

## HR03 Performance and Misconduct Policy

The objectives of the Employer Organisation's performance and misconduct policy are to:

- (a) correct and/or improve the standard of conduct of an employee where appropriate or necessary; and
- (b) provide any particular employee with an opportunity to correct unacceptable conduct (other than in situations where summary dismissal is appropriate);

### Application of the Policy

This Policy applies to all employees.

This Policy may be used as guidance to deal with necessary discipline arising from conduct in any circumstances connected with work and this includes out-of-work conduct and conduct at work-related functions that impacts on the Employer. A work-related function is any function that is connected to work. Work lunches, dinners, conferences, Christmas functions and client/customer functions are examples of work related functions. This Policy also applies when employees go to other workplaces in connection with work, for example, when visiting a landholder, stakeholder, community or member of the general public.

If conduct involves a potential breach of any Australian law, the Employer may notify the police or other relevant government authority.

### Grounds for Disciplinary Action

Disciplinary action may be taken in response to any:

- (a) unsatisfactory performance;
- (b) unacceptable conduct; and
- (c) wilful or serious misconduct.

### ***Wilful or serious misconduct***

Wilful or serious misconduct includes the following:

- a) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;
- b) conduct that causes serious and imminent risk to:
  - a. the health or safety of a person; or
  - b. the reputation, viability or profitability of the employer's business.
- c) the employee, in the course of the employee's employment, engaging in:
  - a. theft; or
  - b. fraud; or
  - c. assault;
  - d. the employee being intoxicated at work;
- d) the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.

## **Disciplinary Procedure**

The procedures outlined below are intended as a guide only to the disciplinary procedures which may be implemented by the Employer. In every case, the actual disciplinary procedure to be adopted will be a matter for the employer/s discretion and in consideration of the circumstances of the case as a whole. Nothing in this Policy prevents the Employer from issuing a final warning at any stage of the process. Similarly, if the circumstances warrant, nothing in this Policy prevents the Employer from dismissing an employee at any stage of the procedure set out in this Policy, for example in circumstances involving wilful or serious misconduct by an employee.

### **Investigation**

Depending on the circumstances, it may be necessary to conduct an investigation into incidents and/or allegations. This may involve collecting relevant data, interviewing the relevant employee, relevant witnesses, such as the employee's co-workers or supervisors, or even customers and suppliers with whom the employee has had contact.

An employee may be suspended from duty or have alternative work arrangements at the discretion of the CEO/EO on ordinary pay pending completion of an investigation.

### **Disciplinary Interview**

If on the basis of the investigation, the Employer believes that there is a case to be answered by the employee, the employee may be asked to attend a meeting to discuss the issue(s) of concern.

An example of a procedure that may be adopted by the Employer in these circumstances may involve:

- (a) the employee being given notice of the meeting and what will be discussed at the meeting.
- (b) the employee will be given a reasonable opportunity to have a support person present at the meeting.
- (c) the issue(s) of concern or allegations will be put to the employee;
- (d) giving the employee an opportunity to respond to the concerns or allegations;
- (e) the employer considering the employee's response and making any further enquires or investigations (if necessary);
- (f) the employer determining whether the concern(s) or allegations have been proven.
- (g) if it is determined that all or some of the concerns or allegations are founded, the employer will make a decision about what, if any, disciplinary action is appropriate in the circumstances.

### **Disciplinary Action**

Any disciplinary action taken will vary from case to case. It will depend on the circumstances and could include a consideration of whether the employee has received any prior verbal or written warnings in relation to their performance or conduct.

Examples of disciplinary action which may be taken by the employer include, but are not limited to, the following:

- (a) redirection, retraining;
- (b) verbal warning;

- (c) written warning; and
- (d) dismissal, including summary dismissal in circumstances of serious or wilful misconduct.

#### **Relevant Legislation**

- C'th Fair Work Act 2009
- C'th Fair Work Regulations 2009