

DISCIPLINARY MATTERS PROCEDURE

SCOPE

This procedure applies to all continuing and fixed-term academic and professional staff employed under the [Monash University Enterprise Agreement \(Academic and Professional Staff\) 2019](#), herein collectively referred to as 'you' for the purposes of this procedure.

This procedure does not apply to casual or sessional staff, staff on probation, staff on a performance-based contract (PBC) or trades and services staff. The [Professional Staff Probation](#) and the [Academic Staff Probation](#) procedures apply (as relevant) together with the relevant Enterprise Agreement or PBC.

In this procedure, the Enterprise Agreement means the [Monash University Enterprise Agreement \(Academic and Professional Staff\) 2019](#).

PROCEDURE STATEMENT

This procedure provides you with an outline of the process for the management of unsatisfactory performance, serious misconduct, misconduct and general disciplinary matters in accordance with the Enterprise Agreement. This procedure must be read in conjunction with the Enterprise Agreement and where any inconsistency arises the Enterprise Agreement will prevail.

The University ('us', 'our' or 'we') aims to support you to achieve high performance, your development goals and successful careers. We value that your aspirations, capabilities and successes bring a diverse contribution to the University. We therefore endeavour to achieve a culture of acting with integrity and respect and in continued performance improvement to achieve excellence in your work through continuous feedback, goal setting and the provision of development opportunities to you.

1. Conduct and performance expectations

- 1.1 We aspire to the highest level of professional behaviour, respect, integrity and the provision of equal opportunity in our ambition to be Excellent, International, Enterprising and Inclusive. Conduct consistent with a professional and ethical culture is expected from everyone working, studying or participating in our community. We expect you to act ethically, fairly, transparently and with generosity of spirit. You are also expected to interact with other staff, students and participants in our community with courtesy and respect.
- 1.2 It is also important that you understand what is expected of you in your position. Your performance expectations are detailed in, but are not limited to:
 - University/Faculty/Department goals;
 - personal and professional goals;
 - positions descriptions;
 - performance development plans;
 - performance discussions; and
 - the Academic Performance Framework relevant for academic staff.
- 1.3 You have a responsibility to conduct yourself and perform work to a standard that is acceptable to your supervisor and the University. Where your conduct or performance standards do not meet those expectations, remedial action may be taken.
- 1.4 You are expected to be an active participant in reviewing your performance, development and achievements which includes participating in regular performance conversations with your supervisor.
- 1.5 Unsatisfactory performance, serious misconduct and misconduct which is not remediated may result in disciplinary action which could lead to the termination of your employment.

2. Conduct and performance feedback

- 2.1 Your supervisor may provide performance and conduct feedback via various methods, including, but not limited to, guidance, formal or informal discussions and meetings, counselling, formal review meetings, appropriate staff development activities and/or appropriate work allocation.
- 2.2 Your supervisor should keep a record of discussions.
- 2.3 You should undertake any remedial actions discussed to help improve your conduct and/or performance to the required standard. Your supervisor will monitor your conduct and/or performance and will advise you as to how you are progressing in meeting the required standard.
- 2.4 If you are not yet at the top of the salary scale (increment ceiling) for your current HEW or academic level, your supervisor and Head of Unit may consider withholding your annual increment payment if your performance does not improve. In such circumstances, your supervisor and Head of Unit (in consultation with the HR Business Partner and/or a Workplace Relations Consultant) must ensure that the process in the Enterprise Agreement is followed.

3. Unsatisfactory performance, serious misconduct and misconduct

Unsatisfactory Performance

- 3.1 Unsatisfactory performance means a persistent or significant failure to perform the work of the position or appointment at a level which would be reasonably required having regard to:
 - the nature and purpose of the position;
 - its classification and duties; and
 - any representations made by you at the time of selection for employment or promotion to your current level or position.

Serious misconduct

- 3.2 Serious misconduct means:
 - serious misbehaviour of a kind that constitutes a serious impediment to the staff member, or the staff member's colleagues, carrying out their duties, which may include conviction by a court for an offence;
 - serious dereliction of the duties required of the staff member in their position;
 - theft or fraud;
 - assault;
 - being intoxicated at work;
 - refusal to carry out a lawful and reasonable instruction;
 - conduct that causes serious and imminent risk to the health or safety of a person;
 - serious misconduct within the ordinary meaning of serious misconduct at common law; and/or
 - persistent misconduct or willful and repeated incidents of misconduct.

Misconduct

- 3.3 Misconduct means conduct that is not Serious Misconduct but is nevertheless unacceptable.

4. Disciplinary matters

- 4.1 We are committed to managing disciplinary matters relating to conduct and performance in a timely and effective manner ensuring the process is fair.
- 4.2 As such, we will inform you of the processes which are to be followed when dealing with situations of unsatisfactory performance, serious misconduct and misconduct (which may include unacceptable behaviours – refer to our [Resolution of Unacceptable Behaviour & Discrimination procedure](#)).
- 4.3 Your conduct may involve either or both unsatisfactory performance and serious misconduct/misconduct; they may overlap. Matters that could be characterised as either Misconduct/Serious Misconduct or Unsatisfactory Performance may be addressed by us under either the Unsatisfactory Performance procedure (as set out in [clause 59](#) of the Enterprise Agreement) or the Misconduct and Serious Misconduct procedure (as set out in [clause 60](#) of the Enterprise Agreement).
- 4.4 Your supervisor will consult with their supervisor and with Monash HR, including Workplace Relations, before starting any formal disciplinary action under the Enterprise Agreement. Your supervisor should inform your Head of Unit if performance concerns are unable to be resolved through feedback. The Head of Unit will review the issues and facts and, where further action is required, seek advice from their HR Business Partner on the matter and/or the responsible Workplace Relations Consultant.
- 4.5 Where unsatisfactory performance is identified by your supervisor or the University, the Unsatisfactory Performance procedure as set out in the Enterprise Agreement (clause 59) will be followed.

5. Termination of employment

- 5.1 If termination of employment is being considered, no action is to be taken without prior consultation with Monash HR, Workplace Relations, and approval from the Chief Operating Office/Provost (as relevant) or their delegate.
- 5.2 Notice periods for termination of employment resulting from disciplinary action will be in accordance with the NES.
- 5.3 Where you are not required to work through the whole or a part of the relevant notice period, salary in lieu of notice may be paid.

6. Review of decision – termination of employment or demotion

- 6.1 In accordance with [clause 61](#) of the Enterprise Agreement, you may apply to the Vice-Chancellor for a review of the decision to terminate or demote on the grounds of:
 - new information not previously available to you;
 - lack of procedural fairness; and/or
 - the disciplinary action being a disproportionate penalty in the circumstances.

7. Breach of the Research Code

- 7.1 Any breaches or serious breaches of the Australian Code for the Responsible Conduct of Research, 2018 (Research Code) will be dealt with in accordance with the provisions of the [Enterprise Agreement](#) as required by [clause 62](#).

8. Further information

Support Person

- 8.1 You may be permitted to have a support person present at meetings that occur under [clause 59](#) or [60](#) of the Enterprise Agreement. The role of your support person is to provide emotional and moral support and be an observer in the process, rather than to act as an advocate for you. If you choose not to have a support person the process will still continue.

Representative

- 8.2 You may be assisted by a Representative during the procedures under clauses 59 or 60 of the Enterprise Agreement. A Representative cannot be a practising solicitor or barrister. The role of your representative is to assist you throughout the procedures under [clause 59](#) or [60](#). If you choose not to have a representative the process will still continue.

Recording Devices

- 8.3 In accordance with our [Behaviours in the Workplace procedure](#), the use of recording devices in any meeting regarding unsatisfactory performance or disciplinary action may be unlawful and is not consistent with our Ethics Statement. If you would like to record a conversation, you should obtain permission from all parties involved prior to commencing the recording.

Privacy

- 8.4 In the event that you provide personal or health information in the course of disciplinary action, we will comply with the [Data Protection and Privacy Procedure](#) with regards to the management of that information.

9. The Employee Assistance Program (EAP)

- 9.1 EAP is a free professional counselling service available to all employees and their immediate family members. The service is highly confidential and offers short-term support for a variety of work-related and personal problems that may be affecting you at work or at home. You can arrange to speak with a counsellor over the phone or make an appointment to see a consultant for a face-to-face session. An after-hours messaging service operates at all other times.

10. Breach of procedure

- 10.1 We treat any breach of our policies or procedures seriously. We encourage reporting of concerns about non-compliance and manage compliance in accordance with the applicable Enterprise Agreement or contract terms.

DEFINITIONS

Academic performance framework	A framework that articulates high level expectations for academic performance adopting a consistent approach across the three categories of Research, Education and Engagement, against which all academic performance will be measured. Further information is available on the Academic Performance Framework website . The Academic Performance Framework includes the academic performance standards relevant to your faculty.
Head of unit	The head of an academic or organisational work unit, for example Head of School, Head of Department or where applicable, a person acting as their nominee.
NES	The National Employment Standards are provided for in the <i>Fair Work Act 2009</i> (Cth). The NES set out some minimum terms and conditions relating to employment, including the minimum period of notice for termination of employment
Representative	A person chosen by the staff member but not a practising barrister or solicitor.
Supervisor	The person who is responsible for the day-to-day supervision of the staff member (refer clause 3.12 of the Enterprise Agreement).

GOVERNANCE

Parent policy	Probation, performance and promotion
Supporting schedules	N/A
Associated procedures	<ul style="list-style-type: none"> • Performance Development Process: Professional Staff • Performance Development Process: Academic Staff
Legislation mandating compliance	N/A
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Endorsement	Chief Human Resources Officer – 18 December 2020
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