

Managing Unsatisfactory Performance Policy

Purpose of this Policy

The purpose of this Policy is to give effect to the requirements of Part 5 of the *Government Sector Employment Act 2013* (the GSE Act) (sections 67 and 68) and Part 7 of the *Government Sector Employment (General) Rules 2014* (the GSE Rules) (rules 35 and 36) in dealing with unsatisfactory performance by employees of the Department of Planning and Environment (the Department).

This Policy should be read in conjunction with the Department of Planning and Environment Managing Unsatisfactory Performance Procedure (the Procedure).

To whom this Policy applies

This Policy applies to all ongoing and long-term temporary employees¹ of the department and its Cluster entities.

Roles and Responsibilities

Senior Executives are required to ensure that:

- performance management systems are linked with appropriate organisational targets and goals for their business units.
- all employees within their business units meet and abide by the requirements of this Policy.

People Leaders are responsible for:

- ensuring all employees in the business unit have documented performance expectations, for example through a current performance agreement that is clearly linked to organisational objectives and is reviewed annually
- setting clear performance objectives for their team members, monitoring performance, and providing regular and ongoing feedback (including structured conversations about performance and development needs)
- proactively providing advice on deliverables and where appropriate what is expected of employees from a performance and behavioural perspective
- addressing and managing unsatisfactory performance
- providing support (including any necessary coaching and training) to the employee for the ongoing capability of their current role.

All employees are responsible for:

¹ Long-term temporary employees are defined as those with more than 12 months continuous service and are to be treated as ongoing employees for the purposes of the Policy. Temporary employees may be terminated at any time, for any reason in accordance with s47(2) of the GSE Act. They must however be provided procedural fairness as per rule 13 of the GSE Rules. If you are unsure as to whether a person is a long-term temporary employee (and therefore subject to this policy) then consult with the WMER team.

- performing their duties and delivering to the standard required by the organisation
- developing their own capability and performance with the support of their people leader
- contributing actively in all aspects of performance management, including willingly seeking and receiving feedback and providing open and honest feedback to their people leader
- proactively seeking advice from their people leader on deliverables and where appropriate seeking information on what is expected of them from a performance and behavioural perspective e.g. review the Code of Conduct.

Workforce Management and Employee Relations (WMER) Team is required to:

- perform as subject matter experts in all areas of workforce management and employee relations
- provide proactive advice and assistance to ensure the implementation and operation of the Policy to avoid further deterioration or escalation of issues and ensure procedural fairness
- act as a key advisor and provide a case management role in the management of unsatisfactory performance by people leaders
- deliver integrated advice to people leaders that incorporates industrial advice, injury/health management advice, advice on people management and human resource strategies.

Policy statement

At the department, unsatisfactory performance is defined as an employee performing their duties at a standard that is less than is reasonably acceptable.

Employees of the department are expected to perform their duties and carry out their responsibilities in accordance with the Government Sector Core Values as set out in section 7 of the GSE Act as well as applicable departmental policies and procedures including the Code of Ethics and Conduct.

The Procedure details the processes by which employees are to be dealt with so that they are afforded procedural fairness when their performance is considered unsatisfactory.

Whilst every effort should be made to comply with this Policy, departures from it which do not undermine the integrity of the principles laid down in the GSE Rules or which do not involve a substantial departure from the Policy, will not operate to invalidate action that may be taken against an employee.

Procedural fairness

A fundamental rule of procedural fairness is that a person must be advised of the matter against them; have an opportunity to respond to the matter and have their response considered by the delegate or decision maker.

To ensure procedural fairness when managing unsatisfactory performance under this Policy, an employee must be:

- advised in writing of the performance issues and that continued unsatisfactory performance may lead to action under s68(2) of the GSE Act if there is no improvement
- given an opportunity to respond to the issues raised
- given an opportunity to provide a response to the delegate (as per the HR Delegations) if their performance remains unsatisfactory following a performance improvement plan
- provided with an opportunity to respond to any proposed action prior to a final decision being reached.

Procedural fairness also encompasses processes such as:

- ensuring an employee has been provided with feedback regarding their performance
- ensuring reasonable supports have been provided to the employee
- ensuring an employee has been given a reasonable opportunity to improve
- ensuring that the delegate and/or decision maker have no direct managerial responsibility and are unbiased in the matter, and the employee subject to the process has the opportunity to provide grounds to the delegate/decision maker as to why any person involved in the management of the process or decision making be replaced with a suitable alternative.

The role of a support person

An employee is entitled to have a support person assist them through the managing unsatisfactory performance process. The support person is of the employee's own choosing and may attend unsatisfactory performance meetings with the employee to provide support and guidance.

The support person may be a representative of the employee's union, a colleague, an adult family member or a legal representative. The support person must not act as an advocate during meetings.

The employee should advise who their support person is prior to the commencement of a meeting as it will be necessary to have a member from the Workforce Management and Employee Relations team present if the support person is a union official or a legal representative.

The nominated support person must not be involved in the managing unsatisfactory performance process or contribute to an unreasonable delay in the performance process by being unavailable.

Legislative Authority

Section 67 of the GSE Act requires all government sector agencies to have a performance management system that meets the six core requirements of Rule 35 of the GSE Rules. The GSE Rules and their essential elements are outlined in the NSW Public Sector Performance Development Framework.

Rule 36 of the GSE Rules sets out the requirements for dealing with unsatisfactory performance, consistent with procedural fairness. If the performance of an employee is determined to be

unsatisfactory in accordance with Rule 36 of the GSE Rules, section 68 of the GSE Act provides the possible actions available to the delegate.

This document provides the department with a Policy, which is accompanied by a Procedure, for managing unsatisfactory performance in line with GSE Rule 36 and section 68 of the GSE Act, including identification and management of any risks posed by the unsatisfactory performance.

Review timeframe

People and Culture will review this Policy no later than three years from the date the document is approved. The document may be reviewed earlier in response to post-implementation feedback, changes to legislation, or as necessary.

Related documents

Other policy documents that may be read with this Policy:

- [DPE Code of Ethics and Conduct](#)
- [DPE Misconduct Policy and Procedure](#)
- [Government Sector Employment Instrument of Delegation \(Secretary of the Department of Planning and Environment\) 2022](#)
- [DPE Records and Information Management Policy](#)

Policy metadata

Table 1. Policy metadata

| Category | Description |
|----------------------|---|
| Status | Final |
| Date of approval | 24 May 2023 |
| Approver | Chief Operating Officer |
| Group | Corporate Services |
| Division | People and Culture |
| Policy owner | Executive Director, People and Culture |
| Branch | Workforce Management & Employee Relations |
| Document location | DPE Intranet and/or Internet |
| Next review date | Prior to 3 years from Policy approval or sooner as required |
| Associated procedure | Managing Unsatisfactory Performance Procedure |
| Superseded document | DPE Managing Unsatisfactory Performance Policy 2017 OEH Managing Unsatisfactory Performance Policy 2015 |
| Further information | Sharyn Gallagher, Manager, Industrial Relations Daniel Palmer, Director, Workforce Management and Employee Relations case.management@dpie.nsw.gov.au |
| Document Reference | DOC23/413913 |

Version control

Table 2. Version Control

| Version | Date issued | Change |
|---------|-------------|------------|
| 1 | July 2023 | New Policy |