

HR027 – Staff Criminal Offences Policy

1. POLICY CERTIFICATION

Policy title:	Staff Criminal Offences Policy
Policy number:	HR027
Category:	Policy
Classification:	Human Resources
Status:	APPROVED

2. PURPOSE

This policy will fulfill the requirements of relevant sections of the *Local Government Act* and provide a framework for which paid and voluntary staff member are dealt with if imprisoned whilst employed by Roper Gulf Regional Council. The policy provides clarity in support of the relevant legislation, regulations, and guidelines.

This policy is a compliment for, and is to be interpreted in conjunction with the HR001 *Staff Member and Contractor Code of Conduct Policy*, HR002 *Bullying and Harassment Policy*, HR003 *Staff Member Discipline Policy*, HR005 *Confidentiality and Privacy Policy*, HR006 *Working With Children Policy*, and HR023 *Criminal History Check Policy*.

3. ORGANISATIONAL SCOPE

This policy applies to all Roper Gulf Regional Council paid and voluntary staff members.

4. POLICY STATEMENT

Roper Gulf Regional Council (RGRC) staff are required by Section 106 of the *Local Government Act* (LGA) to maintain proper standards of integrity, diligence, and concern for the public interest. So as to maintain public confidence, RGRC and the CEO must be able to attest that a staff member employed by RGRC is a 'fit and proper' person, who is able to discharge their duties without fear or favour, according to law, as well as RGRC policies.

If a staff member commits, and is convicted of a summary or indictable offence, and subsequently gaoled for that offence whilst a staff member of RGRC, the actions of that staff member will adversely affect the reputation and public image of RGRC. Furthermore, RGRC may no longer be able to attest that the staff member is a 'fit and proper' person, who is able to maintain proper standards of integrity, diligence, and concern for the public interest, and may itself be in breach of Section 106 of the *Local Government Act*.

5. DEFINITIONS

The Act	<i>Local Government Act</i>
Adheres	Follows or 'complies with'.
Shall	Will
Staff Member	A person engaged by Roper Gulf Regional Council to provide any service, or carry out any task, in either a paid or voluntary capacity.
Imprisonment	Incarceration due to a conviction and/or order by a court for breach of a provision under an act, or statutory instrument. Inclusive of juvenile detention and adult gaol. Is not synonymous with arrest.
Remand	Detention, "in custody", for an <i>alleged</i> offence, which is punishable by a term of imprisonment. The remandee is remanded into custody, without the grant of bail, under provision of the <i>Bail Act</i> , as part of the judicial process prior to a finding of guilt and/or conviction by a court. Applies to juvenile detention and adult gaol. Is not synonymous with arrest.

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Gaol	A place of imprisonment. Synonymous with imprisonment.
Anti-Discrimination legislation	<i>Anti-Discrimination Act, Anti-Discrimination Regulations</i> , any other applicable Territory and Commonwealth Act(s) or statutory instrument(s).
Offence	Breach or contravention of any act or statutory instrument, which is punishable by a financial penalty, or term of imprisonment, or both.
Arrest	Temporary loss of freedom and detention by police, or any other authorised person(s), for an alleged offence. An arrest is temporary and does not mean imprisonment.
Frustration of Employment Contract	A situation where a contractual obligation has become incapable of being fulfilled. For the purposes of this policy, frustration is a situation where a staff member is no longer able to carry out the duties required of them.
Self-Induced Frustration	The frustration of a contract that occurs because of the act, or omission to act of a party.
Summary Offence	As per the Section 3, <i>Criminal Code</i> definition, an offence is a <i>summary offence</i> if an Act states that it is a summary offence, or the offence is not an indictable offence, or , a charge of the offence must be heard and determined summarily, or the offence is not an indictable offence.
Indictable Offence	As per the Section 3, <i>Criminal Code</i> definition, an offence is an <i>indictable offence</i> if an Act states that the offence is an indictable offence, or, subject to subsection (3)(a), the penalty that may be imposed on an individual for the offence includes imprisonment for a period of more than two (2) years.
Natural Justice	The right to be given a fair hearing, and the opportunity to present one's case, and the right to have a decision made by an unbiased, or disinterested decision-maker, and the right to have that decision based on logically probative evidence (<i>Salemi vs MacKellar (No 2) (1977) 137 CLR 396; 14 ALR 1</i>). The denial of natural justice is a ground for a review as per ss 5(1)(a), 6(a) of the <i>Administrative Decisions (Judicial Review) Act 1977 (Cth)</i> .

6. PRINCIPLES

6.1 Legislative Requirements

RGRC, pursuant to Section 106 of the *Local Government Act*, is required to ensure that staff members maintain proper standards of integrity, diligence, and concern for the public interest.

RGRC must also comply with the Section 104 provisions of the Act which state:

“104 Principles of human resource management

A council must ensure that its policies on human resource management give effect to the following principles:

(c) staff must be treated fairly and consistently and must not be subjected to arbitrary or capricious decisions;

(f) there must be:

(i) no unlawful discrimination against a member, or potential member of staff on the grounds of sex, sexuality, marital status, pregnancy, race, physical or intellectual impairment, age or any other ground;

(ii) no other form of unreasonable or otherwise unjustifiable discrimination against a member or potential member of staff.”

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6.2 Commission of Offences by Staff Members

All RGRC staff members are required by Clause 6.4 of the HR023 *Criminal History Check* policy, as well as by their Contract of Employment, to immediately inform RGRC of any criminal charge or commencement of proceedings, or convictions against them, which occur whilst employed with RGRC. A failure to disclose a charge or conviction which occurs whilst employed with RGRC shall be treated as a serious misconduct matter.

6.3 Criminal Offences

Criminal offences carry penalties of imprisonment. If a RGRC staff member, or any other person, is charged with a criminal offence, they may be arrested during the commission of that offence, or afterwards, and may either be granted or refused bail depending on various circumstances such as antecedents, the nature of the offence, the *Bail Act* provisions etc.

A charge with an offence does not mean that the accused committed or is in any other way guilty of an alleged offence unless the offence is proven. The accused is presumed to be innocent of the charge, unless the charge is proven against the accused. The *Burden of Proof* in criminal matters rests on the prosecution which is required to prove the charges against the accused *beyond reasonable doubt* (s43BR, s43BS *Criminal Code Act*).

RGRC shall not intervene, or in any other way pass judgement on matters which are yet to be determined, however, RGRC is required to ensure that staff maintain proper standards of integrity, diligence, and concerns for the public interest (s106 LGA).

Should a RGRC staff member be charged with a criminal offence and be granted bail, the staff member shall declare the charge immediately to their supervisor, who will subsequently inform the Director and/or the CEO. The staff member may be stood down with or without pay depending on the circumstances, for the duration of the proceedings. The matter will be reviewed by the HR Manager, relevant Director, and the CEO, and be considered on an individual case by case basis.

Should a RGRC staff member be refused bail, and remanded in custody for a criminal offence, the staff member shall immediately be stood down without pay whilst they are on remand. Should the staff member subsequently be granted bail, the staff member may request his or her stand down to be reviewed.

RGRC must ensure that public confidence and interest are put first, and the review of a stood down staff member forms part of the concept of natural justice. It is to be treated a *show cause* matter where the staff member is given the opportunity to provide reasons to RGRC as to why their stand down should be lifted. The review is to be conducted by the HR Manager, Director, Corporate Governance (DCG) and the CEO.

Any submissions by the staff member must be considered within the context of s106 of the *Local Government Act* – the maintenance of proper standards of integrity, diligence, and concern for the public interest.

A staff member's position is to be reviewed upon the resolution of their legal proceedings. Should the staff member be found *not guilty*, their position will be reviewed within the context of s106 of the Act, and the concepts of natural justice and the presumption of innocence.

6.3.1 Criminal Convictions

If a RGRC staff member is convicted of, and gaoled for an offence, the staff member shall immediately be stood down without pay. The HR Manager, DCG and CEO shall review the circumstances of the individual matter, and consider whether or not they are able to attest that the staff member, despite their conviction and imprisonment whilst employed by RGRC, is still a 'fit and proper' person. If the HR Manager, DCG and

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CEO are no longer able to attest to the staff member’s fitness and propriety, the staff member’s subsequent employment by RGRC is to be terminated.

RGRC acknowledges that s19(1)(q) of the *Anti-Discrimination Act* prohibits discrimination against a person on the basis of *irrelevant criminal record*. A conviction acquired by a RGRC staff member whilst employed by RGRC may be considered to be a *relevant criminal record* for the purposes of the *Anti-Discrimination Act* within the context of s106 of the *Local Government Act*, and thus the dismissal of the staff member does not contravene the s19(1)(q) provision of the *Anti-Discrimination Act*.

Furthermore, if a RGRC staff member who is employed in a position which involves the care, instruction or supervision of vulnerable persons, is convicted, and gaoled for an offence whilst an staff member of RGRC, Council is exempt from the anti-discrimination provisions of any Act so long as the discrimination is reasonably necessary to protect the physical, psychological, or emotional wellbeing of those vulnerable persons, having regard to all the relevant circumstances of the case including the person’s actions (s37(1)(b) *Anti-Discrimination Act*).

6.3.2 Self-Induced Frustration of Employment Contract

If a RGRC staff member is convicted and gaoled for an offence whilst employed with RGRC, they are no longer able to carry out their duties, resulting in the self-induced frustration of their employment contract. If a staff member is no longer able to carry out the duties for which they are contracted, their employment will be reviewed by the HR Manager, Director of Corporate Governance, and CEO. These matters will be considered on an individual, case-by-case basis taking into account various considerations such as the reason for the frustration, antecedents, and circumstances, which will be weighed up against the needs of the organisation.

7. REFERENCES AND RELATED DOCUMENTS

Legislation	<i>Local Government Act</i>
	<i>Anti-Discrimination Act</i>
	<i>Anti-Discrimination Regulations</i>
	<i>Criminal Code Act</i>
	<i>Fair Work Act 2009 (Cth)</i>
	<i>Aged Care Act 1997 (Cth)</i>
	<i>Northern Territory Civil and Administrative Tribunal Act</i>
	<i>Administrative Decisions (Judicial Review) Act 1977 (Cth)</i>
Roper Gulf Regional Council	<ul style="list-style-type: none"> • HR001 <i>Staff member and Contractor Code of Conduct</i> policy, • HR002 <i>Bullying and Harassment Policy</i> • HR003 <i>Staff member Discipline Policy</i> • HR005 <i>Confidentiality and Privacy Policy</i> • HR006 <i>Working With Children Policy</i> • HR023 <i>Criminal History Check Policy</i>

8. DOCUMENT CONTROL

Policy number	HR027
Policy Owner	Human Resources
Endorsed by	SLT 06 February 2017

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Date approved	OCM 02 March 2017
Revisions	
Amendments	
Next revision due	March 2020

9. CONTACT PERSON

Position **Manager, Governance, Corporate Planning and Compliance**

Contact number **(08) 8972 9000**