



## **POLICY - MANAGING COMPLAINTS, MISCONDUCT AND UNSATISFACTORY PERFORMANCE**

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### **EXPLANATORY NOTES**

The attached policy has been developed by ELAA to provide the employer with guidelines to ensure a procedurally and substantially fair process is applied when handling problems or concerns about an employee's work performance or conduct. While it is envisaged that in most cases, any problems or concerns will be resolved as they arise without any need to resort to formal complaints processes, in a few situations problems will arise that need to be addressed formally.

The employer is responsible and accountable for the standard and content of the program, care and education provided by the service, and for ensuring that it meets both the needs of families using the service and the requirements of relevant government legislation and funding agreements.

Staffing will change from time-to-time and problems may arise with employees that cannot be resolved other than through formal processes. Therefore employers are advised to adopt a policy on managing complaints about staff behaviour and performance as part of the service's staff policies. This will ensure that if the need arises, a fair process ensuring principles of natural justice is observed, will be applied in a way that allows the employer to address the issues of concern while still protecting the rights of employees. Even if workplace counselling or disciplinary processes are used, the aim should always be to try and resolve the issue positively.

The attached policy, which has been developed following consultation with the unions – the Australian Education Union (AEU) and United Voice (formerly LHMU) – clearly sets out, for the employer and employees, the procedures to be followed if a problem arises in relation to an employee's performance or conduct.

### **Important actions required to adopt the policy**

- Draft policy circulated to all committee members and employees.
- Discussions held with all employees in relation to the draft policy, prior to the committee meeting at which it is to be discussed and adopted.
- Draft policy placed on the agenda for committee meeting, and at the meeting the committee discusses both the policy and comments from employees.
- Committee formally adopts the policy at the committee meeting.

### **Implementation of policy**

- Copy of policy placed at the service.
- Committee provides all employees with a copy of the final policy.
- Copy of the policy provided to all new employees as part of their orientation process.
- Copy provided to all new committee members as part of the handover process each year.
- ELAA is contacted if any further information is required, or assistance is needed in implementing the policy.

Note: The following policy is written in the context of a community-based service (that is, operated by a committee). For those services where the employer is not a committee, references to a committee can be replaced with the appropriate authority.



## STAFF COUNSELLING AND DISCIPLINE POLICY

FLINDERS PRESCHOOL INC.

### AUTHORISATION

This policy was approved on [March 2023] by the *Flinders Preschool Inc.* committee.

### REVIEW DATE

This policy will be subject to regular review by the committee in consultation with employees (and parents of students, as appropriate).

### SCOPE

This policy applies to the employer (committee) and all employees.

In implementing this policy, the employer will act in accordance with the requirements specified under relevant awards, industrial agreements or legislation, and in a fair and equitable manner.

Employees are to act in accordance with this policy.

### DEFINITIONS

Child abuse: (In the context of this policy) refers to an act or omission by an adult that endangers or impairs a child's physical and/or emotional health or development. Child abuse can be a single incident but often takes place over time. Abuse, neglect and maltreatment (refer to *Definitions*) are generic terms used to describe situations in which a child may need protection. Child abuse includes any and all of the following:

- *Physical abuse:* When a child suffers or is likely to suffer significant harm from an injury inflicted by a parent/guardian, caregiver or other adult. The injury may be inflicted intentionally, or be the consequence of physical punishment or the physically aggressive treatment of a child. Physical injury and significant harm to a child can also result from neglect by a parent/guardian, caregiver or other adult. The injury may take the form of bruises, cuts, burns or fractures, poisoning, internal injuries, shaking injuries or strangulation.
- *Sexual abuse:* When a person uses power or authority over a child, or inducements such as money or special attention, to involve the child in sexual activity. It includes a wide range of sexual behaviour from inappropriate touching/fondling of a child or exposing a child to pornography, to having sex with a child and grooming with the intent of committing child sexual abuse.
- *Emotional and psychological abuse:* When a child's parent or caregiver repeatedly rejects the child or uses threats to frighten the child. This may involve name calling, put downs or continual coldness from the parent or caregiver, to the extent that it significantly damages the child's physical, social, intellectual or emotional development.
- *Neglect:* The failure to provide a child with the basic necessities of life, such as food, clothing, shelter, medical attention or supervision, to the extent that the child's health and development is, or is likely to be, significantly harmed.
- *Family violence:* When children and young people witness or experience the chronic, repeated domination, coercion, intimidation and victimisation of one person by another through physical, sexual and/or emotional means within intimate relationships. Contrary to popular belief, witnessing episodes of violence between people they love can affect young children as much as if they were the victims of the violence. Children who witness regular acts of violence have greater emotional and behavioural problems than other children.



- **Racial, cultural, religious abuse:** Conduct that demonstrates contempt, ridicule, hatred or negativity towards a child because of their race, culture or religion. It may be overt, such as direct racial vilification or discrimination, or covert, such as demonstrating a lack of cultural respect (attitude and values) and awareness (knowledge and understanding) or failing to provide positive images about another culture.
- **Bullying:** Repeated verbal, physical, social or psychological behaviour that is harmful and involves the misuse of power by an individual or group towards one or more persons. Bullying occurs when one or more people deliberately and repeatedly upset or hurt another person, damage their property, reputation or social acceptance.

**Counselling procedure:** A method of dealing with the work performance of an employee, or a complaint relating to an employee, through discussion between the employer and employee without recourse to formal disciplinary procedures.

**Discipline procedure:** A formal procedure normally consisting of one or more written warnings and, if warranted, can result in termination of employment.

**Employer:** For the purpose of this policy, a legally constituted committee or employing body.

**Reportable allegation:** any allegation that an employee, volunteer or student has committed child abuse (refer to *Definitions*)

**Unacceptable conduct:** Behaviour of an employee that justifies the implementation of immediate disciplinary processes, which may lead to termination of employment, including termination without notice or pay in lieu of notice.

**Warning:** A formal discipline procedure issued both verbally and in writing.

## **POLICY**

This policy sets out the procedures and guidelines for:

- 1 Staff counselling
- 2 Disciplinary procedures

## **PURPOSE**

The purpose of this policy is to guide the employer in managing problems or concerns about an employee's work performance or conduct.

Issues related to employee work performance or conduct will normally be addressed by the employer through

a procedure that commences with discussion/counselling before proceeding to a formal and structured discipline procedure (where necessary). Open communication is encouraged between the employer and employee to ensure that matters of concern are clearly articulated and both parties have the opportunity to address matters raised in the discussion.

The right of all parties to confidentiality must be respected. The procedures set out in this policy will be implemented within the context of rights and obligations on both employers and employees under relevant awards, industrial agreements or legislation.

## **PROCEDURES**

### **Conflict of interest**

Committee members, who may have lodged a complaint or have been personally involved in the matter should refrain from involvement in the discussion or decision making processes relating to the complaint or performance issues, or participating in the subcommittee investigating the issues. This does not apply to a committee member who, as the employer's representative, has observed poor performance or misconduct



and brought it to the attention of the rest of the committee.

### **Investigation and verification of the issues to be raised**

In relation to complaints about a staff member's work performance or conduct the committee will ensure that the issues and concerns to be raised with employees can be substantiated. This includes identifying appropriate and specific examples of those issues or concerns prior to any action being taken. It may also include consideration of any written complaints.

The committee delegates authority to the president to appoint any two committee members (one of whom may be the president) to a subcommittee to conduct an investigation to assess the nature of the complaint to form a view as to the appropriate course of action. This investigation should take place prior to the committee authorising any action to address the matter/s considered. If the president has a conflict of interest in relation to the complaint then the vice president will appoint the sub-committee.

Where complaints have been received in relation to the conduct or performance of an employee, the individual employee concerned should be given the opportunity to respond to the contents of the complaint as part of that investigation.

This subcommittee will, when it has completed its investigation, provide a report to the committee.

In ensuring that the principles of natural justice are applied when managing complaints and work performance issues relating to staff the following should be observed:

- the right of an employee to know the allegation/s being made against her or him
- the right of each party to be heard in respect to the allegations
- the right of each party to be treated fairly
- the right of the employee to have a support person present during interviews
- the right of each party to a decision maker who acts fairly and in good faith.

### **Reportable conduct**

The Approved provider is responsible for

- notifying the Commission for Children and Young People within 3 business days of becoming aware of a reportable allegation (refer to *Definitions*)
- investigating an allegation (subject to police clearance on criminal matters or matters involving family violence), advising the Commission for Children and Young People who is undertaking the investigation
- managing the risks to children whilst undertaking the investigation
- updating the Commission for Children and Young People within 30 days with detailed information about the reportable allegation and any action
- notifying the Commission for Children and Young People of the investigation findings and any disciplinary action taken (or the reasons no action was taken).

### **COMMITTEE APPROVAL**

No action in relation to complaints or work performance of an employee will occur without the prior approval of the committee. All decisions relating to complaints or performance of staff will be made at a committee meeting, and all committee members will respect the confidentiality of the information discussed.

### **WORK PERFORMANCE COUNSELLING PROCEDURE**

#### **Purpose of counselling**

This counselling procedure will not apply in situations where there is conduct by the employee that has been substantiated by an investigation and justifies immediate disciplinary action or termination of employment.

The counselling procedure is intended as a positive exercise to facilitate communication between the parties and to assist (where applicable) the employee to address matters related to their work performance or



conduct, and for the employer to identify concerns raised and to articulate required conduct/work performance levels.

It provides an opportunity for the employer to discuss, and attempt to resolve, problems or concerns relating to an employee's work performance/conduct, without needing to issue a formal written warning.

In the event that issues relating to an employee's work performance or conduct are not resolved, the matters would be dealt with under the formal discipline procedure.

### **Counselling procedure**

The employee must be notified in writing of the date, time and venue of the counselling meeting and the nature of issues to be discussed/complaints made.

The employer should meet with the employee to discuss identified areas of concern related to the employee's work performance or conduct. Discussions should identify what changes or outcomes are required to address the concerns raised by the employer. During the counselling meeting, both the employer and employee should listen to, and carefully consider, the views, reasoning and explanations provided by the other party.

The general content of the counselling meeting, and any specific outcomes and the timelines for these to be achieved, should be recorded in writing, a copy of which will be kept by the employer and a copy will be given to the employee.

## **WORK DISCIPLINE PROCEDURE**

### **Purpose of the discipline procedure**

The discipline procedure is intended to address areas of concern related to the employee's conduct, through a formal structured process within reasonable timelines, using relevant strategies for conflict resolution and a process of evaluation/review. It is not appropriate to use a discipline process for performance matters where the employee is making genuine attempts to improve the performance in question.

Following completion of the formal investigation and where the allegations/complaints are substantiated, the employee will be given a warning, issued in writing as well as verbally, in relation to the conduct issues. It is important for employees to understand that the discipline procedure normally consists of two warnings and, if necessary, will end in termination of employment where the conduct of an employee fails to meet the required standard within appropriate timelines. Conduct that falls within the scope of serious unacceptable behaviour that justifies disciplinary action may also result in termination of employment.

### **Discipline procedure**

The employee will be notified in writing of the date of the disciplinary meeting and the issues of concern. The employee may request the attendance of a union representative or other support person at the meeting.

During the disciplinary meeting, both the employer and employee should listen to and carefully consider the views, reasoning and explanations provided by the other party. The general content of the disciplinary meeting, and any specific outcomes, will be recorded in writing by the employer and a copy given to the employee. Records of disciplinary procedures and the issuing of warnings will be kept on the employee's personnel file normally for a period of twelve months, after which, if there are no further warnings, they will be removed and either destroyed or returned to the employee at the discretion of the employer.

The employer will respect the right of the employee to request in writing a review of the decision to issue a warning in light of any additional information provided by the employee.

The employer will abide by any obligations relating to disciplinary procedures, including maintaining employee entitlements, contained in any relevant industrial agreement, to which the employer is a respondent party.

The section *Guidelines for meeting with employees* on the following pages contains some guidelines for



meetings between employers and employees convened as part of this procedure.

### **UNACCEPTABLE CONDUCT BY EMPLOYEES**

The employer is required to promote an environment that is free of any harassment, intimidation or abuse. Staff shall not treat children, parents, visitors or other employees in a manner involving any form of harassment, intimidation or any treatment of a demeaning, threatening or abusive manner. Staff will at all times act

in accordance with the requirements of the *Education and Care Services National Law Act 2010 and the Education and Care Services National Regulations 2011*.

Conduct that falls within the scope of unacceptable behaviour that justifies disciplinary action and that may result in termination of employment including instant dismissal, includes, but is not limited to:

- verbal abuse or threats
- any form of physical abuse or corporal punishment
- remarks that could be seen as offensive or constitute sexual harassment
- intimidatory behaviour
- treatment, particularly of children, that involves frightening, threatening or demeaning techniques
- a serious breach of the *Education and Care Services National Law Act 2010 and the Education and Care Services National Regulations 2011*.

Specific examples relating to an early childhood service include:

- failing to take every reasonable precaution to protect children from any hazard likely to cause injury
- failing to ensure that any child is adequately supervised
- subjecting children to any form of corporal punishment
- any discipline of children that is unreasonable in the circumstances
- endangering the health and safety of the children
- fraud and theft
- attendance at work while under the influence of alcohol or non-prescription drugs.

In the event of a suspected breach of this policy related to unacceptable conduct, an investigation of the suspected breach will be undertaken by the employer as soon as possible, giving consideration to the relevant circumstances. The committee delegates authority to the president to decide whether a suspected breach of this policy has occurred, and the president will appoint two committee members (one of whom may be the president) to a subcommittee to conduct an investigation. The subcommittee should report its findings back to the committee.

Where the employer has reasonable grounds to conclude that a breach of this policy may have occurred, the employee may be suspended from duty without loss of ordinary pay, pending an investigation. The committee delegates to the president the authority for any decision relating to the standing down/suspension of employees with pay, pending an investigation.

The employee will be given an opportunity to respond to the matters raised before the employer makes any final decision.

The committee will meet as soon as possible after the investigation has been completed and, based on the report received from the subcommittee, will decide action to be taken and refer this back to the subcommittee for implementation.

The sub-committee, on behalf of the employer, will notify the employee in writing of the outcome of the investigation and any decision or actions to be taken by the employer.

### **GUIDELINES FOR MEETING WITH EMPLOYEES**

The following are guidelines for meetings held with employees as part of the *Staff Counselling and Discipline Policy*.



### **Convening a meeting with employees**

The procedures in this policy may necessitate meetings between a subcommittee, or committee members appointed by the committee, and employees to discuss and address issues of concern. The following are guidelines for the conduct of these meetings.

During the meeting with employees

- The subcommittee/committee members will define the employee's work performance issues or conduct that are of concern, and refer as appropriate to the employee's position description.
- The subcommittee/committee members will provide details to the employee of specific instances in which there has been a failure to comply with requirements relating to work performance or conduct.
- The employees will be given an opportunity to comment on and explain their own view of the work performance issues or conduct.
- The subcommittee/committee members will outline outcomes the committee requires in relation to the particular work performance issues or conduct.
- Employees may request the attendance of a union representative or support person at a warning meeting, where this is consistent with a relevant federal award or industrial agreement.

### **Outcomes**

- The subcommittee/committee members will clearly identify and inform the employee of necessary requirements and/or changes so that the employee can address issues related to work performance or conduct.
- The subcommittee/committee members will consider any requests made by the employee for appropriate and affordable training or support that could be of assistance to the employee.
- Where appropriate, a monitoring period and date will be set to review performance/conduct.

### **Record of meetings**

Where appropriate, the content and any specific outcomes or requirements identified during the meeting with the employee will be recorded in writing by the subcommittee/committee members and a copy given to the employee. In situations where interviews or meetings are conducted with employees as part of the discipline procedure, an appropriate written record of the meeting will be prepared by the subcommittee/committee members and a copy given to the employee.

## **KEY RESPONSIBILITIES AND AUTHORITIES**

The committee will determine whether it is necessary to take action under this policy in relation to:

- counselling procedures
- disciplinary procedures, including the handling of unacceptable conduct by employees.

All employees and members of the committee need to be aware of the policy and its contents.

The committee will provide a copy of the policy to:

- all current employees
- all new employees as part of orientation process
- all committee members when policy is adopted and as part of the handover process each year.

## **RESOURCES AND SUPPORT**

- *ELAA Managing Employment Related Concerns available on the ELAA website*
- Commission for Children and Young People for information on about Child Safe standards and the Reportable Conduct Scheme
- ELAA members services officers will provide advice and support when required



## **EVALUATION**

To assess whether this policy has achieved the purposes outlined in this policy, the committee will:

- obtain feedback from employees and committee members on the effectiveness of the policy
- assess whether the issues dealt with under the policy were resolved.