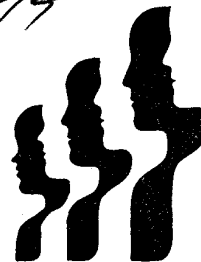


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Department of
Community Welfare Services
Victoria

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OTHER DEPARTMENT'S CIRCULAR

Title: EXT. 729
STAFF GUIDELINES ON DISCIPLINARY MATTERS

AIM

1. The aim of this document is to:
 - a. act as an information document for all staff of the Department;
 - b. provide procedural guidelines in relation to the manner in which matters of discipline are handled within this Department

INTRODUCTION

2. All officers of the Public Service are subject to the Public Service Act 1974. Part V of the Act provides the general framework in relation to discipline for permanent officers and consists of six sections.
3. The first section, Section 59(1), lists four ways in which an officer may find him/herself in breach of the Act. The second part of that section, Section 59(2), indicates seven ways in which officers may be sanctioned for breaching Section 59(1).
4. The remaining sections of Part V of the Act (Sections 60 to 64) deal with the laying of charges, the hearing of charges and appeals.
5. Clearly, the intent of Part V of the Public Service Act is to provide a means of management to the Permanent Head in cases where other action is seen as inappropriate. Examined in this context, the Permanent Head as the manager of the Department could, whilst complying with the relevant provisions of Part V, choose to deal with a disciplinary matter in an informal setting. Indeed, until fairly recent times the informal method was largely adopted throughout the Public Service.
6. Whilst many Departments undoubtedly still adopt a low profile approach to disciplinary investigations and hearings, events which have arisen in the last couple of years have given cause for people, particularly executive staff, to reconsider this approach.

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DISCIPLINE AREAS

7. It is impossible to provide an all inclusive list of matters which fall into the category of discipline and therefore individual staff members should apply common sense in this regard. Broadly speaking, however, matters of discipline will usually fall within one of the following areas -

- a. criminal offence;
- b. breaches of statute;
- c. breaches of the implied contract of employment

8. Criminal offences vary greatly in nature and seriousness. Experience has shown that the type of criminal offences an officer of this Department may come across includes theft, assault, sexual offences and fraud.

9. Permanent Officers are subject to the Public Service Act 1974 and the Public Service Regulations and Determinations made pursuant to that Act. In addition they may also be bound by ancillary statutes such as the Audit Act and the Community Welfare Services Act, dependent on in which Department they are employed and in which area of that Department their function is carried out.

10. Prior to the development of statutes covering aspects of the contract of employment, certain standards were developed by the courts under the common law to govern such employment contracts. These 'implied terms' are enforceable through the courts and include matters such as the duties of an employee to provide faithful service, to obey lawful orders and not to damage the reputation of his employer. The implied contract of employment is not as important in the area of permanent officers but it is when you are dealing with other employees.

STAFF RESPONSIBILITIES

11. All staff have a clear responsibility to report matters which may involve a person in disciplinary proceedings, to a senior officer as soon as the staff member becomes aware of it. Withholding information or delaying a report could severely hamper an enquiry and in some instances may leave the person in possession of that information liable to disciplinary proceedings.

DISCIPLINARY PROCEDURES

12. Matters of discipline will fall under three basic headings, namely:

- a. investigations;
- b. interviews;
- c. proceedings

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INVESTIGATIONS

13. The purpose of an investigation is to:
- a. collect and record evidence;
 - b. report conclusions consistent with the evidence obtained; and
 - c. provide the basis for consideration of any action to be taken by the Department
14. Most investigations will concern persons recalling events, dates, times, etc., therefore it is most important that the relevant people are interviewed as soon as possible after the initial report is received.
15. On receipt of an incident report the senior officer should:
- a. make an assessment of the discipline area the matter falls into i.e. criminal offence, breach of Act or Regulation or breach of the contract of employment
 - b. if the matter may be a criminal offence, it must be immediately reported to the Investigations Officer of the Department
 - c. where the matter falls into one of the other areas the senior officer must assess how serious he/she believes the matter to be, given the available information at that time
16. Where the senior officer considers the matter not to be serious he/she may instigate enquiries without referral to the Investigations Officer or the Division. This enquiry may entail interviewing witnesses and examining documentary evidence.
17. Having completed the local enquiry, the senior officer is then in a position to evaluate the evidence and form conclusions as to the person's guilt or innocence and the appropriate action to be taken. Where the matter is shown to be not sustained, the material is retained and the senior officer makes a clear notation indicating that after investigation the matter was not sustained. Where there is a case to answer, arrangements should be made to interview the person concerned (see details following).
18. It may be that what initially appeared to be a minor matter is of a more serious nature following the initial local enquiries. In these instances the procedures outlined in paragraph 19 should be adopted.
19. Where a senior officer considers a matter to be of a serious nature, he/she should immediately notify the Investigations Officer and the Divisional Deputy Director by telephone. This action will enable co-ordination of the appropriate discipline procedures and assist in alleviating misunderstandings which could lead to a defence of denial of natural justice being raised. In most cases it is not necessary to formally interview witnesses, however this will be considered by the Investigations Officer in consultation with the Divisional Deputy Director.

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INTERVIEWS

20. The purpose of an interview is to:
- a. gather information from witnesses, documents etc. in order to establish if an apparent breach has occurred; and
 - b. in the case of the person who has allegedly committed the breach, to acquaint them with the nature of the breach and provide the person with an opportunity to make a statement in relation to it
21. The two types of interviews are different in nature. In interviewing a witness, the interviewer is essentially trying to establish facts by questioning. When interviewing the person who is alleged to have committed the breach, the interviewer is still trying to establish the factual situation, however, the interviewee does not have to make a statement or answer questions should he/she so elect. There is also the possibility that the interviewee will be less than co-operative.
22. When interviewing a witness, the following information should be recorded:
- a. full name, title and location of the interviewee;
 - b. date, time and place of interview;
 - c. all the relevant details, including those which support the person who is alleged to have committed the breach;
 - d. at the foot of the statement the signatures of the persons conducting the interview
23. It is important that in any disciplinary interview the interview should always be conducted by at least two people.
24. When interviewing a person who has allegedly committed a breach, the following aspects are relevant:
- a. the interviewee is given reasonable notice of the date, time and place of the interview and the general nature of the matters to be raised;
 - b. on commencement of the interview the interviewee is introduced to the interview panel by name and title and is then advised of the nature of the matters to be discussed;
 - c. the interviewee should be advised that he/she is not required to make any statement or answer any questions unless he/she chooses to do so, however, the information will be written down and may form part of any subsequent formal proceedings;
 - d. the interview should not commence until the interviewee acknowledges that he/she understands the implications of making statements, etc.;
 - e. the senior officer outlines the nature of the alleged breach and the type of supporting evidence to the interviewee and asks if he/she wishes to make any comment;

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- f. should the interviewee elect to comment, the interview panel may ask any questions they deem necessary to ascertain the facts related to the alleged breach;
- g. at the conclusion of the interview, the interviewee should be afforded the opportunity of making any final statement to the panel;
- h. the senior officer will then inform the interviewee that a report and recommendations will be made in relation to the alleged breach and that he/she will be informed of the outcome as soon as possible;
- i. after the interviewee has departed, the panel discuss the issues arising out of the interview and formulate recommendations;
- j. the Investigations Officer will make a written report which will include the panel's recommendations. This report will be forwarded to the Personnel Officer with copies to the relevant Division and local facility/centre

25. Interview Panels for the more serious breaches will normally consist of a Deputy Director, the Officer in Charge of the particular facility/centre and the Investigations Officer. The Deputy Director will normally chair the proceedings.

ACTION FOLLOWING DISCIPLINARY INTERVIEW

26. In cases where a disciplinary interview panel recommends that either no further action or action other than the laying of charges (for permanent officers) or dismissal (for employees) is warranted and this recommendation is approved by the permanent head or his nominee, the following action is to be taken:

- a. the officer/employee is to be informed;
- b. the documentation be placed on the officer/employee's personal file

27. The procedures for investigation and interviews are the same for both permanent officers and employees. The procedures do vary, however, from the time that the Personnel Officer receives a discipline interview panel report which indicates the officer/employee has committed a serious breach.

28. Section 40 (7) of the Public Service Act 1974 provides that a permanent head may "dismiss or remove any person temporarily employed in such department". Apart from the power of dismissal, the Act is silent regarding any other disciplinary powers. The practice usually adopted for matters which are serious but do not warrant dismissal is to recommend to the permanent head that the employee be informed by the Director of his/her Division that:

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- a. it is considered the breach has been sustained;
- b. consideration has been given to termination of his/her employment but such action is not warranted in this instance;
- c. any future breach will necessitate that serious consideration be given to termination of employment

29. The present position in relation to Temporary Employees is certainly unbalanced when compared to the provisions applicable to permanent officers. This anomaly has been recognised by a committee which was set up to review Part V of the Act and it is possible certain changes may be made as a consequence. At the present time, however, Section 40 (7) stands as the only relevant Section of the Act.

30. On receipt of an interview report concerning a Permanent Officer who appears to have committed a breach, the Personnel Officer examines the report, appends comments and forwards the file to the Permanent Head. Should the Permanent Head agree that there appears to be a case to be answered he will ask that the officer be asked to explain his/her conduct.

31. The Investigations Officer on receipt of the direction from the Permanent Head to seek an explanation prepares a letter similar in content to the attached Annex "A". This letter is sent to the officer after it has been signed by the Permanent Head.

32. On receipt of a reply to a letter calling for an explanation the Investigations Officer will assess the content from the aspect of whether a charge or charges should be framed. In more serious matters the Investigations Officer may seek the advice of the Crown Solicitor's Office regarding the wording of charges. The Investigations Officer will then either recommend to the Permanent Head that charges should not be laid or draft charges, and forward them to the Permanent Head for signature.

33. The document charging an officer with an offence against the Public Service Act will usually follow the format as per the attached Annex "B". The common factors in any charge will be:

- a. the relevant Section of the Public Service Act will be quoted
- b. the date, time and place of the alleged offence will be specified

34. For serious matters, the Permanent Head may suspend an officer from duty without pay. A suspension of duty will only occur in special circumstances and may only be invoked when an officer is actually charged.

35. On receipt of a reply to a letter charging an officer, the Investigations Officer will note whether the officer admits or denies the truth of the charge. In cases where no reply is received, the Public Service Act provides that this is deemed as a denial of the truth of the charge.

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DISCIPLINARY HEARINGS

36. Following the charging of an officer with an offence under the Public Service Act the next procedure is to arrange for the charge to be heard and determined. The Public Service Act provides that the Permanent Head may delegate the hearing of such matters to another officer in the Public Service or to a person who holds a Government office.

37. The format for disciplinary hearings adopted in this Department complies with the following criteria:

- a. the officer charged has the option of being represented by an official of the Victorian Public Service Association;
- b. the officer charged may call his/her own witnesses and cross-examine those witnesses produced by the Department;
- c. the Department's case is presented by the Investigations Officer;
- d. shorthand writers are present;
- e. evidence is usually given on oath;
- f. the format generally follows (not exactly) that adopted in court proceedings;
- g. formalities are kept to a minimum;

38. At the conclusion of the hearing the Permanent Head may give his decision including penalty. In more serious or complicated matters the Permanent Head will reserve his decision until he has had an opportunity to examine the transcript.

39. The decision of the Permanent Head will be conveyed to the officer in writing, signed by the Permanent Head. An example is attached as Annex "C".

40. The Public Service Board is notified of the decision of the Permanent Head in respect to a disciplinary matter, as is the Auditor General when a monetary fine is imposed.

41. In certain cases an officer has the right of appeal against the penalty imposed by the Permanent Head. The appeal is heard by a specially convened Public Service Appeals Tribunal consisting of a Stipendiary Magistrate, a representative of the Victorian Public Service Association and a First Division Officer from a Department other than Community Welfare Services. The appeal is heard within a legalistic framework. The officer is entitled to legal representation and the Department is usually represented by the Crown Solicitor's Office. The decision of the Tribunal is without further appeal other than by prerogative writ to the Supreme Court.

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42. In cases where no appeal is lodged, the basic administrative actions which follow are:

- a. the officer in charge of the relevant facility is notified of the result;
- b. the relevant Divisional Director is notified of the result and receives a copy of the transcript;
- c. a copy of the transcript is made into a registered file and filed in the Personnel Branch

CONCLUDING REMARKS

43. Many Public Service Officers will never be involved in a disciplinary investigation or hearing, others will only be involved perhaps once in their career. These guidelines are produced as a means of assisting such people and also as a basis for developing a common method of approach.

44. It is acknowledged that not all disciplinary matters will be handled strictly according to these guidelines. The Correctional Services Division, for example, have their own Investigations Section and accept responsibility up to the point of seeking an explanation for the alleged offence. Whilst the Investigations Officer (Personnel) will initiate the administrative actions for Correctional Services Division matters, the presentation of the case at the Hearing will remain the responsibility of that Division.

45. It is emphasised that all officers and employees in this Department are expected to comply with instructions issued for their guidance at various times. These instructions may be in the form of Director General's circulars, letters, or verbal requirements, as well as directions given by other senior officers as delegated by the Director General.

46. Officers from the Personnel Branch have addressed various groups within the Department on the subject of discipline from time to time. In the interests of all staff it is intended to continue this practice.

47. Finally, the major point to be made in relation to the area of discipline is that there are people available who have some expertise in this area and these people should be consulted before an investigation takes place rather than after the investigation has commenced. Staff may contact Bob Johnson (Investigations Officer) on 6536 667 or Eric Mushins (Industrial Officer) on 6536 729 regarding these issues.

Kevin O'Flaherty

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ACTING DIRECTOR- GENERAL