

Unsatisfactory Performance Policy

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1 Purpose

The purpose of this policy is to outline how unsatisfactory performance is managed at the Department of Communities and Justice (DCJ), and Corrective Services NSW (CSNSW), as stipulated in the [Government Sector Employment \(General\) Rules 2014](#) (Part 7, Rule 36). The primary aim is to improve an employee's capabilities and performance so that they fulfil the inherent requirements of their role. This policy is supported by the [Unsatisfactory Performance Procedure](#) which outlines the process and contains information on the management of unsatisfactory performance.

This policy describes performance development and improvement actions that must be followed to address areas of underperformance, prior to initiating the formal unsatisfactory performance process.

It also outlines the options available if an employee's performance remains unsatisfactory following the formal unsatisfactory performance process, in accordance with Section 68 of the [Government Sector Employment Act 2013](#) (GSE Act).

2 Definitions

Term	Definition
Employee	For the purpose of this policy, employee refers to non-executive: • Ongoing employees either part-time or full-time • Temporary employees engaged for more than 6 months, and • Casual employees engaged for a period greater than 12 months with DCJ and CSNSW.
Inappropriate behaviour	Inappropriate behaviour refers to disrespectful or unprofessional behaviours that are not serious enough to warrant misconduct action, or that may escalate into larger issues if left unaddressed.
Manager	Refers to the person responsible for managing an employee's performance.
Misconduct	Misconduct involves improper, wrong or potentially unlawful conduct that is outside of policy, directions or the law. It usually involves an allegation of an employee's act or omission arising from negligence or

Term	Definition
	with intent. Misconduct is dealt with in Section 69 of the Government Sector Employment Act 2013 .
Performance management system	How DCJ and CSNSW manages all aspects of employee performance consistently, equitably and transparently. DCJ and CSNSW's performance management system consists of: • DCJ's Employment Probation Policy and Procedure. • DCJ's Unsatisfactory Performance Policy and Procedure. The performance management system is designed to implement the guidelines set out in the NSW Public Sector Performance Development Framework, as required in the Government Sector Employment Act 2013 (Part 5, Section 67) and Government Sector Employment (General) Rules 2014 (Part 7, Rule 35).
Procedural fairness	Procedural fairness occurs when rules and processes are followed fairly and consistently when making decisions throughout a process. It ensures everyone involved in the process is treated impartially and has an opportunity to be heard to ensure decisions made are based on reliable evidence.
Underperformance	Underperformance is the failure to meet the inherent requirements of the role, including performing the duties, accountabilities, and/or focus capabilities to the required standard.
Unsatisfactory performance	Unsatisfactory performance is a continuation of underperformance where no improvement has been made following coaching and counselling. Unsatisfactory performance is managed in accordance with Section 68 of the Government Sector Employment Act 2013 and Rule 36 of the Government Sector Employment (General) Rules 2014.

Term	Definition
Delegated Officer	A DCJ or CSNSW employee with the delegation to make decisions in relation to unsatisfactory performance, as per the relevant Delegations schedule.

3 Scope

This policy applies to all DCJ and CSNSW non-executive ongoing employees, temporary employees engaged for more than 6 months and casuals who have been engaged for a period greater than 12 months.

The policy does not apply to:

- Contingent labour workers.
- Students and volunteers.
- Senior executives (unsatisfactory performance for DCJ and CSNSW senior executives are managed under their contract of employment).
- Employees on probation. Please refer to [Employment Probation Policy and Procedure](#).
- Responding to or managing allegations of misconduct.
- Casual employees engaged for less than 12 months, however, the principles of procedural fairness outlined in Section 6 must be observed when addressing performance concerns for these employees. Managers can seek advice from their People Business Partner on how to appropriately apply procedural fairness in such cases.

4 Policy statement

DCJ and CSNSW will manage underperformance and unsatisfactory performance in a way that ensures procedural fairness, with the aim of supporting and improving employee performance to a sustained level that meets the inherent requirements of the role.

Unsatisfactory performance and underperformance can have negative effects on team morale, other employees and DCJ and CSNSW's ability to deliver quality services.

Employees have an obligation to meet expectations. Where they are not, they must participate in a process with their manager to resolve underperformance or unsatisfactory performance.

5 Underperformance

Underperformance is the failure to meet the inherent requirements of the role, including performing the duties, accountabilities, and/or focus capabilities to the required standard.

Underperformance can include but is not limited to:

- Unsatisfactory work, including frequent mistakes, poor quality, or failure to complete tasks accurately and/or on time.
- Inability or unwillingness to carry out tasks, deliver on accountabilities or engage in learning and upskilling in new technologies associated with the role.
- Failure to follow a reasonable management direction resulting in breaches of policies, work practices, procedures and/or guidelines that are not serious enough to be managed as misconduct.
- Ignoring reasonable requests to correct inappropriate behaviours that can result in minor issues escalating to larger problems with the possibility of impacting *workplace culture*.
- A series of minor issues that, when taken together, make for a difficult working environment or adversely impact service delivery. An example of this could be if an employee spends a lot of working time in personal conversations and falls behind in their work as a result.
- Poor job fit, for example when the employee doesn't have the capabilities for the job.

Managers are responsible for setting expectations and clarifying performance objectives that align with strategic goals through documented discussions about an employee's performance.

Regular and ongoing conversations will allow for early identification and management of emerging performance issues. In keeping with [SafeWork NSW's Code of Practice: Managing psychosocial hazards at work](#), underperformance should be managed in a thoughtful and respectful manner.

Reasonable management action should involve addressing concerns about performance or behaviour through open dialogue, clearly defined expectations, and supportive measures such as structured feedback and development plans. These actions should be fair, proportionate, and delivered with care and transparency to help ensure they do not lead to psychological distress or resemble inappropriate workplace conduct.

Where an employee is showing signs of underperformance, the manager should act promptly to address and discuss their concerns with the employee.

Managers should document these initial discussions and include steps taken to:

- Set clear performance expectations.
- Monitor an employee's performance.
- Provide opportunities and support to develop capabilities.
- Identify areas of underperformance and their impacts on business operations.
- Provide feedback to the employee about their underperformance.
- Discuss any factors contributing to the employee's underperformance.
- Enable an employee's improvement in the areas of underperformance.
- Determine a reasonable timeframe for the employee to show improvement.

To support this process, managers should maintain accurate records, including meeting notes and copies of relevant emails, documenting any discussions held with employees regarding areas of underperformance.

5.1 Underperformance due to other reasons

Underperformance can sometimes occur due to other reasons that may be outside of an employee's immediate control. This can include, but is not limited to:

- Unclear expectations, where managers are not clear enough on what they want an employee to do and employees don't take the time, or where employees are not confident in asking about things they are unsure of.
- Missed performance appraisals.
- Poor supervision or lack of communication.
- Insufficient onboarding and/or induction.
- Insufficient training and development.
- Personal issues, such as family stress, addiction issues, domestic and family violence, physical or mental health issues, disability and carers responsibilities.
- Being exposed to [psychosocial hazards](#) in the workplace.

In these instances, managers and employees must work together to address any potential barriers to resolving underperformance, while following the principles documented at [section 5](#).

This may include referring to other departmental policies and procedures such as the [Bullying and Harassment Policy](#), [Managing Workplace Issues Procedure](#), [Workplace Adjustment Policy](#), [Managers Guide - Discussing Unplanned Absences and Work Health and Safety Risk Management Resources](#). It may also include referring the employee to support services such as the [Employee Assistance Program](#).

6 Formal unsatisfactory performance process

Unsatisfactory performance is a continuation of underperformance where no improvement has been made following coaching and counselling.

There should be no surprises to anyone involved where unresolved underperformance leads to the commencement of the unsatisfactory performance process.

Where an employee is not meeting or maintaining performance to the expected standard, the manager must contact their People Business Partner representative for advice on initiating the unsatisfactory performance process.

The unsatisfactory performance process must not be initiated unless it is evident that a manager has previously undertaken the necessary steps to address areas of underperformance and is able to provide supporting documentation.

Steps for the formal unsatisfactory performance process are contained in the [Unsatisfactory Performance Procedure](#).

6.1 Possible actions for unsatisfactory performance

Section 68 of the [Government Sector Employment Act 2013](#) provides for the following possible actions resulting from unsatisfactory performance:

- Terminating the employment of the employee (after giving the employee an opportunity to resign).
- Reducing the remuneration payable to the employee.
- Reducing the classification or grade of the employee.
- Assigning the employee to a different role.

6.2 GSE Act requirements for unsatisfactory performance management

Under Rule 36 of the Government Sector Employment (General) Rules 2014, the possible actions described at [section 6.1](#) cannot be applied unless:

- The employee's performance is determined to be unsatisfactory in accordance with this policy and procedure.
- Reasonable steps have been taken to advise the employee that their performance is unsatisfactory in accordance with this policy and procedure.
- The employee is advised that actions described in [section 6.1](#) are under consideration.
- The employee is given a reasonable opportunity to respond to the notice, and their response is taken into consideration.

- The employer has taken any such response into consideration.

Managers must follow the Unsatisfactory Performance Procedure to ensure these requirements are met.

6.3 Increments

If an employee's increment is due during an unsatisfactory performance process, it will be deferred and reconsidered at the end of the unsatisfactory performance process.

Please refer to Clause 14 of the [Government Sector Employment Regulation 2014](#) for further information regarding increments.

7 Principles for managing unsatisfactory performance

The below key principles must be followed to when resolving unsatisfactory performance:

- Managers will address performance issues promptly and fairly by identifying issues early and providing constructive feedback.
- Performance issues should be clearly articulated both verbally and in writing.
- Employees are advised about performance issues using appropriate information or evidence to illustrate the problem and the impact of their unsatisfactory performance.
- Employees are provided the opportunity to address performance issues raised and discuss any underlying reasons for their unsatisfactory performance.
- Employees are provided the opportunity to discuss the support they may need to develop and improve in the identified areas and to explore potential solutions, for example, workplace adjustment or training and development.
- Employees are supported to understand and meet their performance expectations within a reasonable timeframe. This can include training and development, coaching, mentoring and/or implementing workplace adjustments where required.
- Employees are required to actively participate in the agreed actions to improve their performance and meet the inherent requirements of their role.
- Employees are advised of the possible actions that may apply if the unsatisfactory performance is not resolved.
- Confidentiality is to be maintained by all parties.

8 Misconduct

Misconduct involves improper, wrong or potentially unlawful conduct that is outside of policy, directions or the law. It usually involves an allegation of an employee's act or omission arising from negligence or with intent.

Misconduct is dealt with in Section 69 of the [Government Sector Employment Act 2013](#) and Clause 37 to 42 of the [Government Sector Employment \(General\) Rules 2014](#).

Performance related issues are not generally considered to be misconduct unless there is a serious alleged breach of the [Code of Ethical Conduct](#) or other policies, procedures, directives, applicable legislation or an employee's failure to uphold their ethical obligations.

Depending on the nature of the issues, a Delegated Officer may determine that the matter should be referred as alleged misconduct rather than managed as a performance issue.

In these circumstances, managers should seek advice from their People Business Partner representative as a matter of priority, before any discussions are held with the employee.

The People Business Partner representative will consult with the relevant Professional Standards team to determine if the matter constitutes potential misconduct or if it should be addressed under the performance management system.

Managers will be advised if the matter is to proceed as unsatisfactory performance.

9 Appeals

The decision of the Delegated Officer is considered final. Employees may refer the outcome of their unsatisfactory performance process to their union or an external body that has jurisdiction to deal with the matter such as the NSW Industrial Relations Commission.

10 Record keeping

Records are kept in accordance with the [Records Management Policy](#) and any other applicable legislation, including the Government Sector Employment (General) Rules 2014, [State Records Act 1998](#) and applicable privacy legislation and applicable DCJ records management and privacy related policies.

DCJ is committed to protecting employee privacy, ensuring all personal or health information collected during underperformance and unsatisfactory performance processes are managed in line with the [Privacy Management Plan](#) and relevant legislation.

In the event of a suspected or actual data breach, managers and employees must follow the [Data Breach Response Plan](#) and report the incident promptly.

11 Roles and responsibilities

The main roles and responsibilities for the implementation of this policy are as follows:

11.1 Employees

- Ensuring they understand and act in accordance with this policy, procedure and any associated departmental resources.
- Using their [role description](#), to ensure they have a clear understanding of their role, responsibilities and expected standards of performance.
- Performing the requirements of the role to the required standard and in accordance DCJ and CSNSW policies and procedures.
- Actively and openly participating in discussions with their manager about performance expectations, goals and objectives, capability requirements and their development needs.
- Actively seeking constructive feedback to enable improved performance.
- Taking ownership of their performance and promptly raising concerns with their manager, for example, seeking information on task requirements, participating in training as needed.
- Actively participating in developing skills and capabilities for improved performance.
- Advising their manager of any issues that might impact on their work performance and reviewing other departmental policies and procedures that might assist.
- Maintaining confidentiality with respect to unsatisfactory performance management process.

11.2 Managers

- Ensuring they understand and act in accordance with this policy, procedure and any associated departmental documents.
- Offering and accommodating adjustments as necessary during performance discussion meetings.
- Allowing employees to bring a support person to unsatisfactory performance discussion meetings.
- Ensuring employees are clear on what their performance expectations are.

- Identifying and addressing areas of underperformance and unsatisfactory performance and taking appropriate action in a timely and supportive manner.
- Working collaboratively with their employees to address any potential barriers to resolving underperformance. This may include referring to other departmental policies and procedures such as the Bullying and Harassment Policy, Managing Workplace Issues Procedure, Workplace Adjustment Policy, Work Health and Safety Risk Management resources. It may also include referring the employee to support services such as the Employee Assistance Program.
- Advising the employee that their performance is not meeting expectations and the reasons why it is not meeting expectations.
- Identifying and providing specific examples of the employee's unsatisfactory performance.
- Considering the impact of the unsatisfactory performance on other members of the team, service delivery and clients, and communicating this to their employee during performance discussions.
- Defining the actions that both the manager and the employee will take to address performance issues and the timeframes.
- Documenting performance discussions and outcomes.
- Continuing to monitor employee performance, providing ongoing feedback, recognising improvements and conducting review meetings as required.
- Ensuring the employee has access to relevant policies, procedures and associated resources that they are expected to follow.
- Providing examples of required standards of work or necessary performance outcomes to assist the employee to meet performance standards.
- Providing support and guidance to help the employee to improve their performance and undertake remedial actions where identified.
- Maintaining confidentiality with respect to unsatisfactory performance management process.
- File and secure all records in relation to underperformance and unsatisfactory performance matters, in line with the Records Management Policy.

11.3 People Business Partner representative

- Providing advice and support to managers to address and resolve underperformance and unsatisfactory performance.

- Providing advice and support to managers that ensures the principles of procedural fairness are demonstrated, and that the requirements of the GSE Act are met.
- Reviewing unsatisfactory performance documentation and records to ensure compliance with this policy and its procedure.
- Securing documents received in relation to unsatisfactory performance matters.
- Providing advice and support to the Delegated Officer making decisions on unsatisfactory performance matters.

11.4 Delegated Officer (as per DCJ and CSNSW Delegation Schedule)

- Determining that an employee's performance is unsatisfactory.
- Considering the response of an employee to a letter advising that DCJ and CSNSW is considering taking action under Section 68 (2) of the [Government Sector Employment Act 2013](#).
- Endorsing actions to be implemented if the employee's performance remains unsatisfactory at the conclusion of the defined period for improvement.
- Reviewing and making final decisions regarding employee complaints and disagreements on assessment of employee performance by the manager.

12 Related legislation and documents

- Clause 14 of the [Government Sector Employment Regulation 2014](#) outlines the GSE Act requirements regarding increments.
- [Code of Ethics and Conduct for NSW Government Sector Employees](#)
- [CSNSW Managing Misconduct Policy](#)
- [CSNSW Managing Misconduct Procedure](#)
- [DCJ Code of Ethical Conduct](#) and [DCJ Values](#)
- [DCJ Employment Probation Policy and Procedure](#)
- [DCJ's Privacy Management Plan](#)
- [Health Records and Information Privacy Act 2002 \('the HRIP'\)](#)
- [Information Protection Principles \(IPPs\) for agencies](#)
- [Managing Misconduct Procedure](#)
- [NSW Public Sector Capability Framework](#)
- [Privacy and Personal Information Protection Act 1998 \('the PPIP Act'\)](#)

- [Role Description Library](#)
- [Role of a Support Person Fact Sheet](#)
- Rule 36 of the [Government Sector Employment \(General\) Rules 2014](#) sets out the requirements for dealing with an employee's unsatisfactory performance before action can be taken under Section 68 of the Act.
- [SafeWork NSW's Code of Practice: Managing Psychosocial Hazards at Work](#)
- [Schedule A – Delegated Officers](#)
- [Schedule M - Human Resources Delegations \(DCJ\)](#)
- [Schedule M Human Resource Delegations \(CSNSW\)](#)
- Section 68 of the [Government Sector Employment Act 2013](#) outlines specific actions which may be taken where an employee's performance is determined to be unsatisfactory according to the agency's performance management system.
- Section 47 (1) (c) of the [Government Sector Employment Act 2013](#) outlines the grounds by which an employee's ongoing employment may be terminated.
- Section 47 (2) of the [Government Sector Employment Act 2013](#) outlines the grounds by which an employee's non-ongoing employment may be terminated.
- [State Records Act 1998](#)
- [Work Health and Safety Policy and Procedure Library](#)
- [Workplace Adjustments](#).

13 Further support

Employees and managers can seek support from:

- The [DCJ Peer Support Program \(PSP\)](#)
- [My Healthy Workplace](#)
- Union representatives
- If an employee is from a diverse background, one of the [DCJ Diversity Networks](#)
- The [Employee Assistance Program](#).

Converge International, offers employees and their immediate family, confidential counselling, coaching and support, available 24 hours a day, 7 days a week. There are a number of different services available including Employee Assist, Manager Assist, Career Assist, Conflict Assist, Nutrition & Lifestyle Assist, Money Assist, Family Assist and Legal Assist. Converge International also offer one (1) additional session to specialist helpline services, including:

- Aboriginal and/or Torres Strait Islander People

- LGBTQIA+
- Domestic and Family Violence
- Aged Care Support
- Disability and Carers
- Youth and Student
- Spiritual and Pastoral care.

Employees may contact Converge International via 1300 687 327.

Workers can use [Let's Talk](#) to help plan for conversations. Let's Talk is a DCJ program that provides resources, tools and videos to support employees in having direct and respectful conversations at work.

14 Assistance with this policy

Employees and managers can seek advice in relation to this policy and its procedure from:

- The [intranet](#)
- Managers and executives
- Their People Business Partner representative
- Union representatives.

15 Document Information

Document name	Unsatisfactory Performance Policy
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Replaces	Unsatisfactory Performance Policy Version 1.0
Applies to	Refer to Policy Section 3 - Scope
Policy administrator	HR Policy and Governance Employee Relations
Approval	Deputy Secretary, Corporate Services 11 November 2025

16 Support and Advice

Who can people go to if they need more advice?

Business unit	Employee Relations, People, Corporate Services
Email	HRPolicyGovernance@dcj.nsw.gov.au

17 Version and Review Details

Version	Effective date	Reason for amendment	Due for review
1	3 May 2021	Machinery of Government harmonisation activities	2 May 2023
2	18 November 2025	Policy review schedule	17 November 2027