



MANAGING UNDERPERFORMANCE GUIDE

Contents

Contents.....	1
Introduction	1
Objectives	2
Fairness in Managing Underperformance.....	2
Roles and Responsibilities in Improving Performances	3
Interaction with Other Processes	3
Procedures.....	4
Informal Underperformance Management	4
Formal Underperformance Management - Stage 1.....	4
Formal Underperformance Management - Stage 2.....	5
Right of Review	7
Reduction in Classification	7
Termination of Employment.....	7
Further Information.....	8

Introduction

1. This policy has effect from the commencement date of the Office of the Australian Building and Construction Commission Enterprise Agreement 2011-2014 (ABCC EA).
2. In accordance with section 257 of the *Fair Work Act 2009* and clause 15 of the Enterprise Agreement, this policy (as in force from time to time) is incorporated in the Enterprise Agreement. Where the Australian Building and Construction Commissioner proposes to change or repeal this policy, the Australian Building and Construction Commissioner commits to following the relevant consultation procedures outlined in the Enterprise Agreement.
3. As part of the transition to the ABCC EA, this guide will be subject to review within 3 months of the commencement of the Agreement.
4. Fair Work Building and Construction (FWBC) Performance and Development Framework (PDF) supports the ongoing development of the agency's performance culture. Its aims are to:
 - 4.1 foster a culture that supports active performance management and high performance;
 - 4.2 ensure that employees and managers are aware of what is expected of them individually and within teams with a balanced focus on achieving both key outcomes and demonstration of key agency behaviours;
 - 4.3 provide a fair and transparent process for managing any identified underperformance;
 - 4.4 ensure that there is a common basis for performance management across the agency, which is linked to business and workforce planning activities, key agency behaviours and work level standards;



- 4.5 provide a mechanism for regular two-way feedback on performance;
 - 4.6 contribute to the ongoing development of employees and recognise that opportunities for learning and career development are a matter of joint responsibility between the employee and manager; and'
 - 4.7 demonstrate how the employee's individual work contributes to the agency's objectives.
5. This guide applies to all non-SES employees, with the exception of probationers and non-ongoing employees.
 6. For the purposes of this guide the term “supervisor” refers to the person who manages the employee’s day-to-day duties, including allocation and monitoring of work, approval of leave etc. The term “manager” refers to the supervisor’s supervisor.

Objectives

7. The objectives of managing underperformance in the agency are to:
 - 7.1 support and assist employees to attain and sustain performance of an acceptable standard;
 - 7.2 ensure supervisors and managers address underperformance issues as they arise; and
 - 7.3 ensure that the principles of natural justice and procedural fairness are applied to the processes and decisions involved.

Fairness in Managing Underperformance

8. Underperformance is identified when a manger/supervisor makes an assessment that an employee’s performance is “unsatisfactory”, and this is notified to the employee. This should occur at the time the unsatisfactory performance is identified. Unsatisfactory work performance is defined in the PDF as “*when an employee fails to attain and sustain a performance of an acceptable standard*”.
9. An assessment of unsatisfactory work performance indicates that the employee has failed to deliver satisfactory results against a number of significant responsibilities. An unsatisfactory rating means that the employee has not met the work requirements and/or has failed to demonstrate agency behaviours in the workplace.
10. The agency shall have regard to the following during any underperformance process:
 - 10.1 streamlined and efficient processes;
 - 10.2 working with the employee to restore the performance of the employee to an acceptable level;
 - 10.3 natural justice and procedural fairness;
 - 10.4 learning and development assistance for improving;
 - 10.5 active performance management as an integral part of the workplace culture; and
 - 10.6 performance measures and standards to be clearly defined.



Roles and Responsibilities in Improving Performances

11.

Role	Responsibilities
Managers and Senior Executives	<ul style="list-style-type: none"> • ensure managers effectively manage the work performance and development of employees, including unsatisfactory performance. • provide advice, guidance and support to managers on their management of unsatisfactory performance. • critically review the recommended commencement of underperformance procedures, particularly where manager/employee agreement cannot be reached on the existence of unsatisfactory performance and/or the procedures to apply.
Team leaders	<ul style="list-style-type: none"> • ensure a current Performance Agreement is in place, as per the PDF • advise employees when performance is unsatisfactory. • Actively address unsatisfactory performance in a timely manner and adhere to the relevant policy • ensure reasons for unsatisfactory performance are jointly discussed. • identify action that can return work performance to the expected standard. • Notify Human Resource (HR) whenever an underperformance process is to be instigated.
Employees	<ul style="list-style-type: none"> • ensure a current Performance Agreement is in place, as per the PDF • perform their assigned duties to the acceptable standard indicated in their Performance Agreement (PA) or underperformance Action Plan. • seek clarification of expected work outcomes and/or performance standards if these are considered unreasonable or inconsistent with their PA or Action Plans • actively identify and participate in relevant learning and development activities
HR	<ul style="list-style-type: none"> • provide employees, managers and team leaders with guidance and advice on the management of unsatisfactory performance and any related management issues throughout the process in a timely manner.
Human Resources Assistant Director	<ul style="list-style-type: none"> • take timely action in respect of underperformance casework referred for action or advice.

Interaction with Other Processes

12. Managers and team leaders should not delay action to improve performance due to either an investigation into an alleged breach of the Code of Conduct being underway or planned or a Review of Action being in progress.
13. Managers and team leaders may take action to improve performance where an employee has a medical condition. The strategies devised to address the



underperformance must take the employee's health into account and incorporate the principles of reasonable adjustment.

14. Reasonable adjustment means ensuring that any medical restrictions are taken into account within the work environment. Managers and supervisors should make any necessary changes to the work environment to reduce any impact that medical conditions will have on the employee's ability to perform at their maximum potential.

Procedures

15. When unsatisfactory performance is identified, the agency will work with affected employee(s) and their supervisor(s) to attain and sustain the standards required.
16. The principles of natural justice and procedural fairness will apply throughout the processes and decisions involved in managing underperformance. Once an employee has been advised that their performance has been assessed as unsatisfactory, action to improve performance must.
17. An employee who disagrees with an assessment that his or her performance is unsatisfactory should refer to the relevant dispute settlement mechanism. The process will continue even if an application for review has been made,
18. The employee may be supported by a person of their choice during the process and for any meetings that are relevant to the process.

Informal Underperformance Management

19. When an employee's performance is not at a satisfactory standard, this should be discussed with the employee as soon as possible, and this **must not** wait until the next formal performance review. During this discussion the employee and supervisor should:
 - 19.1 identify the specific area (s) of concern in relation to performance;
 - 19.2 discuss the factors that have led to the underperformance;
 - 19.3 establish actions to address the underperformance (such as more regular feedback meetings; additional training; or temporary change to work arrangements).
20. If these actions to address the underperformance do not result in an improvement, then the supervisor must progress to Formal Underperformance Management.

Formal Underperformance Management - Stage 1

21. At the commencement of formal underperformance management the supervisor or manager must advise the employee that their performance has been assessed as unsatisfactory. This should follow a period of informal underperformance management, as per paragraphs 29 and 30 and the Performance and Development Framework.
22. The manager must also notify HR and their senior manager/s that underperformance has been identified and Formal Underperformance Management has commenced.
23. The manager and/or supervisor must:
 - 23.1 identify the specific areas of concern in relation to performance;
 - 23.2 provide the employee with clear and verifiable information as to what has led to the assessment of unsatisfactory; and



- 23.3 reiterate the required expectations and standards;
- 23.4 provide the employee with the potential consequences should underperformance not improve.
24. Managers and/or supervisors should also discuss possible factors affecting achievement of performance expectations. There may be valid reasons for the employee's underperformance and managers and/or supervisors must ensure that initial feedback is balanced and factual. Factors may include:
 - 24.1 unclear performance expectations;
 - 24.2 misunderstandings about work priorities;
 - 24.3 lack of feedback or ineffective supervision; or
 - 24.4 personal circumstances such as bereavement, health issues and family matters.
25. Manager and/or supervisor (in consultation with their manager, where relevant) and employee should discuss and establish an Underperformance Action Plan (UAP) Stage 1 in writing that will assist the employee to achieve the expected performance standard, including specific strategies to address the underperformance. This UAP Stage 1 should:
 - 25.1 be consistent with the PDF;
 - 25.2 be consistent with the stated Key Outcomes and Behaviours within the employee's PA;
 - 25.3 detail the work to be performed including completion dates, performance measures and assessment methods;
 - 25.4 include specific skills development or training activities to support the employee to improve their performance;
 - 25.5 set future feedback meeting dates to review progress; and
 - 25.6 document the potential consequences, should performance not improve to a satisfactory standard.
26. The employee should be given the opportunity to comment on this UAP Stage 1 within seven (7) days of receipt of the advice. The request for comments from the employee should not impede the commencement of the UAP Stage 1. Any negotiated changes to the UAP Stage 1 should be implemented immediately and reflected in the UAP Stage 1.
27. This stage of the process should not be less than 4 weeks and not exceed two months, unless approved by HR. The four week period may be shortened if, for example, a case exists that adequate assessment of performance may be undertaken in a shorter timeframe.
28. If the employee's performance is satisfactory at the end of Stage 1, no further action will be taken and written advice will be provided to the employee informing them of this assessment. However the employee's performance should be closely monitored following the end of the Formal Underperformance Management should keep in regular contact to ensure the underperformance does not return.

Formal Underperformance Management - Stage 2

29. If the employee's performance is assessed as unsatisfactory at the end of Stage 1, the manager will provide the employee with written advice of the need for the



employee's performance to improve. This advice, which may be in the form of a letter and an Underperformance Action Plan Stage 2, will specify:

- 29.1 the expected standard of work and behaviours;
 - 29.2 how the employee's work does not meet that standard, including the performance management processes already undertaken;
 - 29.3 any additional skills development activity required that was not addressed in Stage 1;
 - 29.4 the proposed assessment process for Stage 2, including feedback meetings;
 - 29.5 that performance will need to improve over the defined Stage 2 assessment period (generally six-eight weeks); and
 - 29.6 potential consequences if the employee does not attain and sustain a satisfactory standard of performance by the end of Stage 2.
30. The employee should be given the opportunity to comment on this advice within seven (7) days of receipt of the advice. The advice will then be forwarded to the Assistant Director HR for review, in addition to the relevant senior manager.
31. Where appropriate, the manager or senior manager may appoint an independent person from outside the employee's work area to undertake the assessment. During the assessment period, the manager or appointed person will assess the employee's performance and produce a progress report at least fortnightly. The employee must be given the opportunity to comment on the progress reports.
32. Assessment of performance upon completion of Stage 2.
33. If the employee's performance is assessed as satisfactory at the end of the period defined as Stage 2, no further action will be taken and written advice will be provided by the manager to the:
- 33.1 employee;
 - 33.2 relevant senior manager; and
 - 33.3 Human Resources Assistant Director.
34. Should the employee's performance become unsatisfactory at any time during the 12 months immediately after a Stage 2 assessment period, the manager can instigate a new assessment period. The manager has the discretion to initiate a shorter assessment period (generally four weeks) in consultation with the Assistant Director HR. Should the period be shortened, the employee will be advised.
35. If the employee's performance is assessed as unsatisfactory at the end of the period defined as Stage 2, the manager will prepare a report including the Stage 2 final assessment, progress reports, and any other relevant documentation. The report should indicate
- 35.1 what the expected standards were and how the employee's work performance did not attain and sustain the expected standard;
 - 35.2 any factors that were taken into account during the assessment period, such as illness, injury, disability or work related issues;
 - 35.3 the process that was followed including the feedback provided to the employee; and a recommendation on the action/s to be taken.
36. The employee should be given the opportunity to comment on this report within seven (7) days of receipt of the report. The report will then be forwarded to the Human Resources Assistant Director for decision.



37. Based on the manager's report, the Assistant Director HR will write to the employee to inform them of the finding and of the action to be taken. (The Assistant Director HR may take into account the employee's personnel records, including records of any previous underperformance and referee or supervisor comments when considering the action to be taken). These actions may include one or more of the following:
 - 37.1 reassignment of duties, either permanently or temporarily;
 - 37.2 reduction in classification
 - 37.3 termination of employment; or
 - 37.4 other appropriate action.
38. The employee will be given seven (7) days from receipt of the advice to respond to the findings and the action proposed by the Assistant Director HR.
39. The "receipt of advice" means:
 - 39.1 if the employee is at work, the date the letter was hand delivered to the employee at the workplace ;
 - 39.2 if the employee is not at work, the date the letter was delivered to the employee's home address (by courier or by hand);
 - 39.3 the Assistant Director HR, having taken account of the manager's report and the employee's response, will advise the employee in writing of the decision and the action to be taken with a copy provided to the relevant manager and senior manager (where relevant);
 - 39.4 should a notice of reduction in classification be issued it will take effect one month after the date of the notice.

Right of Review

Reduction in Classification

40. A reduction in classification may be reviewed under s.33 of the *Public Service Act 1999* (the PS Act).

Termination of Employment

41. The sole and exhaustive rights and remedies of an employee in relation to termination of employment are:
 - 41.1 under Part 3-1 and Part 3-2 of the *Fair Work Act 2009*;
 - 41.2 under other Commonwealth laws (including the Constitution); and
 - 41.3 at common law.
42. A termination of employment, at the employer's initiative, must be in accordance with Part K (Separation) of the *ABCC Enterprise Agreement 2011-2014*.



Further Information

43. HR Delegations

[ABCC EA 2011 - 2014](#)

Change History				
Update the following table as necessary when this document is changed:				
Approval authority	Point of contact	Date of Review	Reviewer	Changes
Executive Director, PL&C	Executive Director, PL&C	12 Aug 2011	JH	Creation with new EA