

***Underperformance and misconduct***

***Overview***

This document outlines the principles that underpin the Associations management of underperformance and misconduct.

***Scope***

This Policy applies across all student Associations.

**“Associations” refers** to ANUSA, PARSA & Woroni.

***Policy Statement***

***Performance and conduct expectations***

The Associations will endeavour to assist employees to perform to a high standard through the setting of performance objectives against goals, regular feedback, and by providing development opportunities.

The Association’s conduct expectations are specified in the Associations’ Code of Conduct’ and associated policies.

**Managing underperformance and misconduct**

Where an employee is not able to demonstrate performance or conduct to a satisfactory standard, action will be taken to address the underperformance or misconduct. Such action will occur in a timely manner in accordance with terms of employment (if applicable) and this policy.

The preferred outcome of an underperformance or misconduct process is that an employee will improve their performance or conduct and continue to contribute to the ongoing success of the Associations.

Unremediated underperformance or misconduct may result in disciplinary action. Serious misconduct may result in termination of employment.

An employee:

* Will be afforded procedural fairness;
* May seek procedural advice;
* Has the right to representation; and
* May seek a review of decision.

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| ***Definitions***  *Unsatisfactory Performance*: means a persistent and serious failure of the employee to perform the work of the position or appointment at a level which would be reasonably required having regard to:   * the nature and purpose of the position; * its classification; and * any representations made by the employee at the time of selection for employment, without the presence of sufficient mitigating factors.   *Improvement plan*: a written agreement with a defined timeframe which details the specific improvements required and, if necessary, the additional guidance, assistance and training which would reasonably enable an employee to meet appropriate performance standards.  *Disciplinary action:* means formal counselling; written warnings; withholding increments; demotion from an increment point within a classification level; demotion to a lower classification; other action as recommended; or termination of employment.  ***Principles***  The Associations will endeavour to assist employees to perform to a high standard through the setting of performance objectives against Association goals, regular feedback, and the provision of development opportunities.  The Associations’ conduct expectations are specified in the Associations’ Code of Conduct and associated policies.  The Associations will ensure that the steps defined within this policy are adhered to prior to any decision being made to discipline or terminate the employment of an employee for unsatisfactory performance.  An employee may seek assistance from a union or staff representative and may seek procedural advice, at any time during the processes defined within this policy.  The principles of procedural fairness and natural justice will be applied to all unsatisfactory performance processes.  All employees involved in making decisions in relation to disciplinary action or grievance processes have a duty to ensure that they are not affected by favouritism, bias or conflict of interest, and they must act fairly and impartially.  Assessments about unsatisfactory performance and any verbal or written improvement plans will have regard to the employee's career and performance development agreement and the relevant classification standards and secondary descriptors for the position.  Where the reasons for unsatisfactory performance do not relate to the employee's competency and commitment to meet the performance standards (for example, ill health) the matter may not be dealt with as underperformance.  ***Procedure***  Where a supervisor has concerns about the performance of an employee the supervisor will meet with the employee as soon as reasonably practicable to discuss these concerns and establish a reasonable period of review. This will, where necessary, include:   * the specific deficiencies in the employee's performance; * appropriate development assistance required to address the issue/s; * the specific corrective action required; * the performance standards required; and * a reasonable timeframe in which to address the issue/s   A suggested under-performance meeting plan which can be used to help you prepare for a formal underperformance meeting is attached to this policy.  Conducting a formal underperformance meeting and documenting the outcomes will make sure the employee:   * has a clear understanding of what’s required of them; * has a documented plan for improving their performance; and * is aware of the consequences if their performance doesn’t improve.   Where the employee has addressed the performance concerns within the identified timeframe, the action will cease.  Following the completion of a reasonable review period, if there is little or no improvement in the performance of the employee, the supervisor will work with the employee to establish an Improvement Plan and timeline to assist the employee to achieve the performance standards.  The Improvement plan will specify:   * the required performance, including performance standards; * a clearly defined statement of the problem or performance concerns; * the actions to be taken by both the employee and the supervisor to correct the problem; and * the timeframe over which the employee's performance will be closely monitored. The timeframe will not normally be less than one month but may be up to 12 months in positions where it is unreasonable to have a lesser period. Where the timeframe cannot be agreed between the employee and the supervisor, the supervisor's supervisor will assess the circumstances and determine a reasonable timeframe; * where relevant, include the employee's commitment to a program of training and/or counselling and the supervisor's commitment to provide, or release the employee to attend, such training and/or counselling; and * a statement that any deliberate breach of any of the requirements of the Improvement Agreement may lead to an initiation of disciplinary action.   Payment of an increment that falls due where a performance Improvement Plan is in place may be delayed until the supervisor is satisfied that the Improvement Plan conditions have been met.  At the end of the review period outlined above, the supervisor shall advise the employee in writing that either:   * the issues are resolved, that no further action is required and any deferred increments will be paid from the date that the performance is deemed satisfactory; * a further period of review is required, specifying the new review period; or * that the performance is assessed as unsatisfactory performance and that proportionate disciplinary action is warranted, in which case the supervisor shall make a report to the President/Editor in Chief which will include the aspects of performance or conduct seen as unsatisfactory and the record of the attempts to remedy the problem and any issues in mitigation of which they are aware.   The President/Editor in Chief shall provide the employee with a copy of the report. The employee shall then be entitled to a reasonable opportunity, of no less than 5 working days, to submit a written report to the President/Editor in Chief.  After considering the employee’s response, the President/Editor in Chief will then decide to:   * Take no action; * Where the President/Editor in Chief is of the view that procedural fairness has not been afforded to the employee, refer the matter back to the supervisor with a direction to revisit any of the steps defined above; or * Take proportionate disciplinary action, in which case President/Editor in Chief shall set out in writing and provide the employee a statement as to what material has been considered; what acts, omissions, or failings constitute the unsatisfactory performance; and any relevant conclusions upon which the findings are based.   Where a decision is made to take disciplinary action the employee may seek a review of this decision in accordance with the Associations review of decision provisions. |

**Misconduct**

"Misconduct" shall mean conduct which is not serious misconduct but which is nonetheless conduct which is unsatisfactory.

"Serious Misconduct" shall mean:

* Serious misbehaviour of a kind which constitutes a serious impediment to the carrying out of an employee's duties or to an employee’s colleagues carrying out their duties or to the work of the Association.
* Serious dereliction of the duties required of the employee's office.
* Conviction by a court of an offence which constitutes a serious impediment to the carrying out of an employee's duties or to an employee's colleagues carrying out their duties or to the work of the Association.

"Disciplinary Action" means action by an Association to discipline an employee. In the case of unsatisfactory performance and serious misconduct, disciplinary action shall be limited to (a) to (e) below. In the case of misconduct, disciplinary action shall be limited to (a) to (d) below:

1. Formal censure or counselling (which may include a formal warning);
2. Demotion by one classification level or one or more increments;
3. Withholding of an increment;
4. Suspension with or without pay;
5. Dismissal.

These procedures below apply only to fixed-term and continuing employees who are not on probation.

If,

* in the case of concern over an employee's work performance, the unsatisfactory nature of performance has been brought to the attention of the employee and any support period previously agreed upon has been completed and where fair and reasonable opportunities have been given to remedy the substantive concerns of the employer, a decision is made by the President to dismiss or discipline an employee; or,
* in the case of unsatisfactory performance or serious misconduct, allegations are made by the Association and a decision is made by the President to dismiss or discipline an employee; or,
* in the case of misconduct, allegations are made by the Association and a decision is made by the President to discipline an employee the employee shall be provided in writing with:
  + a statement of the disciplinary action to be imposed; and,
  + details of any allegations and the reasons for dismissal or disciplinary action; and
  + the date of effect of any disciplinary action or advice of any notice period to be given prior to implementation of the disciplinary action (as determined by the President according to the circumstances). In the case of dismissal, the minimum requirements for periods of notice (or payment in lieu of notice at the discretion of the President) are set out below.

Concurrently, the employee shall be advised that should he/ she wish to appeal against the decision, written notification of an intention to appeal to the Staff Appeals Committee must be lodged with the President within one week of receiving the formal notice of action to be taken. The employee shall also be advised that should an appeal not be successful any notice period may be concurrent with the appeal process.

Notwithstanding any notice of intention to resign, the employee shall have the right to resign with immediate effect, in writing, within one week of the notice of dismissal. In addition to any other entitlements payable on termination by resignation under this Agreement, the President may approve a severance payment of up to four (4) weeks’ pay. A resignation shall in no way be construed as an admission of guilt, nor receipt of a severance payment as exoneration.

If within one week of the notice, no appeal has been lodged or no notice of resignation received with a date of effect acceptable to the President, then the dismissal or other disciplinary action shall stand and be effective forthwith. In the case of dismissal the person shall then receive payment for the remainder of

the formal period of notice previously notified by the President, in addition to any other entitlements payable on termination under this Agreement in the circumstances of dismissal. If an appeal is lodged it shall be heard by the Staff Appeals Committee.

Employees may seek advice and representation at any stage of the process.

***Entitlements on dismissal***

An employee’s entitlements on termination of employment are outlined at Clause 23 of *the Australian National University Student Associations’ Enterprise Agreement 2016 – 2019.*

***References:***

*Australian National University Student Associations’ Enterprise Agreement 2016 – 2019.*

References

Enterprise Agreement 2016 – 2019 Clauses 16.4 & 16.5

Review date: on or before 12/2024