

Dealing with Unsatisfactory Performance and Misconduct (Staff) Procedure

1. Purpose and Scope

- 1.1 The Dealing with Unsatisfactory Performance and Misconduct (Staff) Procedure operationalises the Staff Performance Policy as it applies to unsatisfactory performance, misconduct and serious misconduct by staff.
- 1.2 The procedure applies to all academic and non-academic staff, including continuing, fixed-term, sessional and casual staff members.
- 1.3 Board or committee members (who are not otherwise staff members) are referred to the CEO and the Chair of their Board or committee if a complaint is made against them regarding unsatisfactory performance or misconduct.

2. Definition

Refer to *Glossary of Terms*.

Manager in this procedure means the person who is the direct line manager (or supervisor) of the staff member who is subject to concerns about unsatisfactory performance, misconduct or serious misconduct.

Misconduct means wilful conduct which is unsatisfactory. It may involve a breach of the Staff Code of Conduct or other policy or procedure, or a failure to follow reasonable direction.

Performance means the work-related activities expected of a staff member and how well those activities are executed. This includes behaviour and conduct.

Serious misconduct means a recurrence or continuation of conduct which has previously found to be misconduct, or serious misbehaviour which may be a single occurrence. Examples include seriously impeding the carrying out of duties or refusing to carry out a lawful and reasonable instruction that is part of the job; causing serious and imminent risk to the safety of staff, students or visitors to AIAT; a serious risk to AIAT property (including intellectual property); a serious dereliction of duties; potential criminal offences (such as theft, fraud, assault or sexual harassment) and/or other misbehaviour that may seriously damage AIAT's business and reputation.

Unsatisfactory performance means a persistent and serious failure of a staff member to perform the work of the position at a level which is reasonably required having regard to the nature and purpose of the position, its level and representations made by the staff member concerned. This includes poor behaviour or conduct that is likely to have a detrimental impact on the workplace.

3. Procedure

Unsatisfactory performance

- 3.1 Managers are encouraged to raise concerns about a staff member's unsatisfactory performance as they arise, and aim to work with the staff member in identifying possible solutions to address the performance matters (early intervention).
 - 3.1.1 The manager should keep a record of the discussion and outcomes of the early intervention.
 - 3.1.2 If the staff member is subject to probation, the record should form part of the Probation plan and process.
- 3.2 Where the staff member's performance continues to be unsatisfactory and/or the manager is of the opinion that it is unlikely to be improved with early intervention, the manager must report this to the CEO and the Human Resources Officer. In so doing, the manager should provide:
 - 3.2.1 evidence or a description of the unsatisfactory performance;
 - 3.2.2 advice about the early interventions taken in an attempt to address the unsatisfactory performance; and
 - 3.2.3 any other matters the manager considers appropriate (such as impact on the work-unit or students.)
- 3.3 Following consideration of the material provided at clause 3.2, the CEO, with the support of the Human Resources Officer, may:
 - 3.3.1 seek further information from the staff member about the matter.
 - 3.3.2 require the staff member undertake further intervention (such as mandated training or counselling) within a set timeframe with the aim of improving performance; or
 - 3.3.3 proceed with terminating the staff member's appointment in line with the relevant Award and the staff member's contract.
 - 3.3.4 The CEO is responsible for determining whether or not to terminate a staff member's appointment and their decision is final.

Unsatisfactory performance due to medical condition

- 3.4 If the unsatisfactory performance is or is likely to be as a result of a medical condition, the manager should discuss the situation with the Human Resources Officer.
- 3.5 The Human Resources Officer will guide the process in conjunction with the manager.
- 3.6 AIAT may require the staff member attend a medical specialist of AIAT's choosing. If so, AIAT will be responsible for the fees associated with this specialist appointment.
- 3.7 Where the impact of the medical condition continues beyond the original expected duration, or the staff member's capacity continues to be negatively impacted, or the Human Resources Officer does not consider that reasonable adjustments can be made, the Human Resources Officer must notify the CEO in a timely manner.

- 3.8 The CEO may make alternative arrangements for the staff member (such as reduced or changed hours of work) or move to terminate the staff member's appointment in line with the relevant Award and the staff member's contract.
- 3.8.1 In so doing, the CEO will seek further information from the staff member about the matter before proceeding to their decision.
 - 3.8.2 The decision of the CEO under this clause is final.

Misconduct matters

- 3.9 Managers must address misconduct matters as early as possible.
- 3.10 Misconduct may be witnessed by the manager themselves or reported to the manager by any other person such as another staff member or student. The report may be verbal or in writing.
- 3.11 Managers should speak with the staff member who is the subject of potential misconduct, and give them the opportunity to address the concerns / provide evidence in relation to the allegations.
- 3.11.1 Managers may seek written or verbal evidence from other persons about the allegations.
 - 3.11.2 The manager must keep a record of all discussions.
 - 3.11.3 The manager should seek advice from the Human Resources Officer where appropriate.
- 3.12 Where the manager finds that the misconduct occurred and that it is necessary to impose a penalty/ies on the staff member, the decision should be recorded in writing, and copies given to:
- 3.12.1 the staff member concerned; and
 - 3.12.2 the Human Resources Officer for retaining on the staff member's personnel file.
 - 3.12.3 If the staff member is subject to probation, the record should form part of the probation process.
- 3.13 Penalties must be proportionate and reasonable having regard to the seriousness and circumstances of the misconduct. Examples of possible penalties include but is not limited to:
- 3.13.1 Close supervision and regular meetings with the manager or other nominated staff member;
 - 3.13.2 Formal written warning (after consultation with the Human Resources Officer);
 - 3.13.3 Making an apology to the affected parties;
 - 3.13.4 Temporary removal of employment incentives (such as access to professional development or higher duties salary benefits);
 - 3.13.5 Undertaking counselling or mandatory training; and/or
 - 3.13.6 Taking other steps to rectify the situation.

- 3.14 If the staff member continues to engage in misconduct, and/or refuses to complete the penalty in a satisfactory manner, the manager must refer the matter to the CEO and Human Resources Officer as soon as possible. In so doing, the manager must provide:
- 3.14.1 Evidence or a description of the misconduct;
 - 3.14.2 Advice about the penalties imposed as a result of the misconduct; and
 - 3.14.3 Any other matters the manager considers appropriate (such as impact on the work-unit.)
- 3.15 Following consideration of the material provided at clause 3.14, the CEO may:
- 3.15.1 seek further information from the staff member who is the subject of the misconduct allegations, the manager, or any other person about the matter;
 - 3.15.2 impose one or more of the penalties set out at clause 3.13; or
 - 3.15.3 move to terminate the staff member's appointment in line with the relevant Award and the staff member's contract.
 - 3.15.4 The decision of the CEO under this clause is final.

Serious Misconduct matters

- 3.16 Serious misconduct matters must be reported to the CEO and the Human Resources Officer immediately after the manager (or any other person, including another staff member or student) has observed or been informed of the matter.
- 3.16.1 Depending on the circumstances of the alleged serious misconduct, the initial report may be a verbal report.
 - 3.16.2 The person making the verbal report may be asked to provide a written report of the matter within a stated timeframe.
- 3.17 The CEO, pending the outcome of the investigation (as described in Clause 3.19), may impose one or more interim measures on a staff member who is subject to a serious misconduct allegation, such as:
- 3.17.1 restricted access to the workplace or campus, including suspension from employment;
 - 3.17.2 restricted access to AIAT IT and social media systems;
 - 3.17.3 restrictions on communicating or approaching other staff or students, including via social media, email, letter or through a third party; and/or
 - 3.17.4 any other measures the CEO considers necessary to reduce the potential harm to AIAT students and staff.
- 3.18 Interim measures must be:
- 3.18.1 Set for a fixed period of time;
 - 3.18.2 Reasonable and proportionate, having regard to the seriousness and circumstances of the allegations.
- 3.19 The CEO will initiate an investigation into allegations of serious misconduct by a staff member.

- 3.19.1 The CEO may summarily dismiss a staff member who commits serious misconduct, thereby constituting a serious breach of a major term of their contract.
 - 3.19.2 The CEO has the discretion to suspend a staff member with or without pay while the investigation is underway.
- 3.20 An investigation will be undertaken by the CEO or an internal or external delegate. The investigation will normally include such action as:
- 3.20.1 Meeting with the staff member and other relevant witnesses in person or via internet telecommunications.
 - 3.20.2 Speaking directly with the staff member about the allegations made against them and the possible impact on their appointment:
 - a. The staff member may provide written and/or oral evidence.
 - b. The staff member will be allowed to be represented or accompanied by a support person in any formal meeting who is not a legal practitioner.
 - 3.20.3 Obtaining any other material that is relevant to the allegations (such as evidence from other witnesses, CCTV, computer records etc).
 - 3.20.4 The CEO or delegate will:
 - a. provide the timeframe and conditions for undertaking the investigation, with the intention to complete it in a timely manner; and
 - b. ensure that a record is kept of all meetings with the staff member and other persons.
- 3.21 Where the investigation has been undertaken by a delegate of the CEO, the delegate will provide a written report, with recommendations, to the CEO for consideration.
- 3.22 The CEO will consider the material obtained during the investigation and will:
- 3.22.1 make a decision that it is more probable than not that:
 - a. the allegations occurred and constituted serious misconduct; or
 - b. the allegations did not occur, or if they did occur, they do not constitute serious misconduct; and
 - 3.22.2 ensure the staff member is advised verbally about the outcome of the investigation, in addition to a letter in writing, which sets out reasons for the decision (for example, why the appointment is terminated), the date the employment will end (that is, summarily or with notice), and any other applicable matters (such as Centrelink and Fair Work Ombudsman).
- 3.23 In addition to the penalties set out at clause 3.13, outcomes for serious misconduct may include:
- 3.23.1 Summary dismissal (that is, immediate termination of employment without notice).
 - 3.23.2 Termination of employment with notice (or payment in lieu) in line with the Award and the staff member's contract.
 - 3.23.3 Referral to the South Australian Police or other authorities for suspected criminal, illegal or improper conduct.

3.24 The decision of the CEO after a Serious Misconduct investigation is final.

Timeframe for notifications

3.25 Where AIAT is required to notify staff members for matters under this procedure (including all CEO decisions in relation to performance and misconduct matters and outcomes of formal investigations), the following timeframes apply:

- 3.25.1 Given to the staff member in person (takes effect immediately).
- 3.25.2 Posted by ordinary or express post to the staff member at the address shown on the staff member's personnel file (takes effect on the third South Australian working day after it was sent).
- 3.25.3 Couriered to the staff member at the address shown on the staff member's personnel file (takes effect on the date recorded in the courier's records as the date of delivery).
- 3.25.4 Notice may be sent to a staff member's email address if it is reasonable for AIAT to consider that that email address is still valid, such as a AIAT work address for those staff members currently working at AIAT (takes effect 24 hours after the time the email was sent).

Records and reports

3.26 Appropriate records and reports will be maintained by AIAT.

3.27 Any person involved in matters forming part of this procedure should treat information in a confidential manner, except where it is necessary for the discharge of that person's responsibilities under this procedure or as permitted by law.

4. Roles and responsibilities

4.1 The CEO is responsible for:

- 4.1.1 Seeking appropriate external Industrial Relations advice when dealing with serious misconduct matters in relation to a staff member or other unsatisfactory performance matters as required.
- 4.1.2 Making relevant decisions about poor performance, misconduct and serious misconduct in a timely and fair manner. This includes terminating a staff member's appointment summarily or with notice. The CEO's decisions about poor performance, misconduct and serious misconduct are final.
- 4.1.3 Conducting or overseeing the conduct of investigations into serious misconduct allegations.
- 4.1.4 Reporting matters to the South Australian Police, or other external authorities when required by law.
- 4.1.5 Maintaining records of meetings and decisions.

4.2 Managers are responsible for:

- 4.2.1 Fostering a positive working environment among their team.

- 4.2.2 Receiving and taking immediate and appropriate action on poor performance and misconduct matters that come to their attention, seeking advice from the Human Resources Officer as required.
 - 4.2.3 Discussing any deficiencies in performance or conduct promptly, and providing the opportunity for the staff member to take corrective action (early intervention).
 - 4.2.4 Escalating performance and misconduct matters to the CEO and the Human Resources Officer.
 - 4.2.5 Maintaining records of meetings and outcomes and collating evidence that is required when dealing with poor performance or misconduct matters.
- 4.3 Staff are expected to:
- 4.3.1 Report misconduct or serious misconduct if they witness it and in a timely manner.
 - 4.3.2 Acknowledge their own responsibilities and participate in good faith in any disciplinary or misconduct matters they are involved in (either as the subject to a matter or as a witness);
 - 4.3.3 Respond to meeting requests and providing any required evidence in a timely manner.
- 4.4 The Human Resources Officer is responsible for:
- 4.4.1 supporting the CEO, the Executive Management Group and other managers meet their responsibilities under this procedure, the industrial award and relevant matters;
 - 4.4.2 guiding the investigation in conjunction with the manager into issues when dealing with unsatisfactory performance due to a medical condition; and
 - 4.4.3 implementing clear, consistent practices across AIAT when dealing with unsatisfactory performance, misconduct and serious misconduct matters.

5. Procedure Details

Institution	Australian Institute of Advanced Technologies (AIAT)
Procedure name	Dealing with Unsatisfactory Performance and Misconduct (Staff) Procedure
Procedure Reference No.	PROC – 53c
Procedure Approval	Board of Directors
Procedure Authority	Executive Management Group
Responsible Officer	CEO
Governance Reference	Not applicable
Threshold Standards	
Related Documents	Staff Performance Policy Staff Code of Conduct
Related Legislation	Fair Work Act (Cth) 2009

	Educational Services (Post-Secondary Education) Award
References	<p>AIAT has referred and benchmarked with the following institutions and policies during the creation of this policy:</p> <p>Australian Government – Fair Work Ombudsman https://www.fairwork.gov.au/ [accessed 20 December 2021] Australian National University (September 2018) Policy: Unsatisfactory performance and misconduct Australian National University (September 2018) Procedure: Managing unsatisfactory performance Australian National University (March 2018) Procedure: Managing misconduct, serious misconduct and suspension University of the Sunshine Coast (June 2021) Performance Management – Operational Policy</p>
Date of approval	3 February 2022
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Policy Category	Operational

6. Document Version Control

Document No	PROC – 53c	Last Modify Date	Summary of Changes
Version No	1.0	NA	Initial version approved by Board of Directors
	1.01	8/4/2022	Modified policy number
Created Date	Feb 2022		