



ACT
Government

Underperformance Policy and Procedure

Office of Industrial Relations and
Workforce Strategy

Chief Minister, Treasury and Economic Development Directorate (CMTEDD)

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Underperformance Policy and Procedure

Introduction / Purpose

1. The purpose of this policy and procedure is to provide information and procedures for managing employees who are underperforming. As an employer, the ACT Government has a responsibility to manage employees who are not exercising the functions of an office to the standard reasonably required. These responsibilities are established in the ACT Public Sector (ACTPS) Enterprise Agreements (the enterprise agreements), *Public Sector Management Act 1994* (PSM Act) and *Public Sector Management Standards 2016* (PSM Standards 2016).
2. This policy is intended to assist directorate Human Resources (HR) areas and people managers in managing the performance of ACTPS employees, which is critical to supporting a high-performing public sector.
3. Managers should consider any other relevant classification and role specific employment conditions or relevant regulatory frameworks that may apply to an employee in its interaction with this policy.

Application

4. This policy applies to all ACT Government directorates and public sector bodies in relation to employees covered by an enterprise agreement. It contains a set of whole-of-government instructions issued by the Head of Service under section 17(2)(a) of the PSM Act which binds all employees and executives engaged under that Act.
5. Underperformance procedures apply to all employees, except casual employees who are not eligible casual employees. An eligible casual employee is defined in the enterprise agreement as an employee who has been engaged on a regular and systematic basis for at least 12 months.

Key Legislative Provisions

6. Procedures for the management of an employee's underperformance are established under clause H2 (common core provisions) of the relevant ACTPS enterprise agreement.
7. The management of underperformance considers the unfair dismissal provisions in the [Fair Work Act 2009 \(FW Act\)](#) and other relevant legislation including the [Australian Human Rights Commission Act 2005 \(ACT\)](#), the [Disability Discrimination Act 1992](#) and the [Work Health and Safety Act 2011 \(ACT\)](#).

Principles

8. The ACTPS is committed to undertaking best practice management of underperformance in line with the enterprise agreement and relevant legislative provisions.
9. Establishing a robust process for managing underperformance of employees is essential to ensure the ACTPS has a supportive framework to help staff perform at their best. Underperforming employees negatively impact efficiency, productivity and morale.
10. The focus of the ACTPS underperformance process is improving the performance of employees. It is not a disciplinary process.
11. Managers must ensure employees have a consistent and clear understanding of the expectations that exist in regards to work performance and how the employee's performance will be measured against these expectations. The underperformance process supports the employee to be able to meet these expectations and ensure that the productivity of the ACTPS is maintained. The process provides a fair,

prompt and transparent framework for action to be taken where an employee continues to perform below the expected standard.

Procedure

12. Summary flowcharts of the ACTPS Underperformance Discussion and the Underperformance Process can be found at **Annexure 1**.

Setting Expectations and Clarifying the Employee's Role

13. It is important that an employee and manager discuss and reach an understanding of the requirements of the role as their work capacity will be assessed against this.

14. The ACTPS Performance Framework is a mechanism to ensure that every person in the workplace is clear on what is expected of them at work. The ACTPS Performance Framework Policy and Guidance Statement is available on the [Employment Portal](#) and provides an extensive array of materials that can assist managers and employees to implement performance policy and arrangements in the workplace.

15. When an employee starts work in a new role the following should be undertaken:

- a. induction into the directorate/division/branch/business unit
- b. a clear position description is available to the employee
- c. clear objectives are understood by all
- d. performance issues are discussed on a regular basis
- e. both employee and manager understand and agree to what is acceptable performance
- f. a performance and development plan is developed, agreed to and signed.

16. The manager should provide the employee with regular feedback on an ongoing basis regarding whether the employee is meeting the expectations of the role. Feedback should be delivered in a fair, consistent, open and transparent way. As well as negative feedback, the manager may take this opportunity to provide positive feedback on an employee's performance or achievements or to provide them with tools or strategies on how they improve and sustain good performance in their role.

How to Identify Underperformance

17. When analysing an underperformance issue, it is essential to distinguish between casual factors that are 'employee issues' and those that are 'organisation issues'. Many situations have an element of both with one causing or contributing to the other. There may be a tendency to allocate blame to each other or a third party in these cases, however if the true causes are not diagnosed and treated, the problems will be repeated.

18. The underperformance of an employee is distinct and separate to misconduct. Misconduct is defined in clause G4.5 of the 2023-20236 enterprise agreement and includes reference to section 9 of the PSM Act. Further information about misconduct can be found in the Guidelines to the Misconduct Process located on the [ACTPS Employment Portal](#).

19. Underperformance can be exhibited in the following ways:

- a. unsatisfactory work performance, that is, a failure to perform the duties of the position or to perform them to the standard required
- b. non-compliance with workplace policies, rules or procedures
- c. unacceptable behaviour in the workplace that doesn't constitute misconduct
- d. disruptive or negative behaviour that impacts on co-workers that doesn't constitute misconduct.

20. The underperformance process should not be used for breaches of ACT public sector conduct which is defined in section 9 of the PSM Act. Instead such matters should be dealt with by misconduct proceedings. The underperformance process should also not be used where there is a health issue that should be dealt with via other mechanisms. Refer to your directorate’s HR area for advice.

Examples of Misconduct v Underperformance

<p>Underperformance is more likely to relate to the employee’s capacity to do the job than their conduct: Misconduct may be:</p>	<p>Underperformance may be:</p>
<ul style="list-style-type: none"> • Repeated wilful conduct/patterns • Breach of code of conduct • Negligent conduct • Repeated unauthorised absences from work • Wilful refusal to follow reasonable directions • Fraudulent conduct 	<ul style="list-style-type: none"> • Unsatisfactory or poor performance in terms of quantity, quality or timeliness • Not performing duties to specific standard • Breaches of work practices, procedures or guidelines • Inappropriate behaviour with work colleagues, customers or stakeholders • Absenteeism or lateness

	Misconduct	Underperformance
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<p>Asked to prepare a presentation</p>	<p>Deliberately refuses to prepare it</p>	<p>Prepares it to an unsatisfactory standard as required against the functions of the position and work level standards</p>
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<p>Asked to submit a timesheet</p>	<p>Enters incorrect times on flex sheet for self-advantage</p>	<p>Finds it difficult to maintain an accurate and up to date flexsheet at the required standard after clear instructions and guidance</p>
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<p>Asked to display courtesy and professionalism</p>	<p>Is aggressive and yells at colleagues and clients Deliberately withholds information Provides false information</p>	<p>Is courteous with clients however misses crucial information provided by clients and in turn does not satisfy the clients need to the expected standard of the position</p>
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Asked to be mindful and responsible of printing resources	Uses the work computer, printer and stationery for personal use to make birthday invitations	Prints large work documents unnecessarily for research to complete a query or task where the query/task can be more efficiently completed online and utilising the team's previous responses and examples
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Asked to remain task focused due to a team deadline	Refuses to carry out work duties to assist with team meeting deadlines	Can be disruptive or negative in team discussions and slow with producing tasks at the required standard
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Asked to follow WHS workplace policies and guidelines	Is intoxicated at work and assaults another person	Forgets to test their personal alarm before entering a ward
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**Some of these performance matters may be conduct matters depending on the seriousness of the matters or whether they are repetitive in nature – advice should be sought from HR.*

21. There are many reasons why an employee might be underperforming. Some common reasons include:

- the employee does not know what is expected of them because goals and standards are unclear
- the employee may not have the knowledge or skills to do the job
- the employee is unsure if they are meeting requirements
- low personal motivation or confidence
- personal issues such as family stress, physical or mental health problems, or problems with drugs or alcohol
- low morale in the workplace
- a poor work environment
- interpersonal differences or cultural misunderstandings
- workplace bullying.

22. Once underperformance has been recognised the manager should correctly and specifically identify the reason, ideally in discussion with the employee. Some common examples and possible actions for underperformance can be found at **Annexure 2** - Common Performance Issues.

23. As part of their initial identification of underperformance, managers should determine:

- a. how serious the underperformance is
- b. how long the underperformance has existed, noting underperformance should be addressed as it occurs
- c. whether there has been a regular pattern of occurrence

- d. whether previous underperformance processes have been undertaken in relation to this issue
- e. whether there are other relevant factors such as health or personal issues that need to be taken into consideration
- f. what the role requirements are, what tasks and responsibilities must be performed and how can they be measured e.g. timeliness, quantity of output, standard of written work
- g. what instructions, guidance material, training and development were provided to support successful performance
- h. how wide the gap is between what is expected and what is being delivered.

24. An employee can be performing to the best of their ability and still be performing unsatisfactorily. Not every underperformance issue needs a structured process. The manager should explore other options for improving performance, such as the use of regular, specific, and timely feedback, including training options for upskilling. Any performance issue should always be addressed straight away.

25. Managers should reflect on their own leadership and management skills to determine if they are delivering clear and concise directions to the employee. Sometimes it can be helpful for the manager to ask the employee what can be done differently to assist them in reaching the required standard of work performance.

Health Issues and Underperformance

26. At times, employees may have health concerns which can impinge on their ability to perform in their role. As in any circumstances where a manager is concerned about an employee's performance, in the first instance the manager should have a conversation with the employee in a private workplace setting about what they have observed and give the employee an opportunity to disclose any health concerns that might be impacting on their performance.

27. If the employee discloses a health concern, managers and employees must consider and agree on any [reasonable adjustments](#) and how these might be implemented so as to assist the employee to perform the requirements of their role.

28. Where there is a health concern, managers should contact their directorate's HR area for further advice.

29. In cases where both an underperformance and absence due to illness/return-to-work processes are being followed at the same time, these should be focused on separately.

Responsibilities

30. All parties have an obligation to participate in underperformance processes in good faith.

Managers

31. Managers have a responsibility to proactively manage the conduct and work performance of employees and to promptly address underperformance.

32. Directorates have their own various performance management policies in place. Managers should seek guidance from their directorate's HR area in relation to the standard and requirements of regular performance feedback.

33. The [ACTPS Performance Framework](#) is a mechanism to ensure that everyone in the workplace is clear on what is expected of them at work. Managers must provide employees with clear and consistent performance expectations and regular, specific and timely feedback to employees about their performance. Frequent, informal conversations between managers and employees that are aimed at strengthening or

improving employees' performance build a high-performance culture, can increase employee motivation and may deter the need for formal underperformance processes.

34. A [Manager's Toolkit](#) can be found on the ACTPS Employment Portal which provides managers with information and a guide relating to misconduct and underperformance processes.

35. It is good practice for a manager to document any performance discussions they may have with an employee if there is a reasonable belief that the underperformance may invoke formal underperformance processes in the future.

36. Managers who fail to adequately deal with underperformance are not upholding ACTPS values and the integrity of the ACTPS that requires effective performance from each employee. A manager who is not managing the performance of their employee is underperforming in their own management role.

37. Prior to the performance issue moving into a formal underperformance process, managers should seek advice from their directorate HR area if they have not done so already. Early engagement with HR will assist managers with early diagnosis of issues and whether they may be code of conduct or health related issues instead.

Human Resources

38. HR areas are responsible for supporting managers to manage employees in the underperformance process.

39. Directorate HR areas need to ensure they have the capability to actively support managers at all stages of underperformance management.

40. Once a formal process commences, HR's role is to:

- a. provide quality assurance and oversight over the process including communications and record keeping
- b. ensure managers and employees are adequately supported
- c. promote adherence to timeframes
- d. ensure procedural fairness and natural justice are applied.

41. The presence of appropriately skilled HR professionals in review meetings between the manager and the underperforming employee can assist in preventing any claims be they procedural or bullying for example.

Employees on Probation

42. Probation is a supportive process during which mutual evaluation and decisions about permanent appointment can be made. It should be used robustly to test the suitability of newly appointed employees.

43. Managers must set out clear performance standards and expectations from the outset and provide newly appointed employees with regular, specific and timely feedback to employees about their performance. Managers should not just rely on the 2 formal assessments (e.g. 2 and 4 month reviews) for this. The Probation policy located on the [Employment Portal](#) provides advice about the roles and responsibilities of managers and employees on probation. If an employee on probation is not performing, then this should be managed within the probation period.

44. Decisions about whether the employee has satisfied the performance requirements of their role must not be left until the last few weeks of the probation period. The underperformance process should only be initiated where other performance processes are not working. Managers should seek advice early from the directorate HR area in these cases.

45. For employees on probation, the underperformance process may be administered on a proportionate basis according to the circumstances of the case, and in accordance with the principles of

procedural fairness and natural justice (clause H2.2 of the enterprise agreement). This should be managed on a case-by-case basis. It may mean, for example, that the manager may undertake underperformance discussions with the employee which are appropriately documented, rather than commencing the formal underperformance action plan. Alternatively, the action plan period may be shortened if appropriate in the circumstances to only one or 2 months.

46. Where performance issues cannot be satisfactorily addressed within the probation period, the employee's ongoing employment should not be continued. The probation report is to be submitted to the delegate as part of this process.

47. An employee whose employment is terminated while on probation is not entitled to the Internal Review Procedures or Appeal Mechanisms under the Enterprise Agreement (clause B5.7).

48. Action to annul employment during probation is a legitimate action which recognises that not all selection decisions result in an outcome that is right for the employer or the employee. The FW Act outlines that an employee cannot make an unfair dismissal claim if their employment is terminated during the minimum employment period (i.e. 6 months) although key procedural fairness provisions still apply.

Redundancies

49. The redeployment and redundancy processes should not be used to replace or undermine ongoing, robust underperformance management procedures as they can be uneconomical, create perverse incentives and generate resentment in other employees. Instead, underperforming employees should be performance managed.

50. Redeployment and redundancy provisions apply when a position is excess and not for the purpose of underperformance.

Part 1: Underperformance Discussion(s)

51. The 'Underperformance Discussion' is the first step in the formal underperformance process detailed in the relevant enterprise agreement. This is where prior informal discussions, on-the-job training or coaching for example have not resulted in the performance improving. An underperformance discussion checklist to assist managers can be found at **Annexure 3**. Template letters to assist managers and directorates HR areas are available in the Underperformance Communications Guidance Material.

52. An employee must be provided with reasonable notice of the underperformance discussion and offered the opportunity to bring a support person to the meeting.

53. Managers should prepare for the meeting and have supporting documentation which could include for example, the employee's performance development plan, position description, specific work examples and any records from where informal measures were attempted.

54. The goal of the underperformance discussion is ultimately to improve performance. The discussion should include:

- a. advice and support to the employee to overcome concerns about underperformance
- b. clarification of what the underperformance issues are
- c. an opportunity for the employee to provide explanations for their underperformance
- d. setting clear expectations of what improvement looks like
- e. any timeframes for improvement
- f. any work adjustments that may improve the employee's capacity to meet their performance requirements. This could include job redesign, flexible workplace

arrangements or providing workplace modifications. Managers should refer to the ACTPS Workplace adjustments for people with a disability policy and associated guidance and their HR area for further information

- g. consideration of any health issues that may be impacting on the employee's performance. Managers should refer to their HR area and/or the Chief Minister, Treasury and Economic Development Directorate Injury Management Team for further information
- h. any training required or learning and development opportunities
- i. dates of any follow-up meetings including review periods
- j. the availability of the employee assistance program (EAP)
- k. that the underperformance process (clause H2.7 to H2.20 of the enterprise agreement) may be invoked if the underperformance continues and the potential outcomes of this
- l. that the formal underperformance discussion will be documented and that the employee will be given a copy to review, comment on and sign. In circumstances where the employee refuses to sign such a record, the refusal will be noted on the relevant record.

55. An underperformance discussion checklist for managers to assist managers prepare for a formal underperformance discussion can be found at the **Annexure 3**. A manager's guide for the underperformance discussion can be found in **Annexure 4** – Underperformance discussion guide for managers.

56. Following the underperformance discussion, the manager should monitor the employee's performance and continue to provide regular and specific feedback and encouragement.

57. If the employee's work performance improves to satisfactory level, it is best practice for the manager to meet with the employee to review and discuss the work performance. This enables both parties to acknowledge that the issue has been resolved. The manager should continue to work with the employee to ensure that performance improvements are sustained.

Part 2: Formal Underperformance Process

58. A checklist for managers to support them in the formal underperformance process can be found at **Annexure 5**.

59. The underperformance process cannot be initiated unless the manager has:

- a. previously raised concerns about underperformance with the employee
- b. explained and documented the individual job requirements and performance expectations that the employee is reasonably expected to meet
- c. provided support, other mechanisms and reasonable time to improve the employee's performance
- d. explained to the employee the potential consequences of the formal underperformance procedure.

60. The formal underperformance process is set out in clauses H2.7 to H2.20 of the relevant enterprise agreement.

Step One: Action Plan

61. Where a manager assesses that an employee's work performance is demonstrated as being below expected standards after having previously discussed concerns with the employee, the manager will inform the employee in writing of this assessment and the reasons for it. The employee will be invited by the manager to provide written comments on the assessment, including any reasons that in the employee's view may have contributed to their recent work performance (clause H2.7).
62. After taking into account the comments from the employee, the manager must prepare an action plan in consultation with the employee (clause H2.8).
63. The manager will invite the employee to have a support person, who may be the employee's union or other employee representative, present at discussions to develop the action plan and will allow reasonable opportunity for this to be arranged (clause H2.9).
64. In accordance with clause H2.10 of the enterprise agreement the action plan will:
- a. identify the expected standards of work required of the employee on an on-going basis
 - b. identify and/or develop any learning and development strategies that the employee should undertake
 - c. outline the potential underperformance actions that may be taken if the employee does not meet the expected standards
 - d. specify the action plan period, which should not normally be less than one month and should not exceed 6 months to allow the employee sufficient opportunity to achieve the expected standard
 - e. specify the assessment criteria to be measured within the action plan period.
65. Any current performance agreement will be suspended during the period of the action plan. Any incremental advancement action for the employee will be suspended during the action plan (clause H2.11); managers are to advise Payroll Services of this.

Step Two: Regular Assessment

66. During the action plan period, the manager will make regular written assessments (desirably every fortnight) of the employee's work performance under the action plan. The employee will be given an opportunity to provide written comments on these assessments (clause H2.12). Alternatively, the manager may choose to set up a meeting with the employee to provide a verbal assessment, and then prepare the written assessment afterwards. The employee must still be provided with an opportunity to provide written comment on the assessments.
67. If the manager considers that further assessment time is needed, the manager may extend the action plan period. However, the extended assessment time must not result in the action plan exceeding 6 months' duration. The manager will inform the employee in writing of the decision to extend the assessment time and the duration of the action plan (clause H2.13).
68. If the manager considers that the action plan is not meeting the needs of the employee and workplace, the manager may review and discuss with the employee any changes needed to the action plan. Again, the action plan must not exceed 6 months' duration and the action plan process under clauses H2.8 to H2.11 of the relevant enterprise agreement should be applied.

Step Three: Final Assessment or Report

69. If at the end of the action plan period, the manager assesses the work performance of the employee as satisfactory, no further action will be taken under these procedures at that time. The manager will inform the employee in writing of this decision (clause H2.14). The employee's suspension on incremental advancement will also be lifted; the manager is to advise Payroll Services of this.

70. If at the end of the action plan period, the manager assesses the work performance of the employee as not satisfactory, the manager will provide a report including the assessment and reasons for the assessment to the head of service (clause H2.15).

71. A record of the underperformance process and supporting documentation will be retained by the manager and directorate's HR area.

Step Four: Underperformance Action

72. Where the manager assesses the work performance of the employee as not satisfactory, they are to prepare a report for the head of service. The head of service will review the report and advise the employee in writing:

- a. of the assessment and reasons for the manager's assessment
- b. of the underperformance action(s) proposed to be taken and the reasons for proposing this action
- c. of the employee's right to respond in writing to the proposed action within a period of not more than 7 calendar days (clause H2.16).

73. Clause H2.17 of the enterprise agreement sets out that at any time after 7 calendar days from the date the head of service advised the employee of the underperformance action assessment, and after considering any response from the employee, the head of service may decide to take one or more of the following underperformance actions:

- a. transfer the employee to other duties (at or below current pay)
- b. defer the employee's incremental advancement
- c. reduce the employee's incremental point
- d. temporarily or permanently reduce the employee's classification and pay
- e. remove any benefit derived through an existing Attraction and Retention Incentive
- f. terminate the employee's employment.

74. It is important to note that the underperformance actions are not sanctions against an employee. Instead, the intention is to align the employee's capabilities and performance with an appropriate position and salary. The underperformance actions do not extend to a reduction of employee's working hours, unless the employee proposes to reduce their hours in accordance with clauses B21.1, B21.3 and B21.4.

75. If an employee's incremental point is reduced, or the employee's classification is permanently reduced, the date the underperformance action takes effect will become the new anniversary date for the purpose of future incremental advancement. Any higher duties worked prior to the date of underperformance action will not count towards incremental advancement at a higher level (clause H2.18).

76. The head of service will inform the employee in writing of the decision made under clause H2.17, the reasons for the decision and the appeal mechanisms available under the relevant enterprise agreement (clause H2.19).

77. At any time in these procedures, the employee may elect to be retired on the grounds of inefficiency (clause H2.20).

Appeal Rights

78. An employee is unable to seek a review or make an appeal concerning the commencement of underperformance proceedings. Further, an employee is unable to seek an internal review of any actions arising from the underperformance procedures followed under the relevant enterprise agreement (clause I2.1.11).

79. The employee can appeal the final outcome of the underperformance proceedings. If the head of service makes a decision to take one or more of the underperformance actions provided under clause H2.17, the employee has the right under the relevant enterprise agreement (clause J1.3) to appeal the outcome of the decision to take underperformance action under clause H2.17, except action to terminate the employee's employment.

80. The employee may have an entitlement to bring an action under the FW Act in respect of any termination of employment under the enterprise agreement, including the decision to terminate the employment of an underperforming employee.

Consultation

81. This policy was developed in consultation with the People Forum and Unions.

References

The key principles of this policy are aligned with the following authorised sources:

- Enterprise Agreements
- Public Sector Management Act 1994 (ACT)
- Public Sector Management Standards 2016 (ACT)
- Fair Work Act 2009 (Cth)
- Australian Human Rights Commission Act 2005 (ACT)
- Disability Discrimination Act 1992
- Work Health and Safety Act 2011 (ACT)
- ACTPS Guidelines to the Misconduct Process
- ACTPS Manager Toolkit
- ACTPS Performance Framework
- Employee Assistance Program
- ACTPS Workplace adjustment for people with disability Policy
- [ACTPS Workplace Adjustment for people with disability guidance](#)
- ACTPS Union Encouragement Policy
- Australian National Audit Office, Report No. 52/2016-17 Managing Underperformance in the Australian Public Service, Commonwealth of Australia, Canberra, 2017
- Policy - Performance in the Australian Public Service Publication (apsc.gov.au)
- Fair Work Ombudsman, Managing Underperformance, Commonwealth of Australia, Canberra, 2013

Further Information

82. For further information on this policy contact eba@act.gov.au. If you require assistance on a particular underperformance matter, please contact your directorate HR area.

Review

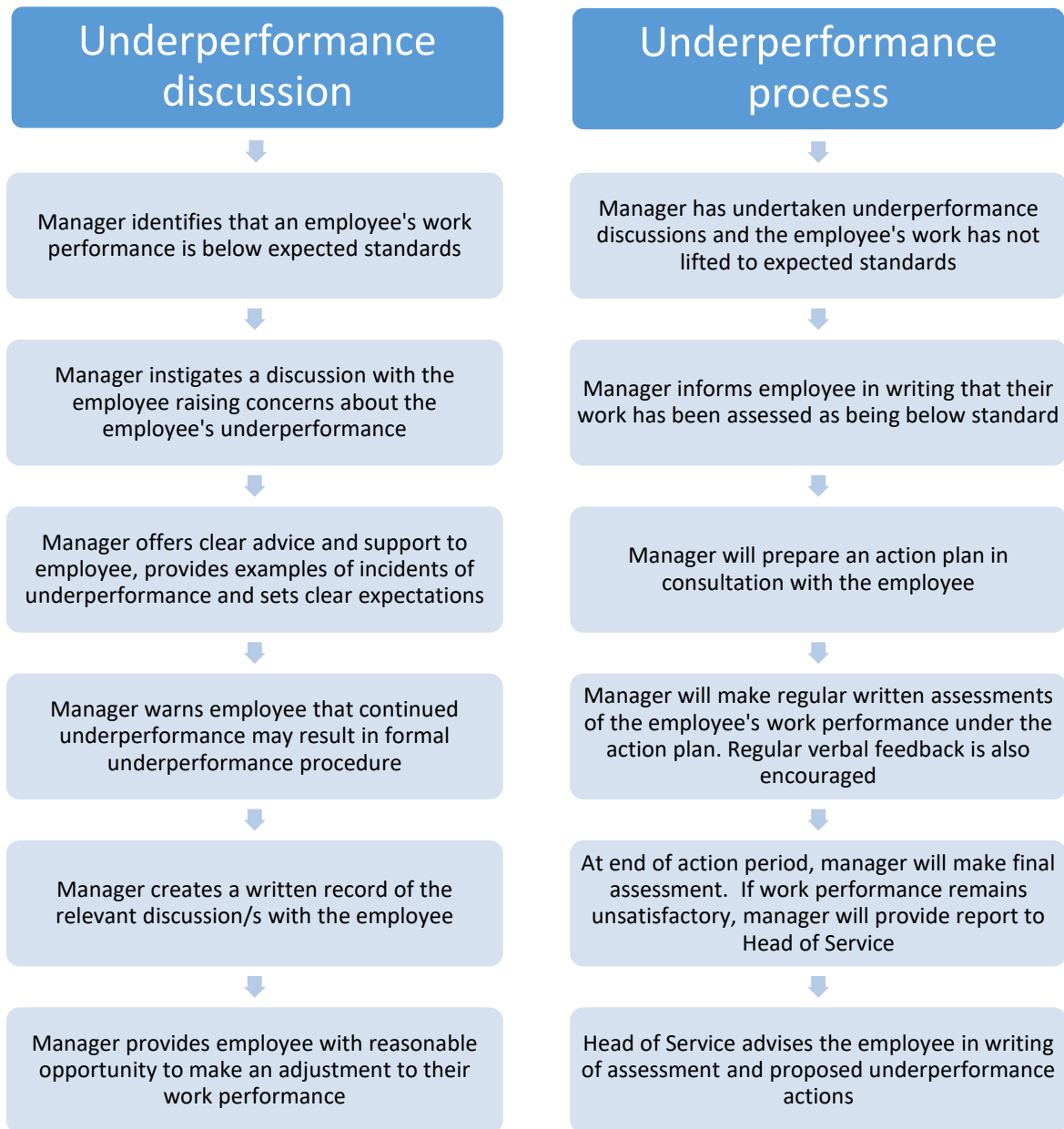
83. This policy is due for review 3 years from the last issued or reviewed date, or earlier where there are changes that affect the operation of the policy.

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Approval Authority

Geoffrey Rutledge
Deputy Director General
Office of Industrial Relations & Workforce Strategy
Chief Minister, Treasury and Economic Development Directorate
On behalf of the Head of Service
8 March 2024

Annexure 1 – Underperformance Discussion and Underperformance Process Flowcharts



Annexure 2 – Common Performance Issues

This list is intended as a guide only for managers. It is not an exhaustive list and has been adapted from the Fair Work Ombudsman’s ‘[Guide to Managing Underperformance](#)’. Underperformance issues can arise from a variety of circumstances and need to be assessed on a case-by-case basis. Refer to your directorate HR area for more specific guidance as required.

Issue	Possible Causes	Actions
<p>Employee does not undertake work as required, showing signs of apathy and laziness</p>	<ul style="list-style-type: none"> ➔ Job content & design ➔ Inappropriate job fit ➔ Possible personal issues ➔ Insufficient training 	<ul style="list-style-type: none"> ✓ Begin with informal performance discussion ✓ Be clear about the performance requirements and expected contribution of the role to the work of the organisation ✓ Focus on interest in work tasks, and how they might be improved ✓ Explore other options for opportunities in other areas of the agency or externally, if possible ✓ Refer to EAP if personal circumstances are impacting performance
<p>Employee exhibits behaviours which negatively impact on team cohesiveness</p>	<ul style="list-style-type: none"> ➔ Unsatisfied with working conditions/content ➔ Possible personal issues 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Be clear about expectations for dealing with other people in the workplace e.g. Code of Conduct, ACTPS Values ✓ Assess whether impacting on performance ✓ If performance issues, couple performance improvement process with a counselling program (referral to EAP)

		<ul style="list-style-type: none"> ✓ If not impacting on performance, explore reasons behind behaviour, consider workloads, job design, options for career transition, some leave or referral to counselling services ✓ Remind employee of team culture based on respect and support ✓ Consider further actions in regards to breach of code of conduct or WHS obligations
<p>Employee is disrespectful to other employees and groups within the agency</p>	<ul style="list-style-type: none"> ➡ Lack of understanding of role of other groups ➡ Lack of understanding of the impact on, and respect for, others ➡ Possible personal issues 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Be clear about expectations for dealing with other people in the workplace e.g. Code of Conduct, ACTPS Values ✓ Educate employee on role of other teams ✓ Stress the importance within the organisation of collaboration, rather than competition between groups ✓ Referral to EAP ✓ Assess whether behaviour is a breach of the code of conduct, and follow appropriate misconduct procedures as required
<p>Employee will not follow directions or perform tasks as required</p>	<ul style="list-style-type: none"> ➡ Failure to understand what is required ➡ Inability to perform tasks ➡ Possible personal issues 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Begin performance improvement process starting with informal discussions around what is required in the position and whether the employee has the requisite knowledge and skills.

	<ul style="list-style-type: none"> ➡ Insufficient training 	<ul style="list-style-type: none"> ✓ Look at possible options for training and development if a skill deficit is identified ✓ Commence formal performance management process if no improvement forthcoming ✓ If the action is wilful, it may be appropriate to follow misconduct procedures for breach of the code of conduct
<p>Employee fails to acknowledge they are underperforming</p>	<ul style="list-style-type: none"> ➡ Performance issues have not been adequately explained ➡ Process has not been adequately applied ➡ Employee does not accept management assessments or peer feedback 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Ensure that a clear and well communicated process is adopted ✓ Remind employee of expected outcomes, give specific examples of how performance has failed to meet expected standards, explain the impact of this on the success of the team ✓ If necessary, commence formal underperformance management process
<p>Employee does not complete work tasks to the required standard</p>	<ul style="list-style-type: none"> ➡ Lacks the required skills and capabilities ➡ Personal or external issues ➡ Insufficient training 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Identify if there is a skill gap ✓ Identify training and development opportunities needed ✓ If employee fails to develop required skills, progress through the underperformance process to possible options such as reassignment of duties, or transfer to another area to achieve a better job fit ✓ Review recruitment practices to ensure appropriate selection decisions are being made

<p>Underperformance issues not being addressed by managers</p>	<ul style="list-style-type: none"> ➡ Manager is unwilling/unable to resolve performance management issues ➡ Manager has had insufficient training ➡ Manager lacks the required skills and capabilities 	<ul style="list-style-type: none"> ✓ Managers should be reminded of their roles and responsibilities ✓ Managers should be supported by appropriate training and development ✓ Managers should be supported by senior management ✓ Review recruitment practices to ensure appropriate selection decisions are being made
<p>Employee is cynical of work environment and tasks, bringing negative opinions to the work environment</p>	<ul style="list-style-type: none"> ➡ Has become disinterested in the work and disillusioned with work environment ➡ Fails to understand value of work being undertaken 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Remind them of team culture based on respect and support ✓ Re-establish role of the position, and the value of outcomes delivered by the organisation ✓ Explore ways to improve motivation and job variety ✓ If possible, explore work interests and opportunities for career transition and movement ✓ If serious cases, manage as misconduct
<p>Employee is regularly absent without cause</p>	<ul style="list-style-type: none"> ➡ Job content & design ➡ Inappropriate job fit 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Identify cause behind absenteeism ✓ Explore possible strategies for job redesign, job fit, changes to working arrangements, management of health issues

	<ul style="list-style-type: none"> ➡ Management style ➡ Personal or workplace issues 	<ul style="list-style-type: none"> ✓ Re-establish expectations of attendance ✓ Manage personal leave appropriately
Employee is disruptive at work	<ul style="list-style-type: none"> ➡ Conflict in the workplace ➡ Management style ➡ Personal or workplace issues 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Identify cause of disruption ✓ Consider referral to EAP ✓ Establish expectations of conduct in workplace ✓ If serious, manage as misconduct
Employee bullies and harasses other staff or manager	<ul style="list-style-type: none"> ➡ Work related stress/ dissatisfaction ➡ Personal or workplace issues 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Remind employee of the expectations about workplace behaviour and standards for ACTPS employees and their obligations under Code of Conduct and commitment to ACTPS Values ✓ Identify cause of behind bullying and harassment ✓ Explore possible strategies such as workloads, task design, counselling ✓ Consider if misconduct process for breach of code of conduct or an investigation is required
Employee fails to deliver work outcomes	<ul style="list-style-type: none"> ➡ Lacks the required skills and capabilities 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Re-establish what is expected in the role, identifying clear deliverables for work tasks

	<ul style="list-style-type: none"> ➡ Personal or external issues 	<ul style="list-style-type: none"> ✓ Identify if any skill gaps ✓ Identify if training and development is required ✓ If necessary, commence formal underperformance management process
<p>Employee’s psychological or physical health impacts negatively on their performance</p>	<ul style="list-style-type: none"> ➡ Work or personal related stress, illness or injury ➡ Personal health issues 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Review work practices for causes of stress, illness or injury, and make appropriate adjustments as required ✓ Discuss with your directorate HR for further advice ✓ Review case in context of medical examination/ability to perform inherent requirements of the role
<p>Employee engages in fraudulent activities</p>	<ul style="list-style-type: none"> ➡ Unaware of ACTPS Values and Code of Conduct ➡ Fails to follow the Code of Conduct 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Begin misconduct process for breach of code of conduct ✓ Consider need to report to police or other professional bodies as appropriate or required
<p>Employee is negligent in their work practices</p>	<ul style="list-style-type: none"> ➡ Fails to follow the Code of Conduct ➡ Failure to follow professional standards 	<ul style="list-style-type: none"> ✓ Have a discussion with the employee ✓ Begin misconduct process for breach of code of conduct ✓ Consider need to report to professional bodies as appropriate or required

Annexure 3 – Underperformance Discussion – Checklist for Managers

This checklist can be used by managers as a guide to assist them in preparing for a formal underperformance discussion.

Before the underperformance discussion, check:

- that clear and consistent performance expectations have been explained to the employee through informal discussions
- that a performance and development plan has been developed with the employee
- appropriate training or development opportunities have been provided to the employee
- if required, has advice been sought from directorate Human Resources area?
- the employee has been advised of the meeting and afforded the opportunity to bring a support person to the meeting

At the underperformance discussion:

Ensure the discussion takes place in a private workplace setting, comfortable, non- threatening environment, away from distractions and interruptions and cannot be overheard by others.

- Clearly describe the problem and give specific examples of the underperformance issues
- Ensure the employee clearly understands how their performance is not meeting the required standard, any impact it may be having on the workplace or team, and what they need to do to meet that standard
- Give the employee the opportunity to respond and give their view of the situation or discuss if there are any other relevant circumstances impacting on the employee's performance

After discussing the problem, work together to find a solution. Employees are more likely to improve performance if they feel that have contributed to the process.

- Jointly, identify specific learning and development opportunities to address capability gaps relating to the performance concerns. This could include training, additional on-the-job support, coaching and mentoring
- Agree a plan of regular follow-up meetings with the employee to reinforce connection to broader outputs, review performance improvement, provide ongoing constructive performance feedback and maintain open communications
- If reasonable adjustments are required, discuss and agree what these are
- Remind the employee about the Employee Assistance Program (EAP)
- Set a time frame for improvement of performance (no longer than 3 months)
- Ensure employee is aware that if performance has not improved within set time frame, formal underperformance procedures will be followed
- Keep notes during the discussion

After the discussion

- Ensure the employee is provided with a copy of the record of discussion and provided with opportunity to comment before signing it
- Manager and employee sign document/s
- Copy of document/s sent to directorate HR area

Where the employee's performance has not improved to the standard required, a formal underperformance process will commence. Managers should contact their directorate HR area for further advice and support.

Annexure 4 – Underperformance discussion – a guide for managers

This guide is intended to assist managers in approaching an underperformance discussion with their employee. Other resources can also be found at [ACTPS Performance Development - ACTPS Employment Portal](#).

Having a constructive conversation

Dealing with underperformance can be challenging and confronting for managers and employees alike, but it does need to be addressed immediately. Often issues that arise can be easily discussed in an open and constructive manner leading to a satisfactory resolution. Language to be used should be clear and to the point and also respectful.

Regular conversations with your employee foster a workplace culture that is based on trust and respect and constructive feedback provides the opportunity for ongoing performance improvement.

Before starting the conversation, you must be clear about why you are having the conversation and the outcome you are hoping to achieve.

Some examples of how to start the conversation with your employee include:

- I have something I'd like to discuss with you that I think will help us work together more effectively.
- I would like to talk about ... with you, but first I'd like to get your point of view.
- I need your help with what just happened. Do you have a few minutes to talk?
- I need your help with something. Can we talk about it (soon)? If they postpone you, follow up with them.
- I think we have different perceptions about ... I'd like to hear your thinking on this.
- I would like to see if we might reach a better understanding about ... I really want to hear your thoughts about this and share my perspective as well.

The Meeting

It is important that the meeting takes place in private workplace setting and in an environment that is comfortable and non-threatening, away from distractions and interruptions.

The manager should discuss the outcomes they wish to achieve from the meeting. Remember that the goal of underperformance management is to improve performance.

The meeting should be an open discussion and the employee should have an opportunity to have their point of view heard and duly considered. Managers should listen to the explanation of why the problem has occurred or to any other comments the employee makes. Taking the time to listen to the employee's concerns can reassure them that you care about them and may make them more receptive to your suggestions about ways they can improve their performance. It may also mitigate factors that are affecting their performance, for example they may be experiencing bullying by a work colleague. It may be helpful to use language that provides the employee with an opportunity to offer an explanation, e.g. "I realise I may be missing something, but from what I can see it appears that..."

When having this type of meeting, it may be useful in facilitating discussion to refer to recent positive things that the employee has done to show them that you also recognise and appreciate their strengths. However, always remember to keep the conversation honest, and don't disguise the real issues in disingenuous compliments.

Key points for managers to remember when holding the meeting are to:

- Talk about the issues and not the person
- Discuss with the employee and not talk at them
- Explore the reasons why there is an issue and use specific examples
- Clarify details
- Don't dismiss valid points raised by an employee
- Don't accept that an employee can 'agree to disagree'. This may be an attempt to avoid taking on feedback or accepting ownership
- Be open to new ideas
- Make a record of the employee's points they raised in the conversation
- Expect that the employee is likely to become defensive. Counter defensiveness through distinguishing the problem from the person, and invite the employee to work with you to resolve the issue
- Acknowledge that you may not have all the answers or information and express a willingness to work with the employee to solve the problem
- Stay outcome focussed, ensure that the employee is clearly aware of what you'd like to see more of (e.g. collaboration, clear communication, better systems or more accountability)
- Always stay relaxed and encouraging and keep professional
- Summarise to check your understanding of the situation.

Be prepared if the employee is uncooperative to terminate the discussion and reconvene at a later time, possibly with a HR representative present.

And, when discussing shortfalls in any area, it is important to check that the employee:

- Is aware that it is a task that is required of them
- Has been shown what is required
- Understands the gap between what is happening and what is required.

Jointly devise a solution

Where possible, it is important that a solution is jointly devised with the employee. An employee who has contributed to the solution will be more likely to accept and act on it.

When working out a solution, the manager should:

- Explore ideas by asking open questions
- Emphasise common ground
- Keep the discussion on track
- Focus on positive possibilities

- Offer assistance, such as further training and development opportunities, mentoring, flexible work practices where appropriate or redefining roles and expectations
- If relevant, discuss what reasonable adjustments might assist the employee
- Offer support to the employee and refer to EAP if appropriate.

At the conclusion of the meeting, the manager should ensure they have:

- Established a timeframe for the improvement
- Set a date for a review meeting after the timeframe has finished
- Explained to the employee if the underperformance continues, the formal underperformance procedure will commence.

Tips and Tricks

Using a Structured Discussion

A structured discussion may include dialogue and questions a manager can raise with an employee during an underperformance discussion. This structure approach can help a manager conduct a meaningful performance conversation if they are unfamiliar with these sorts of discussions.

Step 1: Seek input

- Ask the employee if they are okay
- If there are personal or medical concerns which are impacting on their performance, offer support

Step 2: Describe the Performance Concerns

- Convey appreciation and recognition for achievements
- Identify where things didn't go according to plan and what could be learned or improved for next time
- Explain the performance concerns using specific examples and evidence, for example:
 - Quality of work – for example, making errors or showing poor judgement
 - Quantity of work – for example, not meeting deadlines or unsatisfactory work output
 - Respect shown to others – for example, behaviour that does not meet code of conduct expectations
 - Timeliness – for example, frequent absences or being late
 - Compliance with an instruction, procedure or policy – for example, not notifying of absences or lateness, or not keeping adequate records
- Describe the consequences: explain the actual or potential impact. For example, describe the impact on your team or the organisation
- Avoid hearsay and generalisations
- Focus more on recent performance feedback. The employee is more likely to be upset if you have sat on constructive feedback without acting on it and it is harder to break old habits
- Feedback should go both ways. Allow the employee to provide you with feedback on their workplace pressures and what they feel could be improved.

Step 3: Outline Changes Required

- Explain what is needed from the employee and why. Use phrases such as “I would like you to stop/start/keep doing or do more/less”
- Other phrases that may be helpful in conversation include:
 - What do you think about...?
 - Would you consider...?
 - Tell me what you are thinking about...?
 - How do you think that we can work towards...?
 - What’s another way you might...?
- Make sure the language you are using does not encourage conflict. Telling the employee that they “should”, “need”, “must” or “ought to” are unhelpful and can make the employee feel victimised. Instead, use words like “I prefer that you do x”
- Check that the employee has understood what you are asking of them
- Check if there are any barriers or issues preventing them from making change
- Ask the employee for suggestions and ideas about how they’ll achieve the change. Do they need support?

Step 4: Training and Readjustments

- What skills, knowledge or strengths could be developed to help the employee perform more effectively?
- Reassure the employee that you are focussed on their training and care about their future
- Does the employee have any skills or strengths that could be utilised in the workplace or in another area?
- Does the employee require any sort of readjustment to assist them with improving their performance?

Step 5: Goals and Strategies

- Is the employee aware of the tasks that are required of them?
- Has the employee been shown what is required?
- Does the employee understand the gap between what is happening and what is required?
- What are the priorities for the employee over the coming weeks?
- How will the employee achieve their performance goals?

Step 6: Support

- Remind the employee that you are here to help them, and that performance management is about helping the employee perform better
- Ask the employee if there is anything else you can do to help them achieve their performance goals
- Where appropriate, encourage the employee to access the Employee Assistance Program

Step 7: End Meeting

- Establish a timeframe for the improvement
- Set a date for a review meeting after the timeframe has finished

- Explain to the employee if the underperformance continues, the formal underperformance procedure will commence
- Ask the employee for further comments and thoughts

Tips for managing the conversation

Employee	Manager Response
Agrees too quickly	<ul style="list-style-type: none"> ✓ Use questions such as “What is your understanding of the problem?” ✓ Be alert to non-verbal communication ✓ Make sure there is a mutual understanding of overall performance, goals and objectives before the meeting ends
Has unrealistic expectations	<ul style="list-style-type: none"> ✓ Explain the big picture ✓ Don’t make promises you can’t keep ✓ Outline what experience or skills are needed for improvement ✓ Reinforce individual responsibilities
Constantly shifts the blame	<ul style="list-style-type: none"> ✓ Probe further and pursue facts ✓ Draw back to own performance and responsibilities ✓ Use self-appraisal – consider issues and feedback being given ✓ Ask for possible solutions or options
Becomes hostile or defensive or shouts or becomes disengaged	<ul style="list-style-type: none"> ✓ Talk calmly, slowly and firmly – don’t answer shouting with more shouting ✓ If the shouting continues, or the employee becomes disengaged, advise the employee that the discussion will not continue and you will schedule a time to continue the discussion when they have had time to calm down ✓ Focus on why feedback is being given ✓ Use factual evidence to support your point ✓ Be positive to show you are not attacking ✓ Ensure you set a timely follow up meeting
Is passive or unresponsive	<ul style="list-style-type: none"> ✓ Ask open-ended questions, such as “What would your approach to the problem be? Why do you think you were so successful in completing that project?” ✓ Allow silences ✓ Rephrase difficult questions ✓ seek understanding of what is being said ✓ Start with the subject that most interests the employee or recent successes
Talks at length and doesn’t come to the point	<ul style="list-style-type: none"> ✓ Ask closed questions ✓ Focus discussion ✓ Use probing questions

- ✓ Ask the employee to list issues in bullet points
- ✓ Keep to main points

Becomes emotional or teary

- ✓ Try to minimise the employee's embarrassment by empathising and speaking in low, even tones
- ✓ Offer compassion and tissues
- ✓ Ask if they would like to talk later, or you leave the room to give them time to compose themselves
- ✓ Encourage them to express feelings
- ✓ Continue to refocus on issues
- ✓ Reassure them on their performance
- ✓ Highlight strengths and reiterate positives
- ✓ Use 'time out' but be sure to set a timely follow up meeting

Walks out

- ✓ Ask the person to stay so that you can finish the discussion
- ✓ Don't force the issue if they don't listen
- ✓ Let the employee leave and take up the discussion again when they are calmer
- ✓ If the employee continues to refuse to address an issue, consult your HR contact for guidance on handling the situation

Documenting the Discussion

Make an accurate written record of the discussion. This document needs to be signed by both the manager and the employee. The employee should be given the opportunity to comment on any records before signing them. In circumstances where the employee refuses to sign such a record, the refusal will be noted on the relevant record. Signing and acknowledgement of the record can also be done electronically through an email.

After the Discussion

Monitor the employee's performance and continue to provide regular feedback and encouragement. Studies have shown that employees like regular feedback and would be motivated to work harder if their efforts are more acknowledged at work. More frequent performance discussions focussed on their interests and aspirations and increased communication can give the employee the impression that you are truly there to help, rather than to evaluate them and lead to more harmonious and productive working relationships.

Annexure 5 – Underperformance – formal process – a checklist for managers

Before initiating a formal underperformance process, managers should:

- have assessed that the employee's work performance as demonstrated is still below expected standards
- have had previous underperformance discussions (both formal and informal) with the employee
- ensure that formal underperformance discussions have been documented appropriately
- ensure the employee has been provided with reasonable time frame to improve their performance
- any Workplace Health and Safety, reasonable adjustments and anti-discrimination obligations have been met
- have sought advice from their directorate HR area
- prepare a letter (check with directorate HR for template letters/assistance in drafting) to the employee advising that underperformance process has been invoked
- ensure the employee has been given reasonable time to respond to the letter
- arrange a meeting to discuss the underperformance issues and develop an action plan to address this (reasonable notice of such meeting should be provided to the employee so they can prepare for the meeting and invite a support person if they choose)
- remind the employee about the Employee Assistance Program

Step 1: Action Plan

The action plan will:

- identify the expected standards of work required of employee on an ongoing basis
- identify and/or develop any learning and development strategies the employee should undertake
- outline the potential underperformance actions that may be taken if employee does not meet the expected standards
- specify the period of the action plan period (not less than 1 month and no longer than 6 months)
- specify the assessment criteria to be measured within the action plan period
- the manager should also ensure the employee is aware that any incremental advancement action will be suspended during the period of the action plan

Step 2: Regular Assessment

During the assessment period, regular, specific and timely feedback should be given, together with:

- regular written assessments of the employee's work performance (desirably every fortnight), with the employee provided an opportunity to provide written comments
- any notice that the action plan period may need to be extended (if required, this needs to be confirmed in writing with consideration given to the total duration of the plan)

Step 3: Final Assessment or Report

If at the end of the action plan period the employee's work performance is satisfactory the manager is to:

- inform the employee of this decision in writing

If at the end of the action plan period the employee's work performance is not satisfactory the manager is to:

- compile a written assessment and report of the employee's work performance and provide this to the head of service

