

Managing performance-related concerns



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The voice for parents and service providers

MANAGING PERFORMANCE-RELATED CONCERNS

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Introduction

Employers who make the investment in an appropriate Employee Management and Development (EM&D) system to support and develop employees on an ongoing basis will have a motivated team of employees who are performing at their best (refer to the *Employee Management and Development Kit* for further information and tools).

Through an appropriate EM&D system of providing timely and ongoing feedback, annual performance evaluation and mid-year reviews, most concerns relating to the performance of an employee can be identified early and managed. However, there may be situations in which the underperformance is of a serious nature, or there is evidence of misconduct warranting a different response from the employer.

This resource provides guidance for employers to deal with unsatisfactory performance and misconduct. It is not intended to assist with the management of ordinary complaints and issues that arise in a workplace on a day-to-day basis. It is provided only as a guide and is not intended to represent or replace professional or legal advice that services must seek prior to initiating any formal action.

What is underperformance?

Underperformance is evidenced when:

- the employee consistently performs work unsatisfactorily or does not perform duties to the standard expected of the role
- the employee fails to comply with the service's policies and procedures, or deliberately disregards such policies and procedures
- the employee's behaviour in the workplace is unacceptable
- the employee is disruptive in the workplace or their behaviour is negative and impacts on other employees in the workplace.

What is misconduct?

Misconduct is different from underperformance and is of a more significant nature. Serious misconduct may warrant termination without notice. Examples of serious misconduct include theft and assault.

Possible reasons for underperformance

There are many reasons that lead employees to exhibit poor performance/conduct. While some reasons may be related to work, others may not be work-related. The following are some common reasons for underperformance:

- job expectations are unclear
- goals, service policies and standards are unclear
- inadequate resources and equipment, poor working conditions, occupational health and safety issues
- organisational culture e.g. restrictive rules and procedures, intimidating/authoritarian management and supervision styles, low morale
- employment conditions e.g. excessive workloads, bottlenecks, long working hours, no work/life balance
- mismatch of job and employee e.g. employee overqualified or underqualified for the role, boredom, alienation or frustration
- unsuccessful promotion e.g. employee promoted to a position beyond their ability levels or promoted too soon
- job role unclear or communication issues e.g. clashes over who does what, staff member not communicating information critical to the safe and effective functioning of the service
- workplace bullying, job-related stress etc.
- work group or peer group problems e.g. personality clashes, failure to speak out in the group for fear of offending when conduct is out of order (groupthink), harassment, conflict between job requirements and cultural values, poor management of the work group by the manager
- personal issues that impact on the work of the employee.

The importance of managing underperformance and misconduct

It is in both the employer and employee's interests to address issues of underperformance/misconduct promptly and appropriately. If not addressed promptly, these issues can become more serious over time, more difficult to resolve and can impact negatively on the service and other employees. It is not appropriate for the employer to wait for the mid-year review or annual performance evaluation. (Refer to *Employee Management and Development Kit, Section 3: Performance evaluation and development planning* to resolve issues relating to underperformance/misconduct.)

Performance concerns should be dealt with as soon as they arise.

Dealing with underperformance/misconduct can be challenging for both the employer and employee, and having clear processes and procedures, appropriate support and a willingness to manage the issue is essential in reaching resolution. Not every issue related to underperformance requires a structured process. Options for improving performance such as having a discussion about performance issues in an open and supportive environment may help resolve the issue in many instances. Providing timely feedback to employees as set out in the Employee Management and Development Kit will also serve to address areas of concern before they become persistent issues. The various options available to employers are described in detail later in this resource material. As a general rule, the employer should adopt the lowest level of intervention needed to resolve underperformance issues.

Setting expectations

Every organisation has a set of expectations and standards regarding the performance and conduct required of employees. Expected standards of conduct and performance, in line with the requirements of the job and the culture of the organisation, must be articulated to all employees upfront and at the time of recruitment. Conducting difficult conversations with employees to address underperformance becomes easier and more objective if contextualised around these articulated standards and expectations.

The following steps will assist in ensuring that performance standards are articulated clearly, and understood and agreed to by employees.

Record expectations and provide copies to the employee

There are various ways in which employers can record expectations of an employee. This includes setting out expectations in the position description, the employment contract, workplace policies, relevant Enterprise Bargaining Agreements (EBA) and the organisation's operations manual. Selecting Performance Indicators and goals, in consultation with an employee as part of a mid-year or annual performance evaluation process, is another way of agreeing on and articulating expectations regarding performance and conduct requirements

(refer to *Employee Management and Development Kit, Section 3: Performance Evaluation and Development Planning*). It is important for the employer to ensure that expectations are articulated consistently across the range of documents and that copies of the documents that collectively set out expectations are provided to employees, or are easily accessible.

Ensure standards and expectations are understood

It is important for the employer to ensure that employees not only have a copy of the documents setting out expectations, but that they have also read and understood them. Setting aside a time to discuss these documents in detail with employees (individually or as a group) and clarify understanding during these conversations will ensure that there is no ambiguity.

Review/reiterate standards and expectations

The mid-year and annual performance evaluation meetings provide an ideal opportunity to review and confirm performance expectations with each employee. Employers must use this opportunity to review standards and expectations to ensure they are realistic, current and understood by the employee.

Review policies and manuals regularly

It is also good practice for the employer to review policies and manuals setting out performance standards and expectations regularly to ensure that they are current and relevant. The frequency of these reviews will depend on the size of the organisation and the availability of resources to undertake this review. ELAA recommends a review at least once in three years or earlier if there are legislative changes that may impact these documents. Consultation with employees in the review process will ensure that employee's views are considered and reflected in the changes.

Different approaches to manage performance

Underperformance/misconduct can be addressed using different approaches and will depend on the seriousness of the matter. An employer must make a judgement call on the most appropriate approach. While an informal approach may be an appropriate initial response in many instances, it is not uncommon for informal processes to become more formal if the performance or conduct does not improve or is of a serious nature (refer to *Employee Management and Development Kit, Section 3, Crucial Conversations*).

Informal discussions

For perceived minor problems with performance/conduct that persist despite feedback provided by the employer (refer to *Employee Management & Development Kit*), early intervention through an informal process is more likely to be successful in reaching resolution. Examples of minor issues where this approach may be appropriate include the following:

- a change in performance or conduct compared to past conduct demonstrated by the employee
- low motivation for no obvious reason
- recent examples of lack of skills or expertise to perform the job.

If underperformance relates to issues such as those identified above, the process may involve a discussion with the employee concerned, outlining:

- the performance/conduct that is being observed or reported and which is not in line with standards and expectations
- its impact on the service or other employees
- the employer's expectation and time frame with regard to improvements in performance and conduct
- support that may be made available to the employee to help make improvements.

This process enables the employee to participate fully in the discussion and as an outcome of this meeting the employee can clearly understand the employer's position in relation to performance concerns, the impact on service quality and delivery, the employer's expectations and any potential consequence for repetition of the misconduct/underperformance.

Performance counselling

Performance counselling is another process available to an employer to address issues of underperformance/misconduct. Performance counselling is appropriate where underperformance or unsatisfactory conduct has been ongoing, as well as where there is a once-off incident that must be addressed because of the potential implications of repeated or continued unsatisfactory conduct.

Effective performance counselling is more formal, and enables the employee to participate fully in the discussion relating to the performance/conduct and in seeking appropriate solutions to address any issues.

This may result in an employer to still choose to issue a written warning to ensure that the employee understands the employer's position and improvements required. Employers must ensure that the performance counselling process complies with the provisions of any applicable award or industrial agreement.

Examples of matters that may be dealt with through counselling include:

- performance that affects the employee's productivity e.g. excessive absenteeism, lateness or excessive work breaks, poor work planning or time management, poor work quality
- performance that affects the employee's and/or other employees' productivity e.g. continually being interrupted by non-work related matters (non-work emails, social media, socialising)
- performance that breaches policies/procedures of the service, including policies relating to occupational health and safety, program delivery and supervision of children.

Counselling alone should not be used where the actual or potential consequences of underperformance/misconduct are serious, such as a threat to safety or health of the children and other employees at the service, financial repercussions, damage to property or a threat to the employer's viability or reputation. These are better dealt with as serious misconduct issues and an employer should follow a formal disciplinary process, as outlined later in this section.

What does performance counselling involve?

Performance counselling involves a discussion between an employer and an employee that sets out and reinforces the standard or level of performance/conduct that is required, but which also explores causes of the problem in a constructive manner and identifies possible remedial action.

In addition to clarifying the standard of work or conduct that is expected, counselling aims to assist the employee to understand the adverse effects of the current performance/conduct on the service, other employees and the work group, as well as implications it may have for the employee's career.

The discussion should focus on the perceived underperformance as well as its impact on the service and other employees (if applicable). Specific examples of the

underperformance or conduct should be provided and, where possible, supported by objective facts and documented evidence. The employer's concerns must be discussed openly and frankly, and the employee should be afforded the opportunity to put their views forward and explain their conduct/actions.

The employer or the employer's representative conducting the counselling meeting should adhere to the following principles to ensure the success of this process:

- be objective and consider facts and evidence carefully before determining action
- comply with the basic requirements of procedural fairness and natural justice
- not conduct a performance counselling session with a predetermined outcome
- be open-minded and prepared to explore the situation throughout the discussion.

Decisions regarding any action or agreements as a result of the counselling meeting must only be made once all the issues have been explored. Where improvements in the employee's performance or conduct are required as a result of the counselling process, it is important to ensure that the employee is involved in exploring possible solutions.

Effective counselling meetings involve:

- a two-way dialogue
- active listening
- a positive, problem-solving approach
- empathy
- an openness to the employee's perspective
- confidentiality
- seeking outcomes that enable the employee to improve performance
- building the employee's self-esteem and confidence.

Setting up the performance counselling meeting

Setting up the counselling meeting requires tact and sensitivity to ensure a positive outcome is achieved. The following are important considerations:

- care must be taken to involve only those who need to be involved in the discussion
- procedural fairness must be ensured by providing the employee with adequate notice of the meeting and details about the matters to be discussed at

the meeting to allow the employee time to prepare. The employee should be offered the opportunity to have a support person at this meeting

- the meeting should be confined to discussing only matters related to the underperformance or misconduct.

The following are general guidelines to be observed when conducting a counselling meeting:

- adequate time must be allowed for the meeting to ensure that all matters are thoroughly canvassed. As an approximate guide, ELAA recommends a minimum of one hour of undisturbed time for the discussion
- the meeting is best conducted in a quiet location without interruptions, and preferably in a location and at a time that will ensure the privacy of the employee
- clear and concise language should be used to ensure misunderstandings are avoided and that the focus is on the matter being discussed
- the discussion should be depersonalised and kept factual. Details in relation to the underperformance, including dates, times and specific situations in which the underperformance occurred must be provided to ensure that the discussion is objective and not emotional
- the employer should actively listen to the employee's perspective to ensure a balanced decision is made. Matters to explore during the conversation include but are not limited to:
 - any changes to the scope of the job performed or roles and responsibilities assumed by the employee
 - circumstances beyond the employee's control that may have impacted on performance
- specific improvement sought by the employer must also be articulated in this discussion. Employers must ensure that the improvements sought are realistic and achievable, and that the timeframes agreed for improvements are reasonable.

Record keeping

ELAA recommends that employers should maintain a record of the discussion including any outcomes and/or actions agreed to be performed by the employer and the employee, the timeframes by which the employee must demonstrate improvements and any further meetings/ follow-up that may be required. It is also good practice to have both the employer and employee sign this record, and to make a copy available to the employee. It is also

reasonable to remove records of counselling or disciplinary matters from the employee's file after 12 months if the underperformance has been addressed and resolved satisfactorily, and no further action is required.

Follow-up

The employer must follow up on the actions that have been agreed to at the counselling meeting, and where further professional development has been agreed as part of the negotiated solution, ensure that this is accessed in a timely manner.

Further follow-up meetings must be scheduled and held as agreed, to provide the employee with feedback about progress and to address any other issues that have arisen.

Having sound follow-up processes will not only ensure that the employee is appropriately supported to achieve the required improvements in performance/conduct, it will also enable the employer to identify, in a timely manner, situations where the employee is not demonstrating improvement and initiate more formal disciplinary processes if necessary.

Disciplinary action

Disciplinary action is taken where informal discussions and counselling, as described above, have been unsuccessful and/or where the situation is more serious, such as in the instance of serious misconduct, breach of regulations or incidents that must be reported to DET, police or other authorities etc. Disciplinary action as a consequence of misconduct must only be considered after a thorough investigation has been completed.

Considerations before initiating disciplinary proceedings

A decision whether to initiate disciplinary action should be based on the following considerations:

- the seriousness of the impact of the employee's action on the organisation, fellow employees, children and parents attending the service
- the impact on the reputation of the service
- the intent of the employee, i.e. whether the employee's actions were malicious, intentional, negligent or accidental
- the employee's prior performance and conduct
- whether opportunities to improve performance, such as training or counselling, have been provided and if there was sufficient time for these measures to have an impact.

Disciplinary action can take various forms. The most common forms include formal written warnings with consequences and actions, or written reprimands.

Procedural fairness

Given the serious nature of the consequences for an employee in a disciplinary proceeding, the employer must ensure a high level of procedural fairness when initiating and conducting disciplinary proceedings.

If termination of employment or a formal warning is the outcome of the disciplinary action, ensuring procedural fairness during the disciplinary process is critical to effectively managing and minimising the risk that an employee will lodge a claim for unfair dismissal.

The main elements of procedural fairness are as follows:

- the employee is informed of their rights and obligations
- the employee is treated fairly and consistently
- all relevant policies and procedures are complied with
- the employee is provided with an opportunity to present their case at each step of the process before further action is taken. Witnesses relevant to the performance/conduct being investigated (identified either by the complainant or the employee) are interviewed
- the employer provides the employee with sufficient resources, including time and access to any relevant documents, to prepare their defence
- each party has an opportunity to question and respond to the other
- action is timely e.g. neither delayed unreasonably nor rushed in order to build up a case
- the principles of natural justice and confidentiality are observed
- the employee is encouraged to seek independent advice, support and representation
- the possible consequences, including termination, of continuing or repeated unsatisfactory performance have been clearly explained before implementation
- the allegations are investigated prior to any decision being made, and the final decision is impartial and based on facts and/or evidence.

Receiving a complaint

The need to deal with issues through a formal disciplinary process is commonly triggered by the receipt of a complaint by the employer on the employee's performance or misconduct, or an event or behaviour witnessed by the employer. The disciplinary processes that will be followed by an employer may be contained in the policies of the service, or in the relevant award or enterprise agreement. Employers must familiarise themselves with these processes prior to initiating the disciplinary process.

Investigating a complaint

It is important to undertake appropriate investigation into the complaint to establish the facts before initiating the disciplinary meeting. Depending on the seriousness of the issue, ELAA recommends that the investigation is conducted by an independent third party who is experienced in conducting such investigations.

If the employer decides to conduct the investigation in-house, care must be taken to ensure that the investigator is thorough and fair, seeks information from all relevant parties and conducts the investigation in a manner that is unbiased and procedurally fair to the employee. Where the investigation is triggered by a complaint, the investigator must not be the person who made the complaint.

Where the matter being investigated indicates a potential threat to the health and safety of children or other employees, or poses a serious risk to the employer's business operations, it may be necessary to suspend an employee under investigation (refer to *Suspension* later in this section).

The disciplinary meeting

By the time an employer is ready to initiate the disciplinary meeting, an investigation into the alleged conduct or performance must have been conducted, and the results of the investigation must have indicated the need for a disciplinary meeting and further action.

Who should be involved in the meeting?

Disciplinary meetings are normally best conducted by the employer and should be treated in the utmost confidence. In larger services and Early Years managed services, this may be the Human Resources manager of

the service along with the line manager of the employee. In an independent service, this responsibility may be delegated to a sub-committee of the Committee of Management (CoM).

If the responsibility is delegated to a sub-committee, it is important to clearly define the terms of reference for this sub-committee, and the final decision in relation to an appropriate disciplinary action must be made at a properly convened meeting of the CoM. To ensure procedural fairness, formal disciplinary meetings are best conducted by no more than two authorised representatives of the employer. In the case of serious misconduct, employers may also consider appointing an external, independent person/expert for this purpose. This may be the same person who conducts the investigation.

Preparation for the meeting

The preparation for the disciplinary meeting involves clearly documenting:

- the issues to be raised with the employee at the meeting
- specific examples for each issue to be raised
- the outcome sought by the employer in relation to each issue
- any support/training that may be appropriate to offer the employee.

Notifying the employee

The employer must notify the employee in writing of the date, time and venue of the disciplinary meeting, and the matters to be discussed. Meetings should be scheduled during work hours. The employee should be informed of who will represent the employer at this meeting.

If possible, the employee should be consulted in relation to when the meeting will be held and provided with the opportunity to bring a support person to the meeting. The role of the support person is to listen and provide support, but not to participate in the discussion (refer to *Role of support person during disciplinary meetings* below for further details).

The employer must advise the employee of the matters that will be addressed at the meeting, clearly outlining the conduct that is in question and why the meeting is necessary.

At the meeting

The employer must outline the complaint received, the employer's understanding of the issues involved, the investigation undertaken and the facts as demonstrated by evidence gathered during the investigation. It is important to maintain objectivity throughout the meeting, concentrate on the issues being addressed and keep discussions solutions-focused.

The employer must provide the employee with an opportunity to present their views and perspectives, and must treat the employee fairly. If required, clarification should be sought to understand the employee's perspective. If the employee requires or requests access to records to prepare a case, the employer must provide the employee with access to such records and time for review, which may mean rescheduling the meeting. Documents that infringe on the right to privacy of other persons should not be provided to the employee. Similarly, a letter of complaint should not be provided to the employee without the consent of the author of the letter.

After hearing the employee's response, the employer must consider if there are mitigating circumstances or new information that must be taken into account or further investigated. If so, it is important for the employer not to form any conclusions at this stage, but to advise the employee that the meeting will be rescheduled to allow for further consideration/investigation of the information presented by the employee.

Unless the employer's evidence is clear-cut and establishes serious misconduct or underperformance clearly, it is not advisable for an employer to decide on the action to be taken at the disciplinary meeting. To do so will expose the employer to a claim that procedural fairness was denied to the employee and that the outcome was predetermined and formed without proper consideration of the employee's explanation and perspective.

If the employee chooses not to answer any questions during the interview or refuses to provide information/comment, the employer may proceed with the disciplinary process in the absence of any response from the employee. It is recommended that the employer seeks to understand why the employee is non-responsive and ensures that the matter is approached sensitively prior to any action being decided upon.

However, if it is appropriate to make a decision on the action to be taken within the disciplinary meeting, the employee must be advised about the action the employer is intending to take, and the reasons for decisions made.

At the conclusion of the meeting

At the conclusion of the meeting, depending on the discussion and evidence presented, the following outcomes are possible:

a. Further investigation is required

If information presented by the employee at the meeting needs further investigation, the employer must schedule further meeting(s) to discuss the findings and make a decision.

b. Seek improvement in employee conduct/performance

If the misconduct/underperformance is established, the employer and employee should attempt to form an agreement on required improvements. It is important to ensure that the employee understands the improvement being sought, the timeframe within which improvement must be demonstrated and the support/training that is available to assist the employee to improve conduct/performance. Even if complete agreement cannot be reached, the employer may still provide reasonable instructions that the employee is obliged to follow.

It is advisable for both the employer and employee to document and sign a record of the discussions at the meeting, and the improvements agreed to or required of the employee. Where the employer is providing reasonable instructions for the employee to follow (in the absence of mutual agreement), the employer must ensure the instructions are clear, provided in writing, and understood by the employee.

c. Issuing a formal written warning

Where the misconduct/underperformance is of a more serious nature and is established with evidence at the meeting, the employer may decide to issue a formal written warning to the employee. The warning must be provided in writing to the employee without undue delay after the meeting. This letter should clearly:

- state that it is a formal warning letter
- set out the misconduct/underperformance being addressed
- summarise the discussions from the disciplinary meeting

- outline the expectations of the employer with regard to changes to be demonstrated by the employee to address the misconduct/underperformance
- state the consequences for lack of improvement of the misconduct/underperformance within a stated timeframe, including informing the employee that their employment may be terminated
- list support/development measures for the employee, as identified at the disciplinary meeting, and the timelines within which the employee should undertake such measures
- indicate any follow-up processes agreed to between the employer and employee or required by the employer.

All records relating to the disciplinary meeting and subsequent actions must be signed by the employer, kept confidential and stored at the service in accordance with the legal requirements for the storage of records. Copies should be made available to the employee where appropriate. Employers should request employees to sign the records as evidence of participation/attendance at the meeting.

d. Termination of employment

If the employer is satisfied that the complaint against the employee has been proven and intends to terminate the employment of the employee because the implications are serious enough to warrant termination, this outcome must be communicated to the employee in writing immediately after the meeting. As with the formal written warning outlined above, a summary of the issues, the discussions at the meeting and the reasons for the decision to terminate must be clearly stated in this letter, along with the date from which the employment will be terminated, notice period if any, and arrangements for payment of the employee's entitlements etc.

Note: Any proposed termination must comply with the employee's relevant Industrial Agreement.

Monitor and review

Where an improvement in the employee's performance/conduct is sought, or a formal warning has been issued, the employer should set in place a monitoring and review process to track the employee's progress.

This process should include setting times for regular progress meetings with the employee to review and

provide feedback, and also time for a formal review to make a decision on whether progress is satisfactory or, if improvement has not been demonstrated, further action must be taken. Discussions at these meetings should be recorded and signed by both the employer and employee (refer to the *Employee Management and Development Kit* for information on providing effective feedback and having ongoing conversations).

Conflict of interest

Employer representatives or employees who have lodged a complaint against another employee about behaviour that affects them or their child/children, are the subject of a return complaint by the employee being investigated or are likely to be interviewed as a witness should refrain from any involvement in the investigation, discussion or decision-making process relating to the complaint or issues, or in implementing required action. Employers should ensure these requirements are communicated to relevant employees.

Suspension

Where serious misconduct by an employee is being investigated and the continued presence of the employee at the workplace is likely to interfere with the investigation, or if the conduct is of a nature likely to pose a threat to children, other employees and/or parents etc., the employer may choose to suspend the employee while the investigation and disciplinary process is conducted. Such suspension should be paid and must not, in itself, disadvantage or prejudice the employee. The employer must also ensure that the investigation and the disciplinary process are completed without undue delay.

Maintaining confidentiality surrounding all disciplinary activities is important for a proper and fair process.

Termination without notice

At any time, the employer may terminate the employment of the employee without notice for any cause warranting summary dismissal by common law or by statute. An employer may dismiss an employee in this manner if that employee:

- engages in any act or omission constituting serious or wilful misconduct in respect of their duties
- breaches the confidentiality of the service and/or children in their care

- is convicted of a criminal offence that has significance with respect to the nature and operation of the workplace
- is at work under the influence of illicit drugs, alcohol or any other substances that may impair their performance
- refuses or wilfully neglects to comply with any lawful and reasonable order given to them by the employer
- acts in a manner that brings the employer into disrepute
- acts in a manner that is a serious breach of the *Education and Care Services Law Act 2010* and/or the *Education and Care Services National Regulations*, or other regulation/legislation applicable to the service.

The employee manual or policies at the service may also provide additional grounds on which an employee can be summarily dismissed. It is highly recommended that employers communicate the instances this can occur in employee manuals, meetings and in any other appropriate documents.

Role of support person during disciplinary meetings

An employee who is the subject of workplace counselling or a disciplinary process has the right to have a support person of their choice present at the meeting. The employee should be notified of the right to have a support person at the time they are notified of the disciplinary proceeding. The employee may choose not to have a support person during the process. The employer should make a note that the employee has chosen to attend the meeting without a support person and continue with the counselling or disciplinary process.

The role of the support person is to provide professional and moral support to the employee concerned and to act as a witness or observer to the process. ELAA advises employers to set parameters for the role of the support person at the outset of the meeting.

A support person may be a friend, colleague, relative or union/association representative. If the support person is a professional advocate, this person should be advised that their role during the meeting is that of a support person and not an advocate. While the support person may provide legal or other advice to the employee outside

the meeting, it is different to the role as a support person during the meeting.

While every attempt must be made by the employer to ensure meetings are set at a time that suits all parties involved, the unavailability of an employee's support person is not an appropriate reason to unreasonably delay a meeting.

The support person may not disrupt or direct the process, or otherwise interfere in the meeting. If the support person wishes to comment or provide advice to the employee during the meeting, the meeting can be adjourned. A support person who attempts to intervene directly in the meeting, direct the process or advocate on behalf of the employee should be warned that this contravenes the role of support person. If the support person does not comply with the reasonable directions of the employer despite having been warned, the employer may ask the support person to leave the meeting, and the meeting may continue without the support person. The employer may also terminate the meeting and reschedule it for another day.

The employer may allow a support person to speak on behalf of the employee if, in the employer's view, the support person's participation will assist in clarifying matters, and/or is likely to lead to a resolution of the matter.

TOOL 1 PERFORMANCE IMPROVEMENT PLAN SAMPLE

The following development needs have been discussed and agreed to be undertaken over the next *[insert number]* months.

Employee's name: _____ Date: _____

Beginning of review period: _____ **Date/completed:** _____

Areas for development <i>(These can be competencies, skills or conduct that, following discussions, are agreed to as requiring development)</i>	Actions <i>(These are activities that will assist in development e.g. attending professional development, undertaking on-the-job training, receiving coaching from someone with the required skill)</i>	Person responsible	Date to be completed (demonstrated improvement)

MANAGING PERFORMANCE-RELATED CONCERNS *continued*

TOOL 2 SAMPLE TEMPLATE FOR PREPARING FOR A WORK PERFORMANCE COUNSELLING MEETING

To be completed in preparation for conducting a work performance counselling meeting.

Issues <i>Identify areas needing improvement and group into general categories</i>	Specific examples <i>List examples for each issue</i>	Desired outcome <i>What needs to change? What outcomes are necessary?</i>	Support/training <i>Is it appropriate?</i>	Timeline for actions
<p>What are the issues?</p> <p>When identifying issues, refer to the employee's job description, policies, the <i>Education and Care Services National Law Act 2010</i> and <i>Education and Care Services National Regulations</i>.</p> <p>Issues of concern may relate to general categories such as:</p> <ul style="list-style-type: none"> • working with children • interpersonal skills • providing safe and adequate care for children. 	<p>Examples should be recorded for each of the issues identified.</p> <p>Where appropriate, provide information about time, events and/or other relevant details.</p> <p>Try not to personalise the issue. Remain impartial. Be as factual as possible and avoid emotive language.</p>	<p><i>While this section is completed before the counselling session, it may be necessary to modify desired outcomes following discussions with the employee in the counselling session.</i></p> <p>What outcomes are required?</p> <p>What changes in work performance are required?</p> <p>It is helpful if outcomes can be measurable in order to determine the extent of achievement.</p>	<p><i>This section is completed before the counselling session and if necessary, could be modified after consultation with the employee.</i></p> <p>Is it appropriate and feasible for the employee to undertake training to achieve these outcomes?</p> <p>Is there appropriate support available to help the employee achieve improvement? e.g. mentoring</p>	<p>These are set in consultation with the employee.</p> <p>The timeline should be realistic.</p>

EXAMPLE: The information below is based on a scenario where numerous complaints were received about the inadequacy of the cleaning. The cleaner was interviewed about the complaints and the following worksheet was completed prior to the work performance counselling.

Issues	Specific examples	Desired outcome	Support/training (if appropriate)	Timeline for actions
<p>Failure to carry out cleaning duties in accordance with job description, cleaning schedule and expected standard.</p>	<p>Complaints have been received about the poor standard of cleaning. Examples of this were:</p> <ul style="list-style-type: none"> • on 30/2/00 and 12/4/00, the floor of the children's toilet/washroom was not washed • on 15/4/00 and 19/4/00, pieces of paper and piles of sand were left on the carpet area in the children's playroom after the cleaning had been carried out. 	<p>To clean the rooms in accordance with the job description, schedule of cleaning duties and expected standard.</p>	<p>Employee to seek guidance if unsure about the listed duties or expected standard.</p>	<p>Immediate</p>

TOOL 3

TEMPLATE LETTER FOR WORK PERFORMANCE COUNSELLING MEETING

Note: This is a sample letter to be used as a guide for notifying employees of a performance counselling or investigation meeting.

[Insert service letterhead]

[Insert date]

[Insert employee name and address]

Dear *[insert name of employee]*,

Re: Performance concerns

We are writing to you regarding concerns raised about your performance.

The alleged performance concerns are as follows:

[list summary of key issues to be discussed, for example: • alleged inappropriate behaviour at the staff meeting held on 00/00/00 • alleged breach of confidentiality at the open day held on 00/00/00].

The alleged misconduct and/or *[insert as applicable]* may be a breach of *[insert service name]* *[insert policy names or regulations and enclose copies and list what is attached]*. The alleged behaviour/performance may be a failure to work in a way which results in performing the requirements of the role.

We are providing you with an opportunity to respond at a meeting to be held *[insert day, time, venue, names of employer representative(s) and any external consultant who will be present]*.

If you wish to bring a support person to the meeting, please advise me of the name of the person attending at least one day prior to the meeting.

Depending on your response and the results of the meeting, you may be subject to disciplinary action.

Please note that this is not a disciplinary meeting and the aim of this meeting is to attempt to resolve concerns about the issues listed above.

This letter and meeting regarding the issues raised are to remain confidential and must not be discussed with your work associates and colleagues. A breach of this confidentiality will be treated as a serious matter.

If you require any further information, please contact *[insert name, position title and phone number]*.

Yours sincerely,

[Insert name of committee member]

[Insert position e.g. President]

Name of service: _____

Date: _____

Employee's name: _____

Position: _____

Attendance

Names of those in attendance:

Name: _____ Position: _____

Name: _____ Position: _____

Name: _____ Position: _____

Name: _____ Position: _____

The purpose of this work performance counselling session is to discuss an area(s) of concern regarding the above employee's work performance and the resolution of issues. A summary of matters discussed is contained in the attached *List of issues and outcomes*.

Review of the employee's progress

List any planned follow up meetings or actions by referring to the attached *List of issues and outcomes*.

Employee's comments

The original, including the *List of issues and outcomes* is to be placed in the employee's personnel file. A copy must be provided to the employee.

TOOL 4 EMPLOYEE WORK PERFORMANCE COUNSELLING FILE NOTE (PAGE 2 OF 2)

LIST OF ISSUES AND OUTCOMES

Date: _____ Name of service: _____

Employee name: _____ Position: _____

Issues <i>Areas needing improvement</i> <i>(use general categories)</i>	Desired outcome <i>What must change?</i> <i>What outcomes are necessary?</i> <i>Standards required</i>	Support/training	Person(s) responsible	Timeline for actions
ISSUE 1				
ISSUE 2				
ISSUE 3				

To be filed in the employee's personnel file. A copy must be provided to the employee.