

## POLICY – STAFF CONDUCT AND PERFORMANCE

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### 1. National Quality Standard

Area	Concept	Descriptor
4.2	Professionalism	Management, educators and employees, contractors and volunteers are collaborative, respectful and ethical.
4.2.1	Professional Collaboration	Management, educators and employees, contractors and volunteers work with mutual respect and collaboratively, and challenge and learn from each other, recognising each other's strengths and skills.
4.2.2	Professional Standards	Professional standards guide practice, interactions and relationships.
7.1	Governance	Governance supports the operation of a quality service
7.1.2	Management Systems	Systems are in place to manage risk and enable the effective management and operation of a quality service.
7.2	Leadership	Effective leadership promotes a positive organisational culture and professional learning community
7.2.3	Professional Development	Educators, co-ordinators and employees, contractors and volunteers members' performance is regularly evaluated and individual plans are in place to support learning and development.

## 2. Purpose

- 2.1 Baringa recognises the importance of individual performance to the success and productivity of its organisation and endeavours to assist employees to maintain high standards of performance in their work.
- 2.2 Baringa recognises that there may be occasions when an employee's performance does not meet expected standards. Often the employee may not be aware that they are not performing well and so unless the issue is raised they are unlikely to change their behaviour. Issues which are not addressed promptly have the potential to become more serious over time and more difficult to resolve, which in turn is likely to have a negative effect on Baringa's business. Therefore, whilst dealing with underperformance issues can be challenging and confronting for employees and Supervisors/Manages alike, issues do need to be raised and addressed.
- 2.3 Underperformance or poor performance in the workplace can be exhibited in a variety of ways including:
- (a) failing to perform the duties of the position or to perform them to the required standard;
  - (b) failing to comply with Baringa's policies, values or procedures;
  - (c) exhibiting other unacceptable behaviour in the workplace; or
  - (d) engaging in disruptive or negative behaviour that interrupts or intrudes on the work of co-workers.
- 2.4 Where an employee is not able to demonstrate performance to a satisfactory standard, Supervisors/Managers are to act promptly and in accordance with the procedures listed in this Policy.
- 2.5 The result of following the procedure outlined in this policy may result in the employee's employment being terminated if the employee's performance cannot be restored to an acceptable standard.
- 2.6 This Policy does not apply to those employees undertaking a period of probationary employment, employees who engage in serious misconduct, employees to whom a training arrangement applies and whose employment is limited to a specified period of time and an apprentice.

## 3. Scope

This policy applies to all Baringa employees, contractors and volunteers.

## 4. Code of Professional Conduct

- 4.1 Employees, contractors and volunteers hold positions of trust and exercise powers that have significant impact upon the lives of children and their families or carers. Consequently, there is an expectation that these powers will be properly and prudently used.
- 4.2 With this in mind, all employees, contractors and volunteers are required to comply with the Baringa "Code of Professional Conduct" as amended from time to time. A copy of this code, as at 31 July 2018, is attached at **Schedule 1** to this policy.
- 4.3 The Code of Professional Conduct is the Centre's statement of the standards of professional conduct and integrity expected of employees, contractors and volunteers for the purpose of upholding the values and principles of the Centre.
- 4.4 The code also aims to guide employees, contractors and volunteers in identifying and resolving ethical conduct issues which may arise in the course of their work and, in doing so, maintain community trust and confidence in their integrity and professionalism.
- 4.5 Ethical behaviour is not just a matter of following the letter of the code. It is not sufficient to assume that your behaviour is ethical; it must also be seen to be so. The appearance of

unethical behaviour can be just as damaging to community confidence in the Centre, as the actual behaviour.

- 4.6 The code cannot cover every situation where employees are required to make a decision. In practice, deciding on the right course of action will often involve weighing up competing priorities and responsibilities. If an employee is unsure what to do in a particular situation they should discuss the matter in confidence with their supervisor, and where necessary, seek further advice from an experienced colleague or the Centre Director.
- 4.7 Without limiting the generality of the foregoing, or the specific requirements of the Code of Professional Conduct, the Board recommends that employees, contractors and volunteers approach keep the following questions in mind at all times:
- (a) Are my actions within the spirit of the Baringa Child Care Centre Policies, Procedures, and Accreditation requirements?
  - (b) Are my actions consistent with the Centre's goals and values?
  - (c) Could I adequately defend my action to my supervisor, the Centre Director, the Board of Directors, or the Baringa community if the situation became publicly known?
  - (d) Is this the proper thing for me to do?
  - (e) What will the outcome of my action be for:
    - the Centre and the Board of Directors?
    - the children in my care?
    - the parents/carers associated with the centre?
    - my colleagues?
    - me?

## 5. **Underperformance**

### **General**

- 5.1 Baringa is committed to maintaining an effective performance management system in its workplace through the application of this policy and the provision of training to its Supervisors/Managers in the identification and handling of underperformance issues. Baringa aims to foster a healthy and productive workplace by:
- (a) ensuring that employees clearly understand Baringa's expectations;
  - (b) clearly identifying and assessing instances of underperformance by employees;
  - (c) implementing effective procedures for dealing with underperformance founded on the principles of natural justice;
  - (d) dealing with underperformance in a timely, constructive and confidential manner; and
  - (e) providing maximum opportunities for performance to be improved to the standard required.
- 5.2 The first step will always be to identify the problem and the second to assess and analyse. From there either an informal or formal procedure will be implemented, depending on the circumstances.

### **Identification of the Problem**

- 5.3 When a Supervisor/Manager identifies underperformance in one of Baringa's employees the Supervisor/Manager should first try to correctly and specifically identify the reasons for underperformance. Possible causes for underperformance may include:
- (a) unclear job description/standard of expectation;
  - (b) interpersonal differences;
  - (c) inappropriate job fit between an employee's capabilities, knowledge and skill and the job expected of them;
  - (d) lack of counselling or feedback on employee's performance;
  - (e) lack of personal motivation, low morale in the workplace and/or poor work environment;
  - (f) personal issues;
  - (g) cultural misunderstandings; and
  - (h) workplace bullying.

### **Assessing and Analysing the Problem**

- 5.4 Following identification of the problem the Supervisor/Manager should determine the seriousness of the problem, how long the problem has existed and the extent of the gap between the standard of performance expected and the standard being delivered.
- 5.5 The Supervisor/Manager should then arrange to discuss the problem with the employee. Depending on the nature of the problem, the Supervisor/Manager will then determine to either proceed by way of informal or formal performance discussion. In both instances the meeting will take place in a private, comfortable, non-threatening environment that is free from distraction and interruptions. All discussions should be open and the employee allowed the opportunity to have their point of view heard and duly considered.

### **Informal Performance Discussion**

- 5.6 Prior to invoking the formal performance procedures, it will usually be appropriate for the Supervisor/Manager to initiate an informal performance discussion with the underperforming employee. During an informal performance discussion the Supervisor/Manager should:
- (a) clearly explain or re-establish the employee's performance requirements, expected outcomes and the expected contribution of the role to Baringa's business;
  - (b) use evidence of how the employee's performance has failed to meet the expected standards or other areas of concern in the employee's performance;
  - (c) establish the causes of underperformance;
  - (d) if a skills deficit has been identified, initiate training and development as appropriate;
  - (e) if necessary explore opportunities in other areas of Baringa's business;
  - (f) where an employee's performance is suffering due to employee's personal circumstances refer the employee to counselling services; and
  - (g) agree on a timescale for review.
- 5.7 The Supervisor/Manager should monitor the performance of the employee and provide positive and negative feedback.

## Formal Performance Procedures

- 5.8 Formal performance procedures focus on applying the principles of natural justice and procedural fairness and developing a Performance Action Plan (**PAP**) in consultation with an underperforming employee.
- 5.9 Formal procedures are usually appropriate where:
- (a) an employee's performance fails to improve despite previous relevant informal performance discussions; or
  - (b) an employee has a history of underperformance.
- 5.10 Formal performance procedures are initiated by a Supervisor/Manager by organising a confidential meeting with the employee. The employee will be informed in writing of the time and date of the meeting and the general nature of the issues to be discussed. The employee may bring a support person to the meeting (e.g colleague, union representative or advocate) and must be afforded a reasonable period of time in which to prepare for discussion (this will usually mean not less than 24 hours).
- 5.11 During the meeting the Supervisor/Manager should:
- (a) clearly explain concerns to the employee in specific terms, including:
    - (i) what the problem is;
    - (ii) why it is a problem;
    - (iii) how the problem impacts the workplace; and
    - (iv) why it is a concern;
  - (b) give the employee a genuine opportunity to respond and listen to the employee's comments and opinions on why the problem has occurred;
  - (c) clearly outline the improvement required and the consequences of continued underperformance;
  - (d) jointly with the employee devise a solution and agree on a PAP to improve performance. The PAP should reflect an understanding of performance expectations and what is to be achieved over the specific time, clarify the roles and responsibilities of the employee, provide strategies for training, supervision and development and set out timeframe for improvement; and
  - (e) schedule another meeting to review the employee's performance against the PAP.
- 5.12 The PAP should be formalised in the form approved by the Human Resources Manager from time to time, and the other details of the discussion recorded in writing. Copies of the PAP and record of discussion should be given to the employee.
- 5.13 The Supervisor/Manager should continue to monitor the employee's performance during the period covered by the PAP and provide positive and negative feedback where appropriate. A meeting to review and discuss the employee's performance should be held at the end of the period covered by the PAP even if there is no longer an issue. This will enable both parties to acknowledge that the issue has been resolved.
- 5.14 If the employee's performance does not meet the requirements of the PAP further action may need to be taken, including:
- (a) counselling;
  - (b) issuance of formal warnings; or

- (c) termination of employment.

### **Termination**

- 5.15 If an employee's performance does not improve to an acceptable standard following implementation of the procedures outlined in this policy, Baringa may terminate his or her employment.
- 5.16 In effecting a termination Baringa must comply with all applicable provisions contained in the *Fair Work Act 2009*, the Small Business Fair Dismissal Code (where applicable), any relevant clauses of the Baringa Child Care Centre and United Voice Enterprise Agreement 2015-2018, any other of Baringa's policies and the employee's employment contract.

## **6. Serious Misconduct**

### **Definition**

- 6.1 Regulation 1.07 of the *Fair Work Regulation 2009* (Cth) defines '**Serious Misconduct**' as:

- (a) the wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment; or
- (b) conduct that causes serious or imminent risk to;
- (c) the health and safety of a person; or
- (d) the reputation, viability or profitability of the employees business.

- 6.2 Examples of serious misconduct include;

- (a) engaging in the course of the employee's employment in:
- (b) theft;
- (c) fraud; or
- (d) assault;
- (e) intoxication or drug use at work;
- (f) absenteeism; and
- (g) refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.

### **General**

- 6.3 Baringa takes its legal obligations under anti-discrimination legislation, occupational health and safety legislation or other legislation to investigate complaints or allegations of serious misconduct seriously. Where a Manager/Supervisor becomes aware that an employee is allegedly guilty of serious misconduct, the Manager/Supervisor should immediately conduct a full investigation.
- 6.4 Where a relevant industrial instrument or award provides for an investigation process into misconduct, that process should be followed instead of the process outlined in this policy.
- 6.5 The Manager/Supervisor must inform the employee of the investigation process at the beginning of the investigation.

### **Step 1: Preliminary Understanding of the Allegation**

- 6.6 Where a complaint of serious misconduct has been made against an employee by another employees, contractors and volunteers member, the Manager/Supervisor should request that the employees, contractors and volunteers member put their complaint in writing. If the employees, contractors and volunteers member declines to put the request in writing the Manager/Supervisor should comprehensively interview the employees, contractors and volunteers member and take detailed notes of the matters raised in the interview. If the employees, contractors and volunteers member decides that they want no further action to be taken, the Manager/Supervisor should, depending on the circumstances involved, explain to the employees, contractors and volunteers member that they may, in any event, be legally required to take action on the complaint.
- 6.7 Where an allegation involves criminal conduct and the Manager/Supervisor believes there is reasonable grounds for the allegation, the Manager/Supervisor should report the matter to the police.

### **Step 2: Putting the Allegation to the Employee**

- 6.8 The Manager/Supervisor should inform the employee in writing of the time and date of a confidential meeting. The employee may bring a support person to the meeting, however the support person must not act as an advocate and not speak on the employee's behalf. An interpreter should be arranged if the employee has difficulty understanding the English language.
- 6.9 At the meeting the Manager/Supervisor must explain to the employee:
- (a) the exact nature of the alleged conduct; and
  - (b) how and in what manner it is alleged the employee was involved.
- 6.10 The employee is not necessarily entitled to know who has made the allegation against them.
- 6.11 The employee should be given a reasonable opportunity to respond. Any verbal responses given by the employee during the meeting should be noted by the Manager/Supervisor in a file note of the meeting and any additional information or explanations raised by the employee should be investigated by the Manager/Supervisor.
- 6.12 The Manager/Supervisor should set a deadline (of at most one week) to allow the employee to prepare a written response to the allegations.
- 6.13 If the employee refuses to attend the meeting, the Manager/Supervisor should supply the employee with the allegations in writing and provide the employee with an opportunity to respond in writing and inform the employee of the potential consequences of failure to attend or to respond.

### **Step 3: Consider Suspension**

- 6.14 Where the alleged misconduct is bullying or sexual harassment, Baringa may decide that it appropriate to suspend the employee on full pay while the investigation is being conducted in accordance with Baringa relevant policy.

### **Step 4: Interviewing Witnesses and Gathering Other Relevant Information**

- 6.15 Where there are witnesses to the alleged misconduct, the Manager/Supervisor should interview them, preferably face to face and take detailed file notes or statements from the witnesses. The Manager/Supervisor should inform the witness that the investigation is being made on a confidential basis and that the witness should not discuss the matter with other employees, contractors and volunteers.
- 6.16 The Manager/Supervisor should gather any other relevant information, such as documentary records or judicial verdicts where the matter has been investigated and ruled on by the judicature.

**Step 5: Make a Decision on Whether Misconduct Occurred**

- 6.17 The Manager/Supervisor should subsequently make a decision on whether on the balance of probabilities the misconduct has occurred considering all relevant information, including the employee's response.

**Step 6: Determine Appropriate Disciplinary Action**

- 6.18 If the Manager/Supervisor decides that serious misconduct has occurred, the Manager/Supervisor must decide on the appropriate disciplinary action. The disciplinary action must be proportionate to the misconduct. Possible disciplinary actions include:
- (a) warning;
  - (b) dismissal with notice; or
  - (c) summary dismissal.
- 6.19 If the Manager/Supervisor contemplates dismissal they should meet or inform the employee in writing to allow them an opportunity to provide reasons as to why they shouldn't be dismissed. These reasons and any mitigating circumstances must be taken into account when the Manager/Supervisor makes their decision.
- 6.20 Mitigating circumstances that must be considered by the Manager/Supervisor and which might lead to a conclusion that dismissal is not appropriate include:
- (a) length of service and prior employment record of the employee;
  - (b) the intention behind the misconduct;
  - (c) the employee's contrition or remorse; and
  - (d) circumstances surrounding the misconduct.
- 6.21 In effecting a termination Baringa must comply with all applicable provisions contained in the *Fair Work Act 2009*, any relevant clauses of any applicable industrial instrument, any other of Baringa's policies and the employee's employment contract.
- 6.22 Where dismissal is not justified, a range of other disciplinary procedures may be more appropriate including:
- (a) training the employee on the appropriate behaviour to prevent or minimise misconduct;
  - (b) counselling the employee on what is wrong with the employee's behaviour and determining the reasons for that behaviour;
  - (c) the use of verbal or written warnings of dismissal or further disciplinary action.
- 6.23 A written warning should:
- (a) state the problem and the corrective action required;
  - (b) warn of the intended action if the employee does not correct their behaviour (e.g. 2nd written warning and subsequent dismissal);
  - (c) refer to previous warning and their dates;
  - (d) give details of the allegation;
  - (e) be signed and dated;
  - (f) provide a life span for the warning; and



(g) a copy should be retained by Baringa.

## 7. Recordkeeping & Privacy

### General

- 7.1 Baringa recognises that information provided to it concerning underperformance or serious misconduct is likely to contain highly sensitive and potentially damaging personal information and will necessarily involve allegations against a particular individual. Therefore, any such information Baringa records will be protected with reasonable security safeguards.
- 7.2 If a complaint is subsequently lodged with the Fair Work Commission, or proceedings are commenced in another Court or Tribunal, either body or the parties involved in the litigation may request records as part of its investigation into the allegations. Records relating to the complaint will demonstrate that steps were taken to deal with the matter. Evidence of any internal action that was taken may assist Baringa in reducing liability.

### Informal Procedures

- 7.3 If informal measures have been used to address a performance issue Baringa will usually only collect and retain limited records by recording a brief summary of the issue, along with a record of the details of the discussion held on the relevant employee's personnel file. This will allow Baringa to monitor resolution of the issue and to ensure that there are no potential repercussions for Baringa's organisation.

### Formal Procedures

- 7.4 If a formal procedure is implemented the documentation collected is likely to be much more substantial and will include at a minimum the written PAP. Records of interview with the employee concerned (and, where appropriate, other affected employees) are also likely to be taken. Any employee involved in an interview will be given the opportunity to peruse, correct and endorse their record of interview and will be given a copy of their own record of interview if requested. To avoid any possibility of collusion, interviewees will not be provided with anyone else's statement or record of interview. All records will be placed on the employee's personnel file which can only be accessed with the authority of a specified senior management representative. These records may be removed after a reasonable period of time determined by Baringa, if there has been no repetition of the behaviour.

## 8. Related Legislation and Documents

*Fair Work Act 2009 (Cth)*

*Fair Work Regulations 2009 (Cth)*

Small Business Fair Dismissal Code

## 9. Feedback

Families and employees, contractors and volunteers may provide feedback about this document by emailing [baringaboard@gmail.com](mailto:baringaboard@gmail.com).

## 10. Approval and Review Details

Approval and Review	Details
Approval Authority	Board
Advisory Subcommittee to Approval Authority	Finance Subcommittee (initial) General Counsel/Legal Director (final).
Administrator	Centre Director

Next Review Date	30 September 2018
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Approval and Amendment History	Details
Original Approval Authority and Date	30 July 2018
Amendment Authority and Date	N/A
Notes	<p>This policy replaces “Employee Conduct” policy 4.1 in the November 2017 edition of the Policy and Procedures Manual</p> <p>It also replaces the “Disciplinary Procedure” and “General Staff Expectations” sections of the Staff Handbook.</p>

## Schedule 1 – Code of Professional Conduct

### 1. Principle 1: Service to the Community

Employees are expected to abide by the policies and procedures of the Centre. Employees serve the Board of Directors and Baringa Community by:

- (a) Acting in a manner which promotes confidence in the integrity of the Centre
- (b) Exercising reasonable duty of care
- (c) Treating children, parents/carers, and colleagues with courtesy and sensitivity to their rights, duties and aspirations
- (d) Being committed to children and their development
- (e) Having consideration to the diverse social, cultural and special needs of the children and their families/carers
- (f) Working in partnership with parents/carers
- (g) Acting against any form of harassment or unlawful discrimination

Each employee has an obligation to:

- (a) Respect the dignity, rights and opinions of others
- (b) Demonstrate high standards of professional practice
- (c) Protect children from harm (mandatory reporting requirements)
- (d) Develop and maintain constructive professional relationships with parents/carers by:
  - (i) engaging in open communication; and
  - (ii) being responsive to all reasonable requests in relation to their child's development.
- (e) Exercise leadership in their role as a supervisor by:
  - (i) acting as a positive role model;
  - (ii) acknowledging the work of employees;
  - (iii) promoting equity and diversity in the workplace;
  - (iv) identifying and supporting colleagues who may be experiencing difficulty; and
  - (v) managing and reporting perceived misconduct appropriately.
- (f) Discourage all forms of discrimination in the workplace

## 2. **Principle 2: Accountability**

Each employee is responsible and accountable for:

- (a) Placing the children's best interest over the employee's personal interest or benefit
- (b) Cooperating with colleagues in the best interest of the children
- (c) Must comply with all laws and regulations under the Australian Children's Education Care and Authority (ACECQA).

## 3. **Principle 3: Fairness & Integrity**

The trust that is placed in employees requires that they conduct themselves with honesty, fairness, and propriety.

Employees act with fairness and integrity when they:

- (a) Respect the rights and dignity of children, their colleagues and the Baringa community
- (b) Avoid conflicts between their private interests and their professional responsibilities
- (c) Do not take, or seek to take, improper advantage of their position in order to obtain a benefit for themselves or any other person
- (d) Act with probity and impartiality

Employees have an obligation to act with probity in their daily work activities and decision making by:

- (a) Being aware of social, cultural and religious backgrounds of the children and having regard for their individual needs
- (b) Resolving any conflict in favour of the community interest
- (c) Not accepting private relationships in a way that adversely impacts on the work reputation of the Centre or create an apparent real conflict of interest
- (d) Not being under the influence of drugs or possessing illegal drugs
- (e) Not consuming alcohol when they are responsible for children
- (f) Seeking approval to undertake secondary private employment to ensure that no conflict of interest occurs.
- (g) Taking all reasonable steps to avoid conflicts of interest

## 4. **Principle 4: Efficiency and Effectiveness**

The ethical principle of efficiency and effectiveness seeks to obtain maximum value for the resources expended by the Centre in achieving high-level outcomes for all children.

Employees exercise efficiency and effectiveness in the use of all centre resources by:

- (a) Avoiding waste and extravagant use of Centre resources
- (b) Using Centre property and resources appropriately
- (c) Maintaining high standards of professionalism, probity and performance

Each employee is obliged to exercise efficient and effective resource management by:

- (a) Acting professionally and honestly at all times
- (b) Using all electronic communications (both personal and private) in accordance with Principles 1, 2, and 3.
- (c) Ensuring all equipment is used in accordance with the manufacturer's requirements, and that all use is both safe and legal

**5. Principle 6: Dress and Personal Presentation**

Employees, contractors and volunteers serve as role models in our Centre and are expected to act and dress accordingly.

**6. Principle 5: Personal Responsibility**

Employees, contractors and volunteers must take personal responsibility for professional conduct.

Examples of this include:

- (a) Punctuality for work.
- (b) Being aware of rostered times. Note that rostered days off (RDO's) can be changed at the discretion of the Director to achieve operational capability through consultation.
- (c) If a employees, contractors and volunteers member is unable to attend work, he/she must inform the Director of the centre at least one hour before their starting time.
- (d) Signing in at the commencement of the working day.
- (e) Completing and submitting time sheets before each pay day. Time sheets will be checked regularly by the Director.
- (f) Attending employees, contractors and volunteers meetings and where necessary team meetings.
- (g) Being appropriately dressed (refer Principle 5, above).
- (h) Maintaining a high level of hygiene.
- (i) Provide in writing your notice of resignation in accordance to the EA agreement.
- (j) Provision of a safe, caring environment, displaying a warm and friendly approach to both children and parents.
- (k) Actively work towards a safe work place.
- (l) Participating in the maintenance of all policies and adhering to these at all times.
- (m) Are to be involved in accreditation process on an ongoing basis.