

## Policy F-12

### Managing the Disciplinary Process

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#### 1.0 Policy

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**This Policy covers the requirements that must be met in managing an allegation of a breach of the code of conduct or poor performance against a staff member.**

#### 2.0 Purpose

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2.1 This policy defines the steps in managing the allegation through to a final outcome.

#### 3.0 Responsibilities

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3.1 Managers are responsible for investigating allegations made against their staff and for following the process through to conclusion.

3.2 Human Resources are responsible for providing support and assistance to Managers as required and for ensuring all correspondence to staff meets the standard for good Industrial Relations.

3.3 Executive Managers are responsible for approving the suspension of a staff member.

3.4 CEO is responsible for approving termination of a staff member.

#### 4.0 Definitions

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4.1 *A complaint:* is found to be substantiated if it is found to be true.

4.2 *A grievance:* is a complaint from staff about a breach of workplace policy or legislation typically involving unfair or inappropriate behaviour by another member of staff or management.

4.3 *Allegation:* an accusation, not necessarily based on facts.

4.4 *Balance of Probabilities:* under criminal law a jury makes a decision regarding guilt on the basis of "Beyond Reasonable doubt" however in employment law the standard of proof is "On the Balance of probabilities" this means the evidence only requires that a dispute be decided in favor of the party whose claims are more likely to be true.

4.5 *Breach:* a breaking or infraction of a policy.

4.6 *Investigative Interview:* a meeting between the Manager and relevant participants or witnesses to an event being investigated. It is where the Manager gathers statements from people who may have seen the incident and provides evidence for determining the outcome of the allegation being made.

4.7 *Just Cause:* a good explanation or good reason.

4.8 *Mediation:* involves negotiation within set parameters, opening channels of communication, and establishing and clarifying the issues of both or either party. The mediator does not have a decision making role in this instance and

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exists as a neutral player in most instances.

- 4.9 *Substantiated*: to verify something by supplying evidence, to corroborate or authenticate. Means that the allegation has been shown to be correct.
- 4.10 *Sustained*: to confirm, prove, or corroborate allegations.

### 5.0 Requirements

#### Breach of the Code of Conduct

When an allegation is received, Managers must follow the following process:

- 5.1 Manager is to discuss the allegation with the person making the allegation. The Manager needs to determine the details of the allegation being made and gather the specifics of who, what, when, where, any witnesses and what is the outcome that the person making the allegation would like to see.
- 5.2 The Manager must document this discussion and confirm the details with the person making the allegation to ensure they have correct information.
- 5.3 The Manager then requests a meeting with the alleged perpetrator. The alleged perpetrator must be given 24 hours notice of the meeting and given an opportunity to bring a support person. The alleged perpetrator should be given a letter confirming the meeting and the allegations being made against them. Human Resources will assist with drafting this letter if required.
- 5.4 Minutes of the meeting must be taken by another Manager or Human Resources can provide an officer to take minutes.
- 5.5 The allegations are then put to the alleged perpetrator and the alleged perpetrator has the opportunity to provide their perspective on the allegations being made. The staff member/alleged perpetrator should be given a copy of the minutes and offered access to EAP.
- 5.6 Further investigation work may need to be conducted depending on the seriousness of the allegation and the likely outcome. The Manager may need to interview potential witnesses to the event or may need to conduct a file audit, petty cash audit, etc.
- 5.7 Once all evidence has been gathered, the Manager writes up the information and makes a recommendation on the outcome of the investigation. The decision is based on the balance of probabilities, what is more likely to be true.
- 5.8 Once the determination has been made, the matter is discussed with the Executive Manager to determine possible disciplinary action.
- 5.9 The alleged perpetrator is called to another meeting where they are given the information as to the outcome of the investigation. If the outcome is that the allegations are sustained then the alleged perpetrator is provided another opportunity to explain their actions. They are informed of the recommended disciplinary action and given an opportunity to provide a reason as to why that disciplinary action should not be taken. Minutes of this meeting are taken and

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the alleged perpetrator receives a copy.

- 5.10 The outcome of this meeting is discussed with the Manager and Executive Manager and a final decision made as to the outcome and disciplinary action.
- 5.11 The alleged perpetrator now becomes the perpetrator as the allegations were substantiated. The perpetrator receives a confirmation letter advising them that the allegations were substantiated and what the decision on disciplinary action is. A copy of this letter is kept on the HR file.
- 5.12 If the allegations are unable to be substantiated on the balance of probabilities then the alleged perpetrator is informed of this and they receive a letter confirming this. They are informed that the matter is closed and no further action will be taken. A copy of this letter is placed on their HR file.
- 5.13 At the conclusion of the disciplinary process, a meeting must be held with the person making the allegations to advise them of the outcome of the investigation. They do not have a right to know what disciplinary action has been taken with the perpetrator.

### Poor Performance

If The Trust considers that performance by an employee is such as to require counselling, the following procedure will apply:

- 5.14 The Trust will take steps to advise the employee as soon as possible, of any complaints concerning the performance of their duties and that their employment is under review.
- 5.15 Depending on the nature and seriousness of the performance issue, The Trust may instigate a formal counselling process. In a formal discipline process, all documentation regarding the performance discipline will be placed on the staff member's personnel file.
- 5.16 During performance discipline, the employee will be given the opportunity to respond to the issues in question and to suggest specific outcomes and actions. Ideally, both parties will agree on the outcomes from a first discipline session.
- 5.17 Following an initial performance discipline meeting, The Trust will endeavour to provide ongoing support to assist an employee to improve, including providing the employee with constructive feedback, assistance and training.
- 5.18 Following the first discipline meeting, The Trust may issue the employee with a first written warning including agreed strategies for improving the employee's performance. The Trust may choose to give the employee a time period during which to improve their performance.
- 5.19 Depending upon the degree to which an employee is underperforming, The Trust may consider that an employee should attend ongoing periodical reviews so as to assist their progress.
- 5.20 If insufficient improvement occurs within a reasonable period of a written warning, then a second formal warning will be issued to the staff member. The second formal warning will identify what improvement was agreed to during the

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first formal warning meeting and what progress or non progress has been made in meeting the agreed objectives. The second formal warning will inform the staff member that their employment contract is in jeopardy if there is not an immediate and consistent improvement.

- 5.21 If there is no immediate and consistent improvement in performance then the staff member will be issued with a third formal warning. This warning will inform the staff member that their employment contract is under review. The staff member will have 7 days to provide just cause as to why their contract should not be terminated.
- 5.22 After 7 days, any response received from the staff member will be reviewed and discussed with the Chief Executive Officer. If appropriate, the staff member may be issued with a notice of termination, in accordance with the relevant Award.
- 5.23 At each step in the process, the employee will be given the opportunity to respond. The Trust will give consideration to the employee's response and any reasons given as to why their performance is unsatisfactory or why they should not be dismissed. If, after considering the employee's response, The Trust forms the opinion that the employee should be dismissed, The Trust may advise the employee that his or her employment has been terminated.
- 5.24 In certain instances, the performance issue will be sufficiently serious to warrant a final warning or dismissal and the general process outlined above may not be followed. In such instances, the employee may be issued with a final written warning or notice of termination, in accordance with any relevant Award provisions.
- 5.25 The Trust may dismiss an employee in the event that the employee does not receive a 'satisfactory report' following a Working with Children Check. It is for The Trust to decide whether the risk assessment received by an employee constitutes a 'satisfactory report' in all of the circumstances. In such instances, the employee's employment will be terminated with immediate effect and he or she will receive a payment in lieu of notice in accordance with any relevant Award provisions. The Trust may also proceed with termination following an incident in the workplace likely to give rise to an adverse finding under a Working with Children Check even where that incident is yet to be processed by the agency responsible for checks.

#### Summary Dismissal

- 5.26 The Trust, where it considers it appropriate, may dismiss an employee without notice where the employee is guilty of serious misconduct.
- 5.27 Examples of serious misconduct which would justify summary dismissal include:
- wilful misconduct;
  - wilful disobedience of a lawful and reasonable direction;
  - dishonesty of an employee;

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- where the employee commits a crime in the course of employment which is inconsistent with their employment obligations;
- incapacity due to intoxication or use of drugs at work;
- abuse, neglect or assault of a client;
- sexual contact with a client with or without the client's consent;
- other conduct which causes imminent and serious risk to health and safety of a person;
- conduct which causes imminent and serious risk to the reputation, viability or profitability of the business;
- conduct which violates the rights of clients including rights to privacy, respect and dignity; or
- a material breach of Trust policy.

5.28 Where The Trust is considering the possibility of dismissing an employee without notice, The Trust will endeavour, where possible, to provide the employee with an opportunity to explain his or her conduct. The Trust will consider any explanation provided by the employee before deciding whether, in the circumstances, the employee should be dismissed.

5.29 The Trust, where it considers it appropriate, may suspend an employee on full pay to enable an investigation into an alleged incident or alleged behaviour or conduct. Only an Executive Manager is able to approve suspension of a staff member.

5.30 Such suspension is to last only while the investigation is in progress and the determinations are being made.

5.31 An employee dismissed without notice is eligible to receive any outstanding pay which has been earned, as well as payment for any annual leave or other statutory entitlement which has accrued up to the date of termination.

5.32 Only the CEO has the authority to dismiss a staff member.

### 6.0 Forms and Records

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Nil

### 7.0 Work Instructions and Safe Working Procedures

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### 8.0 Related Policies

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- F-02 Recruitment & Selection
- F-06 Mentoring & Professional Development
- F-10 Employee Code of Conduct
- F-11 Employee Grievances



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F-13 Resignation & Termination

### 9.0 Related Documents

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Nil

### 10.0 References

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National Employment Standards  
NSW Industrial Relations Act 1996 (and amendments)  
Employment Protection Act 1982 (and amendments)  
Disability Discrimination Act 1992 (Commonwealth)  
NSW Anti-Discrimination Act 1977  
Racial Discrimination Act (Commonwealth) 1975  
Sex Discrimination Act (Commonwealth) 1984  
Human Rights and Equal Opportunity Act (Commonwealth) 1986