



Policy F-12

Managing the Disciplinary Process

1.0 Policy

The Disability Trust is committed to high quality services that operate within an ethical and caring framework. The Trust will address issues to do with conduct and performance of our employees in a timely and transparent manner.

The Disability Trust adheres to the concepts of procedural fairness and natural justice when managing the poor conduct or unacceptable work performance of an employee. The Trust ensures that clear and equitable processes are adhered to in the investigation and management of matters of concern.

2.0 Purpose

- 2.1 This policy outlines the steps involved in the investigation of allegations of poor conduct and the instigation of disciplinary proceedings up to and including termination. This policy also outlines the steps involved in managing poor work performance, including provision of support to improve performance where feasible, and consideration of proceedings up to and including termination.

3.0 Responsibilities

- 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 and the CEO are responsible for approving the suspension of a staff member.
- 3.4 Executive Managers and the CEO are responsible for approving termination of a staff member.

4.0 Definitions

- 4.1 *Poor or Unacceptable Conduct:* is any conduct that breaches The Disability Trust's Code of Conduct or that would generally be regarded as inappropriate or unethical by most reasonable people in a similar situation.
- 4.2 *Poor Performance:* refers to unsatisfactory work content in terms of quantity or quality, or breaches of work practices, procedures and rules such as noncompliance with work health and safety requirements. Poor performance may involve any act or omission that is contrary to the requirements of the role. The standard for measurement of work performance is that which is reasonably expected to be achieved by other employees engaged in similar positions and with similar training or qualifications.
- 4.3 *Procedural Fairness:* refers to the handling of issues in a just and fair way and the requirement that decisions are made in a careful and considered manner. Demonstrating procedural fairness means ensuring that the person affected is given a fair hearing and all parties to a matter have an opportunity to put their



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case. Relevant arguments are considered in determining outcomes and reasons for decisions are clearly articulated.

- 4.4 *Balance of Probabilities*: refers to the likelihood that an allegation is true after weighing of evidence for and against.
- 4.5 *Investigation*: an investigation is a fact finding process used to assist in determining whether on the balance of probabilities an allegation of misconduct or poor work performance is or is not true. It may involve meetings with relevant participants or witnesses to gather statements about the matter being investigated. It may also involve requisitioning and examining Emails, and documents pertaining to the allegation.
- 4.6 *Just Cause*: is a good explanation or good reason that the employee may wish to offer to counter an allegation or diminish perception of its severity in light of other matters.
- 4.7 *Suspension of Duties*: involves the removal of an employee from their primary duties while an investigation is conducted.

5.0 Requirements

Poor or Unacceptable Conduct

- 5.1 The Disability Trust provides a Code of Conduct for staff as a guide to our expectations around ethical behaviour. Not all breaches of ethical behaviour are able to be predefined however and staff are required to use their professional judgment and if they are in doubt regarding workplace expectations to seek guidance from Managers or supervisory staff.
- 5.2 At any stage in the investigation or management of an allegation relating to the conduct of an employee, a Manager in consultation with senior management may apply discretion in deciding whether a formal or informal approach is warranted, the exception being for serious allegations as outlined in Pt 5.3. In exercising this discretion, a number of factors may be taken into account including; the seriousness of the allegation; the presence of an alternative appropriate remedy such as informal meeting with the employee or performance counselling; whether other complaints have been made against the employee, and the nature of those complaints; whether the employee appears to have acted with intent; the source and context of the complaint; whether the employee has demonstrated any remorse; any pertinent personal circumstances of the employee or other mitigating factors; and any other relevant considerations. In all cases the decision as to whether to instigate formal disciplinary proceedings will be documented and a notation of the matter retained on the employee file.
- 5.3 Under no circumstances does a Manager have a right to individual discretion in the management of serious allegations including, assault, sexual abuse, bullying, fraudulent behaviour or other matters that impact on the health and wellbeing of clients, employees or on the reputation and integrity of the organisation. A formal process will be used in the investigation and management of all serious allegations.

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- 5.4 Where an allegation involves a criminal matter it should be referred to Senior Management for oversight. In such instances no internal investigation will commence until Police have concluded their investigation due to the possibility of contamination of evidence. In these instances an internal investigation will follow the conclusion of police processes. Any evidence that can be legitimately sourced from Police records will be considered as part of the investigative process. The lack of a formal police charge does not mean that the alleged perpetrator will not be investigated for misconduct. The requirement for proof within the workplace is the *balance of probability* rather than *beyond reasonable doubt*. In addition issues not deemed to be criminal may still represent a significant breach of ethics.
- 5.5 While the disciplinary process may follow the same course Managers and others conducting investigations into any allegation of abuse or assault of children are also to familiarize themselves with *Policy D-03 Dealing with Abuse or Assault of an Adult and D-04 Dealing with Abuse or Assault of a Child*. In accordance with these policies Managers and others conducting investigations must adhere to mandatory reporting and investigation guidelines through the Ombudsman's Office and/or Child Protection Helpline at Department of FACS.
- 5.6 Where serious matters of conduct are under investigation an employee will generally be suspended from duties. Alternative duties e.g. those not involving contact with clients may be provided where available or a period of leave initiated for the duration of the investigation.
- 5.7 The investigation and management of conduct matters is generally a responsibility of Managers with the Human Resources Department providing a resourcing and advice function. At its discretion however and usually in relation to more serious allegations The Trust may nominate a more senior employee (Senior or Executive Manager), a Human Resources Officer or a suitably qualified party external to the organisation to conduct or assist in the conducting of the investigative process.
- 5.8 The first step of the investigative process is to discuss the matter with the person making the allegation. The goal of this communication is to determine specific details of what is alleged to have happened including who was involved, when it occurred, and where. The existence of any other witnesses should be noted. Notes should be taken from any meeting to determine preliminary facts around an allegation. An employee or other party making an allegation should, where possible also be encouraged to provide a signed written statement to support their allegation.
- 5.9 If possible the presence or absence of corroborating information such as file notes, letters, Incident Reports, Emails or other physical evidence should be determined. All evidence should be appropriately examined and stored.
- 5.10 Where required the person investigating the matter may interview other witnesses. In these instances witnesses may be asked to read and sign a Witness Statement documenting the events as described by the witness. All evidence should be appropriately documented and stored.
- 5.11 After examination of evidence a meeting will be organized with the employee about whom the allegation has been made. A letter or Email will be sent to the



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- employee outlining the matters to be discussed with them and inviting them to attend an investigative meeting where they will have an opportunity to respond. The employee will be given 24 hours' notice of the meeting and will be offered an opportunity to bring a support person along to the meeting with them.
- 5.12 The purpose of the meeting with the employee is to allow them to respond to the allegation or to raise any mitigating circumstances that may need to be considered. During the meeting the allegations will be put to the employee and they will have an opportunity to refute the allegations or otherwise explain their behaviour. The Trust will take notes of the meeting for its own purposes. If the employee wishes to they may also take notes or ask their support person to take notes to form their own personal record. The employee does not have a right to access any notes of the meeting taken by The Disability Trust.
- 5.13 As the result of the meeting with the employee who is alleged to have engaged in misconduct, further investigation work may need to be conducted to corroborate or otherwise their explanation of events or verify any mitigating factor the employee has offered to support their case.
- 5.14 Where there is considerable evidence supporting the allegation and the allegation is of a nature that suggests termination may be a consideration, in most cases a further opportunity will be offered for the employee to respond. In such an instance a further written communication to the employee will outline evidence gathered to date and request that the employee show cause as to why their employment should not be terminated
- 5.15 At the conclusion of all investigative processes a *balance of probabilities* standard is used to form the basis of decision making. If on the balance of probability the allegations are unable to be substantiated then the employee is informed in writing of the outcome of the investigation and that no further action will be taken in relation to their employment. A copy of this letter is placed on their Employee File.
- 5.16 Notwithstanding a finding by The Disability Trust that a matter is unsubstantiated, where required under legislation, for instance where the allegation has involved the assault or abuse of a child, The Senior Manager will submit any required notifications to the Office of The Children's Guardian and provide investigative reports to the Ombudsman's Office. The employee will be informed of any findings and given notification of where any external reports have been lodged.
- 5.17 If after full consideration of evidence the matter is found to be substantiated but is of a less serious nature the employee may be issued with a formal warning that states that their continuing employment will be jeopardized should there be any further instances of poor conduct. In this case other remedies including access to mentoring or training, restrictions of duties for a period or further supervision or reporting in the workplace may also be applied.
- 5.18 An employee who has received a formal warning in relation to their conduct must demonstrate their capacity and motivation to maintain appropriate and expected standards of behaviour. The employee may be terminated if subsequent incidents of misconduct are substantiated.



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- 5.19 Where at the conclusion of an investigative process the weight of evidence suggests that on the balance of probabilities the allegation is true and the matter is of a serious nature an Executive Manager or the CEO may move to immediate termination of an employee. A letter outlining reasons for the decision will be sent to the person concerned.
- 5.20 Decisions as to whether to proceed to termination are made at an Executive Management level and the process of decision making considers the final response of the employee and all other evidence collected through the course of investigations including mitigating factors, if any. Potential impact of the misconduct on client wellbeing is also a relevant factor.
- 5.21 Employees may be summarily dismissed for serious misconduct.

Poor Performance

- 5.22 Staff are offered feedback about their performance on a regular and ongoing basis as part of normal staff supervision or monitoring. Where improved work performance has not responded to routine general feedback and correction or where the acts or omissions in terms of performance are considered serious, formal performance management proceedings may be instigated.
- 5.23 At any stage in the investigation or management of a performance issue a Manager in consultation with senior management may apply discretion in deciding whether a formal or informal approach should be progressed. In exercising this discretion, a number of factors may be taken into account including; the seriousness of the work performance issue and its potential to cause detriment to clients, colleagues or the reputation of the organisation; the presence of an alternative appropriate remedy such as informal meeting with the employee; whether other unrelated performance issues have been identified and the nature of those issues; and any relevant personal circumstances of the employee or other mitigating factors. In all cases the decision as to whether to instigate formal disciplinary proceedings will be documented and a notation of the matter retained on the employee file.
- 5.24 The standard for measurement of work performance is that which is reasonable expected to be achieved by other employees engaged in similar positions and with similar training or qualifications. This means that more senior employees have higher accountability in relation to implementing and assisting others to implement company policy and with complying with established systems. More senior employees are expected to operate in a more complex framework of accountabilities.
- 5.25 Generally serious issues that put at risk clients or other persons or that have the potential to damage the reputation of the organisation will require a formal process. Examples of serious events include major medication errors or inadequate support, assistance or oversight of a client. Repeated poor work performance of a more minor nature may also require formal counselling.
- 5.26 Where serious matters of performance are under investigation an employee may be suspended from duties. Alternative duties e.g. those not involving contact with clients may be provided where available, or a period of leave initiated for the duration of the investigation.



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- 5.27 The investigation and management of performance matters is normally a responsibility of Managers with the Human Resources Department providing a resourcing and advice function. At its discretion however and usually in relation to more serious acts or omissions or significant breaches of policy The Trust may nominate a more senior employee (Senior or Executive Manager), a Human Resources Officer or a suitably qualified party external to the organisation to conduct or assist in the conducting of the investigative process.
- 5.28 Where a work performance issue has been raised by another party the first step will be to discuss the matter with the person making the complaint. The goal of this discussion is to determine specific details of what is alleged to have happened including who was involved, when it occurred, and where. Notes should be taken from any meeting to determine preliminary facts around an allegation. An employee or other party making an allegation should, where possible also be encouraged to provide a signed written statement to support their allegation.
- 5.29 If possible the presence or absence of corroborating information such as file notes, letters, Emails or other physical evidence should be determined. Where required the person investigating the matter may interview other witnesses or gather physical evidence relevant to the matter. All evidence should be appropriately documented and stored.
- 5.30 After gathering of evidence a meeting will be organized with the employee about whom the allegation has been made. A letter or Email will be sent to the employee outlining the matters to be discussed with them and inviting them to attend an investigative meeting where they will have an opportunity to respond. The employee will be given 24 hours' notice of the meeting and will be offered an opportunity to bring a support person along to the meeting with them.
- 5.31 The purpose of the meeting with the employee is to allow them to respond to the allegation or to raise any mitigating circumstances that may need to be considered. During the meeting concrete examples of poor work performance will be put to the employee and they will have an opportunity to refute the allegations or otherwise explain their behaviour. The Trust will take notes of the meeting for its own purposes. If the employee wishes to they may also take notes or ask their support person to take notes to form their own personal record. The employee does not have a right to access any notes of the meeting taken by The Disability Trust.
- 5.32 As the result of the performance counselling meeting in some instances further investigation work may need to be conducted to corroborate or otherwise, any explanation of events or mitigating factor the employee has offered.
- 5.33 Where an employee denies the alleged acts or omissions pertaining to the performance of their duties, the balance of probability standard will apply after review of the fact finding investigation. If on the balance of probability it is determined that the examples of poor work performance were substantiated and the employee's work is not of the requisite caliber the employee will be counselled either formally or informally.
- 5.34 Work performance issues of a less serious nature may lead to an informal warning and an agreed approach to supporting improved standards of

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- performance. Attendance by the employee at further training, access to mentoring, more strenuous accountability or reporting requirements and /or enhanced supervision may be considered as way to improve work standards.
- 5.35 The employee may be issued with a formal warning in the first instance if their underperformance is of a more serious nature e.g. their act or omission threatens the health and wellbeing of clients or others. In issuing the warning the employee will be advised that their continuing employment will be jeopardized should the caliber of their work not improve. A formal warning may also be accompanied by other remedies including attendance by the employee at further training, access to mentoring, more strenuous accountability or reporting requirements and /or enhanced supervision.
- 5.36 An employee who has received a formal warning in relation to their work must demonstrate their capacity and motivation to maintain appropriate and expected standards of performance. The employee may be terminated if subsequent incidents of poor performance are substantiated. The option of a second formal warning may however also be considered taking into account the seriousness of the matters, their frequency, the general work history of the employee and current personal circumstances or other mitigating factors
- 5.37 Where the act or omission is of a very serious nature or the performance issues are widespread and/or repeated the employee may be sent further written communication outlining examples of poor performance to date and requesting that they show cause as to why their employment should not be terminated.
- 5.38 At any stage where the weight of evidence suggests serious underperformance that presents a risk to clients or others an Executive Manager or the CEO may move to immediate termination of an employee. A letter outlining reasons for the decision will be sent to the person concerned.
- 5.39 Decisions as to whether to proceed to termination are made at an Executive Management level and in making a decision the final response of the employee and all other evidence collected through the course of investigations including mitigating factors if any, are considered.
- 5.40 Employees may be summarily dismissed for serious acts or omissions or breaches of policy.

Summary Dismissal

- 5.41 The Trust, where it considers it appropriate, may dismiss an employee without notice where the employee is guilty of serious misconduct or significant acts or omissions in the performance of their duties. Examples of serious misconduct or performance issues which would justify summary dismissal include:
- wilful misconduct;
 - wilful disobedience of a lawful and reasonable direction;
 - dishonesty of an employee;
 - 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;



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- sexual contact with a client with or without the client's consent;
- other conduct or acts or omissions which cause 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.

5.42 Prior to instigating a Summary Dismissal a full investigative process will be completed. This process includes requirements for meeting with the employee and giving them the opportunity to be heard and to deny or explain actions or offer other evidence as mitigating factors requiring consideration. If the seriousness of the conduct, act or omission is verified and if on the balance of probabilities the matter is believed to be substantiated the employee may be terminated without notice.

6.0 Forms and Records

Nil

7.0 Work Instructions and Safe Working Procedures

Nil

8.0 Related Policies

- D-03 Dealing with Abuse or Assault of an Adult
- D-04 Investigating Abuse or Assault of a Child
- F-02 Recruitment & Selection
- F-06 Supervision Professional Development
- F-10 Employee Code of Conduct
- F-11 Employee Grievances
- F-13 Resignation & Termination

9.0 Related Documents

RD-F-12-01 Managing the Disciplinary Process Information Sheet for Staff

10.0 References

National Employment Standards
 Disability Discrimination Act 1992 (Commonwealth)
 NSW Anti-Discrimination Act 1977
 Racial Discrimination Act (Commonwealth) 1975



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Sex Discrimination Act (Commonwealth) 1984

Human Rights and Equal Opportunity Act (Commonwealth) 1986

