

## Resolving employee performance or conduct issues

First Produced:	1/11/93 (Refer Notes)	Authorisation:	Te Kāhui Manukura
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Review Cycle:	3 years		
Applies From:	immediately		

# 1 Introduction

## 1.1 Purpose

The purpose of this policy is to deal with resolving complaints of misconduct, serious misconduct or poor performance, made against Ara Institute of Canterbury Limited (Ara Ltd) staff (kaimahi) (kaimahi). This is the primary policy under which all complaints are made and formally recorded.

## 1.2 Scope and application

- a This policy applies to all Ara Ltd employees excluding the Chief Executive.
- b This policy applies to all misconduct, serious misconduct or poor performance complaints. The following complaints are not managed by this policy:
  - i Complaints managed under the Bullying, harassment and discrimination procedures
  - ii Academic matters.

However, complaints raised in i. and ii. above, may have follow-on reasons to deploy this policy.

- c The Ara Ltd Board, in its capacity as employer of the Chief Executive, manages all employment matters including performance concerns and complaints relating to the Chief Executive.

## 1.3 Formal delegations

- a Under section 294 of the Education and Training Act 2020 the Chief Executive manages the academic and administrative affairs of Ara Ltd. The Chief Executive, as the employer, has the authority to take all and any disciplinary action against employees including to suspend and to dismiss.
- b The Chief Executive has the authority to delegate their powers under this policy to the Executive Director People & Capability (ED P&C) or to an employee at 200, 250, 300 and 400 Level, a People and Capability Business Partner or the Employment Relations Specialist.
- c When the Chief Executive has delegated their authority, that delegate has the authority to issue warnings up to and including a written warning but cannot issue a final written warning, suspend, or dismiss employees.

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## 1.4 Definitions

- a **Employee/staff member/colleague/kaimahi:** In the context of this policy, it refers to an Ara Ltd employee, including a manager, for whom a performance or conduct issue has been alleged, with the exceptions noted in Introduction 1.2.
- b **Performance, conduct or behavioural issue:** Any action or non-action which is a breach of an employment agreement or the Ara Ltd Code of Professional Practice for staff (kaimahi), found by searching for CPP211 on Waituhi.
- c **Natural justice:** Natural justice ensures any performance/disciplinary matter is handled without bias and enables the right to fair hearings. Natural justice ensures:
  - i Employees have the right to be told about concerns about their job performance or behaviour that could lead to disciplinary action
  - ii Employees have the right to be told that concerns have been raised and in the case of a formal complaint, who has raised the concerns
  - iii Employees have a right to an opportunity to respond to allegations before any decisions are made.
  - iv Employees have the right to be listened to and can seek and receive advice, support and representation of their choice throughout the process.
- d **Manager:** A person who has the authority to handle a performance or conduct issue. This may be the Chair of Ara Ltd Board in relation to matters concerning the Chief Executive and in matters concerning other employees: the Chief Executive, Executive Directors (EDs) and other line managers with a written delegation to handle performance/conduct issues from any of these authorised persons. It does not include, in the context of this policy, Team Leaders, Programme Leaders, Course Supervisors or the equivalent.
- e **Performance issue:** A concern that an employee is not performing tasks, responsibilities and/or obligations to the required standard outlined in their job description. This includes tasks, assignments, directions and instructions given verbally and/or in writing by a manager or member of Te Kāhui Manukura (TKM).
- f **Te Kāhui Manukura (TKM):** The executive leadership team.
- g **Written warning:** A formal written communication from an authorised manager to an employee including:
  - i Details of the behaviour or performance resulting in the warning
  - ii Changes required in the employees behaviour and/or performance
  - iii Where relevant, observable and measurable standards against which the change/s will be evaluated
  - iv The consequences of failing to make the required improvements/changes
  - v The period allowed for the changes to be made and/or the period the consequences of the warning held on the employees personnel file are valid.

These requirements apply to all written warnings unless a variation is stated.

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<p><b>Related Ara Ltd Procedures</b> (Waituhi) <a href="#">Hyperlinks</a></p> <ul style="list-style-type: none"> <li>• CPPXXX Bullying, Harassment and Discrimination Procedures</li> <li>• Bullying, Harassment and Discrimination Reporting templates – low key, informal, formal</li> </ul>	<p><b>Related Ara Ltd Policies</b> (<a href="#">hyperlinks</a>)</p> <ul style="list-style-type: none"> <li>• All policies related to People and Capability, including CPP211 Code of Professional Practice</li> <li>• APP301 Student Rights and Responsibilities</li> <li>• APP704 Evaluation and Review</li> <li>• CPP102 Disclosures and Management of Conflict of Interest</li> <li>• CPP116 Protected Disclosures</li> <li>• CPP209 Bullying Policy</li> <li>• CPPXXX Harassment Policy</li> <li>• CPPXXX Discrimination Policy</li> </ul>
<p><b>Related Legislation or Other Documentation</b></p> <ul style="list-style-type: none"> <li>• NZQA Quality Assurance Framework</li> <li>• Ara Ltd Employment Agreements</li> <li>• Crimes Act 1961</li> <li>• Employment Relations Act 2000</li> <li>• Harassment Act 1997</li> <li>• Harmful Digital Communications Act 2015</li> <li>• Health and Safety at Work Act 2015</li> <li>• Human Rights Act 1993</li> <li>• Privacy Act 2020</li> <li>• Education and Training Act 2020</li> <li>• Education (Pastoral Care of Tertiary and International Learners) Code of Practice 2021</li> </ul>	<p><b>Good Practice Guidelines</b></p>
<p><b>References</b></p>	
<p><b>Notes</b>  The version approved 06/05/05 (in principle) and 03/06/05 (final) replaced the policy 'Complaints Involving CPIT Staff (kaimahi),' first produced in 01/11/93 and subsequently revised on 29/09/95, 14/11/95, 27/02/98, 27/04/00 and 10/10/01. Although some aspects remained the same, there were significant changes. The policy was reviewed after one year; no changes were made and it reverted to a standard three-year cycle.</p>	

## 2 Principles

- 2.1 All staff members (kaimahi) must maintain professional standards of conduct and performance consistent with employment by an academic institution and with the CPP211 code of professional practice for staff policy.
- 2.2 This policy provides a procedure enabling disciplinary processes to be enacted or complaints to be managed, as soon as possible.
- 2.3 All employee performance or conduct issues are managed in a way that informs the employee about the performance issue(s) or complaint(s) and any matters to be investigated, provides a proper opportunity for investigation and consideration of the issue, and ensures unbiased decision-making.
- 2.4 The Education and Training Act outlines the responsibilities of Te Pūkenga to Te Tiriti o Waitangi. Those provisions include (and are not limited to) a requirement to operate employment policy that contains provisions requiring recognition of the aims and aspirations of Māori, the employment requirements of Māori, and the need for greater involvement of Māori in the education service (s9(2)(h)). This policy seeks to recognise these obligations and consider tikanga in the way we navigate legislative and employment agreement obligations and how we go about resolving employee performance or conduct issues. We seek to consider cultural perspectives in how we navigate these situations.

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### 3 Associated procedures for Ara Ltd corporate policy on: resolving employee performance or conduct issues

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Contents:	3.1	How a performance or conduct issue is raised
	3.2	Initiating complaints
	3.3	Processing formal complaints
	3.4	Procedural requirements
	3.5	Investigation powers
	3.6	Investigator or investigators and investigation process
	3.7	Suspensions
	3.8	Warnings
	3.9	Dismissal

#### 3.1 How performance or conduct issues are raised

Performance, conduct or behavioural issues can become evident through:

- a. The normal course of work, in which case the manager talks to the staff member (kaimahi) to resolve the matter, using the procedural approach in 3.4 below if misconduct or serious misconduct is a consideration.
- b. Receiving a complaint. If a complaint is raised, it can be low key, informal or formal. The ways these types of complaints are received and processed differ. Refer to sections 3.2 and 3.3.

#### 3.2 Initiating complaints

- i. Informal disclosure

Informal approaches include:

The complainant addressing their concern with the person complained about directly (or with the assistance of a support person.)

A Manager, People and Capability (P&C) Business Partner (or other appropriate person) speaking to the person complained about on behalf of the complainant on an informal basis regarding the alleged conduct and resetting expectations if necessary (a 'quiet word'); and or

Having a mediated or facilitated discussion between the complainant and the person complained about. This discussion can be facilitated by a Manager, Head of Department or People and Capability Business Partner.

- ii. Formal complaints

A formal complaint is made in writing with sufficient information to enable Ara Ltd and the person complained about to understand it.

A complaint can be made to a People and Capability (P&C) Business Partner or Manager. In cases where a Manager receives a formal complaint, they will notify the relevant People and Capability Business Partner as soon as practicable.

- iii. Other forms of initiating complaints

Complainants can initiate complaints and seek resolution through external agencies, such as the New Zealand Police, or the Human Rights Commission.

- i. Reports to the Police

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- Ara supports the right of Staff Members or students to decide whether they want to report the complaint to the Police, or not.
  - A Student or Staff Member may decide to make a complaint to Ara, but not report the incident to the Police. Alternatively, a Student or Staff Member may decide to report conduct to the Police, but not to make a complaint to Ara.
  - A Student or Staff Member's decision to make a report to the Police will not necessarily preclude Ara from investigating or acting in response to a complaint under this Policy. However, any internal Ara process may have to be suspended pending completion of the criminal process.
  - When deciding whether to suspend an internal Ara process pending completion of a criminal process, Ara will consult the Police and the complainant and will consider:
    - the potential for the internal process to negatively impact the criminal process;
    - the potential for the criminal process to negatively impact the internal process; and
    - whether investigating or responding to the incident has the potential to impact adversely on the rights of either or both the complainant or the person complained about.
- ii. Reports to the Human Rights Commission and Privacy Commission
- If relevant, if a complainant is dissatisfied with the outcome of a resolution process, or does not feel comfortable using them, they may raise a complaint with an external agency, such as the Human Rights Commission or the Privacy Commission.

### 3.3 Processing formal complaints

All formal complaints are initially managed by the manager or Head of Department, except in the case of a complaint against a Level 200 manager which is managed by the ED P&C and/or Chief Executive. A complaint can be made to any P&C Business Partner, the Executive Director People and Capability (ED P&C) or the Chief Executive.

If needed, the manager or Head of Department considers the complaint or incident and carries out research and/or inquiries. They decide with a P&C Business Partner if the complaint should be managed using a disciplinary process or if it can be resolved informally or in a low-key way as in section 3.2.

If the matter is determined to be frivolous, vexatious or lacking in substance and/or can be managed in a low-key or informal way and no further action is warranted, a note is made for management files about why the matter was not taken further and why no formal investigation was required. The complainant is informed.

### 3.4 Procedural requirements

If a decision is made to manage a complaint using a formal process e.g., investigation or disciplinary process, or there is no complaint and it is a disciplinary matter, then when determining allegations of misconduct or serious misconduct (see CPP211, Ara's code of professional practice for staff) Ara Ltd:

- a Conducts the (disciplinary) process fairly and reasonably
- b Carries out sufficient investigation of allegations.
- c Provides the staff member (kaimahi) with all relevant information and allows a reasonable opportunity to respond

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- d Advises the staff member (kaimahi) of possible consequences if the alleged conduct is found to have occurred
- e Informs the staff member (kaimahi) of their right to have a support person, cultural support person or representative attend meetings
- f Ensures confidentiality is maintained
- g Ensures no decisions are made until hearing or considering the employee's response to the proposed course of action; and
- h Advises the staff member (kaimahi) of the outcome within a reasonable period.

### **3.5 Investigation powers**

- a If a formal investigation is held, the ED P&C may seek information from any source they consider appropriate, including classroom observations.
- b Other powers during an investigation:

The ED P&C may, during an investigation into a complaint, and in consultation with and authority from the Chief Executive, take some of the following actions:

- i Suspend the staff member (kaimahi) on pay
- ii Suspend the staff member (kaimahi) without pay
- iii Temporarily reassign the staff member (kaimahi) to other duties or limit their duties
- iv Delay a course or programme and/or
- v Limit the level of service offered

provided before action is taken the staff member (kaimahi) can provide feedback on the proposed action(s).

- c Variations

This policy must be flexible to allow Ara Ltd to adequately address each complaint. These procedures may be departed from when reasonably necessary, provided:

- i the staff member (kaimahi) is advised of the intended departure; and
- ii at all times the revised procedure is without bias and enables rights to fair hearing from those involved.

### **3.6 Investigator or Investigators and investigation process**

- a The ED P&C can delegate the complaint investigation to an investigator(s) or investigators. This delegation may include appointing an independent investigator (or investigators).
- b When the ED P&C appoints more than one investigator, they are called an investigating committee and the procedure in paragraphs 3.6 c applies with the following additions:
  - i The members of the investigating committee, including how many people appointed and the choice of chair, is decided by the ED P&C
  - ii The terms of reference for the investigating committee are provided to the chair in writing.
- c When an investigator(s) is appointed:
  - i The staff member (kaimahi) is told and is given a copy of the terms of reference

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- ii The investigator considers all information and may:
  - Interview any staff member (kaimahi) (including the complainant), seek information from any person, seek assistance from any person or organisation and undertake general enquiries, all within the terms of reference
  - Specify when information is requested but not supplied
  - List the people interviewed and people who have provided material
  - List systems appraisals
  - Provide a recommendation
  - Report to the ED P&C in a timely manner.
- iii. A copy of the investigator's report is provided to the staff member (kaimahi) concerned.
- iv. The ED P&C invites the staff member (kaimahi) to comment on the report before a decision is made.
- d When an investigator or investigating committee seeks a statement from the staff member (kaimahi), Ara Ltd makes resources available to enable a response. For example, Ara Ltd might provide word processing services for a written statement. This resource assistance does not extend to appointing legal counsel for the staff member (kaimahi) or agreeing to meet their legal representative's fees or out of pocket expenses associated with responding to the complaint.
- e Outcomes may include but are not limited to:
  - i Dismissing the complaint
  - ii Determining that the complaint has otherwise been resolved
  - iii Taking no further action
  - iv Requiring the staff member (kaimahi) to improve their practice, conduct or performance
  - v Requiring the staff member (kaimahi) to undertake training and/or professional development
  - vi Taking disciplinary action, e.g., issuing a warning
  - vii Dismissing the staff member (kaimahi)
  - viii When appropriate, after considering privacy obligations, informing the complainant of the outcome.
- f. All communication about outcomes and decisions is provided to the staff member (kaimahi) in writing.
- g. Complainants are informed when the complaint is closed. Because of the privacy of the employment relationship they are unlikely to be told of the actions taken. (See e viii above.)

### **3.7 Suspensions**

- a. When there is an allegation of misconduct or serious misconduct, Ara Ltd may suspend the staff member (kaimahi) while considering action to take. This is appropriate when there is a risk to Ara Ltd's business/education interests, the integrity of any investigation, or the health, safety or wellbeing of anyone Ara is responsible for. Ara Ltd consults with the affected employee before making a decision to suspend.
- b. Suspension clauses in employment agreements always apply.

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- c. Normally, suspension is on full pay unless there are special circumstances, for example a criminal investigation which prolongs the investigation process or a failure or inability by the employee to cooperate with Ara Ltd's reasonable requirements. If special circumstances arise, Ara Ltd may suspend the staff member (kaimahi) without pay.

### **3.8 Warnings**

- a. This section provides warning administration guidance. It does not suggest a hierarchy of warnings nor require Ara Ltd to impose a warning before taking other disciplinary action. The type of warning imposed (e.g., verbal, written, final warning) is determined by Ara Ltd in response to the seriousness of the staff member's (kaimahi) action or conduct and any feedback or submissions provided by the staff member (kaimahi) concerned.
- b. The warning outlines the behaviours that led to its issue and a copy is placed on the staff member (kaimahi)'s personnel file. Verbal warnings are also recorded on the staff member (kaimahi) personnel file.
- c. The staff member (kaimahi) is told the warning is on their personnel file and that it may be considered in any subsequent disciplinary action.

### **3.9 Dismissal**

- a. As specified in 3.6 e vii, serious issues and complaints, including serious misconduct or repeated misconduct and warnings, may result in dismissal in accordance with this policy and the employee's employment agreement.

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