

### A tale of two PIPs

In my experience, there are two types of performance improvement plan (PIP); one that is genuinely motivated to improve an employee's performance (the Improvement PIP), and the PIP that is intended to be the first step in the 'exit' process for that employee from the organisation (the Exit PIP).

Continuous Supervision Training  
Priorities Communication Grow  
**PERFORMANCE**  
**MANAGEMENT**  
Measurable Feedback Development HR  
Improvement Employees  
Objectives Goals of Corrective  
Direction Job Descriptions Review  
Coaching Promote Monitor Reward  
Commitment

Straight away I hear people saying that is a false distinction; that every PIP is an Improvement PIP, and it only becomes an Exit PIP when the employee does not improve their performance. To those people I say 'balderdash'. That is exactly the kind of 'spin' that I will talk about below.

The Exit PIP is routine business in HR departments in organisations across the country and I have seen many of them. I am sure you have too.

The Improvement PIP is, I suggest, a mythical beast like the Yeti; there are often reported sightings and blurred photographs, but I have yet to see one in real life. Until I do, I will treat their existence in the same way as I do the possible existence of the Yeti; I would like to think they exist out there in the wild, but I am not putting any money on it.

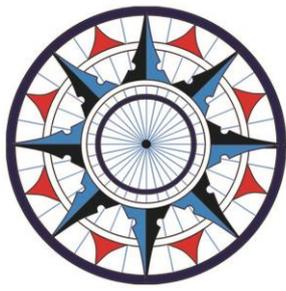
### The 'Improvement' PIP

In theory, this rare beast is prepared where the employer has genuine concerns about an employee's performance, and there is genuine hope that the employee's performance can be improved.

In HR speak, a PIP is a means by which to give 'struggling employees' the 'opportunity to succeed' while still holding them 'accountable' for past performance.

Of course, for such a PIP to be successful, it needs to be implemented early, before the performance issue, whatever it is, has grown beyond the point of no return. Such a PIP is usually accompanied by feedback and guidance from management, sometimes with a sting in the tail - in the old seafaring phrase, 'shape up or ship out'.





Naturally, the goals set must be achievable, reasonable and lawful. The PIP should also be as accurate as possible about the performance issue or behaviour, and the desired end-state. The PIP must not place any pressure on the employee to take shortcuts or to compromise their safety or their legal obligations. The goals and the support provided ought to be transparent and understood by the employee, and not be coloured by any ulterior motives.

The employer has the right to impose this PIP at the employer's discretion and the employee, while they are encouraged to sign, do not have to do so for the PIP's requirements to take effect.

That all sounds perfectly reasonable. The problem is, of course, that I have yet to see a genuine Improvement PIP in real-life.

There are many reasons for this, and a few spring readily to mind from personal experience and observation:

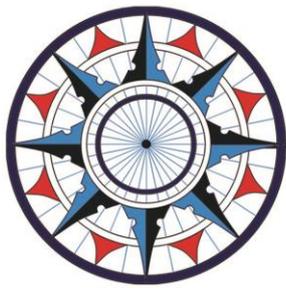
1. When the 'performance' issue is relatively minor or short-term, the incentive to formalise a PIP process is similarly small. It is only when the performance issues become too big or enduring to ignore that a PIP is put in place, and then it is usually too late to be effective
2. The 'performance' issue may be the employee's natural reaction to the demands of a psychopathic manager. If so, the management response is, in my experience, always an Exit PIP
3. For the majority of managers, the most effective methods of managing 'performance' issues are the traditional and informal methods of coaching, mentoring, and counselling, not an Improvement PIP.
4. An Improvement PIP is usually the method of last resort given the significant investment of time and resources required to document and measure human performance, and involves specialist HR practitioners. So it is not the first tool of choice for front-line managers.

### The Exit PIP

By contrast, the Exit PIP is as common as the common cold. It is a matter of everyday experience in most large organisations, and is the staple work of HR departments everywhere (after all the bullying, harassment, inappropriate behaviour, and Christmas Party fallout has been dealt with of course).

The Exit PIP is the default option when the performance problems have become too big to ignore, and are not going to go away by themselves. The informal methods of performance improvement (if any) have not worked,





and the employer has decided that the employee needs to be shown the door in a lawful and defensible way.

The Exit PIP is almost always written with the same goal in mind; defending an unfair dismissal claim in the Fair Work Commission, and it shows.

The Exit PIP is usually written in such a manner that compliance is technically possible, but practically speaking, well-nigh impossible. The necessary fiction underlying the Exit PIP is that a 'struggling employee' needs only to be given an 'opportunity to succeed'.

What a load of steaming poppycock.

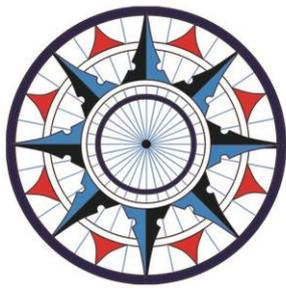
The reality is that underperforming or disengaged or problem employees cannot respond to 'opportunities to succeed' and the support from the employer to do so is generally non-existent. If that approach was going to work, it would have worked already. No, what is really occurring is a clever self-fulfilling prophecy. Under the guise of procedural fairness and employer support and 'opportunities to succeed', the employer sets the rules of the game to ensure that not only will the employee be unable to reach the bar set for performance, but it will be entirely the employee's fault for failing to reach that standard.

So what, I hear you ask? That is the game after all. How else do you 'exit' a problem employee?

In my view, the problem is that the Exit PIP, as I describe it above, is fundamentally dishonest. During an Exit PIP, management neither wants nor expects performance improvement from the employee. In fact, if performance actually improves, then there is a new problem created, and the PIP will need to be amended to ensure the Exit objective is achieved. The goal of the process is to tick the boxes to exit the employee, and defend the subsequent FWC unfair dismissal application.

In my view, the Exit PIP often does more harm than good; to the employee that is the target of the process, to the management team implementing it, and to the employee's colleagues. The fundamental dishonesty of the Exit PIP can have a demoralising effect on the workforce as a whole - it is an exercise in professional cynicism.





### The Exit PIP and the Professional

The point can perhaps be illustrated by the theoretical example of the professional who, for various reasons (being outspoken perhaps, or having the wrong set of personal characteristics, or good old personal dislike) has become a 'problem' for management.

High level professionals (regardless of field) have rigorous requirements for entry, and generally well-established performance criteria. If such a professional has fallen foul of management, but is otherwise meeting all the minimum requirements and mandatory performance criteria, what is management to do?

Invent a new performance measure of course and insert it into an Exit PIP.

Preferably the new performance measure should be introduced to the whole professional group *before* the Exit PIP, but perhaps that can be cured in hindsight as well.

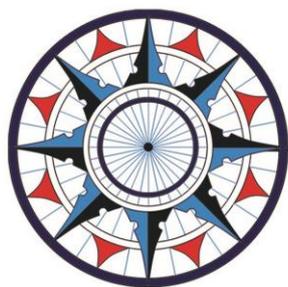
The consequence? The professional has to reach a new and previously unanticipated performance requirement, and given that the rules of the game are set by the employer, 'good luck' in achieving the new performance standard.

Aside from the already mentioned inherent dishonesty in this approach, what happens if the high performing professional is in an important operational position in a high risk industry, such as the shift supervisor in an oil and gas production facility, or a marine pilot in charge of 300m long ships.

The additional stress of an Exit PIP may have direct safety implications. Given that stress on an individual from an Exit PIP is almost universal (that would be the point of the PIP after all), the application of an Exit PIP is likely to have the opposite effect to that 'officially' intended i.e. a drop in performance is very likely. At best, the employee may be distracted by the additional worry of their employment being significantly less secure than it was the day before. The implications for the safety of operations are obvious.

Senior professional employees who also carry the burden of high levels of responsibility may need increased safety margins to manage the consequence of the distraction and stress experienced due to the application of an Exit PIP.





Additionally, the existence of an Exit PIP could constitute a contributing factor to an incident. For example, in transport industries that are subject to the jurisdiction of the Australian Transport Safety Bureau (the 'no-blame safety investigator') the existence of an Exit PIP on a person involved in a reported incident might have significant consequences for the employer, particularly if the Exit PIP imposes novel or previously untested performance criteria.

One wonders whether a PIP in such circumstances is a wise move by management.

### Conclusion

The Exit PIP is both in common use, and in my view, is fundamentally dishonest. It is a red flag to the watercooler community of every organisation that the relevant employee is heading for the back door, not that they are receiving additional support or 'opportunities to succeed'.

Aside from that personal ethical objection, I also think that there is a direct link between the Exit PIP and possible consequences for the safety of operations in high risk industries. Employers need to have a clear understanding of the implications of imposing a PIP on operational staff, particularly senior professional staff, and balance the risks and consequences of exiting a problem employee with the risks of an incident to their organisation.



**Written by:**

John Kavanagh  
Pacific Maritime Lawyers  
Principal Solicitor, Master Mariner

