

UNDERPERFORMANCE & MISCONDUCT POLICY

POLICY

- a. Shire of Quairading will be staffed by workers with the qualifications, skills, and abilities to perform their roles and functions to the required standard.
- b. A worker's performance will contribute (either directly or indirectly) to the health, well-being and safety of customers and co-workers.
- c. A worker's performance will support co-workers in the performance of their roles and functions.
- d. A worker's performance will contribute to positive workplace morale.
- e. A worker's performance will contribute to the productivity and performance of the organisation as a whole.

DEFINITIONS

Bullying

Bullying refers to an individual or a group of individuals who repeatedly behave unreasonably towards a worker or a group of workers of which the worker is a member, and that behaviour creates a risk to health and safety.

Examples of workplace bullying behaviour includes:

- a. Not responding to work health and safety issues;
- b. Managers/supervisors openly venting frustration at workers;
- c. Abusive, insulting, or offensive language or comments;
- d. Unjustified criticism or complaints;
- e. Deliberately excluding someone from workplace activities;
- f. Withholding information that is vital to effective work performance;
- g. Setting unreasonable timelines or constantly changing deadlines;
- h. Setting tasks that are unreasonably below or beyond a person's skill level;
- i. Denying access to information, supervision, consultation, or resources such that it has a detriment to the worker;
- j. Spreading misinformation or malicious rumours;
- k. Changing work arrangements, such as rosters and leave, to deliberately inconvenience a particular worker or workers; and
- l. Excessive scrutiny at work.

Single incidents resulting in a risk to health and safety and will not be tolerated. Examples of behaviour NOT classified as workplace bullying includes:

- a. Conducting business or undertaking appropriate management action and making appropriate management decisions;
- b. Making necessary decisions to respond to poor performance or (if necessary) taking disciplinary action;
- c. Directing and controlling the way work is carried out; and
- d. Allocating work and providing fair and constructive feedback on a worker's performance.

Discrimination

Unlawful workplace discrimination occurs when an employer takes adverse action against a person who is an employee or prospective employee because of the following attributes of the person:

- a. race
- b. colour
- c. sex
- d. sexual orientation
- e. age
- f. physical or mental disability
- g. marital status
- h. family or carer's responsibilities
- i. pregnancy
- j. religion
- k. political opinion
- l. national extraction or social origin

Diversity

Workplace diversity means individual differences across the workforce and the adaption of work practices to create an inclusive environment in which all diverse skills, perspectives and backgrounds are valued. Examples of differences include:

- a. Gender;
- b. Age or life-stage;
- c. Language, ethnicity, or cultural background;
- d. Disability;
- e. Sexual orientation;
- f. Religious belief;
- g. Education;
- h. Socio-economic background;

- i. Personality;
- j. Geographic location;
- k. Marital status; and
- l. Family or other carer responsibilities.

Equal Opportunity

Equal opportunity means the aggregation of policies and practices in employment and other areas that prohibit discrimination against people according to race, colour, age, sex, national origin, religion, or mental or physical disability.

Harassment

Harassment is any uninvited or unwelcome behaviour that offends, humiliates, or intimidates another person, whether or not that effect is intended. This may occur as a single act, or as a series of incidents, persistent innuendoes, or threats. It can take many forms: it may be silent or loud, subtle, or openly hostile, it can be private or public. Harassment may take the form of general bullying or be specifically aimed at people with particular or different characteristics. The latter type of harassment may amount to discrimination which is unlawful.

Sexual harassment generally includes any unwelcome conduct of a sexual nature which a reasonable person would find offensive, humiliating or intimidating. It may be physical, verbal or written. Certain conduct that may be tolerated socially could constitute sexual harassment in the workplace when it is unwelcome. At the same time, sexual harassment must not be confused with conduct that has the consent of all involved.

Examples of sexual harassment include:

- a. The public display of pornography, including on the internet;
- b. Continued use of jokes containing sexual innuendo;
- c. Intrusive enquiries into another employee's private life, their sexuality or physical appearance;
- d. Persistent requests from a colleague to go for a drink (or similar) where such requests have been consistently declined;
- e. Persistent staring or leering at a person or parts of their body;
- f. Sexually offensive telephone calls;
- g. Requests for, or expectations of, sexual activity under threat, or in exchange for favours or promises of preferential treatment;
- h. Deliberate or unnecessary physical contact, such as patting, pinching, fondling, deliberate brushing up against another body, or attempts at kissing;
- i. Public displays of nudity – commonly referred to as flashing; and
- j. Sexual violence at the most extreme, sexual assault and forced attempts of sexual intercourse.

Misconduct

Behaviour by a worker that severs the relationship between the worker and the organisation and merits instant dismissal without notice or pay in lieu of notice or termination of the volunteer position. Serious misconduct dismissal requires only one instance of the damaging behaviour. Examples of serious misconduct behaviour include:

- a. Wanton disregard for the safety of others;
- b. Deliberate acts of violence or hostility;
- c. Fighting or assault on another person;
- d. Malicious damage;
- e. Financial defrauding of the organisation;
- f. Significant or repeated levels of insubordination;
- g. Falsification of documents;
- h. Defaming or criticising the organisation or any member of the organisation or a tenant or client of the organisation on social media or through any other public platform; and
- i. Defaming or criticising the organisation to other organisations, including funding and regulatory bodies

Repeated Behaviour

Repeated behaviour means the persistent nature of the behaviour and can refer to a range of behaviours over time.

Underperformance

Behaviour by a worker considered unacceptable to the organisation but not as immediately harmful to the organisation as serious misconduct. The Shire of Quairading will afford a worker every reasonable opportunity to reverse underperforming behaviour prior to consideration of termination of employment.

Underperformance or poor performance is:

- a. Unsatisfactory work performance, that is, a failure to perform the duties of the position or to perform them to the standard required;
- b. Non-compliance with workplace policies, rules, or procedures;
- c. Unacceptable behaviour in the workplace;
- d. Disruptive or negative behaviour that impacts on co-workers;
- e. Continual absenteeism;
- f. Inappropriate use of workplace facilities;
- g. Unprofessional personal appearance;
- h. Negligence; and
- i. Defaming or criticising the organisation to individual residents, clients, families, staff, or other valued stakeholders.

Underperformance is different to misconduct. Misconduct is more serious in terms of action by the worker, impact on the organisation and consequence.

Unreasonable Behaviour

Behaviour that a reasonable person (having regard for the circumstances) would consider unreasonable. This includes behaviour that is victimizing, humiliating, intimidating, or threatening.

PROCEDURES

Alleged instances of underperformance or misconduct are to be reported to the Executive Manager Corporate Services, who will guide the worker through the correct industrial relations process.

1. Underperformance

Reason for Underperformance

- a. Shire of Quairading recognises the following potential reasons for underperformance:
 - i. A worker does not have a clear understanding of performance goals; standards; workplace policies; the consequences of non-compliance;
 - ii. Interpersonal differences;
 - iii. The worker does not have the knowledge, skills, or ability to perform the role;
 - iv. The worker has not been provided with counselling or feedback regarding individual performance;
 - v. Lack of personal motivation or low morale in the workplace;
 - vi. Personal issues (e.g. family stress; physical or mental health illness; drug or alcohol addiction);
 - vii. Cultural misunderstandings; and
 - viii. Workplace bullying.

Indication of Underperformance

- a. The Executive Manager, in conjunction with the staff member's line manager (if applicable), will attempt to understand the key drivers of performance or underperformance and will endeavour to correctly and specifically identify these drivers through daily interaction and management, without enacting a formal process.
- b. If the performance issue is not rectified within three months, the matter is to be reported to the respective Executive Manager or CEO for action. No other person is permitted to enact a formal performance management procedure.

Assess and Analyse Underperformance

- a. The Executive Manager, in conjunction with the staff member's line manager (if applicable), will endeavour to determine:
 - i. Whether the instance of underperformance is serious;
 - ii. The duration of the underperformance (how long it has been an issue); and
 - iii. The gap between what is expected by the organisation and what is being delivered by the worker.
- b. Once the underperformance has been identified and assessed the Executive Manager, in conjunction with the staff member's line manager (if applicable), will organise a first meeting with the worker to discuss the problem.

- c. The Executive Manager will advise the worker of the purpose of the meeting in advance to enable the worker to adequately prepare for the meeting. If the staff member has a line manager, both the Executive Manager and line manager will attend the meeting, as well as the Human Resources representative. The Human Resources representative will attend ALL meeting relevant to the issue.
- d. The worker will be informed that s/he is allowed to bring a support person of choice or a union representative to the meeting.

First Meeting

- a. The first meeting will take place in a private, comfortable, and non-threatening environment, away from distractions and interruptions.
- b. The Executive Manager will detail the issues of concerns using plain English, specific terms, and specific examples. From this conversation, the worker will be able to understand:
 - i. The nature of the underperformance;
 - ii. The gap between what is expected by the organisation and what is being delivered by the worker;
 - iii. The reasons the organisation considers the underperformance to be a concern or a problem;
 - iv. The ways in which the underperformance impacts on the organisation, or anyone associated with the organisation; and
 - v. The outcomes that the Executive Manager and line manager (if applicable) want from the meeting.
- c. The meeting will be an open discussion.
- d. The worker will have the opportunity to put forward any information the worker considers relevant to the discussion and that information will be duly considered by the managers.
- e. Management will talk about the issue and not the person.
- f. Management will clarify detail at the request of the worker.
- g. Management will ensure that the worker:
 - i. Is aware of the work expectations;
 - ii. Has been shown performance requirements;
 - iii. Understands the gap between expected work performance and actual work performance.
- h. Management will also advise the worker of any work the worker is performing to the required standard.

First Meeting

- a. If after the initial meeting the Executive Manager, line manager (if applicable) and the worker agree that a verbal warning only is required, a verbal warning will be issued by the Executive Manager. The verbal warning will be recorded and placed on the worker's personnel file. The matter will close here, subject to the underperformance actions being repeated by the worker.

- b. If after the initial meeting the management considers a verbal warning only will not resolve the underperformance issue a first written warning will be issued by the Executive Manager and recorded on the worker's personnel file. A second meeting will be convened within five days of the first meeting.

Second Meeting (When a Verbal Warning is not Appropriate nor Satisfactory)

- a. At the second meeting the Executive Manager and line manager (if applicable) will attempt to jointly devise a solution with contribution from the worker.
- b. To determine the solution, management will:
 - i. Explore ideas by asking open questions;
 - ii. Emphasise common ground;
 - iii. Keep the discussion on track;
 - iv. Focus on positive possibilities; and
 - v. Offer assistance (e.g. further training; mentoring; flexible work practices; redefining roles and expectations).
- c. A clear plan of action in the form of a Performance Agreement will be developed with the worker.
- d. The Performance Agreement will:
 - i. Reflect an understanding of performance expectations and what is to be achieved over the specified time period (performance improvement milestones);
 - ii. Clarify roles and responsibilities of the worker;
 - iii. Include strategies for training and career development;
 - iv. Include timeframes for improvement (these may vary according to the issue and the needs of the organisation, but the worker will be granted adequate time to improve performance); and
 - v. Reinforce the value and worth of the role being performed.

Third Meeting (To Review Progress)

- a. A third meeting will be set two weeks after the Performance Agreement has been enacted to review progress and discuss the worker's performance against the agreed Performance Agreement.
- b. If at this juncture the performance of the worker has not improved to a satisfactory standard, a second written warning will be issued, and a copy placed on the worker's personnel file. The warning will include detail on the nature of the underperformance and the fact that a lack of improvement by a specified date will result in a Final Written Warning.

Fourth Meeting (To Review Progress)

- a. A fourth meeting will be set at the discretion of the Executive Manager to review progress and discuss the worker's performance against the agreed Performance Agreement.
- b. If at this juncture the performance of the worker has not improved to a satisfactory standard, a final written warning will be issued, and a copy placed on the worker's personnel file. The warning will include detail on the nature of the underperformance and

the fact that a lack of improvement by a specified date will result in termination of the worker's position.

Fifth Meeting (To Review Progress)

- a. A fifth meeting will be set at the discretion of the Executive Manager to review progress and discuss the worker's performance against the agreed Performance Agreement.

Termination of Employment

- a. If the worker's performance does not improve after performance management, additional training, counselling and/or the issuing of formal warnings and/or if the issue cannot be resolved, the employment will be terminated. Refer to *Redeployment, Redundancy or Termination Policy & Procedures*.

Monitor Performance

- a. Management will continue to monitor the worker's performance and provide both positive and negative feedback after the performance management period to ensure that performance improvements are sustained.
- b. The Executive Manager and line manager (if applicable) will consult with other members of management, so far as is required to have a detailed understanding of the worker's performance and level of improvement.
- c. A member of the Human Resources team will attend all meetings to minute the discussion and agreed actions.
- d. A written record of all discussions, correspondence and reports relating to underperformance will be retained by the organisation. The organisation reserves the right to use this information in the instance of legal proceedings.

CEO Underperformance

- a. Where it is alleged that the CEO is underperforming, the *CEO Standards for Recruitment Performance and Termination* should be enacted.

2. Misconduct

Identification of Misconduct

- a. Line managers will report suspected misconduct action or inaction of workers to the Executive Manager of their respective department. The Executive Manager will report any alleged misconduct to the Executive Manager, Corporate Services.
- b. Other workers will report suspected misconduct action or inaction of managers to the Executive Manager, Corporate Services.
- c. The Executive Manager, Corporate Services will arrange to meet immediately with the CEO who will seek legal advice on the issue, if required.
- d. If at any time a report is against the Executive Manager Corporate Services, staff at any level will report directly to the CEO.

First Meeting

- a. Once the misconduct has been identified and assessed, the Executive Corporate Services, will organise a first meeting with the worker to discuss the problem.

- b. The Executive Manager Corporate Services will advise the worker of the purpose of the meeting in advance to enable the worker to adequately prepare for the meeting.
- c. The worker will be informed that they are allowed to bring a support person of choice or a union representative to the meeting.
- d. A member of the Human Resources Team will attend all meetings to minute the discussion and agreed actions.
- e. Subject to legal advice, if the CEO decides the misconduct warrants termination of the worker's position, the worker will be provided with this information verbally at the meeting and in writing. Refer also to *Redeployment, Redundancy or Termination Policy & Procedures*.

Executive Manager Misconduct

- a. Where it is alleged that the CEO or an Executive Manager is engaging in misconduct, an independent investigator will be engaged to investigate the matter, analyse the outcomes of the investigation and provide recommendations to Council. The recommendations may range from 'no grounds for action' to disciplinary action such as termination of employment.

3. Recourse available to worker

- a. Where a worker considers that management has not fairly or correctly identified or addressed allegations of underperformance or misconduct, the worker has the right of appeal to the CEO.
- b. Where a worker remains unsatisfied after appealing decisions related to underperformance, the employee is encouraged to contact:

The Australian Services Union

102 East Parade, East Perth WA 6004
 [PO Box 8208, Perth Business Centre WA 6849]
 Toll free: 1800 064 657
 General Email: branch.secretary@asuwa.org
 Website: www.asuwa.org

Equal opportunity Commission

Albert Facey House, 469 Wellington St, Perth WA 6000
 Toll free: 1800 198 149
 Website: www.eoc.wa.gov.au

Office of Multicultural Interests

Gordon Stephenson House, 140 William St, Perth WA 6000
 Website: www.omni.wa.gov.au
 Phone: (08) 6552 7300

Western Australian Industrial Relations Commission

Level 17, 111 St Georges Terrace, PERTH WA 6000
 Website: <https://www.wairc.wa.gov.au/>
 Free call: 1800 624 263

STATUTORY ENVIRONMENT

Equal Opportunity Act 1984

Industrial Relations Act 1979

Local Government Act 1995

Minimum Conditions of Employment Act 1993

Record of Policy Review						
Version	Author	Council Adoption	Resolution	Reason for Review	Review Date	CEO Signature
01	Nicole Gibbs CEO	25 May 2023	246 - 22/23	New Policy	May 2025	