

Your rights in misconduct matters

Your Local Land Services Delegates have been reporting an increase in misconduct and performance improvement procedures and some confusion about members' rights throughout this process.

Essentially all employees have a right to procedural fairness, regardless whether allegations are of misconduct or of poor performance. This endeavours to ensure the respondent to allegations:

is clear about the allegations they are to respond to

- » is clear about the processes to determine the matter
- » is given adequate opportunity to respond to the allegations
- » is advised of their right to have a support person from the union if they are a member
- » is clear about the processes leading to a final determination of the matter once the investigation process has concluded
- » is clear that the matter is investigated in a manner that is free from bias.

In regard to alleged poor performance and the development of a performance improvement plan, important points to consider are:

- » a plan should only commence where attempts have previously been made to assist and address alleged performance issues. Ongoing discussion and the raising of issues as they arise, along with proper support and

supervision, can prevent matters progressing in the first place

- » the plan, if the matter has escalated, should relate to the specific issues of concern only
- » those concerns should be clearly defined
- » the employee should be given the opportunity to respond not only to the draft plan, but also to the view that their performance is poor
- » the expectations required of the employee by the end of the plan should be made clear
- » measures to assist should be formulated and put in place
- » the aim of the plan is for success not failure.

It should be noted the requirements under the GSE Act and Rules are more defined for ongoing employees and unfortunately fixed term employees and those on probation have extremely limited rights of appeal against dismissal. This should not, though, take away the inherent right of a fair process for everybody.

The above information is only preliminary. It is recommended that you seeking further advice from the PSA if you are subject to matters of misconduct or poor performance. You should also request the appropriate policy from the employer relating to these matters. Whilst employees are advised to keep matters confidential this does not preclude their involving the union.

