

I. INTRODUCTION

The Legatus Group ('LG') is committed to ensuring that when disciplinary issues arise (including the possibility of termination of the employment contract) every employee is treated fairly and equitably, in accordance with industrial standards of natural justice and procedural fairness.

2. PURPOSE OF THIS POLICY

The purpose of the disciplinary policy and related procedure is to correct and/or cease the unsatisfactory or inappropriate behaviour of an employee to the satisfaction of both LG and employee. The counselling and discipline process is designed to assist in dealing with work performance matters in a fair and consistent manner, ensuring that:

- the relevant parties know exactly where they stand at any given time against the requirements of the position and conditions of employment;
- the employee has been allowed the time and resources to respond, adjust and improve;
- an agreed course of action, together with specific and clearly defined outcomes, has been determined;
- hasty, uninformed decisions are avoided.

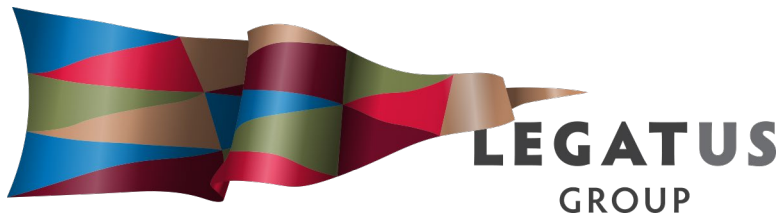
The disciplinary process can also lead to the termination of employment and applies to all employees of LG.

3. DEFINITIONS

Misconduct

Examples of misconduct by an employee may include (but are not limited to):

- Unauthorised absenteeism, lateness and/or a poor record of attendance;
- Unacceptable behaviour towards a manager or fellow employees;



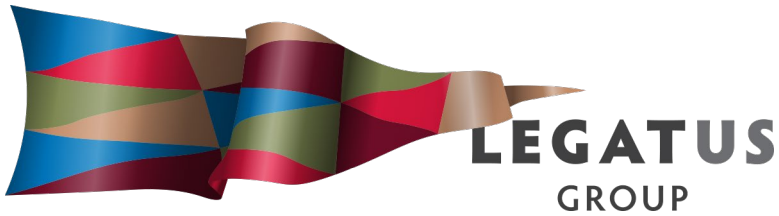
- Failure to follow organisational policies, procedures or practices;
- Failure to comply with the requirements of a contract of employment or letter of appointment;
- Actions involving accident or injury (or the real possibility of accident or injury) to any employee or customer of LG; and
- Unwelcome comments or behaviour directed at another employee or customer of LG.

Serious and Wilful Misconduct

Summary or instant dismissal means dismissal without notice or payment of notice and without the need for an employee to receive any warnings. This form of disciplinary action is appropriate where the offence, after being thoroughly investigated and substantiated, is found to constitute serious or wilful misconduct.

Examples of serious and wilful misconduct by an employee may include (but is not limited to):

- A serious breach of LG's Code of Conduct for Employees or Policies;
- Refusal to carry out the lawful instructions of a manager;
- Consuming, possessing, selling, manufacturing or being impaired by alcohol and/or other drugs while on duty;
- Criminal activity;
- Dishonesty, theft, fraud or other unlawful activities;
- Gross negligence;
- Vandalising, intentionally damaging, or misusing LG or another employee's property;
- Fighting.



Investigations

Prior to any disciplinary action being taken, a confidential investigation will be undertaken by an appropriately appointed person. This may include an external HR Consultant. The aim of the investigation is to establish the relevant facts including dates, times, the specific allegations and people involved. The employee will be afforded the opportunity to respond to any allegations during the investigation. The CEO is responsible for any final determinations.

Meeting

The purpose of the meeting is to present the allegations to the employee and provide them with the opportunity to respond. The meeting will:

- Explain the allegation and the reason why, if substantiated, it would be considered unacceptable;
- Afford the employee the opportunity to respond;
- Refer to any previous disciplinary (informal or formal) discussions.

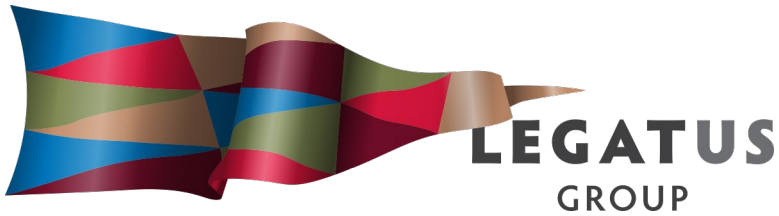
Subsequent to the Meeting the CEO will:

- Pause to allow time to consider all information presented prior to making a determination;
- Inform the employee of any decisions regarding disciplinary action; assistance that will be provided;
- Set a review date.

Support person

A support person is a person of the employees choosing. Their role is to support the employee during the meeting though not speak or advocate on the employees behalf. They may:

- Ask questions to clarify;



- Request the meeting to be adjourned to discuss with the employee (though this cannot be unduly disruptive to the meeting process).

Warnings

There is no prescribed number of warnings to be issued prior to termination of employment however an employer should give the employee a reasonable opportunity to improve performance issues or address misconduct. A warning letter must set out the reasons for the warning; the type of warning; record all relevant details; set clear expectations on what is to be done differently; what support or assistance will be made available; the consequences if the misconduct or underperformance continues; and it must be fair and reasonable given the circumstances.

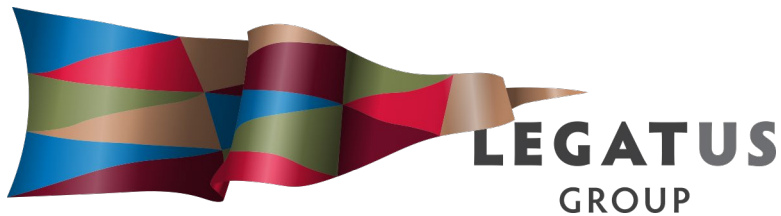
A verbal warning may be used in instances where the employee first starts showing signs of underperformance or minor misconduct. A verbal warning is still documented in writing to the employee and a copy retained on their personnel file.

A written warning may be issued following a verbal warning where performance has not improved. It may also be issued in instances where underperformance or behaviour is such that a written warning is deemed necessary.

A final written warning may be issued in instances of misconduct or where there has been no demonstrated improvement in performance following discussions and where dismissal is deemed too harsh.

In all warnings, employees should be advised of the consequences should there be no improvement of performance or, in the case of misconduct, another event occurs. In most cases, the ultimate consequence will be termination of employment.

All warnings must be signed and dated by an appropriate person and a copy retained on the employee's personnel file. There must be a section for the employee to sign with the employee given two (2) copies and requested to return one (1). Should the employee refuse to sign and return the letter, a comment should be noted on the file copy stating the date the employee was given a copy and the date they indicated they would refuse to sign and these comments should be initialled. An employee has the right to return the letter with any comments.



Dismissal with notice

It is generally issued when there has been no improvement in performance and the employee has been provided sufficient opportunities to improve performance. In this instance, an employee is dismissed and paid their normal notice period in lieu along with any outstanding leave entitlements.

Dismissal without notice

In this instance, the employee is dismissed without payment of their normal notice period. Outstanding leave entitlements will be paid with the exception of Long Service Leave where payment will be compliant with the Long Service Leave Act of South Australia (1987).

Suspension with Pay

A preliminary assessment or investigation of an event or situation may establish that there is a likelihood of serious and wilful misconduct. In this instance it may be appropriate to suspend an employee with pay until the investigation is completed. Suspension with pay should not be for an unreasonable length of time and the employee is still afforded the opportunity to respond to any allegations as part of the investigation process.

Record Keeping (Documentation)

Disciplinary meeting records must be maintained and a copy retained on the employee file. Records should clearly identify all parties present (and whether a support person was offered to the employee), the reason for the meeting, record all relevant details, set out the expectations on what is to be done differently and be dated and signed.

Review meeting

The review meeting should follow a similar format of the initial disciplinary meeting. If the performance has not improved sufficiently, this needs to be supported by evidence and the

next reasonable step in the disciplinary process will be followed. If the performance has improved, it is to be acknowledged and the employee provided encouragement for continued improvement. Either situation requires an acknowledgement in writing.

4. POLICY DETAILS

LG's disciplinary procedure contains a series of steps which are to be followed prior to any termination of employment or other disciplinary action being implemented. However, each particular circumstance determines what action is appropriate, including the number of warnings and the suitable review period for the employee to remedy their poor performance or behaviour. The fundamental principle is that due process is followed in all instances where disciplinary action takes place.

1. Where the CEO has concerns about an employee's performance or conduct, in the first instance, the CEO is to discuss their concerns with the employee (informal counselling);
2. In instances where an employee's performance does not improve as a result of informal counselling, or in circumstances where it is appropriate to proceed directly to a formal disciplinary process, a disciplinary meeting is to be convened to provide an opportunity for both the employer and employee to discuss the issue(s) of concern (refer 'Managing a Performance Meeting' checklist).
3. The employee has the right to bring a support person of their choosing to the disciplinary meeting and the right to respond to the allegations of poor performance or misconduct put to them.
4. A record of the meeting is to be taken, with a copy retained on the employee's personnel file.
5. The warnings procedure may include a series of verbal and written warnings that set out to any employee who is being warned, the basis of the warning, the ways that an employee can and must improve their work performance or behaviour, the time and resources available to assist them in achieving the desired outcomes and finally, it must identify what actions are to occur if they do not meet the required outcomes.

6. All counselling sessions, warnings or other instances of disciplinary action must be recorded in writing, with a copy provided to the employee concerned and the original placed on their personnel file.
7. Review meetings must be followed through as part of any Performance Improvement Plan.
8. Disciplinary action may lead to the termination of employment. Where the offence, after being thoroughly investigated and confirmed, is found to constitute serious or wilful misconduct, employees will be dismissed without notice.
9. Dismissals cannot be harsh, unjust or unreasonable (FWA Act 2009).
10. In the event of final written warnings or termination of employment being considered, the CEO will ensure:
 - there has been a fair process;
 - there exists a valid reason;
 - any mitigating factors have been taken into consideration.

Signature:



Date: 12 June 2020

Chief Executive Officer

If a conflict exists with any law in Australia, then the provisions of the law in Australia will prevail to the extent of the conflict.

Managing a Underperformance or Misconduct Meeting Checklist

Establish the allegation(s):

- The precise nature of the allegation;

- The impact, such as alleged breaches of policies, procedures, industrial instruments, position descriptions or otherwise;
- Determine times, dates and locations where the misconduct/underperformance occurred (examples);
- Gather evidence such as emails, previous warnings, complaint letters or memos;
- The name of any persons involved or witnesses (with their approval);
- Conduct a preliminary review;
- Determine whether to proceed.

Before the meeting:

- Collate all relevant information (refer above);
- Arrange to meet with the employee at a mutually convenient time and location and advise the purpose of the meeting (a minimum of 24 hours' notice for formal disciplinary action is recommended);
- Advise the employee that they are able to bring a support person;
- Advise who will be attending on behalf of the employer;
- Carefully plan what you want to say and ensure someone will take notes.

During the meeting:

- Thank the employee for attending the meeting and acknowledge any support people (or acknowledge that the employee has chosen not to bring a support person);
- Clearly explain the purpose of the meeting;
- Explain how you will run the meeting;

- You will run through the allegations
 - Evidence will be presented that has been collated to date
 - They will be afforded the opportunity to respond
 - Notes will be taken
 - The meeting will be adjourned prior to any final determinations, which may include disciplinary action.
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- Encourage the employee to respond openly and honestly;
 - Outline the allegations and clearly explain why you believe it to be an issue (impact);
 - Present any supporting evidence;
 - Where it has occurred previously, set out the steps taken to date to rectify the situation;
 - Invite the employee to respond;
 - Ask how they believe the situation could be resolved;
 - Take detailed notes;
 - Thank the employee for their input;
 - Adjourn the meeting to consider all information and agree on a suitable date and time to reconvene.

Reconvene the meeting:

- Thank the employee for their time and contributions;
- Outline the information taken into consideration during your deliberations;
- Advise on the final determination (warning);

- Advise the employee that they will be given a copy of the warning in writing and they have the right to make comments and will be requested to sign and return a copy of the warning;
- Agree on actions to assist in performance improvement or to ensure there is no reoccurrence of the misconduct;
- Advise the employee of the consequences should performance not improve or the misconduct reoccurs;
- Agree on the support that will be made available and times / dates for review meetings;
- Close the meeting.

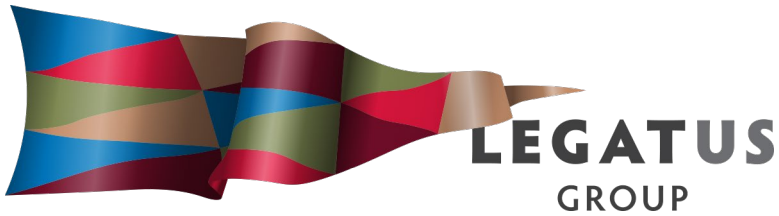
After the meeting

- Confirm the outcome in writing with all the necessary information;
- Keep thorough and accurate notes of the meetings and copies of letters, emails and evidence;
- Give the employee reasonable time to improve their performance;
- Follow through with review meetings and provide regular feedback;
- If the employee's performance has improved sufficiently, close out the process and follow up in writing, stating that it must be maintained and the consequences if it is not;
- If there has not been the required improvement, follow the next step of the disciplinary process

5. LEGISLATION AND OTHER DOCUMENTS

Fair Work Act 2009 (Cth) (as amended)

Local Government Act, 1999 (SA) (as amended)



Work Health and Safety Act 2012 (SA) (as amended)

6. AVAILABILITY & GRIEVANCES

This policy is available for inspection at the Legatus Group Office at 318 Main North Road, Clare during ordinary business hours.

It is also available for inspection, download or printing, free of charge, from LG's website www.legatusgroup.sa.gov.au

Any grievances in relation to this policy or its application should be forwarded in writing addressed to the Chief Executive Officer, Legatus Group, PO Box 419, Clare SA 5453.

7. REVIEW

This Legatus Group Policy shall be reviewed by the Legatus Group within (4) years of the issued date.

Date	Revision Number	Reason for Amendment
5 June 2020	1	No amendment