

Managing Misconduct and Discipline

An AITSL employee policy and procedure

Introduction

AITSL seeks to create a healthy, safe and rewarding working environment based on the principles of fairness, equity and tolerance while ensuring that the organisation is productive, its resources and governance are protected, and its reputation for excellence is maintained. Where employee's behaviour and conduct has the potential to damage the effective and harmonious operation of the organisation, this policy will be invoked to ensure that the disciplinary procedure is fair, impartial and transparent.

This policy provides a framework for the management and application of a disciplinary action relating to misconduct and serious misconduct.

Policy statement

Employee disciplinary procedures are designed to provide a structured, transparent and equitable time-based process where managers and employees can discuss deficiencies in conduct and the severity of this conduct and, where appropriate, implement a planned and agreed strategy to ensure the misconduct is not repeated.

The aim of this policy is to ensure that the employee is aware of the reasons for the disciplinary action being taken, the interventions and strategies being implemented for improvement and the possible outcomes of the disciplinary procedure relating to misconduct and serious misconduct.

Scope

This policy covers all AITSL employees.

This policy does not apply to processes for managing unsatisfactory performance which constitutes underperformance under the Managing Underperformance Policy.

At a glance

- Identifying the issue and severity of misconduct
- Verbal Warning
- First Written Warning
- Final Written Warning
- Notice of Dismissal (Termination of employment)

Procedure

It is everyone's responsibility to report suspected misconduct and serious misconduct for the sake of AITSL employees' health and safety, and AITSL's reputation and viability. As a result, it is AITSL's intention that disciplinary matters will be dealt with swiftly, fairly and in line with relevant legislation.

The objective of this policy is to ensure that behaviours that are consistent with and supportive of the law and that AITSL's values and desired culture are reinforced. In this respect, and depending on the severity of the misconduct, AITSL recognises that:

- An initial supportive response may be more effective than taking immediate formal corrective and disciplinary action
- Counselling and coaching approaches are used to identify the reasons for conduct
- All cases are treated with respect and sensitivity.

Where these responses and approaches fail, and formal corrective and disciplinary action is invoked, such actions are intended to be corrective rather than punitive, excepting where immediate termination of employment is justified.

For the purpose of this policy, misconduct includes the following:

- misdemeanours, including inappropriate behaviour
- making improper use of one's position for personal gain
- failure to comply with organisational policies or a provision of any statute or regulation that applies to the employee in the employee's employment
- unauthorised absence from duty
- inappropriate use of organisation's property and facilities.

Serious misconduct includes wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment (which could take the form of criminal behaviour) and/or conduct that causes serious and imminent risk to the health and safety of a person, or the reputation, viability or profitability of the employer's business.

Where serious misconduct is involved, it may not be appropriate to follow each of the steps below concerning counselling, informal verbal warnings or formal written warnings.

The Managing Misconduct and Discipline Policy should be provided to the employee prior to any discussions taking place and they are to be offered the option of having a support person attend any meeting. A support person may be a work colleague or Union Representative chosen by the employee, but cannot be a family member or lawyer.

The disciplinary procedure in most cases involves a four stage progression:

Step 1. Verbal Warning

After observing or being notified of misconduct by an employee, the manager should establish the facts and consult with Human Resources for advice and support as soon as possible. The manager will:

- gather relevant facts and assess any relevant documentation
- undertake an interview with persons who may (or should) have knowledge of the employee's behaviour and who may have witnessed any incident or event
- review any relevant policies and procedures, taking into account the employee's past record and
- prepare a chronology of events to record what has occurred, and make a critical assessment to determine an appropriate course of action.

Once sufficient information (facts) has been collected, the manager should arrange an appropriate time to meet with the employee concerned.

A verbal warning will be issued describing the offending action / behaviour, its effects, and consequences. The manager will also specify the corrective action and future behaviour required. An agreed and reasonable period for monitoring and review will be established.

The objective of this step is for the matter to be resolved without progression or escalation.

The employee must be given the opportunity to respond to issues raised.

After the meeting, the manager will complete the Employee Discipline Record of Meeting form and record succinct and detailed factual notes. A copy of this document will be provided to the employee and a copy placed on the employee's employment file.

Step 1 should be concluded within 20 working days after observing or being notified of the misconduct.

Step 2. First Written Warning

Where the employee's behaviour does not improve and remains unacceptable, or a subsequent related issue has been raised, a written warning will be issued.

The manager will arrange a meeting with the employee and provide an opportunity for the employee to respond to the issues raised.

At the meeting, the manager will provide:

- details of the unacceptable behaviour
- reiteration of acceptable behaviour
- reference to previous meetings and support provided to resolve the matter
- time frame for monitoring and reviewing progress
- a future meeting time to assess ongoing employment and
- advice to the employee that failure to address the concern may result in termination of employment.

After the meeting, the manager will prepare the Managing Misconduct and Discipline Record of Meeting Form and, if satisfied that the concern has been substantiated, advise Human Resources to issue the First Written Warning detailing the discussion at the meeting.

The written reprimand will include a section for the employee to acknowledge its contents. If an employee refuses to sign the acknowledgement, the manager will duly note the document.

A copy of the completed form will be provided to the employee and a copy placed on the employee's employment file.

Step 3. Final Written Warning

If the required behaviour change still does not occur within a specified and agreed time, a final written warning will be issued.

The manager will arrange a meeting with the employee, which is to also be attended by a Human Resources team member.

At the meeting, the manager will provide

- details of the unacceptable behaviour
- reiteration of acceptable behaviour
- reference to previous meetings and support provided to resolve the matter

- time frame for monitoring and reviewing progress
- a future meeting time to assess ongoing employment and
- advice to the employee that failure to address the concern may result in termination of employment.

The employee will be given an opportunity to respond to matters raised.

After the meeting, the manager will prepare the Managing Misconduct and Discipline Record of Meeting Form and, if satisfied that the concern has been substantiated, advise Human Resources to issue a Final Written Warning detailing the discussion at the meeting.

The written reprimand will include a section for the employee to acknowledge its contents. If an employee refuses to sign the acknowledgement, the manager will duly note the document.

A copy of the completed form will be provided to the employee and a copy placed on the employee's employment file.

Step 4. Notice of Dismissal (Termination of employment)

A meeting will occur if after a final written warning has been issued and, with a reasonable period of time to monitor and review, it is evident that the behaviour has not and will not reach the expected standards.

The manager will contact Human Resources to discuss and review the entire discipline process to date to ensure it has not been harsh, unjust or unreasonable. Any decision to terminate an employee must be endorsed by the Chief Executive Officer in consultation with Human Resources.

The manager will then arrange a meeting with the employee which is also to be attended by a Human Resources team member.

At the meeting, the manager will:

- advise that the unacceptable behaviour has continued
- reiterate the behaviour that was required and
- provide details of previous meetings, counselling and warnings issued.

The employee will be provided with an opportunity to respond and give reason or provide details of any other relevant matters that may avert their potential termination of employment.

After taking a reasonable time to consider the employee's response, if it is determined termination is appropriate, the employee will be provided with confirmation of the termination of their employment in accordance with AITSL's policies concerning termination and the *Fair Work Act 2009*.

After the meeting, the manager will prepare the Managing Misconduct and Discipline Record of Meeting form and a copy will be placed on the employee's employment file.

The notice of termination will be applied in accordance with AITSL policies or the National Employment Standards, whichever provides the maximum terms and conditions for employees.

Other

It is also a provision of this policy that AITSL may initiate the disciplinary process at any stage of this policy, where deemed appropriate, dependent on the seriousness and circumstance of each case. That is, if a matter is deemed serious, AITSL may begin the disciplinary process at any of the steps within the policy, dependent on the facts surrounding the matter.

The organisation reserves the right to undertake an alternative procedure where the matter is considered to be serious misconduct. In such matters, the organisation may suspend the employee with or without pay and / or temporarily transfer the employee to an alternative work unit during the conduct of an investigation.

It is not expected that parties will commence any action permitted under the *Fair Work Act 2009* or any other action until internal policies and procedures have been applied and followed.

Legislative context

This Managing Misconduct and Discipline policy has been developed to ensure AITSL complies with the *Fair Work Act 2009* and any other relevant legislation.

Definitions

Chronology of Events Form	Template to assist in arranging events in their order of occurrence in time, such as the use of a timeline or sequence of events
Managing Misconduct and Discipline Record of Meeting Form	Form used to record details of discipline meetings
Misconduct	<p>When an employee breaches their obligations under their contract of employment.</p> <p>Examples of misconduct include but are not limited to:</p> <ul style="list-style-type: none"> • misdemeanours, including inappropriate behaviour • making improper use of his or her position for personal gain • failure to comply with organisational policies or a provision of any statute or regulation that applies to the Employee in the Employee's employment • unauthorised absence from duty or • inappropriate use of organisation's property and facilities
Serious Misconduct	<p>When an employee breaches their obligations under their contract of employment to an extent that it is reasonable for the organisation to discontinue the employee's employment.</p> <p>Examples of misconduct include but are not limited to:</p> <ul style="list-style-type: none"> • threatened or actual assault of another employee or member of the public • serious conflict of interest • damage, misuse or acts of dishonesty in relation to the organisation's property and facilities • serious or repeated bullying, abuse or sexual harassment of another employee or member of the public • serious failure to observe work health, safety and welfare policies, instructions and requirements or • refusal to carry out a reasonable and lawful instruction / direction that is consistent with the employee's contract of employment.
Staff Manual	AITSL's register of policy and procedure.
Unacceptable Performance	When the employee's performance is unacceptable or remains unacceptable following a reasonable period of performance improvement

Related documents

- Chronology of Events Template
- Employee Discipline Record of Meeting Form
- *Fair Work Act 2009*
- Fair Work Ombudsman
- Fair Work Commission
- Performance Improvement Plan Template
- Process Map – Employee Discipline

Version	Author	Date	Comment
Version 1	Corporate Services	24 July 2014	New Policy and Procedure

Approval		
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