

State Conference 2018



MANAGING DIFFICULT SITUATIONS

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Introduction

What I would like you to take from today is to have the confidence to manage difficult situations involving staff, so that working relationships are professional and constructive, and there are no un-necessary diversions from focussing on lifting outcomes for students. I will largely address my current areas of responsibility in Employee Relations – where I oversee Performance Improvement and Incapacity (PII), Ethical Conduct and Industrial Relations.

The authority of principals and preschool directors is largely drawn from legislation, then from policy. For principals this is more direct. Refer to *Education Regulation 42* which outlines the responsibilities of “Head Teachers” then “Teachers”. Principals are answerable to the Chief Executive (through their Education Directors). There are clear lines of authority. Responsibilities of principals are also outlined in the Principal Position Description. Teachers are answerable to the principal, who is answerable to the Chief Executive.

Responsibilities of preschool directors are outlined in the Preschool Director Position Description, which includes reference to responsibilities under the National Law.

You have the lawful authority to lead and manage your own sites (within the delegated lines of authority). This authority must however be used appropriately, in the broader context of legislation, policy, industrial instruments and the Code of Ethics. We don't run dictatorships but work with staff, students and the community cooperatively and respectfully to move forward and achieve change.

Sometimes it might seem there are industrial/policy conditions that are in direct conflict with your legislated authority, and/or there is a single person or small group of people who continually challenge your authority, resulting in an uncomfortable environment and sometimes a divided staff.

Today I want to go through some examples of where this might occur and how to manage these situations. In doing this, I hope to bust some myths that might have taken hold about what you can/can't do as a leader.

I will cover off examples relating to:

- a) Performance
 - Classroom observations
 - Performance discussions
 - Unsatisfactory performance process
 - Suspected substance abuse – alcohol/drugs
- b) Industrial
 - Operation of the PAC

Classroom Observations

Myth: A leader cannot enter a teacher's classroom without permission, or use the information gained in classroom observation for performance management.

The Facts: This is untrue.

Peer observation and classroom observation by line managers or leaders is an accepted, highly effective and lawful part of professional learning, performance improvement and performance management. It is an expectation. It is to be conducted in a respectful and reasonable way, preferably negotiated with the teacher and part of a larger staff plan for learning and development.

The joint *AEU/DECD statement of protocols for peer observation using the SA Teaching for Effective Learning Compass* refers to the limited use of a specific tool. It refers to teacher initiated feedback through use of the TfEL compass, which is voluntary on the part of the teacher and is managed by the teacher who owns the feedback. This still has a place, but we have now moved beyond that.

The bottom line is that a leader can enter a teacher's classroom without their permission:

- Refer to Education Regulation 42.
- Refer Performance and Development Policy page 7 – that site leaders and line managers have both the authority and the responsibility to “observe the professional practice of employees and provide authentic feedback openly and respectfully with employees”.
- Performance and Development Policy page 6 - classroom observation by a line manager aims to “enable employees to embrace professional accountability through the de-privatisation of their practice and openness to performance feedback”.

Employees' responsibilities Performance and Development Policy - page 8 include:

- Seeking and receiving feedback openly and respectfully with colleagues.
- Sharing learning and practice with others.
- Being accountable for the performance expectations and behavioural standards that relate to their role.

Most of the time this is not a problem – when the practice is respectful, reasonable and negotiated where appropriate.

The Department is developing a simple fact sheet and advice for leaders and employees addressing the different contexts for classroom observation:

- Peer learning and observation.
- TfEL Compass.
- Performance development and management.
- Managing unsatisfactory performance (more directive).

When can Performance Discussions with staff take place?

Can NIT be used? Must I provide release time?

Answer – it depends.

Participating in performance management is specified as a core duty of teachers in policy and the Enterprise Agreement. The expectation is referenced in the Public Sector Act and there is also a Premier's Direction that a formal review occurs twice a year for all staff.

The Enterprise Agreement and PAC Handbook outline the use of NIT during school hours as including preparation of lessons, assessment of student work, report writing and curriculum development (as well as Band A and B leadership time). Note “school hours” is 1600 minutes of student instruction.

Can NIT be used? Yes, if the teacher agrees. In special cases you may even provide additional release time to allow this to happen, for example during managing underperformance. Release time for performance discussions is not an entitlement. There is otherwise time in a teacher’s day outside of the 26 hours 40 minutes of “school hours” to conduct a performance review. This can occur during Other Duties – before or after bell times (not recess or lunch time).

This is not such an issue in preschools given the structure of the week.

Challenges in Managing Underperformance

An employee’s responsibilities in a performance management situation include to:

- Comply with reasonable directions, policies and procedures in the performance of their roles.
- Be active and positive participants in any reasonable management process implemented to address identified unsatisfactory performance.

The aim is for the employee to improve, but this is not always the case. You may face some opposition and challenges during the process – some pushback.

Contact Performance Improvement and Incapacity (PII) at the start, as they can assist every step of the way. Difficult situations can include:

- You could be accused of bullying and harassment, e.g. telling a teacher aspects of their performance need to improve has been viewed by some as bullying. It might be the first time this feedback has been raised with them. You can be faced with aggression, emotive behaviour and lots of resistance. You are simply doing your job in a reasonable, respectful and courteous manner. I strongly suggest you have a witness/note taker to all interactions and you document, document, document!
- The person takes sick leave or lodges a workers compensation claim, likely because of alleged bullying or an alleged unfair process. If there is a compensation claim it raises the question of potential incapacity. Consider whether medical incapacity will overtake unsatisfactory performance. Otherwise, the process will resume when the staff member returns to work. If they are deemed not fit to participate in performance management process then they are not fit to undertake their work duties. Similarly, there should be no medical restrictions regarding to whom the staff member does/not report.
- You might have an unhelpful support person sitting in meetings. Be clear on the role of a support person. They can/can’t... What you will/not tolerate... Have a script. Be clear under what conditions you might give warnings and when you would cease a meeting. It is important the support person is not a mouth piece for the employee – there must be genuine dialogue between the leader and the employee. Hold your ground. PII can provide advice, script the meeting, or even sit in the meeting if needed.
- Seek support including from your network, EAP, PII. Look after yourself. Grit, grin and persist.

Industrial Matters – Operation of the PAC

A well-functioning PAC can be a real asset to a site:

- Staff are regularly consulted on HR matters through their PAC representatives.
- They have genuine and direct input into HR matters.

- The operations and decision making of the PAC are transparent and understood by all.

In most sites this is what occurs. Some principals have said to me that they rely on their well-functioning PACs to get reforms over the line – that the PAC representative conducting constructive consultation with their constituents has assisted this. Other leaders meet on a regular basis with their PAC AEU representative and/or the AEU sub branch secretary to identify and talk through emerging issues before they become a problem.

You as the leader of the site have the delegated responsibility for human resource decisions at the site level, provided those decisions are reasonably made in a reasonable manner and accord with the consultation process outlined in the Enterprise Agreement and PAC Handbook.

For example you need to demonstrate that you:

- Work in partnership with the PAC to consider the range of HR issues at the site (mainly the deployment of staff).
- Have adequate consultation and information sharing arrangements in place (what will this look like?).
- PAC members are provided with sufficient information (including funding information) to understand the issues and enable them to consult with others.
- Achieve decisions by consensus. If consensus can't be reached, the decisions must be made by a majority of the PAC, which must include the principal (or principal's nominee). Example - a decision cannot be made without the endorsement/approval of the principal.

If staff feel they are involved, indeed are involved and consulted, it creates a positive working environment. If you do everything right, and you still get resistance, contact the Industrial Relations unit for help. It might be that the "facts" need to be clarified, or staff conduct needs to be addressed.

Drugs and Alcohol

Finally, I would like to address your role and authority if faced with staff whom you suspect are under the influence of, are intoxicated by, or who have disclosed addictions/problem use of drugs or alcohol.

Myth: you can't take any action without a direct admission from the person, or without absolute proof of substance abuse.

Fact: you must take action that is appropriate in the circumstances.

In reference to your duties under the Education Regulations, the National Law, the Work Health and Safety Act and common law – you have a duty to provide a safe learning and working environment for students and staff that is conducive to learning and where staff can perform at their best.

We are currently developing a policy statement and a leaders' toolkit on this topic.

The use of, or possession of illicit drugs can be a criminal offence. This would be treated by the department as misconduct. If you suspect an employee is under the influence of drugs/alcohol they might be forgetful, constantly late, engaging in bizarre behaviour, going to their car during breaks, or smelling strongly of breath freshener. I suggest you:

- Contact PII for assistance.
- Meet with the staff member – discuss your concerns, any health issues, provide directions as to future conduct/performance.

- Make the call if necessary to send them home (safely).
- Seek a medical to declare they are fit/or not fit to return to work.
- Identify and document impact on performance.

If they are intoxicated at work e.g. slurring words, stumbling, asleep in class, smelling strongly of alcohol:

- Contact the Incident Management Division (IMD) – misconduct.
- Follow the procedure above on advice from IMD.

Summary

In summary, being a leader is a complex job where you often deal with competing perspectives. Please remember we are here to support you. Such support is available from your Education Directors, from my areas of PII, Ethical Conduct and Industrial Relations, and People and Culture generally.