

HR Performance and Misconduct Policy

1. Purpose and Scope:

The Tailem Bend Community Centre (TBCC) believes that performance management and review is an important component of supporting staff in their work, ensuring accountability for work performed, and identifying the professional development needs of staff, contractors and volunteers.

Under this policy, TBCC is committed to ensuring that:

- performance management is undertaken as a collaborative activity to recognise the achievements of staff and to support their ongoing development
- staff understand performance management processes and are encouraged to actively participate in determining and achieving their work goals and career development
- staff and their supervisors clearly understand the goals that have been agreed
- probation is used at the commencement of employment of a significantly new role to provide support for the staff member and to confirm that they are able to deliver the required work goals
- staff receive adequate direction and support for their work
- performance management processes are fair and in accordance with the relevant legal provisions
 - internal accountability for ensuring that work performance of all staff is adequate and that staff conduct is appropriate at all times.

To meet these aims, all staff in TBCC will take part in regular supervision sessions and in an annual formal structured performance review.

Where under-performance or misconduct does occur, a fair and confidential process will be applied according to the guidelines and procedures within this policy, which provide for the perspectives of all parties to be heard and all workable options for resolution to be considered.

The *Fair Work Act 2009* and other relevant legislative provisions and Social, Community, Home Care and Disability Services Industry Award 2010 will be applied in any procedures that are used to address under-performance or misconduct.

Definitions

Performance management: the organisational system for formal and collaborative assessment and recognition of work performance against established objectives, supported by analysis of the development needs and opportunities for staff.

Probation: the work planning process used in the first 3-12 months of employment or transfer to a significantly different role, to provide establishment support and confirm the staff member's suitability for the role.

Supervision: occurs where a manager or senior staff member represents the interests and decisions of the organisation by providing leadership, support, and development opportunities while working with staff to establish work objectives and accountability.

Misconduct: includes failure to follow reasonable instructions, failure to follow organisational policies and procedures such as the Code of Ethics or Conduct, unauthorised absences, consistently being late to work without good reason.

Serious misconduct: includes theft, fraud, violence and serious breaches of workplace health and safety procedures, abandonment or serious neglect of duty and serious inefficiency.

Summary dismissal: dismissal of an employee without notice or warning when the employer believes on reasonable grounds that the employee's conduct is sufficiently serious misconduct.

Unfair dismissal: dismissal may qualify as 'unfair' under industrial relations legislation if:
the dismissal was harsh, unjust or unreasonable, and
the dismissal was not a case of genuine redundancy, and for employees of a small business, the dismissal was not consistent with the Small Business Fair Dismissal Code.

Procedures

Probation

The terms and conditions of probation will be specified in the employment contract for each staff member, based on the relevant industrial award/enterprise agreement.

At the commencement of their employment, or in the event of transferring to a significantly different position, staff will enter a probation period. The probation period will establish the staff member's capacity to undertake the role and determine any development priorities for them.

The probation period will be a fixed period of three months, with the option to extend the probation by no more than three months if the staff member requires an additional period to confidently undertake their role. In total the probation period should be less than 12 months, which is the period that applies prior to unfair dismissal provisions being available to staff.

During probation, the organisation's performance management processes will be used to assess and document capacity and development needs.

Where under-performance or conduct issues arise during probation, the supervisor/manager will instigate the established organisational procedures for addressing these, with the objective of completing the process by the end of the probation period. In particular, the staff member must be warned, preferably in writing, when dismissal is likely if performance does not adequately improve.

If the outcome of probation is that the staff member is not suitable for their role and alternative employment within the organisation is not considered appropriate, then the staff member is entitled to a statement of reason/s and the notice of termination and payment for accumulate leave specified in the Award/Agreement.

Performance review

Staff will meet with the TBCC CEO for formal performance sessions. Staff may request informal consultation or direction from TBCC CEO at other times, and TBCC CEO will attempt to meet these requests within a mutually agreed timeframe.

Formal performance sessions will be held in a location that provides privacy.

TBCC CEO will use the organisation's performance appraisal template to record progress and agreements discussed.

Supervision sessions will be structured so the staff member and TBCC CEO can:

- review the staff member's progress against work plans or agreed tasks
- discuss any issues of concern or impediments experienced in performing duties
- discuss strategies or actions for achieving desired outcomes
- set priorities for the coming period
- identify and address professional development and training needs

Performance review

An annual performance review will be conducted by TBCC CEO and it is their responsibility to schedule the review at a mutually convenient time.

Timing

The first performance review will occur before the end of the probation period then annually. More frequent reviews may be held as agreed between the staff member and TBCC CEO

Objectives

Performance management will be a collaborative process between the staff member and their TBCC CEO that:

- develops agreed realistic expectations in relation to the staff member's position description and work plan, against which assessment of performance can be made
- provides a formal means by which achievements can be assessed and recognised
- discusses and document how the employee is performing from their point of view and from their TBCC CEO point of view
- identifies strengths in skills and knowledge, and considers if these can be better utilised
- identifies any weaknesses or problems in performance from the point of view of the staff member and the TBCC CEO

- seeks common ground for ways to improve performance, where needed
- identifies training needs and discuss other forms of support or on-the-job development required
- reaches agreement on specific goals to be pursued in the period following the assessment

Process

- The staff member will complete a performance self-appraisal. The staff member may choose to include a peer review component in their assessment and, in this instance, the TBCC CEO arranges for peer assessment input to be gathered.
- The completed self-appraisal (and, if applicable, peer review input) are made available to the reviewer (and, if applicable, the employee) at least seven days prior to the review meeting.
- The TBCC CEO will prepare their own assessment comments for the review meeting, using the organisation's standard annual performance appraisal.
- The staff member and the reviewer will meet to discuss findings, performance, future goals and development needs. The discussion will include opportunities for both parties to clarify and explain their comments.
- The outcomes will be documented and agreed actions included within the staff member's work and development plan.
- Both the supervisor and the staff member are responsible for implementing the plan.
- The supervisor and staff member both sign a record of the main discussion points and agreed-upon actions, and the record is retained in the staff member's personnel file.
- The TBCC CEO maintains a performance review register, ensuring that each staff member receives a performance review once every twelve months.

Discussion

The TBCC CEO will address the following in discussion with the staff member:

1. Review work goals

- Review the statement of duties, work plan and any other documentation about the role, ensuring that the position description reflects the current duties of the role.
- Review work goals established at the last review.

2. Review performance

- Review progress against the work plan
- Review assessment information provided by staff member, TBCC CEO and any others, identifying areas of strength and achievement and areas for improvement
- Review impediments to work performance and factors impacting on the person's job performance and satisfaction

3. Identify action

- Identify any training and development needs, focussing on areas that could be improved or where outstanding performance could enable the employee to accelerate their career aspirations
- Identify any resourcing or support required
- Identify any other action

4. Agree goals for next twelve months

- Review the organisation's strategic plans and the team's objectives or operational plan
- Establish work goals which reflect the job role, strategic objectives and outcomes required
- Agree how the performance will be measured and reported
- Identify any training and development needs necessary for the staff person to achieve the goals
- Where performance is satisfactory or above satisfactory, identify any incentives, rewards or recognition appropriate to acknowledge the achievement of goals

5. Determine role progression/salary increments

- Document recommendations for role progression/salary increments using annual performance review, as specified in the employment contract and industrial award or enterprise agreement

Documentation

- A record of the main discussion points and agreed actions is written at the meeting or immediately after using by the TBCC CEO
- The record of discussion is reviewed by the staff member and TBCC CEO corrections or changes made, and a final version signed by both parties
- Documentation of the review should be completed within 2 weeks of the review meeting
- The record is kept on a confidential personnel file with access limited to the staff member and the TBCC CEO unless both agree to any other person having access
- The record will be used as the reference for implementing agreed actions and for consideration of progress at the next review

Performance recognition

Where the performance review process determines that the staff member has performed satisfactorily or exceeded requirements, the salary increment specified in the SCHADS Award or employment contract will apply.

Other recognition schemes will only operate with the endorsement of TBCC CEO The criteria of any recognition system will be available to all relevant staff, who will all have the opportunity to qualify.

Managing under-performance or misconduct

If, as the result of a performance review, performance or conduct problems are identified, the TBCC CEO will implement the performance agreement for managing this.

Managing and reporting misconduct

Any staff member with concerns about the behaviour or action of another staff member should contact TBCC CEO or Chairperson and report their concerns. The TBCC CEO or Chairperson may request that the allegations or concerns are provided in writing.

The TBCC CEO or Chairperson will be responsible for:

- ensuring that both the reporter and the staff member are afforded confidentiality; and
- informing the TBCC CEO or Chairperson of the staff member if a report is received.

Considering options

The TBCC CEO and any other relevant staff member should consider the report and determine an appropriate response:

for minor misconduct or in cases involving personality clashes, refer the matter to mediation or counselling;

for minor infringement and/or atypical behaviour, provide a formal warning to the staff member about their conduct, noting that any further similar conduct could lead to formal action;

for significant misconduct a formal process is to be followed – notify Board or Management Committee, commence investigation and the formal resolution process (below) and consider suspension or a temporary reassignment of duties; and

if the allegation involves a criminal offence, it must be referred to the SA Police and the Board or Management Committee notified.

Prior to investigation

The TBCC CEO or Board or Management Committee will:

confirm the appropriate process;

determine who will be involved in resolution; and

remind all parties about the application of the organisation's Code of Conduct and Confidentiality Declaration.

Commence investigation

The TBCC CEO will:

inform the staff member in writing of the details of the allegations of misconduct and the possible outcomes;

give reasonable notice of a meeting to be held with the staff member and any representative they wish to attend;

make clear the purpose of the meeting which is to give the staff member the opportunity to properly respond; and

conduct further investigation as required in a timely, confidential, systematic and effective manner to reach a determination based on fact, fairness and without bias.

Determination

Where the investigation finds that there has not been any misconduct, the staff member will be informed that there will be no further action and any records associated with the matter disposed of. Where the staff member is found to have been involved in misconduct, determine the sanction to be imposed. The sanction should be appropriate to the type of misconduct and within what is allowable under industrial regulations or agreements. This may involve a verbal or written warning or, in more serious cases, dismissal.

Formal warning process

With the exception of misconduct that is serious enough to warrant summary dismissal (see below), in situations of under-performance or misconduct the formal warning process below must be followed if the situation potentially may lead to dismissal. The TBCC CEO will coordinate the following:

1. Formal counselling – first warning

Schedule a meeting and inform the staff member of the issue/s to be addressed.

Ensure that the staff member understands the objectives and the serious nature of the counselling.

Give the staff member the opportunity to have an observer present.

Ensure that all relevant information has been gathered and reviewed.

Remind all parties about the application of the organisation's Code of Conduct and Confidentiality Declaration.

Provide the staff member with a clear explanation as to why their performance or conduct is unsatisfactory and the possible ramifications.

Provide them with the opportunity to respond.

Set a timeframe and explain the process by which the issues will be addressed.

Identify any further training and development needs that are necessary for the staff member to achieve the goals.

Document the interview using performance agreement template including all agreed outcomes. This document is to be signed by the staff member and the person conducting the interview.

2. Formal counselling – second warning

If the issues have not been addressed, or not fully addressed, within the agreed timeframe, schedule another review meeting.

The TBCC CEO will schedule another review meeting and a new timeline will be revised for the performance issues to be addressed.

3. Final warning

If, after the first and second warnings have been given, the performance or conduct does not improve then a final warning meeting is scheduled.

Discuss the final warning meeting with TBCC Chairman and have them or their delegate present at the meeting.

Clarify for the staff member that the purpose of the meeting is to confirm that they must immediately and fully address the issues.

Advise the staff member of the options if they do not achieve the agreed goals.

Termination

The TBCC CEO/Board or Management Committee will:

Consider all options available (e.g. extension of probation, counselling, restricting the work role, delaying salary progression).

If the improvement in performance or conduct has not occurred as agreed and other options are not available or appropriate, then termination should be considered.

Before any notice of dismissal is given, consider legal advice and undertake organisational review of all documentation to ensure that the processes have been legal, fair and objective and are adequate should the matter be referred to an industrial tribunal, and that the staff member has been given both the opportunity and the support to improve their performance or conduct.

Summary dismissal

Summary dismissal is only used for serious and wilful misconduct, including serious neglect of duty and serious inefficiency. Acts of misconduct may include, but are not limited to:

wilful disobedience;

serious insubordination;

drunkenness;

abusiveness; wilful concealment of crucial obscenity; and
violence; information;

conviction for an offence which renders the staff member unfit for the work.

Each case will be considered on its own merits, and if summary dismissal is found to be lawful and necessary, the TBCC CEO/Board or Management Committee will:


immediately suspend the staff member from duty, pending further investigation;

consult Employsure or equivalent industrial law specialist.

ensure that the person delegated to conduct the dismissal has a responsible member of staff present to act as a witness;

review the requirements for responding to a challenge in an industrial tribunal to ensure process and documentation to date complies with requirements, should this eventuate; and

ensure that the reason for dismissal is given in the terms of the SCHADS Award or Act], and is clearly conveyed to the staff member and recorded on the staff member's personnel file.

Date first formulated	April 2022 (replaced HR staff Performance and Review Strategy and Procedures)	
Dates approved by Board	V1	April 2022
Next Review Date	April 2025	
Related Documents	Human Resources Professional Ethics and Conduct Policy Human Resources Harassment and Bullying Policy Human Resources Development and Training Policy Risk Management Policy (Child Safe) Statement of Commitment to the Safety and Wellbeing of Children Feedback and complaints policy Code of Conduct TBCC Strategic Plan	
Standards	Legal Services Commission National Employment Standards Unions Australia Human Rights Commission Equal Opportunity Commission Children and Young People (Safety) Regulations 2017 (SA) National Principles for Child Safe Organisations Child safe environments Rights of every child Department Human Service DHS Critical Client Incidents Policy Coronial Overview of child protection legislation across state and territory jurisdictions Australian Institute of Family Studies Information Sharing Guidelines Unicef – know your rights and responsibilities Children’s rights and responsibilities flyer Department Human Services DHS Critical Incidents Gender diverse, intersex and sexually diverse children and young people	
Legislation	Work Health and Safety Act Work Health and Safety Regulations 2012 Codes of Practice Safework SA Return to Work SA Aged Care Quality and Safety Commission Act 2018 Aged Care Act 1997 Competition and Consumer Act 2010 Associations Incorporation Act 2009 Sex and Age Discrimination Legislation Amendment Act 2011 Woman Working Centre Australian Human Rights Commission Act 1986 Children’s Protection Act 1993 (SA) Fair Work Act 2009 Volunteers Protection Act 2001 (SA) Family Law Act 1975 Equal Opportunity Act 1984 Children and Young People (Safety) Act 2017 Commonwealth Privacy Act 1988 State Records Act 1997 Guardianship and Administration Act 1993 Australian Human Rights Commission Act 1986 (Federal) Crimes Act 1914 (Federal) Fairwork Act 2009 Federal Law Fair work Act 1994 State Law	
Signed on behalf of TBCC Board of Management by: Name: Jack Hunt Position held: Chairperson Signature:  6 April 2022		