




Discipline and Termination of Employment Policy and Procedures

STATEMENT

The Paraplegic and Quadriplegic Association of South Australia Incorporated (PQSA) is committed to ensuring that when disciplinary action is to be taken or termination of employment issues arise, every employee will be treated fairly and equitably, in accordance with industrial standards of natural justice and procedural fairness.

Approved by: 	Date: June 2015
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The Paraplegic and Quadriplegic Association of SA Inc.(PQSA) is incorporated under the *Association Incorporation Act 1985* (SA) and conducts its business through operating Divisions, namely Support Services and HomeCare+.

SCOPE

This policy applies to all employees of PQSA.

DEFINITIONS

Employee – is a person who carries out work in any capacity either paid or unpaid.

Equitable - open to all without systemic, hidden or apparent bias on the grounds of gender, race, disability, sexuality, age, marital status, pregnancy, potential pregnancy, breastfeeding, religious beliefs, medical record, criminal record or trade union activity.

Misconduct – is unacceptable behaviour by an employee that is inconsistent with their obligations to their employer and includes behaviours such as:

- Sexual harassment;
- Abusive comments to co-workers and/or clients;
- Disruptive behaviour that affects other employees in the workplace;
- Inappropriate language; and
- A continual pattern of lateness.

Must – indicates a mandatory action required by law, industrial instrument, or an Association policy or procedure.

Should – indicates a recommended action that should be followed unless there are sound reasons for taking a different course of action.

Reasonable – The appropriate standard or quality of objective decision-making that must be brought to bear when making an administrative decision.

Reporting – is an account or statement given either verbally or in writing with the specific intention of relaying information or recounting certain events in an objective manner.

Serious Misconduct – as defined in [Reg 1.07](#) under the *Fair Work Regulations 2009*:

- wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment
- conduct that causes serious and imminent risk to the health and safety of a person, or the reputation, viability or profitability of the employer's business
- theft
- fraud
- assault
- the employee being intoxicated (alcohol or drugs, other than prescribed drugs) at work
- the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.

Summary dismissal - is dismissal without notice and occurs where an employee commits an act of **serious misconduct**.

Support Person – is to provide emotional support for the employee. The support person role is not to act as an advocate or to speak on the employees behalf.

Unsatisfactory Performance - is failure by an employee to perform their tasks and duties properly and includes behaviours such as;

- High error rates;
- Inability to communicate effectively with other employees or clients; or
- Sloppy work.

Written – for the purpose of the policy will be a communication in either letter or email format it does not include SMS message or any form of social media.

RESPONSIBILITIES

It is the responsibility of PQSA to communicate the contents of this Policy to all employees on a regular basis.

Managers/Supervisors must ensure that:

Employees are familiar with their obligations and entitlements in accordance with this Policy.

Manager Human Resources or their nominee is responsible for:

- Advising Managers on their legislative requirements in relation to discipline and termination of employment;
- Managing the documentation of all investigations.

POLICY

All employees are required by the terms of their employment contract to behave appropriately in the course of their employment. This includes an obligation to;

- Serve faithfully;
- Maintain confidence;
- Take reasonable care;
- Treat all with dignity and respect; and
- Obey lawful instruction.

The following may be valid reasons for discipline and/or termination of an employee's employment:

- Unsatisfactory performance;
- Serious breach of the PQSA Code of Ethical Behaviour ;
- Misconduct;
- Serious misconduct;
- Redundancy/retrenchment.

PSQA will not terminate the employment of an employee for poor work performance or misconduct until such time as an the employee undergoes a consultation process that identifies, as necessary, appropriate support, instructions and written warning(s), and that the unsatisfactory performance or misconduct continues after a reasonable period of time for improvement, has been allowed. The exception, however, is in the case of serious misconduct where instant dismissal may be justified.

PROCEDURES

PSQA disciplinary procedures contain a series of steps, which must be followed prior to any disciplinary action or termination of employment. However, each particular circumstance will determine the number of warnings and the suitable review period for the employee to remedy their performance or conduct. All meetings will be conducted by two (2) members of staff and a Dictaphone is to be used to ensure a true and accurate transcript is recorded. . In the case of serious misconduct a Human Resource representative must be present at all meetings during the investigation.

Step-by-Step; How to handle employee misconduct and serious misconduct;

All reports of Serious Misconduct must be reported to the Divisional Manager, Manager Human Resources and the Chief Executive Officer. Investigations into reports of serious misconduct must be investigated by a senior independent manager, nominated by the Chief Executive Officer.

Step 1: Investigate the matter

Conduct a prompt and thorough investigation into the alleged issue or misconduct before approaching the employee that the allegations have been made against.

Collate Checklist

- ☐ Incident Reports (where applicable)
- ☐ Witness statements
- ☐ Associated Documentation, which may include;
 - personnel files
 - client Files
 - Support Plans
 - Communication Books
 - Day Books

If there is a need to speak with other employees or clients to gather information about the incident, inform them that the meetings are being conducted in confidence and they are not to discuss the meetings with anyone else.

The investigation needs to be fair, independent and impartial.

Before conducting an investigation into allegations of an employee's performance or misconduct, make sure that;

- The facts that need to be determined are clear;
- Witnesses to the investigation are interviewed individually, not as a group;
- Witnesses are not coached or coerced;
- Impartiality, the investigator's role is to find the facts, not to decide the actions that will be taken by the employer in response to the findings.

If the facts are clear and there is enough evidence of the employee's suspected wrong doing, approach the employee, in writing with this evidence and ask them to provide a response.

If it cannot be substantiated that there has been any wrong doing after the investigation, do not take the matter any further, inform the relevant parties of the outcome of the investigation and recorded in the Client Complaints or Employee Misconduct Registers

Allegations of criminal misconduct – before commencing the investigation report it to the police, obtain a report number and document. Where the allegations refer to a client Department of Communities and Social Inclusion (DCSI) must be immediately contacted initially verbally with a written confirmation of events and conversations sent through as soon as possible. Continue with investigation.

Allegations of misconduct against a client – before commencing the investigation report the incident to the DCSI Care Concern Unit on 8207 0310 and the client's Case Manager, verbally with a written confirmation of events. Continue with investigation.

All documentation must be collated and kept on file.

Step 2: Communicate the performance issue or misconduct allegation to the employee.

Where there is evidence to substantiate an allegation;

Document the allegations;

Give a written account of the allegations to the "accused" employee, The employee also needs to understand the evidence for all the allegations in order to respond, so give them as much information as possible; dates, times and places. The exception to this rule is where the complainant or a witness face a risk of victimisation or intimidation if named. In this case give the substance of the evidence without identifying people.

Removing an employee from shifts – this might be appropriate if;

- The claim against the employee is serious and there is the possibility of dismissal if proven;
- The employee is likely to interfere with the investigation; or
- The employee's presence in the workplace may cause harm.

Step 3: Allow an employee the opportunity to respond to the allegation.

Checklist;

- ☐ Inform the employee of the allegations in full and in writing.
- ☐ Advise the employee of a meeting time and date.
- ☐ Offer the employee the option of having a support person or witness in the meeting, a support person maybe;
 - a friend or relative
 - a union representative
 - an industrial advocate, or
 - a lawyer.
- ☐ Offer the employee the opportunity to postpone the meeting so that they can take advice or prepare their response. *If the employee indicates that they would prefer to provide a written response, let them do so. It would be unfair to insist on an oral response.*
- ☐ Make sure that the employee understands;
 - the seriousness of the allegations, and
 - that if the allegations are substantiated their continuing employment may be at risk.
- ☐ If the employee raises any relevant information or explanation in regards to their conduct, investigate it. Let the employee know;
 - you are suspending the meeting until such time as you have been able to investigate this new information
 - give estimated completion date for the new investigation.

Step 4: Determine whether there is enough evidence to prove misconduct occurred.

The standard of proof in misconduct cases is whether it is more likely than not that the alleged misconduct occurred. Assess:

- The consistency of the evidence presented;
- Whether there was any delay in reporting the evidence; and
- Whether the complainant or any of the witnesses have any other motive for giving particular evidence.

Step 5: Decide what course of action to take if you find misconduct has occurred.

If it is more likely than not that the employee committed misconduct, determine an appropriate course of action. Possible responses to misconduct include:

- Counselling or training i.e. bringing to the employees attention the importance of particular standards of behaviour without threatening dismissal if they repeat the behaviour.
- Issuing a warning either verbally or in writing to the employee; or
- Dismissal, either without notice if the determination is that **serious misconduct** has occurred, or else with a payment in lieu of notice.

Note; before terminating employment the Manager investigation the allegations must;

- Seek legal advice from the Manager, Human Resources.
- Inform the Chief Executive Officer verbally and then in writing of the facts pertaining to the decision to terminate. .

Give the employee a final hearing before you decide your final course of action.

Verbal Warning

Employees may be issued a verbal warning, these are typically issued during a private meeting between the Manager/Supervisor, the employee and a witness.

Checklist

- ☐ Offer support to help the employee meet expectations. This is an opportunity to arrive at a solution both you and the employee agree with and are willing to work on. Document the solution and have all parties at the meeting sign the document.
- ☐ Clarify PQSA's expectations and standards to ensure there is no confusion on the part of the employee at a later date.
- ☐ Let the employee know they are being issued with a verbal warning which will be placed in the personnel file, note this in the meeting minutes.
- ☐ Ensure the employee is aware that PQSA will support them to improve, it is important to reinforce the standard of behaviour required and let them know that if they don't improve, it could lead to corrective action or termination.
- ☐ Organise a date to meet again and review the actions agreed upon.

Written Warning

Employees may be issued a written warning.

Checklist

- ☐ Describe the specific conduct and when it occurred which has led to the warning being issued.
- ☐ Previous actions taken to correct the problem (if applicable);
- ☐ Expectations and acceptable standards of performance that have been agreed to;
- ☐ A warning that further unsatisfactory behaviour or performance may result in further disciplinary action or termination of employment.

A copy of the written warning should be given to the employee and a copy placed in the employee's personnel file. The written warning may also specify a review period, if appropriate, in which the employee's behaviour or performance will be reviewed.

Serious Misconduct

Summary dismissal may include:

- Serious breaches of the Code of Ethical Behaviour or other PQSA policies, e.g. Work, Health and Safety, Sexual Harassment or Privacy;
- Refusal to carry out the lawful instruction of a manager/supervisor;
- Consuming, possessing, selling, manufacturing or being under the influence of alcohol or other drugs whilst at work;
- Dishonesty, theft or other unlawful activities;
- Gross negligence (subject to the nature of the negligence);
- Assault, physical or mental abuse; or
- Vandalising, intentionally damaging or misusing company, client or another employee's property.

Other acts may also constitute serious misconduct, depending on the circumstances of the case. It is up to a Manager of PQSA to determine when an act is serious misconduct.

Upon receipt of an allegation of serious misconduct against an employee, the appropriate Manager must take the following action:

- Notify the Chief Executive Officer and the Manager, Human Resources in writing;
- Complete the Complaints or Worker Misconduct Register.

At the end of a thorough investigation into the allegations of serious misconduct the responsible manager in the presence of a witness and the employee concerned will be advise of the decision to terminate the employees employment forthwith.

- The employee will be provided with a written confirmation of the reasons for the dismissal no later than twenty four (24) hours following the termination.

Confidentiality

Documentation relating to employee discipline or termination will be handled with the utmost discretion.

RELATED LEGISLATION

- ◆ Australian Fair Work Act 2009
- ◆ National Employment Standards
- ◆ Nurses Award 2010
- ◆ Social, Community, Home Care and Disability Industry Award 2010
- ◆ HomeCare Plus Enterprise Agreement 2011

SUPPORTING PQSA DOCUMENTATION

- ◆ Performance Management System
- ◆ Privacy Policy and Procedures
- ◆ Client Complaints Management Policy and Procedures
- ◆ Code of Ethical Behaviour
- ◆ Equal Opportunity Policy and Procedures.
- ◆ Bullying in the Workplace Policy and Procedures

BREACHES OF THIS POLICY

A **breach** of this policy is grounds for disciplinary action, up to and including termination of employment. Ignorance of these procedures will not generally be accepted as an excuse for non-compliance. Only in extreme circumstances and where such ignorance can be demonstrated to have occurred through no fault of the individual concerned will PQSA accept such an argument.

DISTRIBUTION AND REVIEW

PQSA will ensure all persons engaged to provide services either paid or unpaid will be aware of this policy and will have easy access to it in an appropriate format. All policies are to be reviewed on a periodic basis or when legislation or government policy determines.