MISCONDUCT AND DISCIPLINE

POLICY NUMBER: NDIS STAFF 11

INTENT

To ensure that where misconduct has occurred by an Employee or Volunteer (both hereinafter referred to as 'Staff'), the appropriate steps will be taken, and any disciplinary action will be equitable and comply with employment laws and natural justice.

DEFINITION

Misconduct *– Improper or unprofessional behaviour*

Behaviour that may be regarded as misconduct includes but is not limited to, the following examples:

- Harassment including bullying and intimidation
- Discrimination
- Failure to receive, and act upon reasonable instruction from Management
- Wilful lying about work-related matters
- A breach of the policies Code of Ethics (NDIS GOV 12) and/or Code of Conduct (NDIS GOV 15)
- Failure of a Staff member to abide by their Position Description and/or their Terms of Employment current at that time
- Unacceptable interactions between Staff
- A breach of any other Real Living Options Association Inc. policy or workplace practice
- A breach of common law and equitable duties

For a definition of these refer to the Discrimination & Harassment Policy NDIS STAFF14.

Serious Misconduct – *Has the meaning given to it by Section 12 of the Fair Work Act 2009 (Cth) which refers to definition in Regulation 1.07 of the Fair Work Regulations 2009 (Cth):*

1.07 Meaning of *serious misconduct*

(1) For the definition of ***serious misconduct*** in section 12 of the Regulation, serious misconduct has its ordinary meaning.

(2) For sub regulation (1), conduct that is serious misconduct includes both of the following:

(a) wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment

(b) conduct that causes serious and imminent risk to:

(i) the health or safety of a person; or

(ii) the reputation, viability or profitability of the employer's business.

(3) For sub regulation (1), conduct that is serious misconduct includes each of the following:

(a) the employee, in the course of the employee's employment, engaging in:

(i) theft; or

(ii) fraud; or

(iii) assault;

(b) the employee being intoxicated at work;

(c) the employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.

(4) Sub regulation (3) does not apply if the employee is able to show that, in the circumstances, the conduct engaged in by the employee was not conduct that made employment in the period of notice unreasonable.

(5) For paragraph (3) (b), an employee is taken to be intoxicated if the employee's faculties are, by reason of the employee being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug), so impaired that the employee is unfit to be entrusted with the employee's duties or with any duty that the employee may be called upon to perform.

Discipline – *control or order exercised over a person*

OTHER DEFINITIONS & DESCRIPTIONS

Management – *General Manager, Support Manager and Management Committee*

Extended examples of behaviour that may be regarded as misconduct includes but is not limited to, the following:

Staff can use the following extended definitions and examples to assist them in determining what is, and is not, appropriate conduct in the workplace:

Unprofessional and improper conduct including:

- Failure to receive, and act upon reasonable instruction from Management. Specifically, this includes:

  a) Failure to accept and follow the Delegation of Hierarchy
  b) Failure to discharge the common law duty to obey reasonable demands. This means performing tasks that are reasonably within the person's ability and Position Description
  c) Failure to take direction

- A breach of the Code of Ethics (NDIS Gov 12) and/or Code of Conduct (NDIS GOV 15). Specifically, this includes instances where the person has not demonstrated:

  a) Professional or ethical behaviour
  b) Courtesy or respect
  c) Restraint from exposing others to the risk of harm

- Failure of a Staff member to abide by their current Position Description, Duties List and/or their Terms of Employment.
- Unacceptable interactions between Staff including inappropriate verbal discussions and outbursts. Specifically, this may include:
    a) Giving instructions to, or reprimanding other employees, Volunteers or Management where it is not within that person's authority to do so and not due to an instance of misconduct
    b) Remarks that are derogatory or belittle other employees, Volunteers, Management, Participants and/or the Service
    c) Inappropriate emails/social media usage. What is inappropriate will be determined by Management in light of the feelings of the parties and by reasonable standards. Also refer to the Social Media and Communication Policy
    d) Legitimate reprimanding or discipline in an inappropriate place, for example in an open office environment.
- A breach of any other Real Living Options Association Inc. Policy or Workplace Practice. Specifically, this may include:
    a) A breach or the NDIS GOV 15 Code of Conduct Policy and/or document
- A breach of common law and equitable duties. This includes:
    a) breach of confidence
    b) breach of fiduciary duty

Examples of what is not misconduct:

- Expressing a difference of opinion politely. For example, stating a belief or opinion held about how a procedure should be carried out and the reasons why. This may become misconduct if the opinion is repeated numerous times.
- Management drawing a Staff member attention to misconduct at the time of the incident and asking for the behaviour to cease.
- A Staff member drawing another Staff member's attention to the fact that the other person's conduct is unwelcome and/or making them uncomfortable and asking for the behaviour to cease.
- Management's reasonable action following an incident/s of misconduct including but not limited to carrying out some or all of the procedures detailed in this Policy and related documents and using discretion where it is deemed appropriate

POLICY STATEMENTS

- The Management Committee of Real Living Options Association Inc. is committed to taking the appropriate steps including training, support and disciplinary action to resolve and correct any misconduct. Refer to Policy NDIS STAFF 6 Training and Development for more information.

- Management of Real Living Options Association Inc. will use its discretion to determine the appropriate steps to be taken in light of the circumstances, following any report of incident/s of misconduct.
- All Staff must be familiar with this policy
- Staff will try to recognise instances of misconduct and address them with the person engaging in the misconduct and/or report the conduct to the General Manager
- The appropriateness of conduct is to be determined by Management by applying the test of reasonableness. The test of reasonableness is whether the conduct was reasonable from an objective point of view, with knowledge of all of the circumstances, in light of current community standards

PROCEDURES

- All persons are encouraged to resolve difficulties they are experiencing with another person at first instance by speaking to that person directly.
- However, where it is not appropriate due to the nature of the misconduct, the person who has knowledge of the matter should report instances of misconduct to the General Manager.
- In the event, the person responsible for the misconduct is the General Manager, the person/s who has knowledge of the misconduct should report it to a Management Committee member.
- Staff must also complete an Incident Report.
- The General Manager and Management Committee may employ the process in the Misconduct & Discipline Workplace Practice or part thereof and this procedure must be read in conjunction with that practice.
- Where there is a complaint made, policies NDIS STAFF 15 and NDIS SER DEL 6, and the related Workplace Practices mentioned in 'Related Documentation' below, will particularly apply, as may other documents.
- Where the party responsible for misconduct is not satisfied with the outcome of this process, they may approach the Management Committee in writing to review the handling of the matter by the General Manager.
- Where the Management Committee was solely responsible for the management of the misconduct allegation, or the outcome has been reviewed by Management Committee and the party concerned is still not satisfied, the complainant may request information of the options available to seek assistance from an external dispute resolution agent/agency. Any costs incurred will be at the expense of the aggrieved party.

DELEGATIONS

Management Committee

- To monitor the General Manager's management of allegations of misconduct and give advice where necessary.
  To appropriately deal with any allegation of misconduct by another person against the General Manager.

General Manager

- Ensure that all matters of misconduct are dealt with fairly and promptly.
- Keep Management Committee informed and seek advice on the process or disciplinary action where appropriate.

RELATED DOCUMENTION

Complaints & Disputes Policy - NDIS STAFF 15
Staff/Volunteer Complaints Workplace Practice
General Manager Response to a Staff Complaint Complaints Workplace Practice
Management Committee Response to a Staff Complaint Complaints Workplace Practice
Discrimination & Harassment Policy – NDIS STAFF 14
Participant and/or Representative/Nominee Complaints, Disputes and Appeals Policy – NDIS SER DEL 6
Decision Making Between Management Committee Meetings – GOV 5
Code of Ethics – NDIS GOV 12
Code of Conduct– NDIS GOV 15
Code of Conduct document

REFERENCES

Social, Community, Homecare & Disability Services Industry Award 2010
NDIS Practice Standards and Quality Indicators
NDIS Code Of Conduct

AMENDMENTS/REVIEWS

12/04/2012, 13/06/2013, 26/04/2018, 28/07/2022, 06/11/2025