



Managing Unsatisfactory Work Performance and Misconduct Policy – Victorian Public Service

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Overview

This policy provides a framework to informally manage work performance; and formally manage unsatisfactory work performance and alleged misconduct by departmental employees. The policy provides for various unsatisfactory work performance and disciplinary outcomes, including termination of employment.

This policy provides guidance to departmental line managers and employees on how to comply with the misconduct and unsatisfactory work performance clauses of the *Victorian Public Service Workplace Determination 2012*.

Who does this policy apply to?

This policy applies to all departmental employees whose employment is governed by the *Victorian Public Service Workplace Determination 2012*, except those employed on a casual basis and those who are subject to a probationary period of employment.

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Part 1: Managing Unsatisfactory Work Performance and Misconduct Policy – Victorian Public Service

Policy Statement

This policy is underpinned by the following aims:

- To address matters under this policy expeditiously and with minimal disruption to the workplace.
- To maintain appropriate confidentiality.
- To encourage the reporting by employees of workplace behaviour that violates any law, rule or regulation or represents corrupt conduct, mismanagement of public resources, or is a danger to public health or the environment, as soon as reasonably practicable.
- To offer a range of supports to assist both line managers and employees with the processes under this policy.

Transitional arrangements

The policy and procedures introduce amended processes for the management of unsatisfactory work performance and the management of misconduct for employees.

Any new matters must be dealt with under this policy and procedures from the date the VPS Determination comes into effect.

Matters commenced but not concluded, as at the date the VPS Determination comes into effect, may continue in accordance with previous policy and procedures. This does not restrict matters not concluded from being managed under the new policy and procedures and managers are advised to seek assistance from their local people and culture unit as to how this may occur.

Representation and support

Representation

Employees are entitled to be represented by a person of their choice at any stage of a formal unsatisfactory work performance or misconduct matter. This person may be a friend, family member, a union representative or other advocate.

The representative's role includes, if requested by the employee:

- providing moral and practical support and guidance, to the employee
- attending meetings with the employee, taking notes on their behalf and representing them; however, the representative must not provide direct responses on matters of fact
- working cooperatively to resolve matters without undue or unreasonable delay, and
- assisting the employee to prepare a written response, if required.

An employee must notify the department of their representative's details as soon as practicable. While an employee is entitled to have a representative to assist them, the department is not required to provide additional copies of correspondence or other documentation to the representative – this remains the responsibility of the employee. The costs of engaging a representative are the responsibility of the employee engaging that representative.

Representatives must treat all matters in a confidential manner and must agree to follow the principles and requirements outlined in this policy.

In certain circumstances, the employer may request or require that an employee nominate an alternative individual representative, such as if a conflict of interest exists or for another compelling reason.

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Support - Employee Assistance Program

The department values the health and wellbeing of its employees, and recognises that participating in an unsatisfactory work performance or misconduct process may have an effect on some individuals. To help employees, the department provides an Employee Assistance Program (EAP), which is a short-term, confidential, counselling service designed to offer a problem-solving, solution-oriented approach to support employees with personal or work related issues.

The EAP is staffed by qualified practitioners who are independent of the department.

All employees of the department have access to the EAP, which provides for a limited number of counselling sessions at no cost to the employee and can be provided over the phone or face-to-face.

Line managers can access Manager Assist through the EAP, to help with workplace issues.

The department's EAP provider is *Davidson Trahaire Corpsych*, who can be contacted on 1300 360 364.

Record keeping and documentation

Record keeping and documentation in relation to supervision meetings, including discussions held, actions and timelines agreed to (or specified) is normally noted by the employee and the line manager as part of their usual record of supervision.

Record keeping and documentation in relation to formal unsatisfactory work performance and misconduct matters is required in order to accurately record what has taken place, decisions made and action taken.

Records **must** be accurate, reliable and authentic, complete and protected against unauthorised access or alteration, and **must** not be destroyed or removed from file, unless or until provided for as part of proper retention and disposal. Documentation ought to be filed chronologically, with the most recent record uppermost.

In relation to formal processes initiated under this policy, that is, unsatisfactory work performance or misconduct, local people and culture units will raise a restricted access departmental file for each incidence. These files will be treated as confidential and stored securely by the local people and culture unit.

Templates and supporting tools

A number of sample templates and supporting tools have been developed to assist with the processes under this policy. None of the sample templates are compulsory or mandatory to use, but each one contains useful information and material to meet industrial and procedural fairness requirements.

If the relevant sample template is not used, the contents of the sample template should be noted for their relevance to a specific circumstance. Additional information may be added to letters created from the sample templates and the content of templates may be altered. Assistance can be sought from local people and culture unit, if there are any questions about altering or adding new material to the sample templates or supporting tools.

Careful attention should be paid so that any correspondence maintains its integrity and structure and all content is consistent with the intent and purpose of the written material for a specific circumstance. Irrelevant material should be deleted, as should sample template headers and footers, and any other guidance notes contained within the document. Standard letterheads and signature blocks are to be aligned to the department's Style Guide.

All correspondence **must** be signed by a person with the delegated authority to make decisions or take action in relation to unsatisfactory performance or misconduct under this policy.

For further support with the templates, supporting tools or delegations, please seek advice from your local people and culture contact.

Confidentiality and privacy

It is important that appropriate confidentiality is maintained with respect to matters managed under this policy. If disclosure of matters is required from time to time, this should be restricted to those with a direct

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need to know and it is recommended that advice from local privacy contacts be sought prior to the release of material that may contain personal details.

The Protocol between Victoria Police and Department of Human Services on Reporting Employee Criminal Conduct and the Reporting Employee Criminal Conduct Policy provide guidance on the circumstances when information will be released to the police.

Informing the employee who raised the matter

If a formal misconduct process is commenced under this policy because of a complaint made by another employee, the department will inform the employee that made the complaint that the matter will be, or has been, managed in accordance with **clause 19** (Misconduct) of the *Victorian Public Service Workplace Determination 2012*.

The department may also provide the employee who made the complaint with other information as is reasonably practicable, while observing confidentiality and privacy obligations.

Review of actions and disputes

A Review of Actions can only be lodged with respect to a matter being managed under this policy, if documentation of any of the following has been placed on that employee's human resources management file: a record of formal counselling, a formal written warning, a final written warning or a record of a disciplinary outcome. This means that a review of actions can only be lodged about a decision under this policy once the process under this policy has been completed.

This also includes a review of actions relating to whether the processes described by the VPS Determination have been complied with in reaching a decision in accordance with this policy. Such matters should be discussed directly with the line manager or the local people and culture representative.

Employees are precluded from lodging a review of actions if the matter arises from, or relates predominately to, the termination of their contract of employment with the department. Such matters, if applicable, may be referred to Fair Work Commission, which can be contacted by telephone on 1300 799 675 or via its website at www.fwa.gov.au.

Conflict of interest considerations and declarations

A delegate who is required to determine an appropriate discipline outcome **must** consider if there is any conflict of interest that needs to be declared. Where there may be a conflict, it is recommended that the delegate make a declaration so that it can be addressed appropriately.

Declarations may be made using the **Conflict of Interest – Declaration Form** and retained on the relevant restricted access departmental file. It is recommended that advice be sought from the local people and culture unit where a declaration is made.

Reprisal action

No person shall take reprisal action against, or directed towards, an employee or person who has made, or may make, a claim or complaint, or any employee or other person who is identified as a witness or provides information in support of, a claim or complaint. Reprisal action may include, but is not limited to, actions such as 'pay-backs', threats, harassment, retribution or intimidation.

Any such action may be regarded as misconduct and be managed in accordance with this policy.

Related documents

The following related documents may be considered in addition to/or in place of this policy:

- **The Protocol between Victoria Police and Department of Human Services on Reporting Employee Criminal Conduct and the Reporting Employee Criminal Conduct Policy:** explain the procedure for notifying Victoria Police of alleged criminal conduct by departmental employees, and supports the timely sharing and exchange of pertinent information.

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- **Review of Actions Policy:** provides a review process for employees with concerns about management actions or decisions that directly and adversely affect them.
- **Positive and Fair Workplaces: Working Well Together Policy:** provides a framework to promote a positive and fair working environment, and its associated procedures provide guidance on ways to identify and address unfair treatment in a timely and sensitive manner, with the aim of having it cease.
- **Probation Policy – Victorian Public Service:** outlines principles for managing an employee during their probationary period prior to confirming appointments to ongoing or fixed-term roles.
- **Performance management systems:** provide a framework that encourages ongoing, open and two-way communication and feedback between employees and their line managers.

Performance and development in the department is about encouraging success by committing to:

- employees knowing how their work contributes to the department's goals and receiving regular feedback on how they are going
 - line managers providing their teams with role clarity, regular feedback and coaching, targeted development opportunities and fair reward for effort
 - the department's business objectives being met through having the right people doing the right work – and a means of sustaining this.
- **Privacy Policy:** commits the department to compliance with the principles outlined in privacy legislation, and to use these as the standards for handling personal and health information.

Legislation, standards and industrial agreements

Legislation	
<ul style="list-style-type: none"> • <i>Fair Work Act 2009</i> (Cth) • <i>Fair Work Regulations 2009</i> (Cth) • <i>Fair Work(Transitional Provisions and Consequential Amendments) Act 2009</i> (Cth) • <i>Public Administration Act 2004</i> (Vic) - Public sector values and employment principles • <i>Public Administration (Review of actions) Regulations 2005</i> (Vic) • The policy is consistent with the <i>Charter of Human Rights & Responsibilities Act 2006</i> (Vic).<i>Equal Opportunity Act 2010</i> (Vic) • <i>Equal Opportunity Act 2010</i> (Vic) • <i>Information Privacy Act 2000</i> (Vic) 	
Standards	
<p>The State Services Authority's:</p> <ul style="list-style-type: none"> • <i>Code of Conduct for Victorian Public Sector Employees (No. 1) 2007</i> • <i>Public Sector Standards</i> (issued by the Public Sector Standards Commissioner) • <i>Managing Poor Behaviour in the Workplace</i> [publication (2008)] • <i>Fair and Reasonable Treatment Guidelines</i> [publication (2006)] • <i>Reasonable Avenues of Redress Guidelines</i> [publication (2006)]. <p>The department's:</p> <ul style="list-style-type: none"> • Values, and • The principles of the department's Disability Action Plan 	
Industrial agreements	
VPS Determination	Clause 18 and Clause 19, Victorian Public Service Workplace Determination 2012

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Further Information

Internal

For further information and advice contact your local people and culture unit.

External advice and options

Employees may wish to seek external advice and assistance from the union:

- Community and Public Sector Union (CPSU)
Contact details: Telephone 1300 137 636
Website: www.cpsu.org.au

Employees may wish to seek advice and/or representation from a person of their choosing, for instance an external employment or industrial advocate:

Employees may wish to make a claim with the relevant external tribunal, if applicable:

- Fair Work Commission (FWC)
Contact details: Telephone 1300 799 675
Website: www.fwa.gov.au

Making decisions under this policy

Decisions made under this policy are delegated under **s20(1)** and **s33** of the *Public Administration Act 2004* (Vic) by the Secretary, Department of Human Services.

It is recommended that line managers familiarise themselves with the 'Delegation and Authorisation of the Secretary's Functions and Powers to Officers of the Department of Human Services. This is found on the Legal Services website at:

<http://intranet.dhs.vic.gov.au/resources-and-tools/legislation/delegation-of-secretarys-powers-and-functions-under-the-public-administration-act-14-december-2012.doc>

Meaning of terms in this policy

Term	Meaning
Balance of probabilities	Balance of probabilities refers to the standard of proof required to substantiate an allegation. In determining whether an allegation is substantiated, the person making the finding must be satisfied that the alleged conduct is more likely than not, to have occurred. The seriousness of the allegation should also be taken into account; the more serious the allegation, the more fairness requires the decision-maker be satisfied to a real and substantial extent that the alleged conduct occurred.
Line manager	Line manager means the person to whom an employee reports. For the purposes of this policy and its associated procedures, line manager is taken to mean the employee's supervisor, line manager, team leader or any other title in common usage, due to a direct reporting relationship existing. Some of the decisions under this policy and its associated procedures should be made or confirmed by, a more senior line manager holding the appropriate delegation.

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Term	Meaning
Misconduct	<p>Misconduct means employee conduct that is inconsistent with their contract of employment, or the department's <i>Values</i>, or the <i>Code of Conduct for Victorian Public Sector Employees (No. 1) 2007</i>, or the department's policies and procedures, practice manuals or other instructions and includes, but is not limited to:</p> <ul style="list-style-type: none"> • a contravention of a provision of the <i>Public Administration Act 2004</i> (Vic), the regulations to that act, a binding code of conduct, or a provision of any statute or regulation that applies to the employee in their employment, or • improper conduct in an official capacity, or • a contravention, without reasonable excuse, of a lawful direction given to the employee by a person authorised to give the direction, or • an employee making improper use of his or her position for personal gain, or • an employee making improper use of information acquired by him or her by virtue of his or her to gain personally or for anyone else, financial or other benefits or to cause detriment to the VPS or the public sector.
Satisfactory work performance	<p>Satisfactory work performance means an employee performs to the required standards and expectations of the role to which they are assigned.</p> <p>The standards and expectations of an employee's role are described, if applicable, by their job description, performance or work plan, classification standards and descriptors, employment terms and conditions, qualifications and professional standards, the <i>Code of Conduct for Victorian Public Sector Employees (No. 1) 2007</i>, the public sector <i>Values</i>, the department's <i>Values</i>, policies and procedures, practice manuals and any lawful directions given to an employee by a person authorised to give those directions.</p>
Supervision	<p>Supervision means the ongoing, day-to-day line management relationship between an employee and their line manager, which may include, but is not limited to:</p> <ul style="list-style-type: none"> • regular, ongoing communication, coaching and feedback • discussing progress of work and providing continuing role clarity and employees' understanding of how their work contributes to the department's objectives • recognising and acknowledging good work performance • identifying performance matters as they arise • looking for opportunities to challenge and develop good performers • discussion and provision of learning and development opportunities • an opportunity for two-way feedback • encouragement and management of safe work practices • conflict resolution. <p>Note that supervision, if carried out appropriately and in a reasonable way, constitutes 'informal attempts to address an employee's unsatisfactory work performance'.</p>

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Term	Meaning
Supervision meeting	<p>A planned one-on-one meeting between an employee and their line manager that takes place on a regular basis (usually held fortnightly, but may be held weekly, fortnightly or monthly as appropriate).</p> <p>Discussions held, actions and timelines set in supervision meetings should be noted by the employee and the line manager as part of their usual record of supervision.</p>
Unsatisfactory work performance	<p>Unsatisfactory work performance means an employee fails to perform to the required standards and/or expectations of the role to which they are assigned.</p> <p>The standards and expectations of an employee's role are described, if applicable, by their job description, performance or work plan, classification standards and descriptors, employment terms and conditions, qualifications and professional standards, the <i>Code of Conduct for Victorian Public Sector Employees (No. 1) 2007</i>, the public sector Values, the department's Values, policies and procedures, practice manuals and any lawful directions given to an employee by a person authorised to give those directions.</p>
VPS Determination	The <i>Victorian Public Service Workplace Determination 2012</i> , or its successor.

Roles and responsibilities

Employees

All employees are responsible for:

1. Complying with the *Code of Conduct for Victorian Public Sector Employees (No. 1) 2007*, demonstrating appropriate behaviours in accordance with the department's *Values* and adhering to the employment principles set out in the *Public Administration Act 2004 (Vic)*.
2. Following directions given to them by persons authorised to give those directions.
3. Performing at a level of work performance that meets the required standards and expectations of the role to which they are assigned.
4. Being accountable for their own work performance, conduct and development.
5. Participating constructively in discussions about their work performance, conduct and development.
6. Avoiding any actual or perceived conflicts of interest.
7. Cooperating in any unsatisfactory work performance or misconduct process described by this policy to resolve matters fairly and efficiently.
8. Maintaining appropriate confidentiality.
9. Ensuring that the involvement of any representative does not contribute to undue or unreasonable delay in progressing the matter.
10. Reporting workplace behaviour that violates any law, rule or regulation, or represents corrupt conduct, mismanagement of public resources, or is a danger to public health or the environment to the department or an appropriate workplace authority, as soon as reasonably practicable.

Line managers

Line managers are responsible for:

1. Promoting adherence to procedural fairness principles when addressing performance and conduct issues.

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2. Providing continuing role clarity, and outlining required standards and expectations of employees.
3. Giving regular feedback and guidance to employees reporting to them.
4. Acknowledging employees' efforts and achievements, and recognising good work performance.
5. Discussing with employees, their current and future learning and development needs.
6. Offering reasonable support to assist employees to meet the required standards and expectations.
7. Raising any identified work performance or conduct issues with employees reporting to them, as soon as reasonably practicable, and offering them an opportunity to respond.
8. Maintaining appropriate documentation in relation to work performance or conduct matters, including the creation and retention of file notes, records of decisions (including by whom and the reasons for making such decisions), any delays in process, and outcomes.
9. Making employees aware of the consequences of unsatisfactory work performance or misconduct.
10. Arranging for a copy of this policy and procedures to be provided to an employee involved in an unsatisfactory work performance or misconduct process.
11. Maintaining appropriate confidentiality.
12. Reporting workplace behaviour that violates any law, rule or regulation, or represents corrupt conduct, mismanagement of public resources, or is a danger to public health or the environment to the department or an appropriate workplace authority, as soon as reasonably practicable.

People and culture managers and practitioners

As part of their role, these people:

1. Provide advice in relation to matters covered by this policy and procedures.
2. Assist employees and line managers to understand their roles, responsibilities and identifying potential support options that may be available.
3. Maintain appropriate documentation in relation to formal work performance or conduct processes including, if appropriate, the creation and retention of file notes, records of decisions (including by whom and the reasons for making such decisions), any delays in process, and outcomes.
4. Maintain appropriate confidentiality.

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Part 2: Managing Unsatisfactory Work Performance Procedure – Victorian Public Service

Introduction

This Part provides a step-by-step approach for line managers to address unsatisfactory work performance matters under the VPS Determination. It aims to assist and support employees to perform to the required standards or expectations of their role and reflects the department's obligations when formally managing unsatisfactory work performance.

Through regular supervision with their line manager and by participating in the department's performance management system [Progression, Performance and Development (PPD) system or Performance, Development and Recognition (PDRP) Program], employees are well equipped to understand what is required from them in their assigned role.

There may be times, due to a range of factors, where an employee's work performance falls below required standards or expectations. If this occurs, informal attempts to address these issues locally should be made in accordance with the Informal Attempts to Address Unsatisfactory Performance section hereunder.

If the work performance issues are considered significant or if issues recur or persist despite informal efforts to address these issues, then the formal process for managing unsatisfactory work performance may commence. The formal process is outlined in Steps 1 to 3 in the Formal Step by Step Process section hereunder.

This procedure must be read in conjunction with the Policy at Part 1 of this document.

Informal attempts to address unsatisfactory performance

Supervision, when carried out appropriately and in a reasonable way, constitutes 'informal attempts to address an employee's unsatisfactory work performance'.

Before starting the formal process under this Part, the employee's line manager should consider a number of matters, which may include, but is not limited to, whether:

- the employee has been made aware of the standards and expectations required of them in the role to which they are assigned
- organisational or personal factors affecting the employee's work performance
- informal attempts have been made to address an employee's identified work performance issues
- the reasons for the unsatisfactory work performance have been sought
- regular supervision meetings are in place (for example on a weekly, fortnightly or monthly basis), and
- alternatives to formally managing the unsatisfactory work performance have been explored.

It will be helpful for the employee's line manager to also confirm whether the following are in place:

- an up-to-date job description relating to the role to which the employee is assigned
- a current performance plan within the performance management system [Progression, Planning and Development (PPD) system or Performance, Development and Recognition (PDRP) Program].

Line managers should remind employees of the department's Employee Assistance Program (EAP) and encourage them to access it. The EAP provides for a limited number of counselling sessions at no cost to the employee, and can be provided over the phone or face-to-face.

It is recommended that line managers seek advice on specific cases from the local people and culture unit in the first instance, or the central People and Culture Branch before progressing.

If the line manager considers that such informal attempts to address the work performance issues have not been successful, line managers must consider the most appropriate and effective way to proceed.

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The options include:

- continuing to manage the work performance issue through ongoing supervision, guidance and support, or relevant training to assist the employee to meet required standards and expectations, or
- considering the commencement of the formal step-by-step process hereunder.

Reasonable expectation of the employee meeting required level of work performance

In order to effectively manage the employee's unsatisfactory work performance under this Part 2, the department should have a reasonable expectation that the employee is capable of meeting the required level of work performance in the role to which they are assigned.

If the employer and the employee agree that the employee is not capable of meeting the required standards and expectations, the department may reassign or transfer (internally or externally) the employee, following consultation, to a suitable alternative role if it is reasonably practicable to do so, and if the department considers it to be appropriate in all of the circumstances.

Formal Step by Step Process

The unsatisfactory work performance process is in three stages that must be followed sequentially.

In brief:

1. **First stage – formal counselling:** The first stage of the formal management of unsatisfactory work performance is formal counselling of the employee, followed by a reasonable time period for the employee to improve.
2. **Second stage – formal written warning:** If the employee's performance has not improved within the reasonable time period following formal counselling, the employee will be given a formal written warning which commences the second stage.
3. **Third stage – final warning:** If the employee's performance has not improved within the reasonable time period following the formal written warning, the employee will be given a final warning. This commences the third stage of the process.

In the event that the employee's performance has not improved within the reasonable time period following the final warning, the department will determine whether the outcome is for the employee to be assigned to a lower grade or value range or have their employment terminated.

For more detail about the process throughout the stages, please refer to the below process and the requirements under **clause 18** of the VPS Determination.

For ease, the process outlined below is circular and repeats steps one, two and three for each stage until after a final warning in the third stage has been issued. At the end of the process following a final warning in the third stage, if the employee's performance has not improved and they have been given an opportunity to respond, the appropriate discipline outcome will be determined by a person with the appropriate delegation to consider termination of employment as an appropriate outcome.

Step 1 – Inform the Employee and seek their response

Recommended timeframe for step completion: five business days for employee to respond

The employee is notified of the specific areas of unsatisfactory work performance in writing, and their response sought. The **Managing Unsatisfactory Work Performance – Template A – Notice of Meeting** may be used for this purpose.

This written notice is to be provided to the employee as soon as practicable and should:

- identify and describe the specific areas of unsatisfactory work performance
- invite the employee to a meeting, for the purpose of them providing a response to the identified unsatisfactory work performance
- attach a copy of the Managing Unsatisfactory Work Performance and Misconduct Policy – Victorian Public Service and these procedures (if not already provided in a previous stage)

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- give the employee a reasonable opportunity to seek advice, which may be from their union
- allow the employee the opportunity to provide details of any mitigating circumstances.

The employee may elect to respond in writing prior to the meeting date, in addition to attending the face-to-face meeting.

The employee's response and the details of any mitigating circumstances raised are to be documented. If the employee does not provide a response, this is also documented. The **Managing Unsatisfactory Work Performance – Template D – Meeting Record** may be used. It is recommended that a copy of the documentation used to note the discussion at the meeting be provided to the employee.

Step 2 – Consider the employee's response (if any) and notify them of the outcome

Recommended timeframe for step completion: five business days

The employee's response (if one was provided), including any mitigating circumstances raised, are to be considered by the person with the appropriate delegation.

If the employee identifies any factors negatively impacting on their work performance and ability to meet the required standards and expectations of their role, then alternatives to formal management action under this Part are to be assessed and if appropriate, implemented.

The department may need to make some further enquiries in certain circumstances.

If it is determined that the employee's response is sufficient (if one was provided) and/or otherwise that no further action is required under this procedure, the employee is to be notified in writing. The **Managing Unsatisfactory Work Performance – Template B – No Further Action** may be used for this purpose.

If it is determined that the employee's response is not sufficient the outcome, relevant to the particular stage, will be confirmed. For example:

- formal counselling will be confirmed as the outcome for stage 1
- formal written warning for stage 2; and
- final written warning for stage 3).

It is recommended that the **Managing Unsatisfactory Work Performance – Template C – Confirmation of Outcome** be used for this purpose.

Part of the outcome is providing the employee with a 'timeframe to improve'. This is to give the employee an opportunity to demonstrate that they can improve their work performance to a satisfactory level within a reasonable timeframe. The line manager will determine the timeframe and it will vary in duration depending on the particulars of each matter, the areas of unsatisfactory work performance and the reasons for it. The duration may range from two weeks up to three months, and it is recommended to be set with the following in mind:

- the goals to be achieved (these may be easily and quickly achieved, or may take some time to realise and/or be properly measured)
- the need to maintain service delivery and business continuity during the relevant period.

The line manager chooses the method to monitor the employee's performance over the timeframe and this may include regular meetings with the employee on either a weekly or fortnightly basis with suitable documentation being kept. The line manager may manage the employee's unsatisfactory work performance using, but not limited to, the following measures:

- increased supervision
- changes to the employee's performance plan
- mentoring
- training and professional development
- increased feedback

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- coaching.

Supervision notes or other forms of documentation detailing the discussions or meetings in relation to any unsatisfactory performance are generally suitable for this purpose, but a line manager may choose to use the **Managing Unsatisfactory Work Performance – Template E – Remedial Plan and Monitoring**.

The employee's line manager provides ongoing, constructive feedback, and the employee is expected to offer comments, and reflect on the progress made throughout the period. A clear method to record performance concerns during the period is for the line manager to provide the specific details of each event to the employee prior to the regular meeting, including dates/times and relevant detail of when the employee has not met the required level of performance. Likewise it is appropriate, and generally recommended, to highlight areas of improvement and where satisfactory performance has been reached by the employee. This is not a compulsory method, but a suggestion to assist line managers to highlight relevant performance and for employees to better understand what is expected of them.

At the conclusion of the 'timeframe to improve' the line manager and the employee should have a clear understanding of whether the employee has met the required level of work performance over the period. The line manager may choose to use the **Managing Unsatisfactory Work Performance – Template E – Remedial Plan and Monitoring** to demonstrate the discussions over the period, although other documentation, such as supervision notes are generally suitable for this purpose.

Step 3 – Conclude the 'timeframe to improve' and consider any next steps

Recommended timeframe for step completion: within five business days of the end of the period

If employee has met the required standard of work performance

If it is determined that the employee has met the required standard of work performance, the employee is notified in writing of the outcome and the **Managing Unsatisfactory Work Performance – Template B – No Further Action** may be used for this purpose. A copy will be placed on the employee's relevant personnel file (for example, the employees personal file held by Payroll Services).

If the employee subsequently engages in continued or repeated unsatisfactory work at a later time, the department may resume the process described under this Part 2 at the appropriate stage.

If employee has not met the required standard of work performance

At the end of the 'timeframe to improve', the line manager may choose to extend the period for a further period. This would only occur if the employee has shown substantial improvement, but has not yet fully met or demonstrated a satisfactory level of work performance. It is not recommended to extend the period if an employee has not demonstrated significant improvement, nor if there is little prospect of the employee meeting the required level of work performance. It is recommended that line managers seek advice from their local people and culture unit, if they need assistance.

If it is determined that the employee has not met the required level of work performance, the process recommences at Step 1 and moves through to the next stage of the three stage process in sequence, unless the Third Stage – Final written warning has already been issued, in which case the following applies.

If employee has not met the required standard of work performance following the Final Written Warning

If it is determined that the employee has not met the required standard of work performance and the timeframe for improvement following the Third Stage – Final written warning has been completed, the employee will be notified of the specific areas of unsatisfactory work performance in writing, and their response sought. The **Managing Unsatisfactory Work Performance – Template A – Notice of Meeting** may be used for this purpose.

This written notice is to be provided to the employee as soon as practicable, and should:

- identify and describe the specific areas of unsatisfactory work performance
- invite the employee to a meeting, for the purpose of them providing a response to the unsatisfactory work performance
- give the employee a reasonable opportunity to seek advice, which may be from their union

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- allow the employee the opportunity to provide details of any mitigating circumstances
- detail the possible outcomes, including termination of employment.

The employee may provide a written response either prior to, or in addition to, attending the face-to-face meeting.

The employee’s response and the details of any mitigating circumstances raised are to be documented. If the employee does not provide a response, this is also documented. It is recommended that the **Managing Unsatisfactory Work Performance – Template D – Meeting Record** is used. A copy of the documentation used to note the discussion at the meeting is provided to the employee.

Determination of unsatisfactory work performance outcome

The employee’s response (if one was provided), including any mitigating circumstances raised, and the process to date under this Part are to be considered by the person with the appropriate delegation. If satisfied that the process has been followed and the employee’s work performance has been unsatisfactory, the delegate will determine the unsatisfactory work performance outcome to apply from the following possible outcomes:

- assignment of the employee to a role at a classification grade or value range lower than the employee’s current classification grade or value range; or
- termination of employment.

It is recommended that the **Managing Unsatisfactory Work Performance – Template C – Confirmation of Outcome** be used. A copy will be placed on the employee’s relevant personnel file and the local people and culture unit will record the outcome on the department’s human resource management system.

Referral to the Misconduct process

The department may, at any time, where there is reasonable cause, refer the matter for management under the Part 3 of the procedures and anything considered prior to the referral will remain under consideration.

Reasonable cause may include, but is not limited to, instances where the unsatisfactory work performance of the employee is beyond that of mere lack of care for work quality, inefficiency, error of judgement or innocent mistake in the course of their duties. The alleged actions of the employee would be considered wrongful, improper or unlawful conduct, which may or may not be motivated by a premeditated or intentional purpose or by obstinate indifference to the consequences of their actions.

It is recommended that line managers seek advice on specific cases from local people and culture units in the first instance or the central People and Culture Branch prior to referring an unsatisfactory work performance matter to the misconduct process.

Documentation

All relevant documentation relating to the process should be stored in chronological order on the restricted access departmental file.

These files should be treated confidentially and stored securely by local people and culture units or properly archived, as required.

The record of the unsatisfactory work performance outcome applied must be placed on the relevant personnel file (for example, the personal file for the employee that is held by Payroll Services). A record of the unsatisfactory work performance outcome applied is entered in the department’s human resources management information system, [SAP], by the local people and culture unit.

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Part 3: Managing Misconduct Procedure – Victorian Public Service

Introduction

The following procedure provides a step-by-step approach to managing allegations of employee misconduct under the VPS Determination.

Unsatisfactory work performance matters may be referred from Part 2 to Part 3 as needed, depending on the nature of the unsatisfactory work performance, refer to Referral to the misconduct process in Part 2 of these procedures for more guidance.

This procedure should be read in conjunction within the context of all Parts of this policy. The recommended timelines for the process are contained in the supporting document **Managing Misconduct – VPS Discipline Process Recommended Timelines**.

Directions

As part of the process under this Part 3, the department may do any of the following:

- direct the employee to perform alternative duties or work at an alternative place of work; and/or
- direct the employee not to communicate about the matter to other employees or direct the employee not to visit certain workplaces; and/or
- suspend the employee from the workplace with pay.

If any of these actions are being considered, it is recommended that line managers seek advice from local people and culture unit in the first instance or the central People and Culture Branch prior to such actions being taken.

It is recommended that any actions taken be periodically reviewed by line managers during a disciplinary process so that they remain necessary and appropriate in all of the circumstances.

If the decision has been made to suspend the employee from the workplace with pay, the decision must be reviewed and confirmed with the employee no later than a date that is four weeks from the last decision, for the duration of the suspension with pay period. The decision must be reviewed, and the employee must receive confirmation of the review, every four weeks thereafter until the process is finalised. The confirmation to the employee can be by any suitable method, such as by letter, email, telephone or fax, and the contact clearly documented on the discipline file.

Step by step process

Step 1 – Make an initial assessment

Recommended timeframe for step completion: three business days

The first step in the disciplinary process is to make an initial assessment that:

- misconduct may have occurred; or
- an investigation is required.

In making the initial assessment, it is important to consider the relevant documentation or information and how the matter has come to the department's attention. This can be from a variety of sources that may include, but are not limited to:

- receipt of a verbal or written complaint
- notice of police charges
- a departmental incident report
- information provided by a line manager
- information provided by another employee, client or a member of the community

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- in the case of referred unsatisfactory work performance, the matter having been managed under or referred from Part 2, or
- referral from another departmental process.

The process of making the initial assessment should remain relatively simple.

Line managers may conduct some basic fact-finding, which may or may not involve speaking with relevant people, depending on the sensitivity of the potential allegations and checking that there is a reasonable basis on which to proceed.

While a full examination of the evidence is not required at this stage, the line manager should be satisfied that the information, which they have relied upon in making the initial assessment, is just and correct. In some instances, this may require further discussion or information from the source to clarify details, so that reasonable allegations and particulars can be drafted.

After gathering and considering the relevant information, the relevant line manager needs to confirm:

- If the matter does not warrant further action, the reasons for not progressing with a matter. It is recommended that these reasons be documented. In some circumstances it may be appropriate to refer the matter for consideration under another departmental policy. If the employee is aware of the relevant information, it is appropriate to notify the employee that the matter does not warrant further action under this Policy.
- If it is assessed that the matter is one of alleged misconduct, progress to Step 2 and seek advice from the local people and culture unit contact for assistance managing a process under Steps 2 to 6 of this Part.

Note that only authorised delegates of the department can commence formal processes under this policy (please refer to **Making decisions under this policy** section in Part 1).

Step 2 – Notify the employee

Recommended timeframe for step completion: five business days for employee to respond

If the matter is to be managed under this Part, the employee is notified in writing of the allegation(s) and particulars in support of each allegation. The **Managing Misconduct – Template A – Notifying the Employee** may be used. Local people and culture units will generally be responsible for framing the allegation(s) and particulars and they may seek further clarification from the line manager and other persons, if required.

The allegation(s) and particulars reflect the extent of the available information at the time. Accordingly, allegations and particulars may require refining or amendment as better and more detailed information becomes available through the investigation process.

Relevant information will only be withheld if it is necessary to protect the personal privacy of another person, consistent with legislation. In some cases, only certain parts of the relevant information that relates directly to the allegations will be provided to an employee.

It is recommended that this written notice be provided to the employee as soon as practicable, and the written notice must include the following:

- the allegations and particulars of the misconduct by the employee
- a copy of the Managing Unsatisfactory Work Performance and Misconduct Policy – Victorian Public Service and these procedures
- a reasonable opportunity for the employee to seek advice from a representative of their choice; and
- the opportunity for the employee to provide details of any mitigating circumstances (includes inviting the employee to a meeting for this purpose).

The employee can provide their response and any mitigating circumstances in person at the meeting, or provide a response in writing prior to the meeting. If a response in writing is received, it is recommended that the meeting still proceed as scheduled.

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If the employee attends the meeting their response needs to be documented. If the employee does not attend the meeting or otherwise provide a response within the timeframe, this is documented and the process continues.

The **Managing Misconduct – Template F – Meeting Record** may be used to record the discussion at the meeting.

Step 3 – Consider the employee’s response (if any) and notify them of next steps

Recommended timeframe for step completion: five business days

All of the relevant information, the employee’s response (if one was provided) including any mitigating circumstances raised, must be taken into account by the line manager or the relevant delegate.

The process of considering the employee’s response is simply a matter of determining whether the employee’s response is sufficient to satisfy the department that misconduct has not occurred. Further enquiries may be required in certain circumstances.

If it is determined that the employee’s response is sufficient and that no further action is required under this Part, the employee is to be notified and the **Managing Misconduct – Template B – Confirmation of Outcome** may be used.

If the person with the appropriate delegation (please refer to **Making decisions under this policy** section in Part 1) determines that the employee’s response is not sufficient (if one was provided) and/or otherwise that further action is required, then the matter will proceed to investigation.

Step 4 – Investigation and findings

Recommended timeframe for step completion: 40 business days

If it is determined that misconduct may have occurred, the department will appoint a person to conduct an investigation into the matter. Investigation requests should be submitted to the Ethical Standards Team by completing and submitting the **Managing Misconduct – Template K – Investigation Request** and providing a signed copy of the allegation letter. The Ethical Standards Team will appoint an internal investigator or outsource the investigation depending on workload capacity and the nature of the allegations.

The local people and culture unit are to ensure that the employee is notified that an investigation will be conducted and confirm who has been appointed. The **Managing Misconduct – Template C – Notice of Investigation** may be used, but it is also acceptable to provide the information to the employee by telephone and file-note the details of the conversation on the discipline file.

Witnesses who will be asked to participate in the investigation are to be notified by the local people and culture unit. The **Managing Misconduct – Template D – Notice to Witness** may be used, but it is also acceptable to contact the witness by telephone to provide them with the information contained in the template letter and file-note the conversation on the discipline file.

Where appropriate, the investigation can be conducted by the employee’s immediate line manager, or by another person suitably qualified to undertake this task, provided they have not had any prior personal involvement in the matter (thereafter referred to as ‘the investigator’). The employee will be given an opportunity to speak to the investigator if they wish to do so.

If an external investigator is engaged, the scope of the investigation will be set out and agreed to by the department using the **Managing Misconduct – Template G – Investigation Plan** (‘the investigation plan’). The investigator is responsible for preparing the investigation plan, which is then to be submitted to the nominated departmental contact, holding the appropriate delegation, for acceptance (including detailing any changes required). For investigations that are outsourced through the Ethical Standards Team, the investigations plan should be submitted to the Manager, Ethical Standards Team for review and approval. The Ethical Standards Team will consult with the local people and culture unit to ensure the investigative action identified in the plan and timeframes are appropriate.

The investigation includes, but is not limited to, the following:

- collecting any relevant materials
- speaking with the employee

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- speaking with any relevant witnesses
- speaking with any other relevant parties
- presenting the employee with specific particulars to allow the employee to properly respond to the alleged conduct
- seeking an explanation from the employee; and
- investigating any explanation made by the employee for the purposes of verifying the explanation so far as possible.

Investigations should generally be completed within the recommended timeframe; however, matters that are particularly complex or voluminous may require a longer period of time to complete. Circumstances where witnesses or the employee have pre-approved leave from work or are taking leave which affects their capacity to participate in the investigation may also impact on investigation timeframes.

The **Managing Misconduct – Template I - Witness Statement** may be used to assist with the investigation process.

In relation to each allegation of misconduct, the investigator will make findings as to whether the allegation is substantiated, or whether the allegation is not substantiated. The findings of the investigation will be reported to the department by way of a written report. Any delays that affect the completion of the investigation in the recommended timeframe should be documented. The **Managing Misconduct – Template H – Investigation Report** may be used.

If the investigator finds that an allegation of misconduct against the employee is not substantiated then the matter will conclude in relation to any such allegation and the employee is notified in writing. The **Managing Misconduct – Template B– Confirmation of Outcome** may be used and the matter has concluded.

If the investigator finds that an allegation of misconduct against the employee is substantiated the process continues and the line manager proposes an outcome.

Step 5 – Inform the employee of findings and propose a discipline outcome

Recommended timeframe for step completion: five business days

As soon as reasonably practicable after the investigator has issued their report and made the finding that the allegation of misconduct against the employee is substantiated, the employee will be provided with the findings and a proposed discipline outcome. The **Managing Misconduct – Template E – Respond to Finding and Proposed Discipline Outcome** may be used.

In relation to referred unsatisfactory work performance, any matters that have arisen under Part 2 of these procedures may be used to determine the appropriate disciplinary outcome to propose under this Part.

The possible disciplinary outcomes that can be proposed are:

- no action
- performance management
- formal counselling
- formal warning
- final warning
- assignment of the employee, with or without their agreement, to a role at a classification level or value range lower than their current classification level or value range
- transfer of the employee, with or without their agreement, to a different work location at the employee's current classification level (any applicable relocation allowance will apply), or
- termination of employment.

If termination of employment is being considered as the proposed disciplinary outcome, it is recommended that advice be sought from the local people and culture unit or the central People and Culture Branch prior to issuing the letter.

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A copy of the investigation report and findings will usually be provided to the employee, but some sections or attachments to the report may be omitted or redacted so that appropriate privacy and confidentiality is maintained.

Unless exceptional circumstances exist, the employee is required to provide their response to the findings and the proposed discipline outcome in writing. If no response is received, the process continues and the matter will be determined based on the available information.

Step 6 – Determine the disciplinary outcome

Recommended timeframe for step completion: five business days

The person with the appropriate delegation, in relation to the proposed discipline outcome (please refer to **Making decisions under this policy** section in Part 1), will consider all of the following in their determination:

- the findings of the investigator
- the proposed discipline outcome
- any response from the employee, including any admissions of misconduct; and
- any prior disciplinary outcomes.

If termination has been proposed as the appropriate discipline outcome the matter must be referred to a person with the delegation to terminate employment.

In relation to matters of referred unsatisfactory work performance, any matters that have arisen under Part 2 of these procedures may be considered when determining the appropriate disciplinary outcome under this Part.

The delegate (who may be the line manager) will determine the disciplinary outcome that is to apply and notify the employee in writing. The **Managing Misconduct – Template B – Confirmation of Outcome** may be used for this purpose. A copy of the outcome will be placed on the relevant personnel file and the local people and culture unit will record the outcome on the department's human resource management system and advise the Manager, Ethical Standards Team of the disciplinary outcome

Admissions

An employee who is the subject of allegations of misconduct may, at any time, elect to make an admission to those allegations. If an employee makes a full admission to all of the allegations made against them the department may proceed to propose a disciplinary outcome under Step 5 of this Part.

Potential criminal conduct

Reporting potential criminal conduct

Matters of potential employee criminal conduct must be promptly reported to the police in accordance with the Protocol between Victoria Police and Department of Human Services on Reporting Employee Criminal Conduct (the Police Protocol) and the Reporting Employee Criminal Conduct Policy.

Upon making a report, advice should be sought from the police in relation to what level of information can be provided to employee and at what stage. Sometimes, the police may request that the department not provide details to the employee of the potential criminal conduct, particularly in the early stages of their investigations.

Under the Police Protocol, if a line manager has concerns about the progress of a police investigation (including any apparent delays), and has not been able to resolve those concerns with the Station Manager, it is recommended that they refer their concerns to the central People and Culture Branch for advice and any follow up actions as appropriate.

Progressing the disciplinary process

The department should consult with the police about the progress of disciplinary processes if allegations of employee misconduct also relate to potential criminal conduct.

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In particular, the department should ascertain whether beginning, or continuing with, the disciplinary process may prejudice the police investigation or a subsequent hearing of the matter.

While the department is not required to delay or cease the disciplinary process, it may exercise its discretion to do so. Each matter should be considered on its merits. If a matter is delayed, the employee should be notified as soon as reasonably practicable. It is recommended that the employee also be kept informed, as is reasonably practicable, of its progress based on advice from the Police.

It is recommended that line managers seek advice on specific cases from local people and culture units in the first instance or the central People and Culture Branch prior to progressing.

Convictions

If an employee of the department has been charged with or convicted of a criminal offence, the department may take action against that employee if the nature of the criminal offence or the failure to report the charge or conviction warrants further action. If such a decision is made in a particular case, action may be in accordance with, but is neither required nor limited to, this Part. Each matter should be considered on its merits.

It is recommended that line managers seek advice on specific cases from local people and culture unit in the first instance or the central People and Culture Branch prior to progressing.

Documentation

All relevant documentation relating to the process should be stored in chronological order on the restricted access departmental file.

Any record of a disciplinary outcome applied is also placed on the relevant personnel file (for example, the employee's personal file, held by Payroll Services). A record of the disciplinary outcome applied is entered in the department's human resources management information system (SAP) by the local people and culture unit.

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