



THE UNIVERSITY OF
NOTRE DAME
A U S T R A L I A

POLICY:
MANAGING UNSATISFACTORY PERFORMANCE

Purpose:	To outline the process for dealing with the unsatisfactory performance of Staff Members.
Responsible Executive:	Chief Operating Officer
Responsible Office:	Professional Standards & Conduct
Effective Date:	17 February 2017
Modification History:	
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1 Introduction and Purpose

The University aims to provide a working environment where all Staff Members can perform their duties of employment and conduct themselves in a manner that reflects the standard expected of them. Where a Staff Member is not performing their duties to the standard expected of them, the University will manage their unsatisfactory performance in accordance with the processes set out in this Policy.

This Policy is intended to provide both a Staff Member whose performance has been identified as unsatisfactory, and those responsible for managing the Staff Member, with a clear and fair process for providing the Staff Member with the opportunity to improve their performance.

In following this Policy those responsible for implementing the process must be guided by the principles of procedural fairness and natural justice.

2 Definitions and Scope

2.1 “Unsatisfactory performance” is where a Staff Member is not performing the tasks and accountabilities of their position in a manner that meets the reasonable expectations of the University.

2.2 For the purposes of this Policy:

2.2.1 **Staff Member** means any employee of the University or any other person who is subject to this Policy by reason of their contractual relationship with the University, excluding Casual Staff Members and Sessional Staff Members;

2.2.2 **Senior Staff Member** means a Senior Deputy Vice Chancellor, a Deputy Vice Chancellor, a Head of Campus, the Chief Finance Officer, the Chief Operating Officer, the Chief Marketing and Communications Officer, a Pro Vice Chancellor, the University Secretary, the Chief Information Officer, a person employed at the level of Director or above who is receiving a salary at least that of Level 10 Grade 1, a person employed at the level of Chair of College or above, the University Registrar and/or the University Librarian.

3 Management

3.1 The University will manage unsatisfactory performance by a Staff Member in accordance with this Policy, with the exception that this Policy will not apply in relation to unsatisfactory performance by a Casual Staff Member or a Sessional Staff Member or a Staff Member during their period of probation. Performance issues with a Staff Member on probation will be dealt with in accordance with the University’s *Probation Policy*.

3.2 In dealing with unsatisfactory performance by a Staff Member, the University will ensure that:

3.2.1 the Staff Member is afforded substantive and procedural fairness; and

3.2.2 the Staff Member is given the appropriate opportunity and assistance to improve their performance.

4 Process

4.1 Formal Meeting

- 4.1.1 Where a Staff Member's supervisor considers that the Staff Member's performance is unsatisfactory and informal attempts have not resolved the performance concerns, the supervisor will provide the Staff Member with:
- a) Written advice of the performance concerns, including specific examples;
 - b) Written advice regarding the nature of the improvement required;
 - c) This Policy and, if applicable to their employment, a copy of the relevant Clause in the University of Notre Dame Staff Enterprise Agreement 2015-2017 ('the Enterprise Agreement'); and
 - d) Notice of a suitable time to formally meet to discuss their unsatisfactory performance, which will be no more than 7 working days from the date of the written advice of performance concerns.
- 4.1.2 The supervisor will advise the Staff Member that they are entitled to have a support person present at this meeting, who may be a Union representative.
- 4.1.3 The supervisor may request a member of the Staffing Office to be in attendance at the meeting.

4.2 Opportunity to respond

- 4.2.1 At the formal meeting, the Staff Member will be given the opportunity to respond to each performance concern. Where a Staff Member feels they are unable to adequately respond to the performance concerns during the meeting or requests time to consider their response, they may provide a written response to the supervisor within 5 working days of the meeting.
- 4.2.2 The supervisor will then consider the response of the Staff Member and any reasons or explanations put forward by the Staff Member.

4.3 No further action

- 4.3.1 Where the supervisor is satisfied with the Staff Member's response, the supervisor will notify the Staff Member that the performance concerns have been satisfied and no further action is necessary.

4.4 Performance Improvement Plan

- 4.4.1 Where the supervisor considers the Staff Member's responses do not satisfactorily address the performance concerns, the supervisor, in conjunction with the Staff Member, will develop an agreed Performance Improvement Plan (**PIP**). Where there is disagreement regarding the content of the PIP, the supervisor's decision will be final.
- 4.4.2 The PIP will:
- a) identify the problems with performance;
 - b) detail performance expectations;
 - c) set out any professional development or other relevant training required; and
 - d) provide a reasonable timeframe for the review period (Review Period).

- 4.4.3 A copy of the PIP will be provided to the Staff Member.
- 4.4.4 The Staff Member will undertake all reasonable measures to achieve the required standard of performance in accordance with the PIP.
- 4.4.5 The supervisor will hold regular review meetings with the Staff Member during the Review Period to assess progress, provide support where required and discuss further requirements.
- 4.4.6 The Staff Member is entitled to have a support person present at the review meetings, who may be a Union representative.
- 4.4.7 The supervisor may request a member of the Staffing Office to be in attendance at the review meetings.
- 4.4.8 Following the completion of the specified Review Period in the PIP, the supervisor will meet with the Staff Member and inform them that:
- a) there has been a satisfactory improvement in performance and that no further action is required; or
 - b) the level of improvement made is not yet satisfactory.
- 4.4.9 Where the supervisor is of the view that there has not been enough improvement, but believes the Staff Member is willing to take steps to improve their performance, a further specified review period will be implemented and the steps set out in subparagraphs 4.4.5 to 4.4.8 will be repeated.
- 4.4.10 Where the supervisor is of the view that the unsatisfactory performance is unlikely to be resolved, the supervisor must refer the matter to the supervisor's senior manager. If the supervisor's senior manager considers that the unsatisfactory performance is unlikely to be resolved, the senior manager must notify the Staff Member in writing that they intend to refer the matter to the Vice Chancellor for further action in accordance with clause 4.5.

4.5 Referral to Vice Chancellor for Review by the Senior Staff Member

- 4.5.1 Where the matter has been referred to the Vice Chancellor under clause 4.4.10, the Vice Chancellor will nominate a Senior Staff Member to handle the matter.
- 4.5.2 The Senior Staff Member will review the matter and satisfy himself/herself that all reasonable steps have been taken, including:
- a) that appropriate steps were taken to draw the attention of the Staff Member to the deficiencies identified in their performance;
 - b) that the improvements required of the Staff Member were reasonable;
 - c) that adequate opportunity was given to the Staff Member to respond to the performance concerns;
 - d) that a reasonable period of time was afforded to the Staff Member to remedy the deficiencies identified in their performance; and
 - e) that any response to requests from the Staff Member for support, training and/or assistance was reasonable.

- 4.5.3 Once the Senior Staff Member has reviewed the matter, they will provide a written report to the Vice Chancellor including:
- a) their findings on the matter; and
 - b) a recommendation in relation to appropriate disciplinary action, if any, to be taken. This may include but is not limited to:
 - i. providing the Staff Member with a further written warning and further time to improve their performance;
 - ii. redeploying the Staff Member to another more suitable position where possible which may include a position that is one level lower; or
 - iii. terminating the employment of the Staff Member.
- 4.5.4 The Senior Staff Member will notify the Staff Member in writing:
- a) of the nature of their findings;
 - b) of the recommendation to the Vice Chancellor that they have made in relation to any disciplinary action to be taken against the Staff Member as a result of their findings; and
 - c) that if the Staff Member wishes to appeal the findings or recommendations of the Senior Staff Member, they must, within 5 working days, advise the Vice Chancellor in writing.
- 4.5.5 If the Staff Member does not appeal the recommendation of the Senior Staff Member in accordance with subparagraph 4.5.4(c), the Vice Chancellor will, as soon as practicable, provide notice to the Staff Member, in writing of:
- a) the Vice Chancellor's decision; and
 - b) any disciplinary action that will be taken against the Staff Member.
- 4.5.6 In the event that a Staff Member's employment is terminated as a result of unsatisfactory performance, they will be entitled to notice or payment in lieu thereof in accordance with their conditions of employment and the Enterprise Agreement, where applicable.
- 4.5.7 The action of the Vice Chancellor under subclause 4.5.5 will be final, except to the extent that any tribunal or court can determine the matter.

4.6 Staff Review Committee

- 4.6.1 In the event that the Staff Member notifies the Vice Chancellor within 5 working days that they wish to appeal the findings or recommendations of the Senior Staff Member, the Vice Chancellor will refer the appeal to a Staff Review Committee convened for this purpose.
- 4.6.2 In conducting its review, the Staff Review Committee will consider whether:
- a) all steps of the process outlined in this policy have been complied with;
 - b) the performance of the Staff Member was unsatisfactory;
 - c) appropriate steps were taken to bring the unsatisfactory nature of performance to the attention of the Staff Member;

- d) due and proper consideration was given to the Staff Member's response;
- e) reasonable time, opportunity and resources were made available to the Staff Member to enable them to remedy their performance;
- f) there was appropriate consultation with the Staff Member's colleagues, where requested;
- g) the decision of the Senior Staff Member was reasonable in the circumstances; and
- h) the disciplinary action recommended by the Senior Staff Member was reasonable in the circumstances.

4.6.3 In conducting its investigation the Staff Review Committee will:

- i) be able to hear any person or receive any materials it sees fit to assist in its deliberation;
- j) allow the Staff Member to be represented in the matter if they so choose;
- k) ensure that the Staff Member (or their representative if they so choose) has the right to make submissions and to present and challenge evidence; and
- l) at its discretion, allow any other person the Staff Review Committee wishes to hear from (or their representative) the right to make submissions and to present and challenge evidence.

4.6.4 The Staff Review Committee will provide a written report to the Vice Chancellor.

4.7 Vice Chancellor's Decision

4.7.1 Following consideration of the Staff Review Committee report, the Vice Chancellor will as soon as practicable provide a copy of the report to the Staff Member and advise the Staff Member, in writing:

- a) of the Vice Chancellor's decision; and
- b) of any disciplinary action that will be taken against the Staff Member.

4.7.2 In the event that a Staff Member's employment is terminated as a result of unsatisfactory performance, they will be entitled to notice or payment in lieu thereof in accordance with their conditions of employment and the Enterprise Agreement, where applicable.

4.7.3 The action of the Vice Chancellor under subclause 4.7.1 will be final, except to the extent that any tribunal or court can determine the matter.

4.8 Records

4.8.1 Documentation relating to a formal process of resolving unsatisfactory performance as set out in this Policy will be placed on the Staff Member's personnel file. Such documentation may include records of meetings, discussions with witnesses, responses, correspondence and considerations relevant to the alleged unsatisfactory performance.