

## Introduction

This process is designed to provide a mechanism to assess the performance of staff, with the primary purpose being to provide assistance to the staff member whose performance has been assessed and requiring improvement.

Disciplinary action will be instigated as a last resort and supervisors will make every effort to resolve instances of unsatisfactory performance through guidance, counselling and appropriate professional development.

Federation TAFE will follow the processes set out below before taking any disciplinary action against a staff member for unsatisfactory performance.

## Definitions

Term	Definition
<b>Counselling</b>	Provision of information to the staff member by their supervisor on the nature of their unsatisfactory performance and the expected standard of performance.
<b>Disciplinary action</b>	Means measures or actions that may be taken by the University in relation to unsatisfactory performance and includes, but is not limited to: <ul style="list-style-type: none"> <li>a) formal counselling;</li> <li>b) giving an employee a written warning (including, where appropriate, a final written warning);</li> <li>c) withholding an increment;</li> <li>d) demotion by one or more classification levels or increments; or</li> <li>e) termination of employment.</li> </ul>
<b>Independent reviewer</b>	A person agreed between the University and relevant union. The independent reviewer will not be a member of the University.
<b>Performance improvement plan</b>	Document outlining performance improvement goals, strategies to assist with improving performance, skill development or training required and a timeframe for completion in order for the employee to achieve the expected standard of performance.
<b>Progress review</b>	Regular meetings between the staff member and their supervisor to review progress with performance improvement plans and to provide feedback to the staff member on their performance. Such meetings may include a support person for the staff member and/or a representative from Human Resources.
<b>Review period</b>	The period where a staff member's performance is assessed by their supervisor. During this period the supervisor will meet regularly with the staff member and provide feedback on the progress of their performance improvement.
<b>Written warning</b>	Written notice to the staff member advising of the nature of their unsatisfactory performance including notice to improve the performance and the consequences if they fail to do so.

## Process

Before taking disciplinary action against a staff member for misconduct or serious misconduct, the University will undertake the following process:

## Counselling and support

Where a supervisor forms the view that the performance of a staff member is unsatisfactory, the supervisor will address the issues promptly.

The supervisor will counsel the staff member on the nature of the unsatisfactory performance, the improvement required and the timeframe within which the improvement is expected and, in discussion with the employee, develop a performance improvement plan and implement strategies to address unsatisfactory performance. Such strategies will be given up to one school term to take effect.

The supervisor will provide a copy of the performance improvement plan to the staff member.

## Progress review

The supervisor and the staff member will meet at regular intervals during the counselling and support process to review progress and provide feedback to the staff member. The supervisor will provide a copy of the feedback to the staff member following each review meeting.

If the staff member's performance improves to the expected standard at the end of this process no further action will be taken.

## Written warning

If the supervisor is of the view that the staff member's performance has not improved following the counselling and support phase, following consultation with the HR Business Partner, the supervisor will meet with the staff member and provide them with a written warning and advice of the need to improve performance. The written advice will specify:

- the expected standard of performance, including appropriate performance indicators;
- how the staff member's performance is unsatisfactory;
- provide a direction that performance must improve in line with the expected standard;
- any required skill development or training to be provided; and
- the improvement required in order to meet the expected standard.

A further performance improvement plan that includes the above requirements will be developed with the staff member and will be given a further school term to take effect (the review period).

The supervisor will meet with the staff member at regular intervals during the review period and provide an assessment of the staff member's performance. The supervisor will provide progress reports after each review meeting. A copy of the progress reports will be provided to the staff member, who will be invited to provide comments. Where appropriate, the Pro Vice-Chancellor (VET) may appoint an independent person from outside the staff member's work area to undertake the assessment.

If the staff member's performance improves to the expected standard at the end of this process no further action will be taken.

## Recommendation for action

If the supervisor concludes that the staff member has not met the expected standard of performance at the end of the review period, the supervisor will consult with their immediate supervisor and forward the final assessment, progress reports, the employee's comments and other relevant documentation to the Pro Vice-Chancellor (VET), together with a recommendation for action which may include further disciplinary action. A copy of the final assessment will be given to the employee.

The Pro Vice-Chancellor will write to the staff member asking them to provide written reasons within 10 days as to why the recommendation should not be adopted.

The Pro Vice-Chancellor (VET) will reasonably consider the report, documentation and the staff member's response and satisfy themselves that the requirements of this process have been complied with.

The Pro Vice-Chancellor (VET) may then decide to:

- take no further action;
- refer the matter back to the supervisor to ensure the steps referred to in this process are complied with in substance and in a manner appropriate to the circumstances; or
- take disciplinary action.

The Pro Vice-Chancellor (VET) will inform the staff member in writing of the decision. A decision for disciplinary action will take effect no earlier than five days from the date of the Pro Vice-Chancellor (VET) notification.

## Disciplinary action

Where the matter of unsatisfactory performance has been dealt with in good faith and in accordance with this procedure, the disciplinary action section of the [Managing allegations of misconduct and serious misconduct](#) process will be applied.

Where the decision to take disciplinary action is made, the Pro Vice-Chancellor (VET) will consult with the Director, Human Resources, and where appropriate the Vice-Chancellor, and supply all the information provided by the supervisor.

The Pro Vice-Chancellor (VET) will recommend one of the following actions, including but not limited to:

- provision of a further written warning to the staff member; or
- provision of a final written warning to the staff member; or
- termination of the employment of the staff member.

The Vice-Chancellor will advise the Director, Human Resources and Pro Vice-Chancellor (VET) within five working days whether the recommended disciplinary action is accepted or not. The Vice-Chancellor may also provide decide to impose a different sanction(s) as appropriate.

Within five working days from receiving the Vice-Chancellor's decision, the Pro Vice-Chancellor (VET) will advise the staff member in writing of the decision and outcome, including the operative date of the decision.

## Review of decision

If a decision is made under the *Disciplinary action* section of this document to demote by one or more classification levels or increments or terminate the staff member's employment due to unsatisfactory performance, the staff member will be provided with the grounds for the disciplinary action, including any reference material relied on in support of the decision.

If the decision to impose disciplinary action is in the form of termination of employment, the staff member may request a review of the Vice-Chancellor's decision by writing to the Vice-Chancellor within 10 working days of receiving the decision.

In requesting a review, the staff member must provide the following information to the Director, Human Resources at the time the request is lodged:

- the grounds for requesting the review;
- any written submissions supporting the request for review; and
- any documentary material that the staff member relies on.

The Director, Human Resources will engage an independent reviewer within five business days of the request for a review.

The independent reviewer will be agreed between the University and relevant union. Where agreement cannot be reached, the relevant union may seek the assistance of the Fair Work Commission in resolving the issue.

The University will provide its submissions and any supporting materials to the independent reviewer within 10 working days. A copy of the documents submitted by the University will be provided to the staff member and they will have five working days to provide any additional comments or submissions to the Independent Reviewer.

At the time of submitting the review request, the staff member will elect to either:

- i. appear before the independent reviewer; or
- ii. have the review conducted on the papers.

If the review is conducted on the papers, the independent reviewer can seek additional information as considered necessary to make an informed decision.

Where a staff member appears before the independent reviewer, the University will also appear.

The Independent Reviewer will:

- i. conduct the review in camera;
- ii. allow the staff member and the University to be assisted or represented by an agent of their choice who is employed by the University but who is not a practising barrister or solicitor, or by an officer or employee of the union (in the case of the employee) or of AHEIA (in the case of the University).
- iii. provide an opportunity for the staff member to be interviewed by the independent reviewer (where the staff member has elected to appear) and ensure the staff member has adequate opportunity to answer findings of unsatisfactory performance and put their case;
- iv. where considered necessary, interview any other person thought fit to establish the merits or facts of the particular case;
- v. conduct all interviews in the presence of the staff member (or their representative) and the University's representative, unless the independent reviewer concludes there are good grounds not to do so, in which case they will ensure procedural fairness to both parties in respect of any interview material the independent reviewer may rely upon;
- vi. where the staff member has elected to appear, ensure the staff member (or their representative) and the University's representative have the opportunity to ask questions of the interviewees (unless the independent reviewer considers there are good grounds not to do so), make submissions and present and challenge evidence.
- vii. conduct proceedings as expeditiously as possible, consistent with the need for fairness; and
- viii. take into account the other material the independent reviewer believes appropriate to the case.

The Independent Reviewer will report their findings to the Vice-Chancellor within 10 working days of the conclusion of proceedings, outlining whether:

- i. the process outlined in this document has been followed appropriately; and
- ii. whether there was, overall, sufficient materials to make a finding of unsatisfactory performance.

The Director, Human Resources will not unreasonably refuse a request from the independent reviewer for an extension to the 10 working days timeframe.

The Vice-Chancellor, having considered the report, may confirm the original decision or may reconsider and determine what (if any) disciplinary action should be taken.

The Vice-Chancellor will advise the staff member of the outcome of the review in writing. Where the original decision to terminate employment is upheld, the notice period (if any), or payment in lieu, will then apply from the date of the Vice-Chancellor's written notification.

Notice periods will be paid consistent with the requirements of the Fair Work Act 2009.