



## WHS-63 Fair and Just Culture Procedure

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## 1 Purpose

This procedure is to provide Territory Generation workers with a transparent framework to guide the application of a *fair and just* culture that supports our Values and helps achieve a workplace free of incidents and injuries. The Vision and Values statements can be found at [http://intranet.territorygeneration.com.au/about\\_us/vision\\_and\\_values](http://intranet.territorygeneration.com.au/about_us/vision_and_values).

The focus of this procedure is learning, reinforcing positive behaviours, preventing incident recurrence and fostering accountability and responsibility to create a positive culture and a safer workplace.

In applying a *fair and just culture* approach Territory Generation shall ensure:

- Exceptional team and individual safety and environmental performance and leadership is recognised;
- All incidents are reported;
- Territory Generation implements learnings from reported incidents;
- Breaches or violations of requirements are addressed in a timely, appropriate and defined manner; and
- If disciplinary action against individuals is taken this only occurs in appropriate circumstances.

## 2 Scope

This procedure applies to all Territory Generation workers (refer Definitions Section 4).

This procedure applies to:

- At risk behaviours that have contributed to or caused a safety, environmental, and asset damage incidents (and others incident types as determined appropriate). Incidents are recorded in GRACE and the appropriate level of investigation conducted prior to enacting the Fair and Just Culture Procedure; and
- Exemplary behaviours. Where these are as a result of an incident (e.g. exceptional response to an emergency situation) the incident will be recorded in GRACE. Where the exemplary behavior is not linked to a recorded incident (e.g. positive contribution to workplace safety culture, taking initiative to address an identified risk) this must be reported to or by the Manager/Supervisor to enact the Fair and Just Culture Procedure.

Exclusions:

- This procedure cannot address every possible scenario or situation. It is designed to help Managers and/or Supervisors consider a broad range of issues so that their decisions are consistent with our values, are fair and just and help achieve a workplace free of incidents and injuries.
- This procedure does not provide detailed advice regarding Human Resource (HR) employee disciplinary and/or performance management processes, but will be used in conjunction with these processes as required.
- This procedure does not address organisational, task and workplace weaknesses, or individual personal non-work related issues that should be addressed as part of the investigation. However if identified they will be considered when determining the fair and just culture response.

### 3 Roles and Responsibilities

This table sets out the responsibilities of various individuals within our organisation.

Role / Title	Responsibility
<b>Chief Executive Officer</b>	<ul style="list-style-type: none"> <li>• Ensure that all workers are aware of the requirements of this procedure;</li> <li>• Ensure that the procedure is implemented at all sites under Territory Generation’s control;</li> <li>• Foster a fair and just culture approach through all levels of the organisation;</li> <li>• Initiate reviews of the procedure as required.</li> </ul>
<b>All Managers/Supervisors</b>	<ul style="list-style-type: none"> <li>• Ensure that this procedure is applied at all Territory Generation controlled sites;</li> <li>• Lead the fair and just culture approach;</li> <li>• Ensure that workers under their control are informed of and follow the procedure;</li> <li>• Contribute to reviews of the procedure and encourage workers to also contribute.</li> </ul>
<b>Project Officers/Contract Managers</b>	<ul style="list-style-type: none"> <li>• Ensure that employees and contractors under their control are informed of and follow the procedure;</li> <li>• Lead the fair and just culture approach;</li> <li>• Ensure evidence of contractors response to the procedure is received and responded to;</li> <li>• Contribute to reviews of the procedure.</li> </ul>
<b>Human Resource Personnel</b>	<ul style="list-style-type: none"> <li>• Provide relevant policy/procedural advice and support and guide all recognition or performance management processes as required in accordance with this procedure;</li> <li>• Contribute to reviews of the procedure.</li> </ul>
<b>Contractor principals</b>	<ul style="list-style-type: none"> <li>• Must participate in the Fair and Just Culture process where incidents involve their workers.</li> <li>• Must provide evidence to TGen of their own disciplinary actions taken in response to a fair and just decision.</li> </ul>
<b>All workers</b>	<ul style="list-style-type: none"> <li>• Attend appropriate training about the procedure as directed;</li> <li>• Participate constructively in the Fair and Just Culture process;</li> <li>• Contribute to reviews of the procedure.</li> </ul>

### 4 Definitions

<b>Exceptional behaviour</b>	Means that a person acted above and beyond the expected behaviour associated with their role in order to improve safety, environmental and other outcomes. This includes role-modeling exemplary behaviour and actively enabling or guiding
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	the exemplary performance of others.
<b>Expected behaviour</b>	Means that a person acted at a level of behaviour that would normally be expected of their role. This includes guiding the behaviours of others and leading by example.
<b>Unintentional at risk behaviour</b>	Means that a person unintentionally demonstrated human error in the form of a slip, lapse or mistake that led to an increased risk of harm.
<b>Routine violation</b>	Means that a person intentionally deviated from an established system, procedure, instruction or direction to perform a task in a manner that others in the same situation would also commonly do. For example short cuts or other violations that have not previously been addressed by management and which have been committed by others on a regular basis.
<b>Situational violation</b>	Means that a person intentionally deviated from an established system, procedure, instruction or direction because they believed these processes were an unnecessary barrier to completing the task or perceived pressure to complete the task.
<b>Optimising violation</b>	Means that a person intentionally strayed from an established system, procedure, instruction or direction for a perceived personal or organisational gain. This includes condoning or approving at risk acts or behaviours for perceived personal or organisational gain.
<b>Reckless violation</b>	Means that a person carried out an at risk act or behaviour that constituted a significant and unjustifiable risk and did so intentionally or with disregard for the potential consequences of their actions.
<b>Human error</b>	Means occasions where a planned sequence of mental or physical activity fails to achieve its intended outcome.
<b>Fair and just culture</b>	Means a set of established values, attitudes, beliefs, norms and practices that delineate the boundaries of acceptable and unacceptable risk behaviours to ensure: <ul style="list-style-type: none"> <li>- Incidents that result from honest mistakes or misunderstandings are not punished but rather used as the basis for learning;</li> <li>- Reckless acts and violations are not tolerated and are treated appropriately;</li> <li>- Positive incident reporting and learning from investigation outcomes is fully supported; and</li> <li>- Positive behaviours, initiatives and improvements that make a difference to our performance are recognised and where appropriate rewarded.</li> </ul>
<b>Safety culture</b>	Means a set of established values, attitudes, beliefs, norms and practices where safety is revered, promoted and treated as an overriding priority.
<b>Safety non negotiables</b>	Means safety rules that are fundamental to having a safe

	workplace and a breach of one of these safety rules will result in disciplinary action.
<b>Shall</b>	Mandatory requirement.
<b>Should</b>	Advisory requirement.
<b>Worker</b>	As per the <i>Work Health and Safety (NUL) Act 2011</i> ‘workers’ includes employees at all levels, contractors, sub-contractors, consultants, labour hire employees, apprentices and trainees, work experience students, and volunteers.

## 5 References

- *Work Health and Safety (National Uniform Legislation) Act 2011*
- *Work Health and Safety (National Uniform Legislation) Regulations 2011*
- *Public Sector Employment and Management Act*
- Territory Generation Workplace Health and Safety Policy
- HR-001 *Employee Recognition Procedure*
- WHS-56 *Incident Reporting and Investigation procedure*
- Formal Discipline Procedure
- Complaint, Dispute and Grievance Procedure
- Conduct Improvement Procedure
- Performance Improvement Procedure
- Reason, James - *Managing the Risks of Organisational Accidents*; Brookfield, Ashgate, 1997

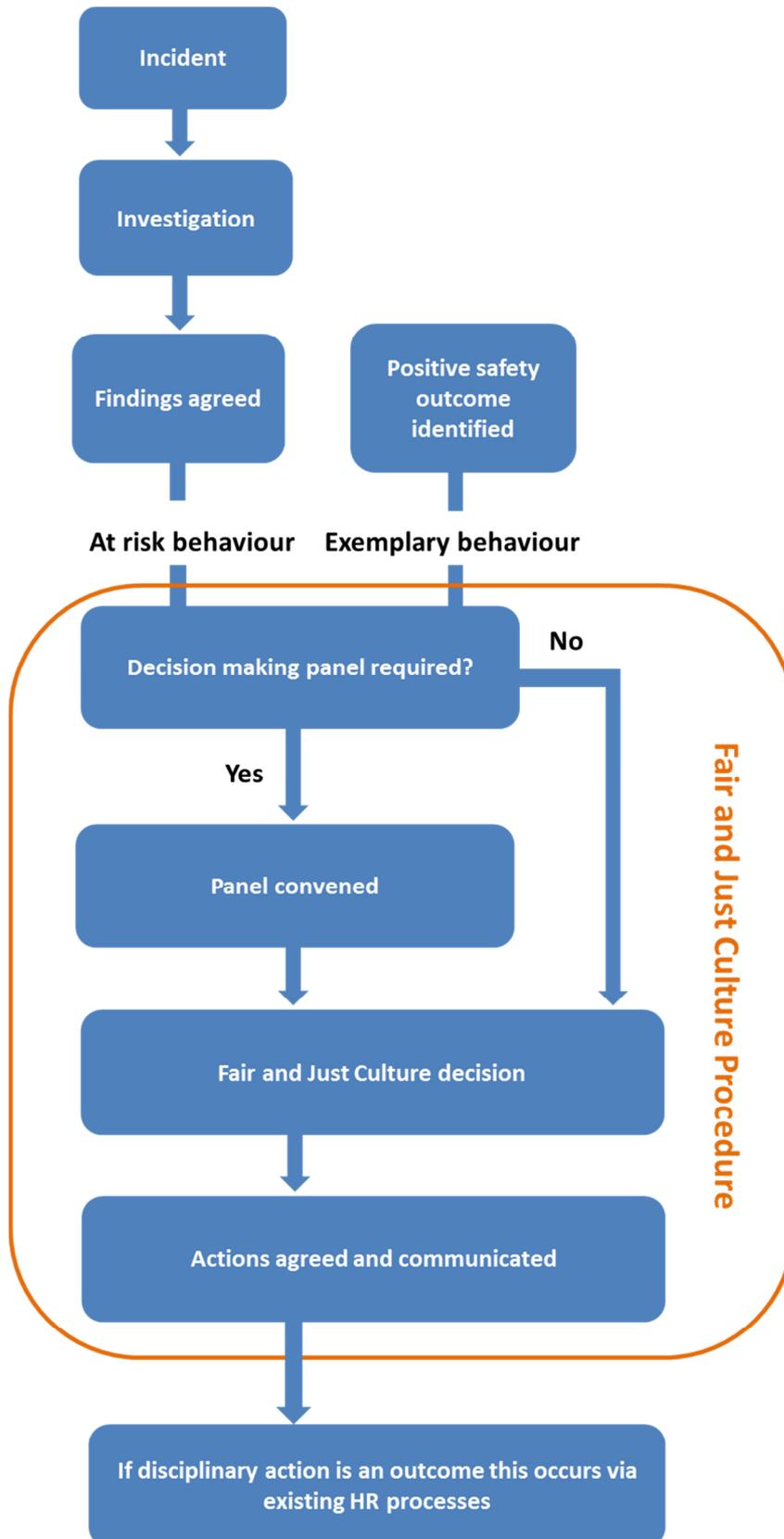
## 6 Records

- All relevant documentation shall be stored confidentially in TRIM. HR must be contacted to create secure folders in TRIM under the employee’s entitlements folder.
- All records of contractor application of the Fair and Just Culture process shall be stored in TRIM in the Contractor Fair and Just Culture Records folder.
- Privacy and confidentiality requirements shall be adhered to at all times.

## 7 Basic principles

The fair and just culture approach seeks to improve organisational culture and the performance by means of behavioural modification. It also encourages workers (including leaders) to take greater responsibility for their actions. It shall be applied with the knowledge that:

- People do make mistakes;
- Both work and non-work related issues may contribute to human behaviour (e.g. pressures, lifestyle issues, mental health, low status etc.);
- Task, workplace and organisational weaknesses can contribute to human errors (e.g. shortfalls in systems, processes, supervision, leadership, resources and the environment);
- People may develop unhealthy or at risk patterns of behaviour;
- People need to take personal responsibility and be accountable for their actions;
- Reckless conduct (at risk behaviour) cannot be tolerated and must be dealt with; and
- People doing an exceptional job and promoting good work practices or initiatives should be recognised.

**8 Application**


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- a) A Fair and Just Culture process shall be applied in Territory Generation where behaviours have contributed to or caused an incident, near miss or identified risk (**incident**) or in the case of exemplary behaviour.
- b) Decision making should be conducted as swiftly as possible.
- c) The incident is to be investigated thoroughly as per WHS-56 *Incident Reporting and Investigation* procedure prior to enacting the Fair and Just Culture assessment and response. The Fair and Just Culture Procedure does not re-investigate incidents.
- d) The investigation should focus on identifying and addressing any task/system/organisational factors (root causes) that caused or contributed to the incident. The investigation should also examine whether the conduct of individuals may have contributed to the incident. It should not focus on attributing blame and administering disciplinary action. It is designed to ascertain the facts so that similar incidents can be prevented in the future.
- e) If any person feels an investigation has not been conducted objectively or thoroughly, or the findings do not address the cause/s this should be raised directly with line management or the safety team to resolve. Fair and Just Culture decisions cannot proceed without factual and objective information.
- f) The Fair and Just Culture approach taken in a particular case should be transparent, consistent and equitable so that workers are treated fairly.
- g) Where counselling or disciplinary action is warranted it must be conducted in a confidential and respectful manner and in line with HR procedures.
- h) The Fair and Just Culture process recognises that Managers or Supervisors may also contribute to exemplary or at risk behaviour on the part of workers. This Procedure takes into account the role of the Supervisor/Manager. If it becomes necessary to deal with a Supervisor/Manager in accordance with this Procedure then the Manager of the relevant Supervisor/Manager shall apply the Fair and Just Culture Procedure to the relevant Supervisor/Manager.
- i) Where previous history is considered in determining actions that must include past good performance as well as incident history. Where history is considered it must be recent and of a similar nature to the behaviour being assessed, or be of a severity it should be considered. Unrelated or distant history may not be applicable to the behaviour in question. However, serious or repeated behaviours must be considered in the actions and documented in the 'Matters taken into consideration' section of Appendix C (the decision record).
- j) The Manager and/or Supervisor shall follow the *Workflow Process* in Appendix A to guide their approach in determining the appropriate response to exceptional or at risk behaviours. The *Workflow Process* provides a step by step approach as to how the considerations in the *Fair and Just Culture Decision Chart* in Appendix B are to be applied.
- k) Where the at risk or exceptional behaviour involves a contractor the Contract Owner shall ensure the *Workflow Process* in Appendix A and the *Fair and Just Culture Decision Chart* in Appendix B are applied and evidence of application is provided by the contractor and held on file.

## 9 Decision making

### 9.1 Decisions without a panel

In many circumstances a Manager and/or Supervisor may make a decision without convening a panel. This may be the case for minor at risk behaviours or conversely where a reckless behaviour is so severe the need for a panel is not required (i.e. the decision is clear and justifiable). This is to ensure decisions can be made swiftly for the benefit of both the involved persons and Territory Generation.

### 9.2 Panels

In some circumstances a panel may be required to utilise a range of views and ensure greater independence in the decision. A Panel is mandatory where behaviour is likely to be determined as Level 5 or above on the Fair and Just Culture Decision Chart, unless as per above; the behaviour is reckless and so severe that an immediate decision is clear and justifiable.

The initial assessment of behaviour can be determined by the Manager and/or Supervisor by using the chart to assess whether a panel is warranted. The initial assessment is not to be utilised by the panel but used for the sole purpose of determining if a panel is appropriate.

- a) Panels can apply for both exemplary behaviours and at risk behaviours.
- b) The relevant Manager and/or Supervisor determine the need for a panel.
- c) Selection of the panel is initiated by the Manager and/or Supervisor and must include persons who can act independently and objectively to ensure any decision is fair and just. For all sites this may require bringing panel members from other locations or in some cases external resources.
- d) The involved worker must be advised of the panel members and their right for this to include worker representation via an HSR or other delegate.
- e) A panel may include but is not be limited to the following personnel (numbers and mix based on the complexity of the case):
  - Lead investigator;
  - Technical/safety advisers (e.g. relevant trades, engineers and WHS professionals);
  - Managers;
  - Coordinators;
  - Line supervisors;
  - Peers;
  - HSRs; and
  - Worker representative.
- f) All panels shall act in consultation with a Human Resources (HR) representative.
- g) Each member of the panel shall review the information at hand and provide their views to the relevant Manager.
- h) The decision reached by the panel shall guide the relevant Manager and/or Supervisor in their dealings with the involved worker. If the members of the panel cannot agree on a decision or outcome, the Supervisor/Manager shall take into account the circumstances and differing views of the panel in order to reach an agreement. Where agreement is unable to be reached the matter shall be escalated to the COO or CEO for final decision.

### 9.3 Matters considered and taken into account

When determining a Fair and Just Culture response it is critical that consideration is made to matters that may have contributed or caused the behaviour. This information should be available through the investigation and through discussion with the involved persons. While this does not change the level of behaviour the actions may be different in light of other matters considered.

These matters include but are not limited to:

- **History of recent or similar behaviour (including repeated incidents and trends)**  
E.g. a number of incidents where the person has displayed Optimising Violation should be dealt with more strongly than a single incident of Optimising Violation (assuming the risk to safety is the same)
- **Training and awareness**  
E.g. has the person undergone training and awareness relevant to the expected standard or behaviour and if so, how long ago? If a person has not received training in 10 years the action would be different than if they had recently undergone training.
- **Personal or work related pressures**  
E.g. are there any known personal issues that have contributed to out of character behaviour or work pressures? If yes, actions may include providing additional support.
- **Clarity of systems and expectations**  
E.g. has the person ever been made aware of the expectations of their role? Are the position description and accountabilities clear? Did the person have access to the system? If yes, the action would be stronger than if the person was unclear and had no access.
- **Team/workplace culture**  
E.g. is there a history of at risk behaviour that has been tolerated? If yes, the action may be to re-state expectations and increase auditing to re-set the standard. If a person has displayed at risk behaviours contrary to team culture then the action should be focused on that person.
- **Perceived status/power**  
E.g. is the person new to the team or site and in efforts to 'fit in' followed the at risk behaviour of others or failed to intervene? If yes, the action may be to re-set standards with the entire team.
- **Understanding of actual or potential risk**  
E.g. does the person understand the severity of what did or could have occurred? If not, action should be taken to increase risk awareness and eliminate complacency.

## 10 Fair and Just Culture conversation

- a) The involved worker must be engaged to advise of any decisions and gain a full understanding of the reasons for the decision.
- b) Some decisions may be communicated in a verbal manner only where at risk behaviours are determined to be of a minor nature. This is to ensure the Fair and Just Culture Procedure does not detract from the ability of leaders to coach, mentor, and set expectations as is expected of their role.
- c) The conversation process allows for the involved person to meet with the Manager and/or Supervisor to discuss the matter and to arrive at the appropriate outcome on the *Fair and Just Culture Decision Chart*.

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- d) Where violations are being discussed a supportive relationship with the person involved shall be maintained at all times, including during and after the conversation. Where necessary support strategies should be utilised such as the Employee Assistance Program, peer support, and ongoing follow up.
- e) During the conversation each party may have a representative to witness the meeting.
- f) All records relating to the conversation and any actions taken pursuant to the *Fair and Just Culture Decision Chart* shall be saved as per Section 6.
- g) The involved person will be provided with a copy of the completed *Fair and Just Culture Decision Chart Record* where this has been completed.

### **11 Sharing the learnings**

- a) Sharing learnings from particular incidents is encouraged but must be done in a respectful manner taking into account the privacy of individuals.
- b) The relevant Manager and/or Supervisor in consultation with the Senior Management WHS Committee shall determine the type and level of information to be shared and the communication methods to be used.
- c) Individual outcomes from any application of the *Fair and Just Culture Decision Chart* and any subsequent disciplinary processes shall remain confidential at all times.

### **12 Training**

- a) All employees shall be provided with awareness training to ensure both understanding and consistent application of the fair and just culture model within the organisation.
- b) Key contractor principals will be provided with awareness and training and are required to ensure their workers are made aware.
- c) Awareness training shall be recorded in the Training Management System.

**APPENDIX A - Workflow Process for applying the Fair and Just Culture process**

**1. Understanding Workplace Behaviour**

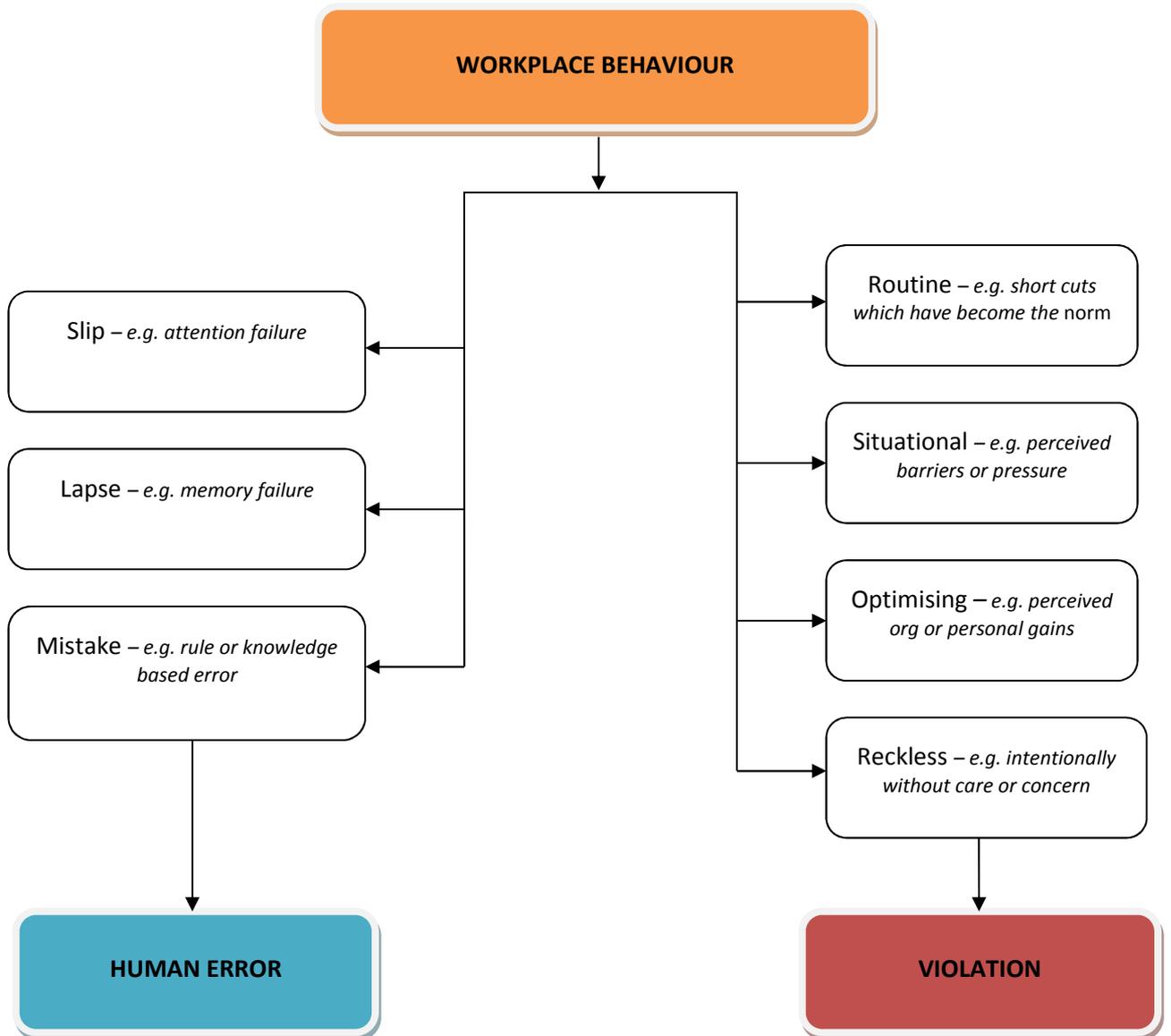
Human error is a part of life. People make mistakes.

In many cases, where a slip or lapse in following procedures or a mistake is made, disciplinary measures may not be appropriate. Even when a violation is made (an intentional act not to follow established procedures) it is important to look at the organisational context of the behaviour. For example, is the violation a one-off act by an individual or is there a culture of workforce non-compliance?

Various error types are indicated in Figure 1 - *Error Types*, with the main distinction between the *unintentional* nature of human error and *intentional* nature of violations.

When things do go wrong, it is important to look at the underlying cause or motivation for the behaviour before deciding on a fair and just consequence.

Figure 1 - Error Types



## 2. Work flow process chart

TRIGGER	PROCESS STEP	REQUIRED ACTION
Incident or event occurs	Incident investigation	Confirm that the incident investigation has been completed and findings are agreed
Exceptional behaviour occurs	Review relevant information and findings	Identify if any human behaviour issue has been identified as a contributing factor
	Refer to DECISION CHART	<ol style="list-style-type: none"> <li>1. Apply to only one action / behaviour at a time</li> <li>2. In cases where there are multiple actions by an individual, each should be treated separately</li> <li>3. Use for worker first and then repeat for Manager / Supervisor</li> </ol>
	Select behaviour on DECISION CHART	<p>Select the most appropriate description of behaviour (Level 1 to 7).</p> <p>Use the considerations information to assist.</p>
	Determine action	<ol style="list-style-type: none"> <li>1. ACTUAL or POTENTIAL severity must be considered when determining the fair and just action</li> <li>2. If disciplinary action is considered appropriate this must proceed in consultation with HR</li> </ol>
	Documentation	<ol style="list-style-type: none"> <li>1. Documentation is mandatory where stated</li> <li>2. Where documentation is 'considered' this is at the discretion of the assessor</li> <li>3. Records must be saved as per Section 6</li> </ol>

The consequence for **unintentional** human error must be different to violation. An error may result from a lack of skill, training or knowledge. A violation is a deliberate act that knowingly contravenes systems, processes and policies.

When workers **intentionally** break a well-known rule to gain a benefit or advantage or through simple disregard for known risks and/or workplace standards, then it is reasonable that there should be a personal consequence. Where repeat intentional offences are identified, escalation to "Reckless Violation" should be considered.

APPENDIX B - Fair and Just Culture Decision Chart

		IDENTIFY THE MOST APPROPRIATE COLUMN FOR THE BEHAVIOUR						
		1. Exceptional behaviour	2. Expected behaviour	3. Unintentional at risk behaviour	4. Routine violation	5. Situational violation	6. Optimising violation	7. Reckless violation
WORKER DECISION	<b>Description of behaviour</b>	Acted above and beyond expected behaviour to actively improve the workplace	Displayed expected behaviour, followed required procedures and instructions	Unintentionally strayed from a system, procedure, instruction or direction as a result of a slip, lapse or mistake	Intentionally strayed from a system, procedure, instruction or direction to act in a manner that others in the same situation would also commonly do (e.g. short-cut that's become a norm)	Intentionally strayed from a system, procedure, instruction or direction due to a belief that these processes were unnecessary OR perceived pressure to complete a task	Intentionally strayed from a system, procedure, instruction or direction for a perceived personal or organisational gain	Deliberately strayed from a system, procedure, instruction or direction for personal gain and/or without care and consideration of the risk to themselves or others
	<b>Considerations (refer Section 9)</b>	>Level of initiative shown >Impact of behaviour (e.g. can the learnings be shared) >Barriers overcome	>Previous patterns of behaviour (e.g. have they lifted to expected standard)	>Training/awareness >Personal or work related pressures >Clarity of systems and expectations >Recent or similar history	>Training/awareness >Team/workplace culture >Personal or work related pressures >Perceived status/power of worker >Recent or similar history	>Training/awareness >Team/workplace culture >Personal or work related pressures >Perceived status/power of worker >Recent or similar history	>Team/workplace culture >Perceived status/power of worker >Recent or similar history	>Recent or similar history >Understanding of actual or potential risk
	<b>Actions</b> <i>NOTE: severity of actual or potential harm must be considered in all cases</i>	<b>Recognise</b> >Complete Fair and Just Culture Form and file >Communicate	<b>Encourage</b> >Verbal positive recognition	<b>Communicate/inform</b> >Set expectations to prevent recurrence >Depending on severity consider completing Fair and Just Culture form	<b>Coach/train</b> >Set expectations to prevent recurrence >Communicate expectations to teams >Depending on severity consider completing Fair and Just Culture form	<b>Coach/train</b> >Set expectations to prevent recurrence >Communicate expectations to teams >Depending on severity consider completing Fair and Just Culture form	<b>Coach/counsel</b> >Set expectations to prevent recurrence >Communicate expectations to teams >Depending on severity consider completing Fair and Just Culture form	<b>Coach/counsel</b> >Set expectations to prevent recurrence >Complete Fair and Just Culture Form and file >Consult with HR >For contractors write to Principal >Communicate expectations to teams
MANAGER / SUPERVISOR DECISION	<b>Description of behaviour</b>	Modelled exemplary behaviour and actively enabled or guided exemplary behaviour in others	Guided the expected behaviour of others and lead by example	Unintentionally failed to detect an error or provided poor direction or supervision due to a slip, lapse or error	Allowed at risk behaviours to develop and exist without correction	Allowed or condoned violations due to known beliefs or barriers and did not act to address these	Allowed or condoned violations for a perceived personal or organisational gain	Deliberately committed, condoned or requested a violation without consideration of the risk to workers
	<b>Considerations (refer Section 9)</b>	>Level of initiative shown >Impact of behaviour (e.g. can the learnings be shared) >Barriers overcome	>Previous patterns of behaviour (e.g. have they lifted to expected standard)	>Leadership/site experience >Personal or work related pressures >Clarity of expectations >Recent or similar history	>Leadership/site experience >Personal or work related pressures >Clarity of expectations >Recent or similar history	>Leadership experience >Work related pressures >Clarity of expectations >Recent or similar history	>Leadership experience >Work related pressures >Clarity of expectations >Recent or similar history	>Recent or similar history >Understanding of actual or potential risk
	<b>Actions</b> <i>NOTE: severity of actual or potential harm must be considered in all cases</i>	<b>Recognise</b> Complete Fair and Just Culture Form and file Communicate	<b>Encourage</b> Verbal positive recognition	<b>Coach/train</b> >Set expectations to prevent recurrence >Depending on severity consider completing Fair and Just Culture form	<b>Coach/train</b> >Set expectations to prevent recurrence >Complete Fair and Just Culture Form >Communicate expectations to leaders	<b>Coach/counsel</b> >Set expectations to prevent recurrence >Communicate expectations to leaders >Complete Fair and Just Culture Form	<b>Coach/formal discipline</b> >Set expectations to prevent recurrence >Communicate expectations to leaders >Complete Fair and Just Culture Form >Initiate formal disciplinary action in consultation with HR	<b>Formal discipline</b> >Initiate formal disciplinary action in consultation with HR >Complete Fair and Just Culture Form and file

## APPENDIX C - Fair and Just Culture Decision Record

This decision record is to be completed by the responsible line Supervisor/Manager, provided to the worker, and held on file.



Involved worker	
Name	
Location	
Role	
If a contractor state employer	
Incident Reference (where applicable)	

Was a Fair and Just Culture Panel established? YES /NO	
If Yes provide names of members:	
HR Consultant:	

### Record of Fair and Just Culture Decision

Decision	Matters taken into account (e.g. severity of actual or potential harm, facts and findings from investigation, recent or similar history)	Actions
Level of behaviour:		Detail:

Completed by	
Name	
Location	
Role	
Signature	
Date	

Approved by	
Name	
Location	
Role	
Signature	
Date	