

# Human Resources Policy

## Discipline

**Policy Number:** E10 (QH-POL-124)

**Publication date:** June 2021

**Purpose:** To outline the requirements and process for the management of discipline in Queensland Health.

**Application:** This policy applies to all Queensland Health employees.

This policy does not apply to Queensland Ambulance Service employees. Instead, Queensland Ambulance Service employees are to refer to their local policy/procedure.

**Delegation:** The 'delegate' is as listed in the relevant Department of Health Human Resource (HR) Delegations Manual, or Hospital and Health Services Human Resource (HR) Delegations Manual, as amended from time to time.

### Legislative or other authority:

- *Crime and Corruption Act 2001*
- *Human Rights Act 2019*
- *Hospital and Health Boards Act 2011*
- *Information Privacy Act 2009*
- *Public Interest Disclosure Act 2010*
- *Public Sector Ethics Act 1994*
- *Public Service Act 2008*
- Public Service Regulation 2018PSC Directive No. 07/20: Appeals
- PSC Directive No. 14/20: Discipline
- PSC Directive No. 15/20: Positive performance management
- PSC Directive No. 16/20: Suspension directive
- PSC Directive No. 17/20: Workplace investigations

### Related policy or documents:

- [Code of Conduct for Queensland Public Service](#)
- Public Service Commission Guideline 01/17: Discipline
- [Workplace conduct and ethics HR Policy E1](#) (QH-POL-113)
- [Requirements for reporting suspected corrupt conduct HR Policy E9](#) (QH-POL-218)
- [Individual employee grievances HR Policy E12](#) (QH-POL-140)
- [Suspension of employees HR Policy E14](#) (QH-POL-400)
- [Performance and development HR Policy G9](#) (QH-POL-189)
- [Performance improvement HR Policy G11](#) (QH-POL-190)
- [Conflicts of interest Guideline](#) (QH-GDL-113-1)
- [Role of Union Representatives and Support Persons](#)
- [Role of a support person in the Queensland Government](#)

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## 1 Discipline in Queensland Health

Chapter 6, Part 2 of the *Public Service Act 2008* provides for the discipline of employees (extended to health service employees via the Public Service Regulation 2018).

Public Service Commission (PSC) Directive No. 14/20: Discipline is applied to health service employees via the Public Service Regulation. Any replacement directive issued dealing with substantially the same subject matter is to be applied.

A decision maker has an obligation under the Human Rights Act to act and make decisions in a way that is compatible with human rights. When making a decision under this policy, the delegate is to give proper consideration to human rights.

This policy does not replace, modify or revoke any legislative requirements that apply to the management of particular types of complaints (e.g. corrupt conduct under the *Crime and Corruption Act 2001*, public interest disclosures under the *Public Interest Disclosure Act 2010*, or complaints under the *Human Rights Act 2019*).

## 2 Key principles

The following key principles are to be applied in conducting disciplinary processes.

A disciplinary process is not a substitute for management action and the need for managers to undertake early intervention to address unacceptable conduct. Early intervention, even in the context of a likely disciplinary process, provides the best hope for:

- the cessation of unacceptable conduct
- early resolution
- preserving working relationships; and
- avoiding an unnecessary and disproportionately protracted dispute.

Discipline is not appropriate for matters that may be dealt with:

- through management action, which may include use of alternative dispute resolution (ADR), use of warnings, or other management action that is reasonable in the circumstances
- under the directive on positive performance management.

ADR strategies are processes that enable parties to resolve their disputes. Examples of ADR strategies may include facilitated discussion, mediation, conciliation or negotiation.

There will be occasions when it will be necessary and appropriate for a delegate to commence and complete a disciplinary process, however, the purpose of discipline is to promote integrity. Discipline is as much about maintaining a 'disciplined workforce' as implementing supportive and corrective actions for an employee who is the subject of a disciplinary process.

Discipline under Chapter 6 of the Public Service Act must:

- be timely, fair, appropriate and proportionate to the seriousness of the work performance matter; and
- comply with the requirements of the relevant legislation (e.g. *Information Privacy Act 2009* and *Human Rights Act*), the provisions of applicable directives and HR policies, and the principles of natural justice.

The following additional principles must be applied in all disciplinary processes:

- Allegations must be supported by objective evidence which has taken into account all relevant materials.
- The standard of proof to be applied in making a finding in relation to a disciplinary matter is on the balance of probabilities.
- Process must be maintained without bias (real or perceived) or conflict of interest.
- An employee must be advised they can access Employee Assistance.
- The process must comply with privacy and confidentiality obligations.
- Employees are entitled to have a support person, of their choosing and/or represented by a representative of an industrial organisation (e.g. union) to which the employee is a member to support them through the process. Refer section 10.
- All stages of the disciplinary process are to be documented and stored confidentially in a secure location and are not to be kept on the employee's personnel file.
- There is a distinction between criminal and/or legal proceedings and an employee disciplinary process under the Public Service Act. Therefore, an employee charged with a criminal offence, whether subsequently convicted or not, may still be subject to disciplinary action. Further, a criminal and/or legal proceedings and a disciplinary process may run concurrently, depending on the advice received from the relevant authority (usually the Queensland Police Service).

### 3 Grounds for discipline and discipline action

A delegate may discipline an employee if the delegate is reasonably satisfied, based on the evidence before them, that the employee has under section 187 of the Public Service Act:

- engaged in repeated unsatisfactory performance or serious under performance of the employee's duties, including, for example, performing their duties carelessly, incompetently or inefficiently; or
- been guilty of misconduct; or
- been absent from duty without approved leave and without reasonable excuse; or
- contravened, without reasonable excuse, a direction given to the employee as a public service employee by a responsible person; or

- (e) used, without reasonable excuse, a substance to an extent that has adversely affected the competent performance of the employee's duties; or
- (ea) contravened, without reasonable excuse, a requirement of the chief executive under section 179A(1) in relation to the employee's appointment, secondment or employment by, in response to the requirement –
  - (i) failing to disclose a serious disciplinary action; or
  - (ii) giving false or misleading information; or
- (f) contravened without reasonable excuse a provision of this Act; or
- (g) contravened, without reasonable excuse, a relevant standard of conduct in a way that is sufficiently serious to warrant disciplinary action.

For the purpose of section 187 of the Public Service Act –

**misconduct** means –

- (a) inappropriate or improper conduct in an official capacity; or
- (b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public service.

**relevant standard of conduct** means—

- (a) a standard of conduct applying to the employee under an approved code of conduct under the *Public Sector Ethics Act 1994*; or
- (b) a standard of conduct, if any, applying to the employee under an approved standard of practice under the *Public Sector Ethics Act*.

In disciplining an employee under section 188 of the Public Service Act, the delegate may take action, or order the action to be taken, that the delegate considers reasonable in the circumstances.

#### 4 Requirements to commence a discipline process

Where a work performance matter arises that may constitute a ground for discipline under section 187 of the Public Service Act, the delegate must determine whether to commence a disciplinary process. In making this determination, the delegate must assess:

- the seriousness of the employee's personal conduct and/or work performance
- whether the matter should be resolved through management action
- whether the matter is a Public Interest Disclosure under the Public Interest Disclosure Act and/or whether the matter must first be referred to the Crime and Corruption Commission, Queensland Police Service or other regulatory agency for assessment
- whether further information is required to commence a disciplinary process.

In forming a view about the seriousness of the employee's personal conduct and/or work performance, the delegate should consider:

- whether there are recent previous and/or repeated instances of inappropriate conduct from the employee, and management action has recently been taken for similar conduct
- the impact of the alleged conduct on the employee, their colleagues, the workplace, the complainant, and the reputation of the public sector
- whether the alleged conduct is reasonably suspected to have caused actual harm, or a risk to the health and safety of employees, or other people
- the nature of the alleged conduct, including what the most serious disciplinary outcome may be for conduct of this nature.

Consideration should also be given to whether the matter has previously been raised and resolved with the employee, and therefore may be considered to have already been addressed.

## 5 Discipline for performance

Section 186C of the Public Service Act provides that a delegate **must not** take disciplinary action against an employee for a matter relating to the employee's performance until the delegate (or another authorised delegate) has complied with the directive about positive performance management. Reference is to be made to PSC Directive No. 15/20: Positive performance management, and Performance and development HR Policy G9 and Performance improvement HR Policy G11.

## 6 Discipline for conduct

Section 187 of the Public Service Act provides a delegate may discipline an employee if they are reasonably satisfied a ground for discipline arises.

The circumstances in which a contravention of a relevant standard of conduct under section 187(1)(g) of the Public Service Act is likely to be considered sufficiently serious to warrant disciplinary action are where the delegate forms a view that management action is not likely to address and/or resolve the work performance matter. In forming their view, the delegate must consider whether there are more proactive strategies than disciplinary action to manage the personal and professional development of employees, including through training and development. Additionally, the delegate must consider:

- whether the matter has been assessed as meeting the definition of corrupt conduct and has been referred to the Crime and Corruption Commission, or has been referred to the Queensland Police Service as a potential criminal offence
- whether management action is an appropriate response based on the nature of the alleged conduct (for example, management action is not appropriate for matters involving theft, fraud, sexual harassment, negligence, or maladministration)
- whether implementing management action would eliminate or effectively control the risk to the health and safety of employees, or other people, posed by the alleged conduct
- whether management action would alleviate or mitigate the impact of the alleged conduct on the employee, their colleagues, the workplace, the complainant, and the reputation of the public sector
- whether management action has recently been taken for previous similar instance/s of inappropriate conduct, and the management action did not result in sustained correction of the employee's conduct
- if the contravention is of a more serious nature, but is a single and/or isolated incident of poor conduct (that is, not a pattern of unreasonable behaviours), whether the delegate has reasonable concerns about the employee's potential for modified behaviour through management action that clarifies the expected standards of conduct and provides the opportunity and support for the employee to demonstrate sustained correction of their conduct.

## 7 Disciplinary action that may be taken against a former employee

Action can be taken against a former public service employee or health service employee under section 188A of the Public Service Act. Any action taken must comply with the requirements of section 190 of the Public Service Act.

## 8 Delegate

In accordance with the principles of natural justice, an employee is entitled to a decision by a disinterested and unbiased adjudicator.

The delegate must demonstrate consideration of conflicts of interest and ensure conflicts of interest are declared, monitored and appropriately managed by all parties to the disciplinary process. Refer to Workplace conduct and ethics HR Policy E1, Conflicts of interest Guideline and the Code of Conduct for Queensland Public Service.

For consistency of decision making, the delegate should remain the same throughout the discipline process. It is however recognised that due to various circumstances the delegate may need to change. Where a change to the delegate occurs during a process, this should be communicated to the subject employee in writing, including the reason why the delegate has changed, e.g. leave, resignation, higher duties, bias, conflict of interest or a higher delegate is required.

## 9 Natural justice

Natural justice (also known as procedural fairness) is the right for a person to be made aware of and respond to information which will be used in the course of a decision that may adversely affect the person. The principles of natural justice must be applied when undertaking the disciplinary process. Natural justice must be afforded before making a decision on an allegation and any disciplinary action.

An employee subject to a discipline process is to be sufficiently informed about the allegations and evidence against them, as well as any proposed action or disciplinary decision, so that the employee may respond to the case against them. The employee is to be provided a reasonable opportunity to be heard, i.e. to make a full and detailed response regarding the information (the hearing rule).

The decision maker needs to ensure they are unbiased and any conflicts of interest (actual, possible or perceived) in the matter and/or its outcome are declared, monitored and appropriately managed (the rule against bias).

## 10 Support persons and industrial representatives

A subject employee may be supported by a person of their choosing and/or represented by a representative of an industrial organisation (e.g. union) to which the employee is a member, provided the support person:

- is not otherwise involved in the disciplinary process (for example, as a subject employee or witness)
- does not provide direct evidence on behalf of, or otherwise talk for the subject employee.

If the support person is an officer of an industrial organisation of which the employee is a member, the officer also has a role to support their member's interests, including actively ensuring that natural justice and procedural fairness has been afforded to their member.

## 11 Appeal rights

A subject employee has a right of appeal in relation to:

- disciplinary findings as provided for under section 194(1)(eb) of the Public Service Act – by lodging a fair treatment appeal
- a disciplinary decision (non-termination) as provided for under sections 194(1)(b) of the Public Service Act – an employee may appeal the decision (in accordance with the Public Service Act and PSC Directive 07/20: Appeals). The notice of appeal must be received by the Queensland Industrial Relations Commission (QIRC) by the 21st day after the day on which the employee received written notice of the decision on disciplinary action. Where no notice of appeal is received, the decision on disciplinary action will be implemented.
- disciplinary action (termination) – an employee is entitled to appeal the decision by lodging an Application for Reinstatement with the QIRC within 21 days of receipt of the letter advising of the termination.
- A direction given to a delegate about the handling of a work performance matter, to the extent the direction affects the subject employee, as provided for under section 194(1)(ba) of the Public Service Act.

## 12 Periodic review of discipline process

This section applies to a work performance matter, other than a corrupt conduct matter.

A delegate is required to finalise an ongoing discipline process in a timely way.

A discipline process commences when a delegate writes to the subject employee to inform them that discipline will commence (usually a show cause notice on disciplinary finding).

A discipline process may be extended by the delegate, following review:

- at six months by an independent decision maker in the agency
- at nine months by the Director-General or delegate
- at 12 months in accordance with section 62(2) of the Public Service Act by the Director-General
- at 18 months by the Commission Chief Executive (CCE), PSC, and every three months thereafter.

The review must consider whether the discipline process complies with section 190 of the Public Service Act and the relevant PSC directive.

A discipline process must not continue until the review is completed.

The findings of the review must be communicated to the subject employee in writing.

## 13 Subject employee may ask Public Service Commission for review of discipline process

This section applies to a work performance matter, other than a corrupt conduct matter.

A subject employee may ask the PSC to conduct a review of a procedural aspect of Queensland Health's handling of a work performance matter, provided:

- the subject employee reasonably believes the delegate has not complied with the PSC directive on discipline
- the subject employee has used internal review procedures under the directive on individual employee grievances and is dissatisfied with a decision made following the internal review (refer Individual employee grievances HR Policy E12), and
- a decision has not been made for the work performance matter that the subject employee may appeal under chapter 7, part 1 of the Public Service Act.

The subject employee must request the review in writing. The request must address the eligibility for review (outline in the paragraph above) and include:

- a clear statement of how the employee believes Queensland Health has not complied with the PSC directive on discipline; and
- the action the employee seeks from the review.

On receiving the request, the PSC may, but is not required to, conduct a review of a procedural aspect of Queensland Health's handling of a work performance matter contemplated in section 881A of the Public Service Act, and may but is not required to give the Director-General, Queensland Health, a report on the review.

The CCE must provide a written decision to the subject employee, along with reasons for the decision, including when the CCE decides not to conduct a review.

## 14 Management of process, outcomes and documentation

Delegates and direct line managers are to ensure the process is managed efficiently, confidentially and in accordance with policies and legislation.

The subject employee should be kept informed regarding the progress of all stages of the discipline process and informed of any anticipated delays.

All aspects of the discipline process are to be recorded in a separate confidential discipline file and not on the employee's personnel file.

## 15 Transitional arrangements

Section 296 of the Public Service Act provides the transitional arrangements for disciplinary processes under section 187(1)(a) or (f)(ii) or (iii) as in force immediately before commencement.

Provisions relating to periodic reviews under section 12 of this Policy and provisions relating to reviews requested by a subject employee under section 13 of this Policy apply to work performance matters that commence after the commencement date of the PSC directive on discipline. For public service employees of Queensland Health, the effective date is 25 September 2020. For health service employees of Queensland Health, the effective date is 2 October 2020.

### Definitions:

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| Allegation               | A stated claim that is yet to be substantiated on the balance of probabilities.   |
| Balance of probabilities | Refers to the civil standard of proof. For an allegation to be substantiated on the balance of probabilities, the evidence must establish that it is more probable than not that the alleged conduct occurred. The strength of evidence necessary to establish an allegation on the balance of probabilities may vary according to the: <ul style="list-style-type: none"> <li>• relevance of the evidence to the allegations</li> <li>• seriousness of the allegations</li> <li>• inherent likelihood or improbability of a particular thing or event occurring</li> <li>• gravity of the consequences flowing from a particular finding.</li> </ul> For example, the more serious the allegation or proposed action the higher degree of probability that is required.  |
| Corrupt conduct          | Section 15 of the <i>Crime and Corruption Act 2001</i> defines corrupt conduct as conduct of a person, regardless of whether the person holds or held an appointment, that - <ul style="list-style-type: none"> <li>(a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of— <ul style="list-style-type: none"> <li>(i) a unit of public administration; or</li> <li>(ii) a person holding an appointment; and</li> </ul> </li> <li>(b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that— <ul style="list-style-type: none"> <li>(i) is not honest or is not impartial; or</li> <li>(ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or</li> <li>(iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and</li> </ul> </li> </ul> |



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|                          | <p>(c) is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and</p> <p>(d) would, if proved, be—</p> <p>(i) a criminal offence; or</p> <p>(ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.</p>   |
| Date of receipt          | Where correspondence is posted, is taken to be the date at which the correspondence would be delivered in the ordinary course of post, unless the contrary is proved.   |
| Delegate                 | The role that has been delegated the authority to determine disciplinary matters in accordance with the relevant HR delegations manual.   |
| Disciplinary action      | Action taken as an outcome of a disciplinary process pursuant to the <i>Public Service Act 2008</i> (section 188).  |
| Disciplinary declaration | In accordance with section 188A(10) of the Public Service Act means a declaration of: <p>(a) the disciplinary finding against the former public service employee; and</p> <p>(b) the disciplinary action that would have been taken against the employee if the employee's employment had not ended.</p>  |
| Disciplinary process     | Anything done in making (or in contemplation of making) a disciplinary decision under Chapter 6 of the Public Service Act, including: <ul style="list-style-type: none"> <li>making a disciplinary finding under section 187, section 187A, or section 188AB; and</li> <li>taking disciplinary action under section 188, section 188A, section 188AB, section 188AC or section 188AD.</li> </ul> The process commences from the issuing of the 'show cause notice on disciplinary finding' (also known as the 'first show cause' letter) and concludes by notifying the employee of the decision made.          |
| Employee Assistance      | A confidential counselling and referral service for Queensland Health employees. Employee Assistance provides short term personal counselling to all employees and/or immediate family members for personal and work-related problems.  |
| Grounds for discipline   | A ground for discipline exists if the employee's alleged performance or conduct could be seen to have breached a section within 187(1)(a) to (g) of the Public Service Act.   |
| Management action        | Management action is a course of local action that is reasonably open to a manager to support and correct situations of employee conflict, poor performance or unacceptable behaviours at the earliest possible opportunity. <p>Management action should not be considered as disciplinary by its nature, but can be undertaken in conjunction with, or instead of, the imposition of a disciplinary penalty in conduct or performance matters. In most circumstances, it is preferable that management action is considered as the first step in managing conduct or performance matters in the workplace.</p> |
| Manager/supervisor       | The person who has responsibility for the employee for performance management purposes and who is responsible for their performance outputs, development and guidance.  |
| Misconduct               | In accordance with section 187(4) of the Public Service Act <p>(a) inappropriate or improper conduct in an official capacity; or</p>  |

|                         |   |
|-------------------------|---|
|                         | (b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public service.  |
| Natural justice         | <p>Natural justice is a right recognised and defined by law that involves two key elements—the hearing rule (everyone is entitled to a decision by a disinterested and unbiased adjudicator), and the bias rule (the parties shall be given adequate notice of the case against them, and a right to respond).</p> <p>Refer to section 9 of this policy for the application of natural justice in the context of discipline.</p>  |
| Responsible Person      | In accordance with section 187(4) of the Public Service Act, responsible person, for a direction, means a person with authority to give the direction, whether the authority derives from the Public Service Act or otherwise.  |
| Subject employee        | An employee subject to a discipline process. Also known as a subject officer.   |
| Support person          | <p>An employee may have a support person present during the interview with the investigating officer. The support person cannot advocate on behalf of the employee. The support person may assist by taking notes or quietly prompting or giving advice to the employee. The support person cannot be disruptive or obstruct the process.</p> <p>Where the support person is an industrial representative, they have a role to represent their members in accordance with, and to the extent that industrial legislation and their union rules provide. This may involve asking clarifying questions and, on occasion, advocating to ensure that procedural fairness has been afforded to their member.</p> |
| Work performance matter | A matter involving an employee's work performance or personal conduct, including, for example, an allegation against the employee that constitutes or would, if proved, constitute a disciplinary ground.   |

### History:

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|--------------|--|
| June 2021    | <ul style="list-style-type: none"> <li>• Policy: <ul style="list-style-type: none"> <li>– amended to incorporate amendments to the <i>Public Service Act 2008</i> and provisions of PSC Directive No. 14/20: Discipline</li> <li>– amended to include <i>Human Rights Act 2019</i> statement</li> <li>– amended to update references and naming conventions.</li> </ul> </li> </ul>  |
| June 2020    | <ul style="list-style-type: none"> <li>• Policy application amended as a result of changes outlined in the Hospital and Health Boards (Changes to Prescribed Services) Amendment Regulation 2019.</li> </ul>   |
| January 2020 | <ul style="list-style-type: none"> <li>• Policy: <ul style="list-style-type: none"> <li>– formatted as part of the HR Policy review</li> <li>– amended to update references and naming conventions.</li> </ul> </li> </ul>   |
| October 2018 | <ul style="list-style-type: none"> <li>• Policy: <ul style="list-style-type: none"> <li>– formatted as part of the HR Policy review</li> <li>– amended to update references and naming conventions</li> <li>– application excludes employees of Queensland Ambulance Service</li> <li>– amended to clarify the natural justice provisions (section 3), appeal options (Attachment One section 3.3), and the discipline process (Attachment One sections 1, 2 and 4)</li> <li>– amended to incorporate definition for corrupt conduct.</li> </ul> </li> </ul> |

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| March 2014 | <ul style="list-style-type: none"> <li>• Policy formatted as part of the HR Policy Simplification project.</li> <li>• Policy amended to: <ul style="list-style-type: none"> <li>– move all the process sections into Schedule One</li> <li>– accurately reflect the requirements for discipline under the Public Service Act 2008 and Public Service Commission Discipline Guideline 01/13</li> <li>– remove suspension sections as they are now included in Suspension HR Policy E14</li> <li>– update references and naming conventions.</li> </ul> </li> </ul> |
| May 2009   | <ul style="list-style-type: none"> <li>• Amended to reflect the provisions in the <i>Public Service Act 2008</i> for suspension from duty and to adjust the definition of support person.</li> </ul>  |
| July 2008  | <ul style="list-style-type: none"> <li>• Amended to reflect Public Service Act 2008 and Public Service Regulation 2008.</li> </ul>  |
| June 2008  | <ul style="list-style-type: none"> <li>• Developed as a result of the HR policy consolidation project.</li> </ul>   |
| Previous   | <ul style="list-style-type: none"> <li>• IRM 5.5 Prescribed Remuneration.</li> <li>• IRM 9.2 Disciplinary Offences.</li> <li>• IRM 9.3 Suspension of Officers or Employees.</li> <li>• IRM 9.8 Discipline – A Strategy for Managing Discipline.</li> </ul>  |

Public Sector Act 2022  
applies on 1 March 2023

UNDER REVIEW

Managing the risk of psychosocial hazards at work  
Code of Practice 2022  
applies 1 April 2023

# Attachment One – Discipline process

The following information is provided as the minimum mandatory standard practice, procedure or process to enable satisfactory compliance with this Queensland Health HR policy.

Local guidelines/procedures may be developed to facilitate implementation of this policy. Any local guidelines/procedures must be consistent with this policy and standard practice and ensure employee entitlements continue to be met.

## 1 Initial enquiries and considerations

On receipt of an allegation, a preliminary assessment of the matter should be undertaken to:

- determine whether there is a suspicion of corrupt conduct and therefore whether a referral needs to be made to the Ethical Standards Unit (for Department of Health employees) or to the Crime and Corruption Commission Liaison Officer (for Hospital and Health Service employees)
- assess whether management action could more appropriately address the concerns – refer to sections 4 and 5 of this policy
- determine whether further information needs to be obtained and how this should occur.

If a manager determines disciplinary action may be necessary, they must consult with the local HR team prior to referral to the appropriate delegate.

The delegate can give consideration to suspending the employee at any stage of the disciplinary process in accordance with the Suspension of employees HR Policy E14.

## 2 Determine whether to proceed with a discipline process

When the delegate is satisfied all relevant documentation is available to them, and they have given careful consideration to the information, they can make a determination on whether they are reasonably satisfied there may be grounds for discipline under section 187 of the *Public Service Act 2008* and whether to commence a discipline process – refer to section 4 of this policy for the requirements to commence a discipline process.

A delegate may reach a conclusion that the behaviour may have been inappropriate and there are grounds for discipline; and still determine management action would appropriately address the concerns.

Should the delegate decide to proceed with a discipline process, the local HR team should be engaged to provide support to the delegate. However, if the employees involved are members of the local HR team, the delegate should consider who external to the team will provide HR assistance for the discipline process in order to avoid any bias (real or perceived) or potential conflict of interest.

## 3 Options during the discipline process

At any stage of the discipline process the delegate can decide to:

- continue with the discipline process
- take management action
- take no further action.

## 4 Discipline process

If the delegate reasonably believes there are grounds for discipline, and determines a discipline process is warranted, the delegate may commence a discipline process. The subject employee must be afforded the opportunity to:

- be provided with the written details of the allegation/s against them (show cause process for disciplinary finding – refer to section 4.1 of this Attachment) including any relevant directives, policies or authority relevant to the matter.
- provide a response to the allegations. This is the employee's opportunity to accept or deny the allegations and provide any information they consider relevant.
- respond to the proposed disciplinary action (show cause notice on disciplinary finding – refer to section 4.3 of this Attachment). The employee's response may include a recommendation of other disciplinary action the employee considers may be more appropriate.

### 4.1 Show cause process for disciplinary finding

The delegate is to provide the subject employee with written details of each allegation and invite the employee to show cause why a disciplinary finding should not be made in relation to each allegation (a show cause notice on disciplinary finding).

Written details of each allegation must include:

- the allegation
- the particulars of the facts considered by the delegate for the allegation
- the disciplinary ground under section 187 of the Public Service Act that applies to the allegation.

A copy of all evidence relevant to the facts considered by the delegate for each allegation must be provided to the employee, including, where relevant, specific reference to page or paragraph numbers that comprise the relevant evidence.

The delegate must provide the employee with a minimum of 14 days from the date of receipt of a show cause notice on disciplinary finding to consider and respond to the notice, having regard to the volume of material and complexity of the matter. The delegate may grant, and must consider any request for, an extension of time to respond to a show cause notice on disciplinary finding if there are reasonable grounds for extension.

If the employee does not respond to a show cause notice on disciplinary finding or does not respond within the nominated timeframe and has not been granted an extension of time to respond, the delegate may make a decision on grounds based on the information available to them.

### 4.2 Decision on grounds (disciplinary finding)

A delegate must review all relevant material, including any submissions/response (if any) from the employee, and make a decision on the disciplinary finding on the balance of probabilities.

The delegate must advise the employee of the delegate's finding in relation to each allegation included in the show cause notice on disciplinary finding (substantiated, partially substantiated or not substantiated).

For each finding the delegate must:

- clearly explain their finding (on the balance of probabilities) in relation to each allegation, including the evidence relied on and how they reached the finding; and
- state if the disciplinary ground to which the allegation was applied has been established, i.e. if the allegation/s were substantiated or partially substantiated

- state what ground/s of the Public Service Act (section 187) the employee's performance or conduct has breached (only one ground per allegation).

The employee is to be informed of the finding and explanation of the finding in writing, including information that the employee may appeal the disciplinary finding.

If the delegate determines that discipline ground/s have been established, the delegate may consider:

- whether disciplinary action should be proposed (refer to section 4.3 of this Attachment); and/or
- management action implemented; or
- to take no further action.

If the delegate determines that no ground/s for discipline have been established, the delegate may consider whether any management action is required and advise the employee in writing.

### 4.3 Show cause process for proposed disciplinary action

The delegate is to provide the employee with written details of the proposed disciplinary action and invite the employee to show cause why the proposed disciplinary action should not be taken (a show cause notice on disciplinary action).

The delegate may propose more than one type of disciplinary action, and if relevant, detail any management action to be implemented.

The disciplinary action the delegate may propose is not limited to the examples of disciplinary action listed in section 188 of the Public Service Act, which include:

- termination of employment
- reduction of classification level and a consequential change of duties
- transfer or redeploy the employee to other public service employment
- forfeiture or deferment of a remuneration increment or increase
- reduction of remuneration level
- imposition of a monetary penalty (which cannot be more than the total of two of the employee's periodic remuneration payments)
- if a penalty is imposed, a direction that the amount of the penalty be deducted from the employee's periodic remuneration payments
- a reprimand.

In proposing appropriate and proportionate disciplinary action, the delegate should consider:

- the seriousness of the disciplinary finding
- the employee's classification level and/or expected level of awareness about their performance or conduct obligations
- whether extenuating or mitigating circumstances applied to the employee's actions
- the employee's overall work record including previous management interventions and/or disciplinary proceedings
- the employee's explanation (if any)
- the degree of risk to the health and safety of employees, customers and members of the public
- the impact on the employee's ability to perform the duties of their position
- the employee's potential for modified behaviour in the work unit or elsewhere
- the impact a financial penalty may have on the employee
- the cumulative impact that a reduction in classification and/or pay-point may have on the employee
- the likely impact the disciplinary action will have on public and customer confidence in the unit/agency and its proportionality to the gravity of the disciplinary finding.

A show cause notice on disciplinary action must only state the employee is liable for termination of employment if the delegate reasonably believes that the employee might, in the circumstances, have their employment terminated.

The delegate must provide the employee with a minimum of 7 days from the date of receipt of a show cause notice on disciplinary action to consider and respond to the notice, having regard to the volume of material and complexity of the matter. The delegate may grant, and must consider any request for, an extension of time to respond to a show cause notice on disciplinary action if there are reasonable grounds for extension.

If the employee does not respond to a show cause notice on disciplinary action or does not respond within the nominated timeframe and has not been granted an extension of time to respond, the delegate may make a decision on disciplinary action based on the information available to them.

The delegate may combine the disciplinary finding (refer to section 4.2 of this Attachment) and the show cause notice on disciplinary action within the same written correspondence.

#### 4.4 Decision on disciplinary action

A delegate must review all relevant material, including any submissions/response (if any) from the employee in response to a show cause notice, and make a final decision on the disciplinary action to be taken.

The delegate must inform the employee of the decision in writing, including:

- the reasons for the decision, including consideration of any information provided by the employee in response to a show cause notice
- excluding a termination decision, information that the employee may appeal the decision on disciplinary action
- for a termination decision, information that the employee may lodge an application for reinstatement under the *Industrial Relations Act 2016*.

A delegate may decide to impose disciplinary action different to the disciplinary action proposed in the show cause notice on disciplinary action, provided that:

- the revised disciplinary action is objectively less onerous than the original action proposed; or
- the employee is given a further opportunity to comment on the appropriateness of the new proposed action, before a final decision on the disciplinary action is made and communicated to the employee; or
- the employee has suggested the disciplinary action as an appropriate alternative penalty.

Disciplinary action (other than a termination decision) is not to be implemented until the period for an appeal against the decision to discipline an employee has expired or any appeal lodged is finalised.

The delegate may combine the procedural elements of a show cause process for disciplinary finding and a show cause process for proposed disciplinary action where:

- the particulars of the evidence being relied on to determine discipline liability are not likely to be disputed (for example, where the employee has been found guilty, or pleaded guilty, to a criminal offence in relation to the conduct the subject of the discipline process, regardless of whether a conviction is recorded in relation to that offence), and
- the delegate reasonably believes the progression or finalisation of the matter is in the best interests of the employee.