

## **PERFORMANCE IMPROVEMENT, COUNSELLING AND DISCIPLINE POLICY**

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### 1. POLICY STATEMENT

1.1 Altaira recognises the importance of ensuring a skilled and energised workforce. Critical to this is the quality of our performance management and disciplinary processes, fairly and consistently applied to manage unsatisfactory workplace performance and other behavioural or conduct matters.

1.2 An early local response to problems can often avert the serious consequence of formal disciplinary action, and therefore requires that each Manager/Supervisor be responsible for detecting and handling unsatisfactory workplace performance and discipline problems in their work unit.

1.3 Managers/Supervisors should allow the employee an opportunity to explain their behaviour, and to allow consideration of any extenuating circumstances e.g. medical grounds.

1.4 The principle of “natural justice” is an essential element in all workplace performance and disciplinary counselling. This is an open process with, at all times, an employee being given: adequate opportunity to respond to concerns or allegations made regarding their performance or behaviour; access to any reports or records being prepared and those making decisions being free from bias and perceived bias or other personal interest in the outcome.

1.5 All documentation related to performance improvement and counselling or disciplinary processes should be maintained by the Manager/Supervisor and filed in the employee’s Personnel File. Documentation includes records of discussions and meetings, action plans and emails to and from the employee.

1.6 The employee must be given the opportunity to comment on the documentation and should sign it to certify it as being a true and accurate account of any meeting, discussion or interview. If the employee concerned refuses to sign the documentation, the reason for that particular course of action must also be documented.

1.7 Where possible, the preferred format for recording meetings, counselling or disciplinary interviews is, "he said", "she said", "they said", "I said".

1.8 Where the steps in this policy have led to the desired behavioural change this should also be documented and filed accordingly.

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### 2. PERFORMANCE IMPROVEMENT

#### 2.1 Managing Unsatisfactory Performance

The primary objective of managing unsatisfactory performance is to assist employees to improve their performance and meet the expectations of their role within a reasonable timeframe.

Underperforming employees will be provided with every reasonable opportunity and assistance to address their unsatisfactory performance.

The most appropriate way to address and manage unsatisfactory performance may vary, depending on the circumstances. However, action that may be taken includes:

- informal performance counselling;
- formal performance counselling;
- disciplinary action which may include verbal\* and written warnings;
- dismissal.

\*[If a verbal warning has been issued, it should always be confirmed in writing; an email to the employee is sufficient].

##### 2.1.1 Informal Feedback/Counselling Process

Informal feedback relies on impromptu meetings and discussions, consultation, coaching, counselling and providing feedback. This approach is encouraged to create a healthy culture of open and constructive communication.

Where an employee fails to meet the performance expectations of their role (ie a Manager/Supervisor has identified a performance gap), the employee's Manager/Supervisor should promptly (as far as practicable) address the unsatisfactory performance, and:

- ensure that the employee is aware of the expectations of their role and the required standards of performance;
- advise the employee on the nature of the improvement required and the time within which reasonable improvement is expected;

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- provide the employee an opportunity to respond to the issues raised;
- discuss any support the employee may require to improve their performance;
- set achievable objectives and reasonable timeframes for improvements to occur; and
- monitor the employee’s work performance and communicate frequently with the employee.

The Manager/Supervisor should prepare file notes of their discussions with the employee, detailing the content of the discussion and any resulting actions. All file notes must be filed in the employee’s Personnel File. Subject to the nature of the unsatisfactory performance, the Manager/Supervisor should keep their Manager and/or the Director informed.

### 2.1.2 Formal Feedback/Counselling Process

Where informal counselling is not appropriate (see examples below), or the employee’s performance continues to be unsatisfactory following informal counselling, a formal performance counselling meeting should be scheduled between the employee and their Manager/Supervisor.

All discussions should be confidential and the employee being counselled should be given the opportunity of having a support person\* of their choice present if so desired.

*\*An employee’s support person may be a friend, colleague, union delegate/official, but not a practicing barrister or solicitor. The support person is not entitled to take an active part in any meetings; however, meetings may be adjourned to provide the support person the opportunity to consult with the employee.*

Where an employee elects to bring a support person, details of the support person must be provided to Altaira , prior to the meeting.

Adequate notice of the formal meeting should be given, allowing the employee to seek a support person, if they so wish. Generally, 48 hours is sufficient for this purpose, but this may vary due to circumstances at the time.

The examples set out below are a guide to offences and/or unacceptable behaviour for which formal counselling action would generally be appropriate as a first step:

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- poor attendance;
- poor work performance;
- abusive language or behaviour
- failure to comply with reasonable requests;
- failure to notify, within 24 hours, a reason for absence;
- disclosure of information gained in the employee's official capacity;
- any unwanted or uninvited behaviour that makes a person feel offended, embarrassed or frightened
- any unwelcome sexual behaviour that a reasonable person could anticipate may make another person feel offended, intimidated or humiliated in that situation.  
The following are examples of this but not an exclusive list:

- ❖ sexually suggestive comments or jokes that offend or intimidate
- ❖ intrusive questions about a person's private life or physical appearance
- ❖ inappropriate staring or leering
- ❖ inappropriate physical contact
- ❖ unwelcome touching, hugging, cornering or kissing

Problems such as those listed above should be handled **immediately** they become apparent. The objective is to achieve the desired improvement within a stipulated timeframe without recourse to disciplinary action.

### 2.1.3 Formal Counselling Interview

An effective counselling interview should include:

- Employee awareness of the Altaira 's expectations about performance and conduct.
- Managerial awareness of the reasons for the problem and any mitigating circumstances.
- Employee awareness of the action to be taken if the problem persists.

During the meeting, the Manager/Supervisor should:

- review any previous performance counselling discussions;

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- ensure the employee is informed of what records of the interview will be taken;
- ensure that the employee is aware of the expectations of their role and the required standards of performance;
- highlight the areas of the employee’s performance which are unsatisfactory;
- provide the employee an opportunity to respond to the issues raised;
- discuss any support that the employee may require to improve their performance;
- develop a performance improvement plan (PIP) and timeframe that supports the employee’s performance improvement;
- allows sufficient time for the employee to improve their performance and/or behaviour to an acceptable standard and in which progress will be reviewed e.g. 2 weeks, 1 month, 3 months; and
- inform the employee that failure to meet the required standards may result in disciplinary action being taken, which may include termination of employment.

The Manager/Supervisor should follow up the discussion with a letter to the employee noting:

- all attendees and the date and time of the meeting;
- the details of the discussion (including the employee’s responses) and performance improvement plan established to support the employee to improve their performance; and
- where appropriate, a written warning that if the employee’s performance does not improve, further action may be taken, including a disciplinary process, which may include termination of employment.

Where an employee’s performance does not improve or continuously fails to achieve Altaira performance standards and expectations, disciplinary action may ensue.

When the problem is one which involves the whole work team, it may be useful to have a joint meeting with all staff rather than individual counselling sessions. A joint meeting would have the purpose of clarifying expectations.

The Director may choose to seek professional Human Resource advice at any stage.

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*Nothing in this policy shall prevent Altaira from conducting further formal counselling meetings where the particular circumstances require it.*

### 3. DISCIPLINE PROCESS

#### 3.1 Disciplinary Action due to Unsatisfactory Performance

The management of an employee's unsatisfactory performance and any associated disciplinary action must be implemented in accordance with the principles of natural justice.

If an employee's performance continues to be unsatisfactory after formal performance counselling/written warning(s), in consultation with the Director, the employee's Manager/Supervisor should determine whether to continue with further formal performance counselling or whether disciplinary action (which may include dismissal) is appropriate. Escalating to a disciplinary process should occur having undertaken counselling procedures in accordance with this policy.

The expected outcome of all disciplinary processes is to achieve permanent change in the performance and/or behaviour of the employee.

**The final decision to terminate an employee's employment rests with the Director.**

The following steps should be taken:

- Employee advised in writing of the discipline interview including time, date, location and parties attending. The letter needs to clearly state that it is a formal disciplinary interview. \* It is desirable to seek professional advice when framing this notice.
- Employee provided with an outline of any allegations against them in sufficient detail so that they are able to prepare their response.
- Employee invited to have a support person\* of their choice present (\*see page 3).
- Alternatively, the employee can be invited to provide a written response to the allegations against them, allowing a reasonable time for the response to be prepared and received by Altaira .

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\* Adequate notice of the disciplinary meeting should be given, allowing the employee to seek a support person, if they so wish. Generally, 48 hours is sufficient for this purpose, but this may vary due to circumstances at the time.

The Director may choose to seek professional Human Resource assistance in the construction of correspondence to the employee.

### 3.2 Disciplinary Action due to Misconduct or Gross Misconduct

Altaira views all allegations of misconduct seriously and will manage all misconduct and serious misconduct of employees in accordance with the provisions of relevant legislation, Awards, employment contracts and Altaira policies and procedures whilst demonstrating procedural fairness.

**Misconduct** is defined as improper or unlawful conduct and includes any conduct in breach of Altaira 'Code of Conduct' or any other Altaira policy or procedure.

**Gross misconduct** occurs when an employee is guilty of a serious offence and the conduct is such as to clearly indicate repudiation of the employee's obligations under their contract of employment. It includes, but is not limited to:

- wilful or deliberate behaviour by an employee (or employees) that is usually inconsistent with the continuation of the employee's contract of employment;
- theft, fraud or assault on a fellow employee or client;
- being intoxicated (alcohol, drugs or illicit substances) at work (the seriousness of the situation will depend on the circumstances e.g. degree of intoxication, safety issues etc).
- premeditation and deliberate neglect of duty;
- refusing to carry out a lawful and reasonable instruction that is consistent with Altaira policies and the employee's contract of employment, without sufficient cause;
- conduct that causes a serious or imminent risk to the health or safety of a person;  
or
- conduct that is likely to damage the reputation of Altaira .

Managers/Supervisors are responsible for ensuring that:

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- instances or allegations of misconduct are reported to the Director, as soon as practicably possible;
- where appropriate, they attempt to informally resolve any instances or allegations of employee misconduct with the employee(s) involved in the first instance (in consultation with the Director);
- all necessary assistance is provided to any person investigating an instance or allegation of misconduct. This may include an external Human Resources Advisor.

Employees are responsible for ensuring that they:

- comply with this policy and related procedures; and
- report any instances or allegations of misconduct to the relevant Manager/Supervisor, or the Director, as appropriate.

### 3.2.1 Reporting Misconduct or Gross Misconduct

- Any employee who observes another employee engaging in misconduct or becomes aware of any instances of misconduct, must report the matter to their Manager/Supervisor immediately.
- The responsible Manager/Supervisor, in conjunction with the Director, will determine whether the matter should be addressed via an informal process or a formal disciplinary procedure.
- Where conduct may warrant disciplinary action or serious misconduct is alleged, the matter should be dealt with formally, following the investigation procedure outlined in this policy.
- It is acknowledged however, that Altaira may depart from this procedure at its discretion to deal with any instances of employee misconduct as it considers appropriate.
- Director is responsible for determining if external entities (eg police) need to be informed and/or involved.

### 3.3 Procedure

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Each instance or allegation of misconduct will be:

- considered by Altaira on its own merits, and any mitigating circumstances will be taken into account; and
- treated seriously and sensitively, having due regard to procedural fairness, maintaining confidentiality and privacy (ie only those people directly involved in the complaint or resolution will have access to information relating to the misconduct etc).

In some cases, it may be necessary or appropriate for Altaira to take interim action to remove the employee from the workplace or restrict the employee’s access to Altaira property, premises and/or clients’ premises pending the outcome of the investigation.

Possible interim action may include (but is not limited to):

- suspending an employee on a without prejudice basis and without loss of pay; and/or
- restricting the employee’s access to Altaira IT equipment, client records or email systems; and/or
- restricting the employee’s access to particular areas of the workplace.

Investigations into instances or allegations of misconduct will be conducted in accordance with the principles of procedural fairness. Employees accused of misconduct will be given an opportunity to respond to the allegations against them and may have a support person (in accordance with 2.1.2) present with them during any investigative and/or disciplinary meetings.

Investigations should be performed as confidentially and promptly as possible having regard to the principles of natural justice and procedural fairness, which includes:

- an objective investigation into the allegations is conducted;
- the employee is entitled to know the substance of the allegations against them ;
- the employee is provided with an opportunity to respond to the allegations;
- the decision maker has gathered all the relevant information before making a decision;

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- the decision maker is free from bias;
- employees involved in the investigation process have the right to a support person (in accordance with 2.1.2).

The form of the investigation may vary depending on the particular circumstances, but should generally incorporate the following stages:

- obtaining a detailed written complaint or statement from the complainant or a report about the alleged behaviour;
- informing the respondent about the substance of the allegations;
- providing the respondent with an opportunity to respond to the allegations;
- if facts are disputed, gathering other evidence relevant to the complainant and the respondent to clarify information;
- on the balance of probabilities, assessing the evidence to determine whether the allegations are substantiated or unsubstantiated;
- communicating the outcome of the investigation to the respondent and (where relevant) the complainant;
- If allegations of misconduct or serious misconduct are substantiated, determine appropriate disciplinary action.

### 3.4 Outcomes of Disciplinary Action

If an employee is found to have engaged in misconduct or serious misconduct, the employee's Manager/Supervisor, in consultation with the Director, will determine the appropriate disciplinary action, taking into account all of the circumstances.

In determining the appropriate disciplinary action, the following factors should generally be considered:

- the nature and severity of the substantiated conduct;
- the employee's employment history, including any previous performance issues, warnings etc;
- the investigation process followed; and

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- any relevant mitigating circumstances.

Disciplinary action may include:

- counselling;
- formal written warnings. Subject to the nature of the allegation(s) and the outcome of the investigation and interview, the ‘level’ of warning may vary; for instance, a first warning, a final warning, or a ‘show cause’;
- dismissal with notice;
- summary dismissal.

***Nothing in this policy shall prevent Altaira from conducting further disciplinary meetings where the particular circumstances require it.***

### 3.5 Termination of Employment

Before making a decision to terminate employment all the information collected including the employee’s response to allegations will be considered by the Director. Such a decision will not be rushed.

***Dismissal can be costly for the organisation in time, lost productivity and money. It should only be instigated as a last resort, where sufficient attempts have been made to resolve the unsatisfactory performance or behaviour and where Altaira is satisfied that dismissal is not harsh, unjust or unreasonable and does not include a prohibited reason.***

Employees must be given notice of termination in accordance with their Award or other Employment Agreement, or payment made in lieu of notice.

Advice of termination of employment and reasons for termination should be confirmed in writing within 24 hours of the verbal advice including details of any final payments of monies owing or termination payments.

#### 3.5.1 Prohibited Reasons for Dismissal

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There are a number of reasons which are not allowed to be taken into consideration as part of the decision to dismiss:

- temporary absence due to illness or injury;
- union membership or participation in union activities outside of work;
- non-membership of a union;
- seeking union office, or having acted or acting as a representative of employees;
- filing a complaint, or participating in proceedings against the employer;
- race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;
- absence due to maternity or other parental leave.

A warning or advice of termination of employment and the reasons for termination should be confirmed in writing within 24 hours of verbal advice. The termination letter also needs to include details of any final payments of monies owing or and/or termination payments.

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