



HACSU

Health & Community
Services Union

Discipline and the effects on Mental Health in the Disability Sector

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Introduction

The Health and Community Services Union (HACSU) is the Victoria No. 2 Branch of the Health Services Union (HSU). HACSU is one of the fastest growing HSU Branches in Australia, with over 10,000 members working in mental health, disability, and drug and alcohol services across Victoria.

For over a century, HACSU has represented workers who make a real difference to the lives of people living with mental illness, disability, and drug and alcohol addiction. HACSU members are employed in a range of occupations including nurses, health professionals, disability and human service workers, program and support workers, trades and administration.

HACSU's longstanding position is that quality public services for Victorians depend on a quality workforce. This means a workforce that is recognised for its skills, commitment, and passion in making sure the most vulnerable and disadvantaged Victorians can live better lives and become active citizens.

The safety of the disability sector has always been one of HACSU's highest priorities as a union that strives to improve the safety standards of the industry, in both its workforce and for persons with disabilities. This report investigates the effects of disciplinary action on the mental health of employees.

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Executive Summary

The safety of the disability sector has always been one of HACSU's highest priorities as a union who strives to improve the safety standards of the industry, in both its workforce and for persons with disabilities.

The disability sector has undergone a number of Commissions and reforms¹ in recent years resulting in a strengthening of the quality and safeguards for people with disabilities that is supported and valued by stakeholders in the industry. It is these frameworks that have focused on reporting of abuse and neglect through regulatory bodies that may have inadvertently created a higher level of reporting to the Commission and Police, a practice which increases the risks of mental health injuries to staff undergoing these investigations.

The primary purpose of disciplinary action and performance management procedures is to address concerns about employee behaviour, performance, or conduct. The aim is not to punish employees, but rather to correct performance or behaviour to meet an appropriate work standard.

Removal from the workforce whilst undergoing investigations is often standard practice, yet has significant short-term and long-term impacts on the health and well-being of employees whose work is an integral part of their identity.

In recent years HACSU has experienced a high increase in the number of discipline matters that resulted in staff being stood down and/or investigated through a formal discipline process of serious misconduct with serious and significant impacts on those staff and their families. Those staff reported serious and significant impacts on their mental health and the wellbeing of their immediate families. Tragically, there have been 3 sentinel events of suicide involving HACSU members who were undergoing discipline processes in a period of 2 years. The number of staff reporting suicidal tendencies during this process has also been significant and increasing.

Furthermore, Discipline processes also have an impact on teams and their consumers, who may struggle with the understanding of what is occurring, or where an employee has gone.

This paper provides the methodology and findings in more detail, with the summary of key process issues and identified best practice to reduce mental health injuries as follows :

¹ Productivity Commission 2011, Royal Commission into Abuse, Neglect and Exploitation of People with Disability 2019 (ongoing)

National Disability Insurance Scheme 2016

NDIS Quality Safeguards Commission 2017,

NDIS Worker Screening 2021

ASSESSMENT

- Assessments of complaints/reports should consider whether the complaint meets genuine serious misconduct, or can be managed as a practice review, performance management or misconduct. The appropriate level of discipline must be applied and conducted at the most localised level possible.
- Assessment of stand down should consider whether there are other options for gainful employment. This should include consultation with the employee, as for some, this would cause further impact on their mental health, and stand down would be more appropriate. This should be reassessed throughout the process, and where this occurs, there should be written advice confirming the temporary arrangements.
- A risk assessment to be completed for the employee subjected to the investigation, prior to actions being taken.
- All stand-downs should be reviewed immediately and where possible prior to actioning the stand-down to ensure probity by a nominated executive such as the CEO.
- All Managers to be trained in the assessment and management of discipline procedures.
- Where a concern about appropriateness of level of misconduct is held, immediate contact is to be made by representatives to resolve as quickly as possible and escalated to Senior Management as a priority.

NOTIFICATION

- Employees must be provided the information that is available at the time of the stand-down which details the alleged serious misconduct, not the code of conduct breach itself.
- Where possible, the notification does not occur at the workplace, and before 3pm of any day to allow for supports to be engaged.

INVESTIGATIONS AND TIME PERIODS

- Time-frame guidelines to be adopted by employers and HACSU,
- Formal letter of stand-down including information about complaint- ideally at the time of stand down, but no later than 1 day,
- Letter of allegations and evidence – within 1 business week,
- Commencement of investigation and response- within 3 business weeks,
- Outcome meeting- within 2 weeks of response,
- Finalisation of matter – no longer than 12 weeks, unless exceptional circumstances,
- Use of external Investigators only where it is not feasible for investigations to be conducted internally,
- Where represented, communication between disability providers and HACSU from the outset may assist with understanding the level of concern and whether the process can be completed expeditiously. For example, where there is a full admission, there may not be a requirement to conduct witness interviews, gather evidence and formalise full reports prior to outcome discussions,
- Avoid disputes about evidence by the timely provisions of allegations and evidence relied upon,
- Scheduling of meetings times to be done directly and in consultation with employee/HACSU,
- Continued liaison directly with representative and immediate escalation of issues to Senior Managers if there are concerns /disputes,
- Review of case status regularly by Senior Management from Providers and HACSU.

SUPPORT

- Review of proforma letters to remove generalised statements about contact with others, and to only include provisions relating to discussing the investigation or contacting key individuals related to the investigation,
- HACSU provision of stress fact sheet on all discipline allocations,
- Allocation of a well-being officer, who has no role in the investigation but whose role is to support the employee who has been stood down, to assist with management of their anxiety and mental health regarding the situation,
- Consideration of a 24-hour support line (other than EAP),
- Education and Assessment of EAP - both by the Provider and HACSU,
- Discussion with the employee at the point of notification to determine who they would like to be their allocated point of contact,
- Regular contact to be made with employee throughout the process at least weekly, or as agreed with the employee, by both employer and HACSU representatives,
- Avoid any correspondence likely to require support occurring after 3pm on a business day.

OUTCOMES

- Outcomes should be proportionate to the offence,
- Outcomes should be consistently applied,
- Outcomes need to clearly identify the areas of improvement required and consultation with the employee to determine the supports needed to enable this.

RETURN TO WORK

- All absences from the workplace of greater than 12 weeks will have a formalised return to work plan that:
 - Is flexible and adaptive to the needs of the employee,
 - Is developed with the employee directly and considers their suggestions/needs,
 - Takes into account a staged return where necessary to build confidence and fitness for work,
 - Takes into account additional training and supports.
- Development of RTW checklists to provide consistent approaches.

Methodology

Given the concerns about the increasing mental health issues of its members, HACSU undertook to meet with 7 major Victorian disability providers², including the Victorian State Government, with the main objectives to be:

- To understand and identify the points of harm during a discipline process
- To analyse different organisations approaches
- To determine best practice and to recommend appropriate improvements.

The key focus of this engagement was to work cooperatively together to review systems and processes to ensure that where a discipline process is required to occur, the health and safety of the worker is also considered a priority. This also included the review of HACSU systems and supports, not just providers, recognising that representatives also play a role in ensuring better health outcomes for its members in this process.

HACSU also undertook a Safety in Disability Survey between May 20th-June 14th 2021, with 1279 respondents, that included information about discipline processes and impacts on health. Almost 10% of respondents had been absent or stood down from work due to a workplace allegation or investigation in the last 12 months and **94% of respondents reported significant mental health affects (moderate to severe)**. This is an abnormally high number and is a recent phenomenon. It is completely at odds with other industries, with truly devastating impacts on the mental health and wellbeing of the disability workforce. The continuation of such trends is likely to be unsustainable in terms of financial impacts and mental resilience for both employees and the employer.

Findings

HACSU SURVEY RESULTS

HACSU Safety in Disability Survey results in relation to questions about discipline found:

Total Survey Respondents: 1279

9.33% of all respondents have been absent or stood down from work due to a workplace allegation or investigation in the last 12 months, with **29.2 % stood down for more than 6 months**.

Length of time stood down: (Of 113 Respondents)

46.02% less than 3 months (52)

25.66% between 3 and 6 months; (29)

21.24% between 6 and 12 months, (24)

7.96% more than 12 months (9)

² Department of Families, Fairness and Housing, Aruma, Life without Barriers, Home@Scope, Possability, Melba, Yooralla

Effect on Mental Health (Of 115 respondents)

- .9 % reported no effect (1)
- 5.2 % reported a mild effect (6)
- 25.2 % a moderate effect (29)
- 68.7 % reported a severe impact (79)

94% of respondents reported significant mental health effects (moderate to severe)

DISCUSSIONS WITH DISABILITY PROVIDERS

The discussions held between Providers and HACSU showed high levels of commitment to the willingness to improve on the experience of a worker in a discipline process through a lens of health and safety, and a recognition that workers

There were several key issues with the process that appeared to increase the likelihood for employees to have a significant impact on their mental health. This paper identifies those issues and the best practice recommended following discussions with all providers.

ASSESSMENT

HACSU has experienced a shift in the classification of discipline matters, whereby for some Providers, a high percentage of matters are assessed as serious misconduct, when they do not meet the legal definition. The escalation of discipline matters to this level, creates unnecessary stress and anxiety, and is less likely to result in an employee feeling supported to improve practice.

Consideration is required to be given to assessing the determination of level of discipline:

- Is the issue a practice issue that should be dealt with in education and training?
- Is the issue a performance management that should be dealt with in supervisor or informally? For example, minor staff conflict issues, bad language, absenteeism
- Can the employee remain at work whilst being investigated?
- Do the alleged allegations actions identify willful or intent?
- Is there a **genuine** risk to any person in the worksite, which would require the standing down of an employee? Wherever possible, balancing the risk to both the employees and the consumers, other restrictions should be considered and applied to manage perceived risk, with stand-down always being the last option. For example, an issue involving errors in medication may not require stand -down, but could be managed by restricting that staff member from medication administration during the investigation.
- Is there a belief that the employee will continue to be employed even if allegations are substantiated? If so, then the risks of stand-down are higher, both financially, to the employee and to re-integration to a worksite.

Best practice Identified:

1. Assessments of complaints/reports should consider whether it meets genuine serious misconduct, or can be managed as practice review, performance management or misconduct. The appropriate level of discipline must be applied and conducted at the most localised level possible.

2. Assessment of stand down should consider whether there are other options for gainful employment. This should include consultation with the employee, as for some, this would cause further impact on their mental health, and stand down would be more appropriate. This should be reassessed throughout the process, and where this occurs, there should be written advice confirming the **temporary** arrangements.
3. A risk assessment to be completed for the employee subjected to the investigation, prior to actions being taken.
4. All stand-downs should be reviewed immediately and where possible prior to actioning the stand-down to ensure probity by a nominated executive such as the CEO.
5. All Managers to be trained in the assessment and management of discipline procedures.
6. Where a concern about appropriateness of level of misconduct is held, immediate contact is to be made by representatives to resolve as quickly as possible, and escalated to Senior Management as a priority.

NOTIFICATION

Employees suffer enormous stress when being notified of an investigation that requires their removal from the workplace and are not provided with the details about what the alleged incident/conduct was. Rather some employees are being given a generalised statement about the code of conduct breach with some employees are not even given this. This lack of information causes them to want to question others in the workplace about what they know and ruminate unnecessarily. For the decision to be made to stand-down an employee, the Provider must be satisfied that they have enough detail and evidence to do this, and this material must be provided at the time of the standdown.

The location and timing of notification is also likely to increase stress and anxiety and access to relevant supports. Often employees attend shift to find a Manager/s onsite, or they attend throughout the shift, to be notified of their stand-down and to leave the workplace. Sometimes this occurs in front of other staff. This is humiliating to them, especially when other staff are on duty, and leaves them to make their way home in a state of distress.

It is also a common practice to stand-down employees after hours or just before close of business. This does not allow for employees to call their GP's, Union, or other supports during business hours. If a staff member is not rostered on duty in the following period of the complaint/allegation being notified, this should be considered unnecessary and conducted in business hours when there is more support available.

Best practice Identified:

1. Employees must be provided the information that is available at the time of the stand-down which details the alleged serious misconduct, not the code of conduct breach itself.
2. Where possible, the notification does not occur at the workplace, and before 3pm of any day to allow for supports to be engaged.

INVESTIGATIONS AND TIME PERIODS

Discipline processes should be completed in a timely manner and should not extend beyond 12 weeks, unless there are genuine reasons to account for this, such as Criminal/Police matters. There are several factors that cause investigations to be prolonged beyond these timeframes such as:

- Delays in provision of allegations and evidence
- Employees becoming unfit to participate
- Inability to make contact with or interview witnesses
- Delays in appointing and having external investigators commence
- Disputes with HACSU/ other employee representatives

- Ability to schedule meetings with HACSU and employees
- Police or other parallel investigations

Best practice Identified:

- Time-frame guidelines to be adopted by employers and HACSU
 - Formal letter of stand-down including information about complaint- ideally at the time of stand down, but no later than 1 business day.
 - Letter of allegations and evidence – within 1 business week
 - Commencement of investigation and response- within 3 business weeks
 - Outcome meeting- within 2 business weeks of response
 - Finalisation of matter – no longer than 12 weeks, unless exceptional circumstances,
- Use of external Investigators only where it is not feasible for investigations to be conducted internally,
- Where represented, communication between the Providers and HACSU from the outset may assist with understanding the level of concern and whether the process can be completed expeditiously. For example, where there is a full admission, there may not be a requirement to conduct witness interviews, gather evidence and formalise full reports prior to outcome discussions,
- Avoid disputes about evidence by the timely provisions of allegations and evidence relied upon,
- Scheduling of meetings times to be done directly and in consultation with employee/HACSU.
- Continued liaison directly with representative and immediate escalation of issues to Senior Managers if there are concerns /disputes,
- Review of case status regularly by Senior Management from Providers and HACSU.

SUPPORT

The need for ongoing support throughout an investigation process is significant and often poorly provided. The provision of EAP information is not adequate or accessible to most employees, who may not trust the service and believe that it is an extension of the employer who stood them down or find it difficult to engage them.

Employees are often directed that they must not talk to anyone within the organisation, including other staff and consumers. For a lot of employees, their work colleagues are also a part of their friendship networks. It is not reasonable to remove their support networks or rights to engage with friends and family, but only to restrict any discussion relating to the investigation. Likewise, it is not always necessary for the employee to be restricted from contact with consumers in exceptional circumstances, for example birthday celebrations, hospitalisation, or funerals. These should be considered on a case by case basis and treated with reasonable consideration of risk and compassion.

Best practice Identified:

- Review of proforma letters to remove generalised statements about contact with others, and to only include provisions relating to discussing the investigation or contacting key individuals related to the investigation,
- HACSU provision of stress fact sheet on all discipline allocations,
- Allocation of a well-being officer, who has no role in the investigation but whose role is to support the employee who has been stood down with regard to their anxiety and mental health regarding the situation,
- Consideration of a 24-hour support line (other than EAP),
- Education and Assessment of EAP - both by the Provider and HACSU,

- Discussion with the employee at the point of notification to determine who they would like to be their allocated point of contact,
- Regular contact to be made with employee throughout the process at least weekly or as agreed with the employee, by both employer and HACSU representatives,
- Avoid any correspondence likely to require support occurring after 3pm on a business day.

OUTCOME

The key objective of a discipline process is to address concerns about behaviour, performance or conduct and correct performance or behaviour to meet an appropriate work standard. Whether an environment is one that employees feel safe to make mistakes and learn from them may be determined by the experiences they witness in the workplace.

HACSU believes that where employees witness harsh outcomes in disciplinary processes, this may have the reverse effect on employees feeling confident that they can self-report or report others, and that a fair and just process will occur quickly and with fair outcomes. Employees consider this when deciding to raise a concern about a colleague or their own conduct, particularly where it involves minor practice or conduct issues. This approach may also incent malicious and vexatious reporting.

The disability sector is an industry that is not required to be highly trained, that provides minimal ongoing support and education, that has minimal supervision requirements and has a high level of casualisation. These factors must be considered when both assessing discipline streams and determining outcomes.

The objective is to improve practice and conduct, requiring a level of commitment from the employee to learn from their mistakes. If outcomes are harsh or unjust, this has a direct impact on the employees ability to accept the decision and proactively engage in performance improvement plans.

Employees generally consider any outcome to be serious, and it should not be assumed that unless a matter is dealt with in the harshest manner possible that employees do not recognise the seriousness of the intervention. All discipline matters, no matter the level, weigh heavily on their minds, particularly if their customers have been impacted by their actions.

It is critical that there is not a loss of staff from a sector that is already struggling with workforce issues from discipline matters that could have been addressed through support and education, and opportunities to review and improve their practice.

Best practice Identified:

- Outcomes should be commensurate to the offence
- Outcomes should be consistently applied
- Outcomes need to clearly identify the areas of improvement required and consultation with the employee to determine the supports needed to enable this

RETURN TO WORK

There are identified impacts on employees who have been absent from the workplace for extended periods (and in some circumstances, shorter periods):

- Loss of confidence,
- Development of anxiety disorders,
- Feelings of judgment by colleagues / family and friends,
- Feelings of shame and embarrassment,
- Loss of fitness for work eg, readjustments to working long shifts.

The return to work of these employees' needs be managed in the same way as an injured workers return to work. This will ensure that a supportive approach is taken to enable them to return in the most efficient and safe way possible.

Best practice Identified:

- All absences from the workplace of greater than 12 weeks will have a formalised return to work plan that:
 - Is flexible and adaptive to the needs of the employee,
 - Is developed with the employee directly and considers their suggestions/needs,
 - Takes into account a staged return where necessary to build confidence and fitness for work,
 - Takes into account additional training and supports.
- Development of RTW checklists to provide consistent approaches.

CONCLUSION

The focus of this paper was to address the concerns of mental health impacts of an employee undergoing a discipline matter. The paper submits considerations for the necessitation of recognition that there is a need to have a Zero Tolerance on abuse and neglect, whilst simultaneously recognizing that there is also a responsibility to the health and safety of the employee involved.

The commitment of Disability Providers and HACSU to review and assess their own systems in relation to the management of discipline matters, whilst working towards the best practices identified in this paper, will not only result in better financial outcomes for Disability Providers, but more importantly ensure positive outcomes for workforce attraction, retention, continued skill development, and confident reporting that is essential to providing quality service provision, whilst supporting employees mental health and well-being.