

City of Hobart

# Policy

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**Title:** Elected Member Fitness to Undertake Duties

**Category:** Corporate Governance

Date Last Adopted: 24 February 2020

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## 1. Purpose

The Hobart City Council is committed to enabling its elected members to fulfil their duties to the best of their abilities to ensure that the functions of the Council are achieved in accordance with legislative requirements, good governance principles and community expectations.

This policy has been prepared for elected members in support of their roles as community leaders.

Where an elected member may have known disabilities, the City of Hobart will make all reasonable and necessary adjustments to support them in fulfilling their duties of office.

In the application of this policy such circumstances are not considered as related to issues of fitness to carry out the duties of office of an elected member.

In accordance with the Local Government Act 1993 (the Act), elected members have committed to undertake their roles to the best of their ability and in accordance with the law. They have also committed to take reasonable care to protect their own health and safety as well as the health and safety of others in the workplace, in accordance with the Elected Member Behaviour Policy.

The purpose of this policy is to support elected members in undertaking their roles and functions by:

- making elected members aware of when and how to access support if they cannot fulfil their duties to the best of their ability;
- outlining factors and circumstances which may impact an elected member's fitness to perform all duties in their role;

- setting out the obligations of elected members to make confidential disclosures regarding impacts on their abilities to undertake all duties; and
- Setting out the obligations of the General Manager in dealing with fitness for duty issues where they may impact an elected member and/or employees or other persons within the workplace.

## **2. Scope**

This policy applies to all City of Hobart elected members, and applies to all issues which may impact on an elected member's fitness to perform duties while undertaking their role, including without limitation, physical and psychological conditions.

Where an elected member is not fit to perform their duties, they may advise the General Manager as set out in this policy. Relevant arrangements will be made to either support the elected member to continue in their role or enable them to return to their role as quickly as possible.

In cases where an elected member chooses not to disclose their unfitness and to continue to undertake their duties, this may constitute a health and safety risk for both the elected member and others.

## **3. Policy**

### **Fitness for Duty and Disclosure Obligations**

#### **Identifying a fitness for duty concern**

Elected members acknowledge that a physical or psychological impairment may impact on their fitness to carry out duty.

A person is fit for duty when they are in a mental and physical state of health which allows them to competently perform the inherent or genuine and reasonable requirements of their role in a manner which does not compromise or threaten the safety or health of themselves or others.

Common indicators of an issue concerning or impacting fitness may include:

- impaired physical function;
- unexplained or excessive absences or unreasonable habitual lateness;
- problems with memory, speech or co-ordination;

- disproportionate or excessive aggressive outbursts towards another person or in response to any discussion;
- unusual drowsiness or fatigue; or
- concerning physical changes.

## **Consumption of alcohol and drugs**

Elected members acknowledge that consumption of alcohol and other drugs (even if legal and prescribed), may impact on the satisfactory performance of their duties. Further, such activity may negatively impact on the working environment and affect other persons, including other elected members, Council employees and community members.

Elected members may elect to be included in the City of Hobart's random drug and alcohol testing regime which applies to employees.

In electing to participate in the regime, the procedure attached to this policy would apply.

In submitting themselves to drug and/or alcohol testing, elected members would be subject to the legal requirements relating to alcohol and drugs, as applying in the State of Tasmania.

The use of any substance which impacts on the ability of an elected member to satisfactorily undertake duties as part of their role, or which poses risks to others, may result in the elected member being considered to be unfit to carry out their duties.

## **Other factors and circumstances impacting fitness**

Elected members acknowledge that there are a range of other things that may impact on fitness for duty, including fatigue, general physical health, or specific health situations. This could mean an elected member's physical or mental health is temporarily affected, or affected over a longer period of time, such that their ability to function in their role may be compromised.

## **Managing Fitness for Duty**

### **Disclosure by Elected Member**

Where an elected member considers they may not be fit to undertake their duties, or their fitness has been compromised or restricted, or on professional medical advice their fitness has the potential to become restricted, they should notify the General Manager.

In consultation with the elected member, the General Manager will, subject to their consent, put in place appropriate arrangements to support and assist the elected member. These arrangements will be determined on a case by case basis, depending on the nature of the issue, and risks to health and safety.

### **Confidentiality and privacy**

Subject to the law, the details regarding an elected member's fitness to carry out their duties, will not be disclosed, except for those persons who may be involved in the provision of support services arranged by the General Manager in consultation with the elected member.

Elected members should be mindful of any associated reputational damage to an individual elected member, where there are concerns around fitness to carry out duty. In line with the principle of respect outlined in the Respectful Conduct Policy, no public communications on such matters are permitted.

### **Assistance, external advice and referral**

Assistance may include, but would not be limited to the following:

- provision of ergonomic and rehabilitation resources;
- additional support provided by administrative staff as required;
- a medical assessment and/or return-to-full duties plan;
- access to support services (in addition to the availability of elected member assistance provided through the Council's Employee/Elected Member Assistance Program); or
- adjustment of the elected member's workload, as may be appropriate.

Where the elected member's circumstances may give rise to a work health and safety risk, or be a breach of the law, the following section applies.

## Compliance with Legislative and Policy Obligations

### Work Health and Safety Obligations

In accordance with the Work Health and Safety Act 2012 the General Manager is responsible for work health and safety at City of Hobart workplaces, operations and activities.

Elected Members would be regarded as other persons under the legislation.

In the event of a situation arising where an elected member's behaviour within the workplace was considered to pose a risk, the General Manager, as the responsible officer, may be required to take appropriate action to address the situation.

Such appropriate steps to reduce any health and safety risk may include, for example:

- restricting the use of Council resources by an elected member;
- recommending the Councillor take a temporary leave of absence; or
- referring the Councillor to appropriate authorities where the circumstances involve broader contravention of the law

The Code of Conduct provisions, contained within the Local Government Act 1993, mandate behaviours expected of elected members.

Where behaviour is considered to be in contravention of the Code the legislation outlines the procedures to be followed by a complainant, including an expectation that effort will be made to resolve the issue which is the subject of concern, outside of the formal complaint process.

### Possible Scenarios

The following scenarios are provided as examples only in order to illustrate how this policy may operate in practice. Failure to follow the steps outlined in these scenarios does not necessarily constitute a breach of this policy.

#### **Scenario 1: I injured my foot**

Step 1: Will this impact your ability to carry out duties?

You must consider whether an injury sustained at work or outside of work has the potential to impact on your performance.

If so, you must report it to the General Manager.

Step 2: Report it immediately

The General Manager will discuss the most appropriate means of assisting which could involve reducing workload and duties.

Step 3: If you take leave

In some circumstances, where a fitness issue requires temporary leave of absence, the organisation may make appropriate arrangements on your return to work in accordance with its WH&S Policy.

**Scenario 2: I am taking prescription medication which makes me feel faint**

Step 1: Will this impact your ability to carry out duties?

Feeling faint has negative impacts on your capacity as well as your safety at work.

If there are potential impacts from the medication on your ability to undertake duties, you must inform the General Manager.

Step 2: Disclose it to the General Manager.

The General Manager will discuss potential options to enable you to undertake your duties while minimising risks to the safety of yourself and others. This may include reducing or rearranging your workload or taking temporary leave.

Step 3: If there is a health and safety risk

Prolonged symptoms of feeling faint may prompt the General Manager to discuss a longer leave of absence or a review of medication or alternative treatments.

**Scenario 3: I have noticed another elected member often shows up smelling of alcohol**

Step 1: Is their fitness to undertake their duties effectively a concern?

Are there outward serious or persistent signs that the person is having difficulty performing their usual duties?

Step 2: Is there a health and safety risk?

If this poses a potential risk to the health and safety of the elected member and/or others, it must be reported to the General Manager immediately.

Step 3: Depending on the circumstances, and whether they have serious concerns about health and safety, the General Manager may follow up with the elected member and/or intervene.

## 4. Definitions

Term	Definition
Alcohol	Means ethyl alcohol or ethanol.
Drug	Means any substance that may result in psychological or behavioural changes that have the potential to reduce a person's fitness to perform duties and impact on performance and safety.
Duty	Means the performance of the role and functions of an elected member as prescribed under the Local Government Act 1993.
Substance	Includes alcohol, intoxicating products, prescription and non-prescription medication, legal/illegal/illicit drugs whether naturally occurring or synthetic.

## 5. Legislation, Terminology and References

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### Related Council Documents

- Code of Conduct
- Elected Member Behaviour Policy
- Meeting Procedure Policy
- Elected Member Development and Support Policy

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### Applicable Laws

- Local Government Act 1993 (TAS)
  - Local Government (Meeting Procedures) Regulations 2015
  - Anti-Discrimination Act (1998) (Tas)
  - Fair Work Act (2009) (Cth)
  - Privacy Act (1988) (Cth)
  - Work Health & Safety Act 2012 (TAS)
  - Magistrates Court Act (1987)
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Elected Member

Alcohol and Other Drugs Testing Procedure



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## 1. Guidelines

Particular processes in this procedure will be utilised as considered reasonably necessary to ensure effectiveness.

The process should ensure appropriate confidentiality for all parties.

An elected member may have a support person involved for any process contained under this procedure.

The role of the support person is to assist elected members by providing emotional support, aiding the elected member's understanding by taking notes, asking appropriate questions, or requesting breaks. A support person is not to be an advocate or speak on behalf of the elected member. An appropriate support person is a person who is not a party to a process or involved as a potential witness or who otherwise has a conflict of interest.

A support person must maintain confidentiality and understand that an elected members' fitness for work in relation to Alcohol and other Drugs is a private matter between the relevant parties, and that confidentiality of those processes should be respected at all times.

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## 2. Testing Procedures

Council is authorised to conduct testing of elected members who elect to participate in the testing regime, in accordance with the policy.

Council will engage the Testing Organisation to carry out testing for Alcohol and/or Drugs in accordance with this Procedure, Council Policy and applicable laws.

Testing must positively establish the elected member's identity.

The Testing Organisation must maintain custody of the sample and test results

until authorised by Council to release them.

Where the testing organisation reasonably suspects that a testing sample has been tampered, interfered with, or substituted the elected member must submit a second sample.

Types of testing

Illicit Drugs, Prescription Drugs and/or OTC Drugs testing will be by way of oral fluid testing (saliva).

Alcohol testing will be by way of breath analyses; and,

If requested by an elected member, subsequent blood test to confirm results of breath analyses test.

### **Procedure for Non-Negative Test**

If an elected member participates in a test and the test returns a non-negative test result, the elected member may take the following actions:

- immediately participate in a further test in accordance with the procedure to confirm/disprove the result by;
- accept the non-negative test result and be subject to actions, prescribed under the relevant Tasmanian legislation applying to alcohol and other drugs;

In the case a non-negative test result for alcohol

- providing a blood sample for laboratory testing arranged by the Testing Organisation; or
- in the case of a non-negative test result for illicit drugs, prescription drugs and/or over the counter drugs providing further saliva samples for laboratory testing arranged by the Testing Organisation.

### **Procedure for Negative Test Results**

If an elected member participates in a test and the test returns a negative test



result, they will be permitted to commence or continue with their work.