

Managing Underperformance Misconduct and Serious Misconduct Process

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Version: 1.02 Current

Approved: Executive Director Corporate Services

Date Approved: 28 August 2006

Administered: Governance

Next Review: 31 December 2007

Purpose:

This document describes the process lines and processes dealing with underperformance, misconduct and serious misconduct. The process lines add to the provisions of Clause 26 of the [Charles Darwin University Union Certified Agreement 2006](#) (CDU UCA).

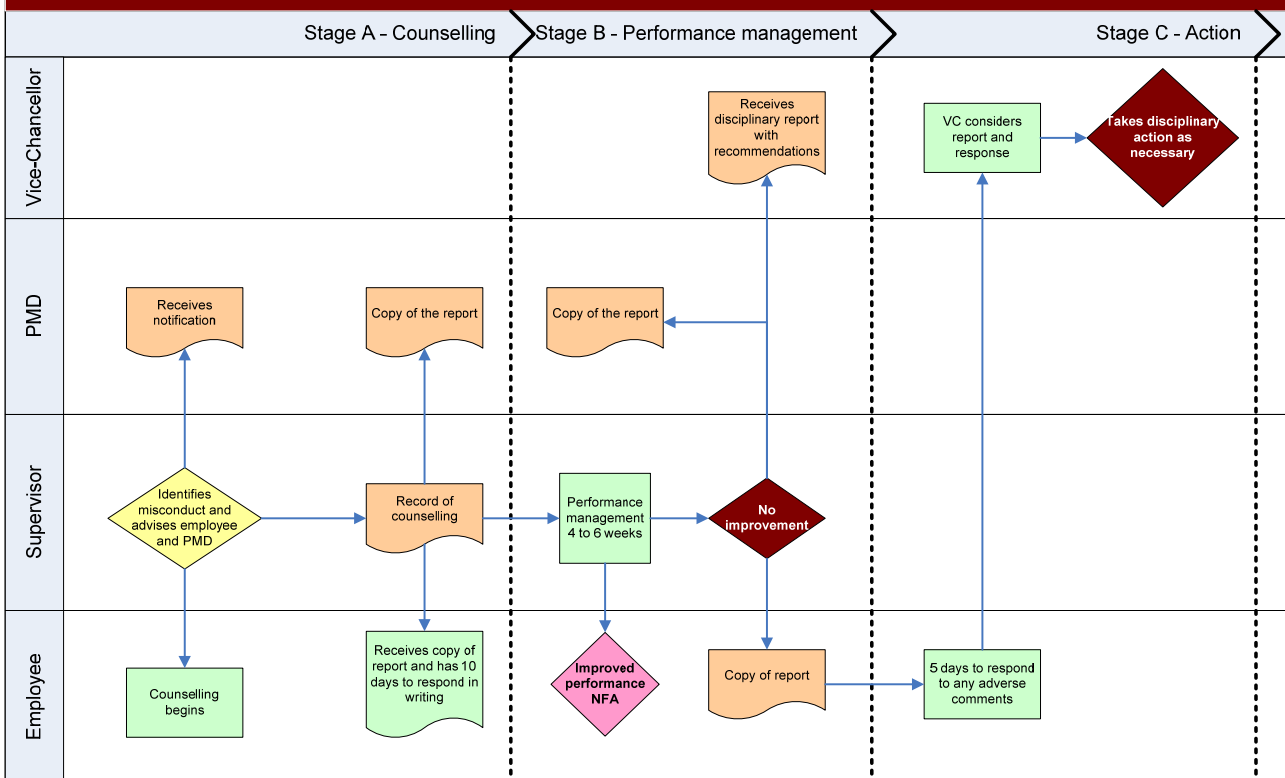
Attributes:

The University has the right to terminate an employee's employment for unsatisfactory performance, misconduct or serious misconduct.

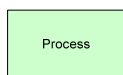
Counselling will be provided in the first instance where action is required under this process and the staff member will be provided with an opportunity to respond to any allegation of unsatisfactory performance or misconduct.

If a staff member is charged with serious misconduct the Vice-Chancellor will be notified immediately and appropriate disciplinary action taken.

Underperformance and or misconduct including serious misconduct



Key Process Steps



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| Definitions | <p>For the purposes of this process, "serious misconduct" means:</p> <ol style="list-style-type: none"> a. serious misbehaviour of a kind which constitutes a serious impediment to the carrying out of your duties or to your colleagues carrying out their duties; b. serious dereliction of the duty; c. conviction by a court of a serious offence; or d. actions that potentially bring the University into disrepute, where it can be sufficiently argued that the University may be impeded from fulfilling strategic or financial goals as a direct result of the action. <p>"Misconduct" means conduct which is not serious misconduct but which is nonetheless conduct that is unsatisfactory.</p> |
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General Information

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| Counselling | <p>The Manager, Employment Services should be notified of any action is to be taken under this process.</p> <p>Where a supervisor (manager) is of the view that a staff member's performance is unsatisfactory, or that there has been misconduct, the supervisor will first counsel the staff member on the nature of the unsatisfactory performance or misconduct, the improvement required and the time within which reasonable improvement is expected.</p> <p>A record of the counsel given will be kept and a copy given to the staff member and the Manager Employment Services (PMD). The staff member will be afforded a reasonable period, not longer than ten (10) working days, to respond to the issues raised during the counselling.</p> <p>The staff member may invite a support person, not being a lawyer in private practice, to attend the counselling sessions.</p> |
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| Professional development | <p>The supervisor will consider any response by the staff member in good faith, and may provide additional advice or guidance as required. If the supervisor believes it appropriate, he or she may direct the staff member to undertake a course of professional development or other appropriate program(s) designed to assist in improving performance.</p> <p>The supervisor may also decide that no further action is necessary.</p> |
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| Serious misconduct | <p>If the supervisor is of the view that there has been serious misconduct, the supervisor may immediately report to the Vice-Chancellor.</p> |
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| Report to the Vice-Chancellor | <p>If the supervisor believes that counselling has not produced the desired improvements and that misconduct has continued, or that there has been serious misconduct, the supervisor will make a formal report to the Vice-Chancellor. Such a report will state clearly the behaviours in question and the record of attempts to remedy the problem.</p> |
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| Response | <p>The supervisor must provide the staff member with a copy of the report at the time it is submitted to the Vice-Chancellor. The staff member will be afforded a reasonable period, of not longer than five (5) working days, to submit to the Vice-Chancellor a written response to the supervisor's report.</p> |
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| Response by the VC | <p>Upon receipt of the supervisor's report and any written response from the staff member, the Vice-Chancellor will first satisfy himself or herself that appropriate steps have been taken to bring the unsatisfactory behaviour or performance or conduct to the staff member's attention, that an adequate opportunity to respond was given, that any response was taken into account, and that, where appropriate, a reasonable opportunity has been afforded to remedy the problem. The Vice-Chancellor may then decide to:</p> <ul style="list-style-type: none"> • take no further action; |
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| | <ul style="list-style-type: none"> refer the matter back to the supervisor to ensure that the steps referred to above are complied with in substance and in a manner appropriate to the circumstances; or take appropriate disciplinary action, including termination of employment. |
| Notifying any decision | The Vice-Chancellor will advise the staff member in writing of his or her decision. The decision will take effect no earlier than five (5) working days from the date of the Vice-Chancellor's written advice. However, in cases where the decision is to terminate the staff member's employment, the decision may be implemented immediately with appropriate payment of wages in lieu of notice. |
| Review Panel | If within five (5) working days of the written advice referred to above the Vice-Chancellor receives from you a written request for a review of the decision, the Vice-Chancellor will refer the matter to a Review Panel as constituted under Clause 27 of the CDU UCA 2006. Commonwealth Government laws prohibit an internal appeal mechanism where the employment of a staff member is terminated. |
| Referral to supervisor | Nothing in this clause prevents the Vice-Chancellor referring a question of possible unsatisfactory performance or misconduct back to the supervisor for appropriate action. |
| Immediate action | Nothing in this clause prevents the Vice-Chancellor from taking immediate action as deemed appropriate in the event of serious crimes being committed involving University persons or property. |

Process

| Step | Summary | Responsibility |
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| Misconduct identified | Unsatisfactory behaviour or underperformance/misconduct identified and brought to the attention of the staff member | Supervisor |
| Counselling | Meeting to discuss issues and plan the way forward including milestones and timeframes | Supervisor and staff member |
| Report | Outcomes of the counselling session committed to writing | Supervisor |
| Response | Ten [10] days to respond to behaviours identified during counselling | Staff member |
| Performance management | Counselling report identifies issues to be addressed and period of performance management | Supervisor and staff member |
| Report | Poor response to performance management ends in report to the Vice-Chancellor recommending disciplinary action. Copy to the staff member. | Supervisor |
| Action | Vice-Chancellor makes his/her decision on the type of disciplinary action to be imposed and provides written report to the staff member. | Vice-Chancellor |
| Appeal | Staff member has five [5] days to appeal disciplinary action other than in cases where employment is terminated. | Staff member |
| Decision of panel | See process for the operation of the appeal panel. | Review panel |

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Document History and Version Control

| Version | Date | Approved | Brief Description |
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| 1.0 | 28/08/06 | Executive Director Corporate Service | Original. Process lines and processes drafted as a result of reaching agreement on the CDU Union Collective Agreement in 2006 . |
| 1.01 | 12/10/06 | Manager Employment Services | Flow chart update |
| 1.02 | 18/04/07 | Manager Employment Services | Updated - No internal appeal for staff that have had their employment terminated. Prohibited by Commonwealth law. |

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