behaviour**

- 8.10.1 Where an employee displays aggressive or violent behaviour when required to undertake an alcohol and/or other drug test, the situation should be managed by remaining calm and not arguing with or mirroring the employee's behaviour.
- 8.10.2 Emphasis should be placed on getting the employee to calm down and discussion kept away from personal issues. The employee should be asked to comply with the management directive and be informed of the opportunity to dispute the decision through the normal grievance process utilised by Council. The employee should also be reminded that acts of aggression or violence in the workplace are a breach of the Code of Conduct and may result in dismissal.
- 8.10.3 If the employee refuses to modify their behaviour they should be advised that the discussion is terminated and that they must leave the workplace immediately. This period of absence is to be without pay.
- 8.10.4 In the case of actual or apprehended violent behaviour, the employee is to be advised that the police will be called.

## **8.11 Alcohol Test Procedure:**

- 8.11.1 Employees identified for alcohol testing will be required to participate in a supervised alcohol analysis test, using a calibrated breath testing device as per the requirements of the Australian Standard AS3547:1997- Breath Alcohol Devices for Personal Use. The test will be administered by a suitably qualified person.
- 8.11.2 Photo identification is to be provided, on request, in association with alcohol testing. Where photo identification is not available a senior member of staff will be required to confirm the individual's identity and to sign the identification section of the testing paperwork.
- 8.11.3 The employee may request to have a support person present during the testing procedure.

8.11.4 Unless medically required, no food or drink is to be consumed for 15 minutes prior to the test. Smoking is not permitted for 2 minutes before testing.

8.11.5 Testing on commencement of work:

8.11.5.1 Where testing is conducted on commencement of work and the result is consistent with the applicable cut-off point e.g. 0.00BAC, <0.02 BAC or <0.05 BAC the result will be deemed to be a negative result.

8.11.5.2 Where the result is above the applicable cut off point it will be deemed to be a non-negative test result second confirmatory test will need to be carried out 15-20 minutes later.

8.11.5.3 During the intervening period between tests, the employee is to be supervised at all times. Food, and drink are not to be consumed during this period and cigarettes are not to be consumed for a minimum of two (2) minutes before retesting.

8.11.5.4 Where the second sample is again above the applicable cut off point the result is deemed to be a confirmed positive test result. As a consequence the employee will be assumed unfit for work and will be stood down for a minimum of the remainder of the day.

8.11.5.5 Arrangements will be made for the employee to be transported home or to a safe place until they are fit to drive.

8.11.6 Testing conducted other than on commencement of work:

8.11.6.1 Where testing is conducted other than on commencement of work and the result is above 0.00 BAC the result will be deemed a non-negative test result and a second confirmatory test will need to be carried out 15-20 minutes later.

8.11.6.2 During the intervening period, the employee is to be supervised at all times. Food, and drink are not to be consumed during this period and cigarettes are not to be consumed for a minimum of two (2) minutes before retesting.

8.11.6.3 Where the second sample is again above 0.00 BAC the time post commencement of work will need to be taken into account to determine whether the level recorded is consistent with having been under the applicable limit on commencement of duty.

8.11.6.4 Where the resulting BAC is above the applicable commencement of work level the person would either have had to:

- arrive at work with an alcohol concentration above their applicable cut off point; or have
- consumed alcohol since commencement of work.



- 8.11.6.5 In either case the employee will be deemed to be in breach of the protocol and will be stood down for a minimum of the remainder of the day.
- 8.11.6.6 Where necessary arrangements will be made for the employee to be transported home or to a safe place until they are fit to drive.
- 8.11.7 This period of stand down will be unpaid unless the employee chooses to access accrued annual or long service leave in accordance with Council protocol, or Council approves access to sick leave (such approval will be determined on a case by case basis).
- 8.11.8 Prior to returning to work the worker is to submit to a further alcohol test which must register within the applicable B.A.C limit.
- 8.11.9 Confirmed positive test results are to be formalised in writing with the letter detailing a nominated time and date when the employee and, if requested, their support person, is to meet with their Manager and the Manager Human Resources, or delegate(s) to discuss further action. (Refer to section 8.13 for more information on the Return to Work Meeting)

## **8.12 Other Drugs Testing Procedure:**

- 8.12.1 Employees identified to participate in a drug test will be required to undergo an initial drug screen oral fluid drug test following the guidelines documented in the Australian Standard AS4760:2006 - Procedures for Specimen Collection and the Detection and Quantification of Drugs in Oral Fluid. The test will be administered by a suitably qualified person.
- 8.12.2 Photo identification is to be provided, on request. Where photo identification is not available a senior member of staff will be required to confirm the individual's identity and to sign the identification section of the testing paperwork.
- 8.12.3 In association with the initial drug screen test staff will be given the opportunity (as per section 8.12.5 Potential Impact of Prescription and Over the Counter Medication) to declare any prescription or over the counter medication they are taking.
- 8.12.4 Where the screening test indicates a non-negative test result a saliva sample will be sent to an accredited testing laboratory for confirmatory testing in accordance with the Australian Standard AS4760:2006 - Procedures for Specimen Collection and the Detection and Quantification of Drugs in Oral Fluid. Confirmatory test results will take in the order of 48 hours to be analysed and the results provided to Council. Confirmatory test results will be provided directly to the Manager Human Resources or delegate and will be treated and stored as confidential.

## 8.12.5 Potential Impact of Prescription and Over the Counter Medication

- 8.12.5.1 In recognition that some prescription medications can result in a non-negative result being obtained in association with initial screening tests, employees can choose to declare any over the counter and/or prescription medications they are taking. This information can either be declared up front prior to taking the test, or following the initial screening test if a non-negative result is obtained. Such information is to be kept confidential and will only be used in determining if the medication is the reason for the non-negative test result.
- 8.12.5.2 If the worker declares the medication prior to any testing being conducted, or in the case of initial testing being conducted in house, before testing by a third party commences, and the drug class(es) declared is consistent with the drug class(es) detected at the screening test, then a fitness for work assessment is to be conducted by two Responsible Persons.
- 8.12.5.3 If as a result of this assessment the employee is assessed as being:
- unfit to continue their normal role, Council will explore any opportunities to temporarily redeploy the employee to alternate suitable duties whilst confirmatory test results are awaited.
    - Where alternate duties are not possible, arrangements will be made for the employee to be transported home or to a safe place unless acceptable public transport is available e.g. an employee who normally operates or drives a Council vehicle or heavy/mobile plant or undertakes high risk duties may be unable to continue to do so.
  - fit to perform their normal duties the person will be permitted to return to work and will be allocated low risk tasks pending the result of the confirmatory test.
- 8.12.5.4. Council may request further information such as a medical certificate from the employee's doctor, or refer the employee to a doctor of its choosing.
- 8.12.5.5 Where a non-negative test result is obtained and the employee declared no medication use, did not declare the medication prior to third party testing commencing, if the drug class(es) declared was inconsistent with the drug class(es) detected, or there are methamphetamines present, the employee will be assessed as unfit for work and arrangements will be made for the employee to be transported home or to a safe place, unless acceptable public transport is available.
- 8.12.5.6 Oversights in the reporting of medication use are to be anticipated and are to be regarded as normal, however the provision of false information in relation to declared medications will be dealt with as a disciplinary matter.
- 8.12.5.7 Where an employee is stood down as a result of an initial non-negative test result this period of absence will be without pay unless the worker chooses to access accrued annual or long service leave in accordance with Council

protocol, or Council approves access to sick leave (such approval will be determined on a case by case basis).

#### 8.12.6 Negative Confirmatory Test Results

- 8.12.6.1 On receipt of a negative confirmatory test result the employee and their Supervisor/Manager will be advised of the test result.
- 8.12.6.2 If the employee had been stood down pending the outcome of the confirmatory test they will be advised that they are free to return to work and any loss of pay or use of paid leave taken as a consequence of being stood down will be reimbursed and reinstated in full by Council.

#### 8.12.7 Confirmed Positive Test Results Consistent with Declared Medication

- 8.12.7.1 On receipt of a confirmed positive test result consistent with declared medication the employee and their Supervisor/Manager will be advised of the result.
- 8.12.7.2 If the employee had been previously allocated low risk duties whilst the confirmatory test results were awaited, the employee will be reassessed for fitness for work by the Manager Human Resources (or delegate) and the relevant Supervisor and/or Manager and 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.
- 8.12.7.3 If the employee had been stood down pending the confirmatory test results they are to be advised that they can return to work where a fitness for work assessment will be conducted by the Human Resources Manager (or delegate) in consultation with the worker's Supervisor and/or Manager. On completion of this assessment the worker will either:
  - return to normal duties; or
  - be placed 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.
- 8.12.7.4 Where appropriate, assistance in making the fitness for work determination can be sought from the employee's Doctor or other relevant health professional(s).
- 8.12.7.5 Matters of this nature will be dealt with as a Fitness for Work issue.

## 8.12.8 Confirmed Positive Test Results Not Consistent with Declared Medications or Where No Medication is Declared

- 8.12.8.1 On receipt of a confirmed positive test result the employee will be advised in writing that the confirmatory test was positive, or where medication use was declared, positive and inconsistent with the medication disclosed.
- 8.12.8.2 The letter will contain details of a nominated time and date when the employee and, if requested their support person, is to meet with their Manager and the Manager Human Resources, or delegate(s) to discuss further action.

## 8.13 Return to Work Meeting

- 8.13.1 A return to work meeting is to be held as a consequence of any confirmed positive alcohol or other drug test obtained by a Council employee and in the circumstances of a refusal to undergo testing. The meeting is to involve the employee, their support person where requested; their Manager and the Manager Human Resources (or delegates).
- 8.13.2 Depending on the circumstances this meeting may be held before or after the staff member has been cleared to return to work as a consequence of a subsequent negative test result.
- 8.13.3 At this meeting the details of the positive test result will be discussed with the employee, who will be given the opportunity to provide any information or comments that may be a mitigating factor when considering the confirmatory test result.
- 8.13.4 After consideration of this information the employee will be advised:
- if they are required to participate in a targeted random testing program;
  - of available counselling/support services and if necessary, or by the employees own request, be referred to an appropriate service;
  - whether a return to work plan will be required to be developed;
  - any disciplinary action to be taken by management; and
  - the requirement, if not already met, for a negative test result to be obtained prior to any return to work.
- 8.13.5 Whilst awaiting the required negative test result, the employee may be stood down and be entitled to access their accrued annual or long service leave in accordance with Council protocol. Council may approve access to sick leave (such approval will be determined on a case by case basis).
- 8.13.6 Where a return to work plan is required its aim is to assist the employee to manage their fitness for work issues. The details of the plan should be agreed between the parties and may include the:
- aim of the program;
  - actions to be taken;
  - progress reporting procedure;

- review date; and the
- timeframe for return to work.

8.13.7 The parties may include, at the employees request, their union representative or a representative of their choice to assist in the development of this plan.

8.13.8 Where the employee agrees/is required to obtain professional assistance the input of this professional may be sought in relation to the return to work plan and/or a rehabilitation plan may be required to be developed between the employee and their medical provider. This plan, where requested, is to outline the 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.

8.13.9 Free counseling in accordance with the provisions of Council's Employee Assistance Program will be available to Council employees as part of their return to work plan. Assistance with the costs associated with other components of the rehabilitation program will be assessed on a case by case basis but will normally be a cost to the employee.

8.13.10 Depending on the circumstances the employee may be directed to attend counseling under the Employee Assistance Program as a condition of return to work.

8.13.11 With the approval of Council, sick leave, long service leave, annual leave (where accrued) or unpaid leave may be available to the employee undertaking alcohol and/or other drugs rehabilitation or counselling. Such approval shall not be unreasonably withheld.

8.13.12 The relevant Manager, in conjunction with the Human Resources Manager or delegates, is accountable for monitoring the frequency of targeted random testing for an employee subject to targeted random testing.

8.13.13 Council may initiate disciplinary action in accordance with the provisions of the Local Government (State) Award and this Protocol where the employee returns a second or subsequent positive test result within a two year period.

## **8.14 Return to Work Testing**

8.14.1 Once a staff member returns a confirmed positive test result, or refuses testing, they are to be stood down from work for a minimum of the remainder of the day and are unable to return to work until a subsequent negative test result has been obtained.

8.14.2 It is up to the staff member to determine when they believe they are ready for this testing to be undertaken.

- 8.14.3 To schedule a return to work test, arrangements are to be made the day before with the Human Resources Unit who will make arrangements for a tester to be available at an agreed time on the proposed date of return.
- 8.14.4 Where a negative test result is obtained the employee is free to return to their normal duties. Where a return to work meeting has not already been held, one will be scheduled as soon as practicable on return of the employee.
- 8.14.5 Where return to work testing results in a confirmed positive alcohol result or a non-negative initial drug test result a confirmatory sample will be forwarded to the pathology lab for further testing and the employee will be directed to remain off work, with a further round of return to work testing to be arranged on a future agreed date.
- 8.14.6 Confirmed positive return to work test results do not constitute a further breach of this protocol but rather will be treated as a continuation of the original breach.

### **8.15 Disciplinary Action:**

- 8.15.1 Employees who breach this protocol will be subject to disciplinary action in accordance with the provisions of the Local Government (State) Award, Council's Disciplinary Protocol and this Protocol.
- 8.15.2 Disciplinary action will normally escalate through the following four (4) steps:
- Step 1 - First Warning (verbal)
  - Step 2 - Second Warning (Written)
  - Step 3 - Final Warning (Written)
  - Step 4 - Show Cause (Written)
- 8.15.3 Discussions held as part of a return to work meeting resulting from a first offence or self-disclosure will be regarded as a verbal warning.
- 8.15.4 Second and subsequent confirmed positive test results (other than those consistent with declared medication) within a two year period will result in formal written disciplinary action up to and including dismissal.
- 8.15.5 An employee's inability to perform normal duties during any period as a result of this protocol may result in a review of the employees pay rate during this period which could result in a reduction in pay.
- 8.15.6 Employees participating in self-disclosure testing have immunity from disciplinary action on the condition that they comply with the established rehabilitation program and do not attend for work in breach of this protocol.

### **8.16 Grievances/Disputes Relating to this Protocol:**

- 8.16.1 Any dispute to the application of this protocol by an employee of Council shall be settled in accordance with the Grievance and Dispute Settlement Procedure of the Local Government (State) Award.

## 9.0 Forms

Forms developed to assist in the application of this protocol include:

1. Fitness for Work Assessment Form
2. Drug and Alcohol Testing Form
3. Drug and Alcohol Rehabilitation Plan Template

## 10.0 Protocol Review

This protocol will be reviewed periodically by Tweed Shire Council in consultation with interested parties. Interested parties include, but are not necessarily limited to, employees, applicable union bodies, and relevant external parties e.g. contractors, and labour hire/ group training providers.

As a minimum the protocol will be formally reviewed on completion of the first 12 months of implementation and on communication of the results of any Industry wide reviews of the template policy and procedure on which this document is modeled.

Consideration will be given in future reviews of this document to the potential introduction of risk based position specific workplace alcohol and other drug limits.

Notwithstanding the consultation process referred to above, Council reserves the right to vary, amend, or revoke the provisions of this protocol at any time.

**Version Control:**

<b>Version History</b>		
<b>Version #</b>	<b>Summary of changes made</b>	<b>Date changes made</b>
1.0	<i>Protocol launch</i>	<i>8 March 2006</i>
1.2	<i>Updated to new Protocol template</i>	<i>11 July 2011</i>
2.0	<i>This protocol is a completely rewritten protocol that rescinds and replaces Council's previous OHS Drug and Alcohol Protocol v 1.2</i>	<i>4 March 2015</i>
2.1	<i>Clarification of Alcohol testing procedure post commencement of work</i>	<i>16 September 2015</i>

