



University of
South Australia

Disciplinary Procedure

- Application
- Overview
- Definitions
- Procedure
- Cross references
- Further assistance

APPLICATION

This procedure only applies to academic, professional, security, grounds and document services staff employed in accordance with an Australian Workplace Agreement (AWA) where a reference to this procedure is specifically referred to in the AWA and who are not on probation.

OVERVIEW

This procedure provides a guide to the application and management of disciplinary action for unacceptable performance or misconduct. The nature of the Staff Member's performance or behaviour will determine the stage of the disciplinary process to be applied.

Nothing in this procedure prevents the University from undertaking an alternative process where the matter is regarded as serious misconduct. In matters of serious misconduct the University may suspend the Staff Member with or without pay, or temporarily place the Staff Member in another position, during the conduct of any investigation. Any allegations of serious misconduct will be provided to the Staff Member who will be given an opportunity to respond to those allegations. The University will consider the Staff Member's response in deciding whether or not to terminate the Staff Member's employment. Approval to terminate employment will be obtained in accordance with stage 5 of this Procedure.

A Staff Member may have a support person of their choice, excluding a solicitor or barrister currently in practice, present during any stage of the disciplinary process.

DEFINITIONS

For the purpose of this procedure:

'Unacceptable Performance' is when the Staff Member's performance remains unacceptable following a reasonable period of performance improvement. Unacceptable performance shall be dealt with at Stage 4 – Formal Warning of this procedure.

'Misconduct' is when a Staff Member breaches their obligations under their contract of employment. Examples of misconduct include but are not limited to:

- breaches of policies, codes of conduct and other reasonable instructions;
- unauthorised absence from duty; or
- inappropriate use of University property and facilities.

'Serious Misconduct' is when a Staff Member breaches their obligations under their contract of employment to an extent that it is reasonable for the University to discontinue the Staff Member's employment. Examples of misconduct include but are not limited to:

- threatened or actual assault of another staff member, student or member of the public;
- serious conflict of interest;
- damage, misuse or acts of dishonesty in relation to University property and facilities;
- serious or repeated bullying, abuse or sexual harassment of another staff member, student or member of the public;
- serious failure to observe occupational health, safety and welfare policies, instructions and requirements; or
- refusal to carry out a lawful and reasonable instruction that is consistent with the Staff Member's contract of employment.

PROCEDURE

1. Establishment of Facts

Before counselling a Staff Member the Supervisor should establish the facts and consult with the appropriate Divisional/Portfolio/Unit Human Resources Representative for advice and support during the process.

As part of the process to establish the facts the Supervisor may:

- assess any relevant documentation;
- interview persons who may (or should) have knowledge of the staff member's behaviour; and
- document what has occurred.

Once sufficient information has been collected the Supervisor should meet with the Staff Member concerned.

2. Informal Counselling

- a) Informal counselling of a Staff Member will normally occur when, in the Supervisor's opinion, the Staff Member's behaviour is such that formal disciplinary action is not appropriate.
- b) At the informal counselling the Supervisor will:
 - provide details of the behaviour of concern;
 - provide the Staff Member with an opportunity to respond to the concern and to raise any other matters that the Staff Member considers relevant; and

- if the Supervisor is satisfied that the concern can be substantiated, identify any improvement in behaviour that may be required and assistance/support to be provided (if relevant).
- c) After the informal counselling the Supervisor will:
- keep a diary note of the discussion; and
 - where appropriate, plan a subsequent discussion with the Staff Member to review their behaviour.

3. Formal Counselling

- a) Formal counselling of a Staff Member will normally occur when:
- the Staff Member has previously been counselled informally, but behaviour has not improved to the standard required; or
 - the Staff Member's behaviour is such that, in the opinion of the Supervisor after consulting the appropriate Divisional/Portfolio/Unit Human Resources Representative, formal counselling is appropriate.
- b) At the formal counselling the Supervisor will:
- provide details of the behaviour of concern; and
 - provide the Staff Member with an opportunity to respond to the concern and to raise any other matters that the Staff Member considers relevant.
- c) After the formal counselling the Supervisor will prepare a written record of the meeting and, if satisfied that the concern has been substantiated:
- confirm in writing –
 - the behaviour of concern;
 - any assistance/support to be provided (if relevant);
 - that failure to address the behaviour of concern may result in termination of employment; and
 - plan a subsequent discussion with the Staff Member to review their behaviour.

4. Formal Warning

- a) A formal warning will be given to a staff member when:
- the Staff Member has previously been counselled formally, but behaviour has not improved to the standard required;
 - the Staff Member's performance remains unacceptable following a reasonable period of performance improvement; or
 - the Staff Member's behaviour is such that, in the opinion of the Supervisor after consulting the appropriate Divisional/Portfolio/Unit Human Resources Representative, formal counselling is appropriate.

- b) Prior to conducting a meeting at which a formal warning may be given, the Supervisor will advise the Staff Member in writing:
 - the time and place of the meeting; and
 - the nature and detail of the matters to be discussed.

- c) At the meeting the Supervisor will:
 - provide details of the performance or behaviour of concern and support/assistance that has been provided (if relevant);
 - provide the Staff Member with an opportunity to respond to the concern and to raise any other matters that the Staff Member considers relevant;
 - advise the Staff Member that failure to address the concern may result in termination of employment; and
 - plan a subsequent discussion with the Staff Member to review their behaviour or performance.

- d) After the meeting the Supervisor will prepare a written record of the meeting and, if satisfied that the concern has been substantiated:
 - confirm in writing –
 - the behaviour of concern;
 - any assistance/support to be provided (if relevant);
 - that failure to address the behaviour of concern may result in termination of employment; and
 - supply a copy of the record to the Staff Member and request that they acknowledge receipt of the record by signing and returning it.

5. Process for Termination

If after stage 4 of this procedure and within a reasonable period of time there is still no or insufficient improvement in the Staff Member's performance, the Supervisor should contact the Divisional/Portfolio/Unit Human Resources Representative to discuss the processes undertaken in stages 1 – 4 (as appropriate) prior to any further action. If the Supervisor considers that the staff member's employment should be terminated, the following process will be implemented:

- i) The Staff Member shall be advised of, and given an opportunity to respond to any adverse material which the University may consider in a decision to terminate employment.
- ii) The Supervisor recommends to the Head of School/Director of Research Institute/Director of Unit/Division Manager/Director or Director: Centre for Regional Engagement that the employment of the Staff Member be terminated. The Supervisor will be required to provide a written report to support their recommendation for termination.
- iii) If the case is supported by the Head of School/Director of Research Institute/Director of Unit/Division Manager/Director or Director: Centre for Regional Engagement they will make a written recommendation to the Pro Vice

Chancellor/Executive Director that the employment of the staff member be terminated.

- iv) The Pro Vice Chancellor/Executive Director will consult with the Director: Human Resources about the recommendation to terminate employment.
- v) If the case is supported by the Director: Human Resources, the Pro Vice Chancellor/Executive Director will make a written recommendation to the Vice Chancellor through the Director: Human Resources that the staff member's employment be terminated.
- vi) If termination of employment is approved, the Staff Member will be provided with a written communication confirming the termination of their employment allowing for a notice period and/or compensation as required by the *Fair Work Act 2009* as amended.

CROSS REFERENCES

- Performance Management website
- Code of Ethical Conduct

FURTHER ASSISTANCE

Management and staff may seek further advice from:

- Their immediate supervisor
- The designated HR representative for their area.
- The Human Resources Unit
- The Human Resources website

Reviewed: August 2011