

HUMAN RESOURCES

NPRSR Investigation and Discipline Procedure

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1. Purpose

The purpose of this procedure is to provide a transparent process for the management of investigations and potential discipline matters in the Department of National Parks, Recreation, Sporting and Racing (the department).

2. Authority*Anti-Discrimination Act 1991**Crime and Misconduct Act 2001**Education (Work Experience) Act 1996**Industrial Relations Act 1999**Information Privacy Act 2009**Public Interest Disclosure Act 2010**Public Records Act 2002**Public Sector Ethics Act 1994**Public Service Act 2008**Public Service Regulation 2008**Right to Information Act 2009**Vocational Education Training and Employment Act 2000**Workers Compensation and Rehabilitation Act 2003*

Employees of Queensland Government Departments (Other than Public Servants) Award - State 2003

Queensland Public Service Award - State 2003

PSC Directive - Appeals

PSC Directive - Employee performance management

Ministerial Directive - Transfer and Appointment Expenses

PSC Guidelines - Discipline

PSC Standard - Public Interest Disclosure

Code of Conduct for the Queensland Public Service

Departmental Policy and Procedure –Employee complaints management

Facing the Facts: A CMC Guide for dealing with suspected Official Misconduct in Queensland public sector agencies, 2007

Queensland State Archives General Retention and Disposal Schedule for Administrative Records

3. Scope

Section 4 of this procedure (in relation to investigation) applies to all employees and volunteers.

Section 5 of this procedure (in relation to discipline) applies to all permanent, temporary and casual employees, including graduates and cadets.

Attachment 1 outlines a shorter and distinctly different process for the DISCIPLINE OF A TRAINEE and/or for when a supervisor is proposing to cancel a traineeship contract. This process outlined in Attachment 1 of this procedure has been provided because only the Department of Employment and Training has the authority to discipline a trainee and must be involved before cancelling a traineeship contract TRAINEESHIP CONTRACT.

The Investigation and Discipline Procedure does not apply to work experience students. Refer to the *Education (Work Experience) Act 1996* and the departmental Work Experience Policy and Procedure.

4. Investigation Procedure

When investigating allegations the delegate needs to ensure confidentiality is strictly maintained throughout the process. It is important to protect the confidentiality of the person making the complaint (the complainant), the person who is subject to the complaint (the subject officer) and the confidentiality of the complaint itself. The requirement for confidentiality must be balanced with the employer's responsibility to ensure that parties subject to the complaint are afforded procedural fairness.

Advice must be sought from the Divisional Human Resources (HR) contact who will liaise with Workforce Relations and Safety, Human Resources (WRS) before any determination is to be made to disclose the name of the complainant. Advice must also be sought on what information can be released to parties throughout the investigation process. This is to ensure that the department complies with confidentiality and privacy considerations pursuant to the *Information Privacy Act 2009*.

In cases of allegations of Official Misconduct the identity of the complainant may be suppressed by the CMC. Where an employee of the department is the complainant, the CMC will treat the allegations of Official Misconduct as a Public Interest Disclosure (PID) and therefore the identity of the complainant cannot be disclosed to the subject officer or any other party to the investigation other than those officers who need to know in line with performing their official duties. Similarly, should the complainant make a PID, they are afforded protected disclosure status under the *Public Interest Disclosure Act 2010* and persons making such a disclosure are given unique protections under the Act to protect them from reprisal, exposure of their identity and civil, criminal or administrative liability.

Employees must not make false, frivolous, groundless or vexatious allegation/s. The making of purposefully false or vexatious allegation/s is conduct that contravenes an employee's obligations to demonstrate a high standard of workplace behaviour and personal conduct prescribed under the Code of Conduct for the Queensland Public Service. The investigation of false, misleading or vexatious allegation/s is an unjustifiable use of departmental resources and such claims or complaints may result in the delegate commencing a discipline process. In making allegations employees must have evidence of material substance to support their allegation and the making of frivolous or groundless allegations could also result in the delegate commencing a discipline process.

Complaints received about employees through the departmental complaints management system are to be dealt with pursuant to the Complaints Management Departmental Policy and Complaints Management Procedure. If the complaint involves an action of an employee which could be a potential discipline matter (including misconduct) the matter is to be managed in accordance with this procedure. If the complaint involves an action of an employee which could constitute Official Misconduct or is a PID the matter is to be managed in accordance with the departmental Official Misconduct Complaints Procedure as well as the department's Investigation and Discipline Procedure.

Employees are obligated under their employment contract to follow a lawful direction to cooperate with local level resolution processes and official inquiries into workplace matters including providing information and assistance to department appointed investigators.

4.1 Preliminary Assessment

As a result of a complaint or other information about an employees alleged unsatisfactory work performance or unacceptable behaviour or conduct coming to the attention of the department (except in cases where an allegation may involve official misconduct), the delegate (in consultation with the Divisional HR contact **and** WRS) needs to determine the most appropriate response to the particular information or complaint. If the information available does not provide sufficient evidence for the delegate to make a determination on the appropriate course of action to be taken, then the delegate may determine that an investigation process is warranted. Generally, the preliminary assessment should be completed within fourteen (14) days.

The preliminary assessment may involve, but is not limited to:

- Making enquiries into the matter to clarify/validate information;
Establishing the nature and seriousness of the alleged conduct or unsatisfactory performance;
- Establishing if there are other mitigating factors impacting on the officer that may have contributed to the circumstances e.g. health, lack of resources/training, personal issues.

If after this preliminary assessment the delegate determines that there is sufficient evidence on the balance of probabilities to support that a discipline process is warranted, the process outlined in section 5 of this procedure is required to be followed.

In the case of an allegation of possible official misconduct, in accordance with section 3 of the *Crime and Misconduct Act 2001* and CMC requirements, the department is required to consider only the information already in the department's possession, to determine whether there is a suspicion that the allegation may involve official misconduct. Advice can be provided by the Manager, Privacy and Ethics and WRS to assist the delegates in making this determination. The delegate should NOT notify or discuss the matter with the employee who is the subject of the allegation/s. If the delegate determines there is a suspicion that the allegation may involve Official Misconduct the matter must be reported as soon as reasonably practicable to the Manager, Privacy and Ethics who will then determine whether the matter is reportable to the CMC.

Should the matter be reportable under section 38 of the *Crime and Misconduct Act 2001* (immediate report) no further investigation can be undertaken until advice/direction is received from the CMC. In the case of an allegation that is deemed by the Manager, Privacy and Ethics to be a matter reportable under section 40 of the *Crime and Misconduct Act 2001* (monthly report) the investigation process can commence immediately. However, the outcome of the investigation will require reporting to the CMC at the completion of the investigation.

Please refer to Attachment 1 for information regarding unacceptable conduct that may be criminal in nature.

4.2 Consideration of suspension or stand-down

General principles

Suspension of employees or stand-down of general and temporary employees should only be utilised as a last resort where the alternatives to suspension or stand-down have been exhausted or are considered not appropriate or practical. Advice must be sought from WRS prior to any recommendation/decision being made in relation to the suspension of an officer or a stand-down of a general or temporary employee.

Alternatives to suspension or stand down that may be taken:

- Temporarily require the employee to undertake alternative duties within the employee's existing workplace; or
- Temporary relocation to undertake alternative duties, in another work location (i.e. another office or work base); or
- Directing that the employee work under close supervision or with another employee; or
- The employee agrees to take accrued recreation and/or long service leave.

Prior to making a decision, the delegate should consider a range of factors including whether:

- The safety or well-being of other employees, clients or members of the public may be adversely affected if the employee were to remain in the workplace;
- The alleged behaviour of the employee is so unacceptable that it is likely to cause loss and damage to the department either physically or through public perception;
- The investigation would be compromised if the employee were to remain in the workplace, e.g. is there a possibility that evidence will be destroyed or witnesses may be inappropriately approached or feel intimidated;
- There is a likelihood that the employee will continue with the alleged unacceptable conduct and the potential impact if this were to occur.

Actions to be taken to suspend or stand down an employee

Once the delegate has determined to suspend or stand-down an employee, they must be provided with written notice stating:

- The reasons for suspension (i.e. the delegate reasonably believes that the proper and efficient management of the department might be prejudiced if the employee were not suspended);
- When the suspension starts and ends (if an end date is known);
- The remuneration to which the employee is entitled for the period of suspension;
- The effect that the alternative employment may, under section 191 of the *Public Service Act 2008*, have on the entitlement (officers only)

Please refer to Attachment 2 for additional information regarding suspension.

4.3 Gathering the Evidence

In consultation with the WRS Unit, the delegate must determine the most appropriate method to address allegations of either unsatisfactory work performance or alleged unacceptable conduct or behaviour.

Alleged unsatisfactory work performance

Where the allegation relates to unsatisfactory work performance, the manager should collate all relevant documentation supporting the assessment of the unsatisfactory work performance. This should include, but is not limited to, Performance and Development Plans, Performance Improvement Plan, work samples, records of performance meetings and other relevant documentation.

The documentation should demonstrate that:

- The employee was advised of their performance issues;
- The employee was provided with a reasonable opportunity to improve their performance (including the allocation of appropriate time and resources to facilitate improvement);
- The employee was advised of the potential consequences should their performance remain unsatisfactory; and
- At the conclusion of the performance improvement plan the employee's performance was re-assessed prior to referring the matter for consideration as to whether the commencement of a disciplinary process is warranted.

In most cases of unsatisfactory work performance the existing performance improvement documentation should be sufficient to assess whether the commencement of a disciplinary process is warranted. However, where the documentation lacks detail or appears incomplete, further inquiries may be made to determine that the performance does appear to be unsatisfactory and all reasonable efforts have been made to assist the employee to return to an acceptable level of performance. This may include the delegate seeking a response from the employee by issuing an Opportunity to Respond letter thereby affording the employee procedural fairness.

The issuing of an Opportunity to Respond letter is not a discipline process but a mechanism to gather more information so that the delegate can make a decision as to whether any further action is warranted. The specific allegation/s must be put to the employee and the employee given an opportunity to comment in writing within fourteen (14) calendar days of receipt of the request to do so. Once the response from the employee is received (or if no response is received, after fourteen (14) days has elapsed) the delegate (in consultation with WRS) then determines whether to commence a discipline process, gather more information or to take no further action and must advise the employee accordingly.

Alleged unacceptable conduct or behaviour

Where the allegation relates to unacceptable conduct or behaviour, the delegate must determine the most appropriate method to address these allegations. The department encourages local resolution of unacceptable conduct or behaviour where appropriate.

The delegate must consider the nature and seriousness of the alleged conduct or behaviour and any risk to health and safety of the employees involved when determining which of the following options should be utilised.

a) Local resolution:

Options for local resolution can include one or more of the following:

- Management intervention including facilitated discussions or mediation; or
- Formal mediation or facilitated discussions through the engagement of an external consultant; or
- Counselling; or
- Training including Code of Conduct, anger management, management training; or
- Internal investigation conducted by management.

The department's Employee Complaints Management Policy and Procedure provides more detailed information to undertake local resolution options.

b) Opportunity to Respond process: Should the delegate determine that the allegation/s cannot be resolved or is not appropriate to be resolved through local resolution options (outlined above) and does not consider that the matter is serious enough to warrant an investigation by an external consultant, the delegate may decide to issue an Opportunity to Respond letter inviting the employee to respond to the specific allegation/s to assist with the information gathering phase of the process. The delegate may also utilise the Opportunity to Respond process in circumstances where the delegate does not have sufficient information to determine how to proceed, or in circumstances where the delegate considers that the employee subject to the allegations has not been afforded procedural fairness. The Opportunity to Respond process is not a disciplinary process.

The specific allegation/s are to be put to the employee and the employee issued an Opportunity to Respond letter within fourteen (14) calendar days of receipt of the request to do so. Once the response from the employee is received (or if no response is received,) the delegate, in consultation with WRS then determines whether there is sufficient evidence to substantiate the allegations and whether it is appropriate to impose:

- Administrative actions,
- Gather more information (through an investigation process),
- Take no further action or
- Commence a discipline process.

If the delegate considers that there is sufficient evidence available to substantiate the allegations but the delegate does not consider that the employee has breached any legislation, Code of Conduct, policy or procedure the delegate may consider administrative action is warranted. However, before making any final determination, the employee must be afforded procedural fairness and issued with correspondence that must clearly outline the details of the evidence (including relevant documentation) upon which the delegate's administrative decision is based and the letter must foreshadow what administrative actions are proposed.

The decision to implement administrative actions cannot be taken into consideration when determining any future disciplinary matters, as no disciplinary finding has been made against the employee. No documentation relating to this decision is to be placed on an employee's personnel file.

If the delegate considers that there is sufficient evidence available to substantiate the allegations and that the employee's alleged conduct may have breached legislation, the Code of Conduct, policy or procedure the delegate may however determine that the commencement of a discipline process is not warranted. The delegate may however determine to make an administrative decision to implement administrative actions (e.g. counselling, professional development, training, caution, warning or zero tolerance approach to future behaviour or conduct).

However, before making any final determination, the employee must be afforded procedural fairness and issued with correspondence that must clearly outline the details of the evidence (including relevant documentation) upon which the delegate's administrative decision is based, sections of the corresponding legislation, Code of Conduct, policy or procedure that may have been breached and the letter must foreshadow what administrative actions are proposed. Such an administrative decision (that there is sufficient evidence to substantiate the allegations and that the employee may have breached legislation, the Code of Conduct, policy or procedure) is considered to be a disciplinary finding and therefore would be subject to an appeal to the Public Service Commission (PSC) Appeals Officer. See section 9 of this procedure.

After the delegate considers the employee's response the delegate must advise the employee in writing of the outcome and/or any administrative and/or management actions that are to be imposed. Further, pursuant to section 12 of the *Public Service Regulation 2008* (Dealing with employee record if detrimental to employee's interests) the employee must be provided with an opportunity to provide a written response at least fourteen (14) calendar days before the record can be placed on a confidential HR file. A copy of the employee's written

response must be attached to the record. Should the department not receive a response, a notation to that effect must be placed on the confidential HR file with a copy of the record.

Where a disciplinary finding has been made and/or administrative action have been imposed, a notation is to be placed on the employee's personnel file which is to contain a reference to the existence of an investigation and/or discipline file and the details of the disciplinary finding made and any administrative actions that were imposed. The employee must be advised, in writing, that such a notation will be placed on their personnel file.

The employee must also be advised of their appeal rights. See section 9 of the procedure.

- c) External formal investigation:** Should the delegate (after consultation with WRS) determine that the nature of the alleged conduct or behaviour is considered serious or significant enough to warrant an investigation by an independent external investigator, the delegate will engage an external consultant to investigate the allegations and provide a report.

The following process must be followed when conducting an external investigation:

Engaging an investigator

A terms of engagement letter must be prepared to engage the external investigator. The letter must include the specific allegations that the department requires investigating (terms of reference) outlining the scope and purpose of the investigation and the investigator's responsibilities in conducting the investigation (e.g. investigations must be conducted in accordance with the CMC's guidelines: *Facing the Facts*). The delegate must task the relevant HR Officer with the responsibility to prepare the required correspondence, coordinate the investigation and provide support to the investigator.

The investigator must be advised of the timeframe of the investigation. The entire investigation process should be completed as a matter of priority, ideally no longer than three (3) months. However, it is acknowledged that this timeframe may be impacted on by the number and availability of witnesses and the complexity of the investigation.

Advice to subject officers/complainants/witnesses

Both the complainant and subject officer/s must be advised in writing that the delegate has determined to investigate the matter. The letter is to include the specifics of the allegations being investigated and the employee's obligation to participate in the investigation process. Employees who have been identified as potential witnesses to the investigation must also be advised of the investigation and of their obligation to participate in the Investigation process. Witnesses can either be advised verbally or in writing (where appropriate). All parties must be advised of the contact details of the department's employee assistance service provider.

The delegate must ensure that the letters are hand delivered (where possible) to employees involved in the investigation process and appropriate information and support is provided to these employees. Advice to complainants (who are members of the public) about the investigation process is to be sent by registered mail.

Employees are entitled to have a support person present when being interviewed. Please be aware that this person can only be present in a support capacity and cannot answer on the employee's behalf. It should be noted that in accordance with the *Industrial Relations Act 1999* employees who are a member of a Union have a right to be represented by their Union during the interview process.

Investigation report

Upon receipt of the investigation report, the delegate must review all relevant information provided in the report and any other relevant evidence pertinent to the matter.

After considering all the evidence, the delegate must determine what action is to be taken. This may include (but is not limited to) the following:

- 1) **No further action** - if there is insufficient evidence in the report to take any further action or the investigator found the allegation/s had not been substantiated the delegate must advise all parties to the investigation (in writing) in a timely manner of the finalisation of the investigation process. The complainant and subject officer must be advised of the delegate's decision.
- 2) **Gather more information** - if there is insufficient evidence in the report to make a determination on action to be taken or the investigator recommends that further investigation or enquiry is required, the delegate may seek further information from employees or other parties before making a determination. In circumstances where the delegate considers that an employee was not provided with an appropriate opportunity to comment on the allegations through the investigation process (e.g. a witness's status changed during the investigation to that of subject officer) the delegate may issue the employee with an Opportunity to Respond letter to comment on the report before making any determination.
- 3) **Implement administrative and systemic changes** - if there is insufficient evidence to substantiate the allegations or to take any further action against an individual employee but the report recommends administrative or systemic changes to procedure or policy.
- 4) **Impose administrative actions** - if the delegate considers that there is sufficient evidence available to substantiate the allegations but the delegate does not consider that the employee has breached any legislation, Code of Conduct, policy or procedure the delegate may consider administrative action is warranted. However, before making any final determination, the employee must be afforded procedural fairness as outlined in Section 4.3: *Part B* of this procedure.

The decision to implement administrative actions cannot be taken into consideration when determining any future disciplinary matters, as no disciplinary finding has been made against the employee. No documentation relating to this decision is to be placed on an employee's personnel file.

If the delegate considers that there is sufficient evidence available to substantiate the allegations and that the employee's alleged conduct may have breached legislation, the Code of Conduct, policy or procedure the delegate may however determine that the commencement of a discipline process is not warranted. The delegate may determine to make an administrative decision to implement administrative actions.

However, before making any final determination, the employee must be afforded procedural fairness as outlined in Section 4.3: *Part B* of this procedure.

After the delegate considers the employee's response the delegate must advise the employee in writing of the outcome and/or any administrative and/or management actions that are to be imposed. Further, the process outlined in Section 4.3: *Part B* of this procedure needs to be followed in terms of dealing with an employee record that is detrimental to an employee's interests.

Where a disciplinary finding has been made and/or administrative action have been imposed, a notation is to be placed on the employee's personnel file which is to contain a reference to the existence of an investigation and/or discipline file and the details of the disciplinary finding made and any administrative actions that were imposed. The employee must be advised, in writing, that such a notation will be placed on their personnel file.

The employee must also be advised of their appeal rights. See section 9 of the procedure.

- 5) **Commence a discipline process** - if there is sufficient evidence available that could result in the allegation/s being substantiated then a discipline process may commenced as outlined in section 5 of this procedure. Note that when it is determined that it is appropriate to commence a discipline process, in accordance with the principles of procedural fairness, the delegate is not permitted to accept the substantiated findings and recommendations contained in the investigation report until after the employee has been afforded procedural fairness. The delegate must then consider the employee's response in the course of the discipline process. The delegate would then determine whether the allegation/s has been substantiated or not.

Regardless of the determination/s made by the delegate in relation to the investigation process, all parties (including witnesses) party to the investigation must be advised in writing of the finalisation of the investigation process. Further, the complainant and subject officer must be advised of the delegate's decision.

5. Discipline procedure

This procedure provides explanatory information about the steps to be taken during a discipline process. The Divisional HR contact **and** WRS must be directly involved in all discipline matters and advice must be sought from WRS before commencing a discipline process against an employee.

All correspondence issued during a discipline process must be in accordance with the approved template/s letters held by WRS. All discipline letters must be approved by the Manager, WRS before they are issued.

The delegate must ensure that all letters issued in the course of the discipline process are hand delivered to employees (where possible) and appropriate information and support is provided to these employees. Advice must be sought from WRS on the most appropriate delivery method for each employee's specific circumstances.

5.1 Determining liability for discipline

On receipt of the relevant documentation (e.g. unsatisfactory work performance documentation, an investigation report, a response to an Opportunity to Respond letter or other relevant documentation) the delegate determines whether there is evidence that would appear to substantiate the allegations. Where it appears that the allegations may be substantiated, the delegate must then determine if the employee is liable for disciplinary action.

Grounds for discipline – is defined in section 187 of the *Public Service Act 2008*. The chief executive or delegate may discipline an employee if reasonably satisfied that the employee has:-

- Performed their duties carelessly, incompetently or inefficiently;
- Been guilty of misconduct as defined in the *Public Service Act 2008*;
- Been absent from duty without approved leave and without reasonable excuse;
- Contravened, without reasonable excuse, a direction given by a responsible person (ie. A person with the authority to give the direction);
- Used, without reasonable excuse, a substance to an extent that has adversely affected the competent performance of the employees duties;
- Failed to disclose, where required, a serious disciplinary action;
- Given false or misleading information;
- Contravened, without reasonable excuse, a provision of the *Public Service Act 2008*,
- Contravened, without reasonable excuse, a standard of conduct under an approved Code of Conduct under the *Public Sector Ethics Act 1994*;
- Contravened, without reasonable excuse, a standard of conduct, under an approved standard of practice under the *Public Sector Ethics Act 1994*.

The department may commence a discipline process if the delegate is reasonably satisfied that there is sufficient evidence that the employee's actions meet the Grounds for discipline (outlined above).

If it is determined that the employee is liable for disciplinary action then the delegate must proceed to Step 2 - Issuing first show cause notice.

If the delegate considers that there is sufficient evidence available to substantiate the allegations but the delegate does not consider that the employee has breached any legislation, Code of Conduct, policy or procedure the delegate may consider administrative action is warranted. However, before making any final determination, the employee must be afforded procedural fairness as outlined in *Section 4.3: Part B* of this procedure.

The decision to implement administrative actions cannot be taken into consideration when determining any future disciplinary matters, as no disciplinary finding has been made against the employee. No documentation relating to this decision is to be placed on an employee's personnel file.

If the delegate considers that there is sufficient evidence available to substantiate the allegations and that the employee's alleged conduct may have breached legislation, the Code of Conduct, policy or procedure the delegate may however determine that the commencement of a discipline process is not warranted. The delegate may determine to make an administrative decision to implement administrative actions.

However, before making any final determination, the employee must be afforded procedural fairness as outlined in *Section 4.3: Part B* of this procedure.

After the delegate considers the employee's response the delegate must advise the employee in writing of the outcome and/or any administrative and/or management actions that are to be imposed. Further, the process outlined in *Section 4.3: Part B* of this procedure needs to be followed in terms of dealing with an employee record that is detrimental to an employee's interests.

Where a disciplinary finding has been made and/or administrative action have been imposed, a notation is to be placed on the employee's personnel file which is to contain a reference to the existence of an investigation and/or discipline file and the details of the disciplinary finding made and any administrative actions that were imposed. The employee must be advised, in writing, that such a notation will be placed on their personnel file.

The employee must also be advised of their appeal rights. See section 9 of the procedure.

If the delegate determines that there is insufficient evidence in the documentation before them to commence a disciplinary process or to take any further action in relation to the matter, the employee must be advised of the delegate's decision (in writing) in a timely manner.

5.2 Issuing first show cause notice - liability for discipline

Where the delegate has determined that the employee may be liable for disciplinary action, the employee is to be issued with a show cause letter as to why disciplinary action should not be taken against them. This letter must

include the findings arrived at from the evidence gathering phase (e.g. investigation report, Opportunity to Respond letter and/or unsatisfactory work performance documentation) and the reason that the delegate has determined the employee may be liable for disciplinary action. In accordance with the principles of procedural fairness, the delegate is not permitted to accept substantiated findings and recommendations contained in the investigation report until after the employee has responded to the first show cause notice and has considered the employee's response. The delegate would then determine whether the allegation/s has been substantiated or not.

The show cause letter must clearly outline each allegation for which the employee may be liable for disciplinary action and the corresponding section of legislation, Code of Conduct, policy or procedure that may have been breached. This must be accompanied by a copy of the evidence being relied upon by the department e.g. the relevant sections of the investigation report, the performance improvement documentation or other supporting evidence.

However, in situations where it is likely that providing a complete investigation report might impact unfavourably on third parties identified in the report, a summary outlining the specific allegations, the grounds upon which the employee may be liable for disciplinary action and the supporting evidence must be provided. The department must comply with confidentiality and privacy considerations pursuant to the *Information Privacy Act 2009* and advice must be sought from the WRS Unit about the release of information during the discipline process.

Further, should the discipline be based on evidence that was provided through a disclosure process, the information that can be provided to an employee may be restricted by law, to protect the identity of the discloser (whistleblower). Advice must be sought from the WRS Unit and the Manager, Privacy and Ethics Unit in relation to the disclosure of any information relating to a public interest disclosure made by a discloser (whistleblower).

Relevant extracts of this procedure and extracts of relevant legislation, Code of Conduct and policy are to be provided to the employee. The employee must be afforded a period of fourteen (14) calendar days from the date of receipt of the show cause letter to submit their response. The WRS Unit will facilitate this process with the relevant Division.

5.3 Reaching a finding on the allegations and intent to impose disciplinary action

On receipt of the employee's response to the first show cause notice or at the end of the show cause period, if no response is received, the delegate must review all available material, including all evidence relied upon to commence the discipline process, and any information provided by the employee. Generally, this review should be completed within fourteen (14) days.

The delegate is required to reach a finding against each allegation presented in the show cause notice. The employee must be provided with the reasoning behind each finding, and a description of the corresponding section of the legislation, Code of Conduct, policy or procedure that has been breached, where the allegations are found to be substantiated. This determination must be provided in writing to the employee as part of the second show cause notice.

The delegate should be aware that in order to satisfy the grounds for discipline, they must take into consideration:

- Whether the employee had a reasonable excuse; and
- Whether this excuse mitigated any potential liability for disciplinary action.

At this stage the delegate may decide that the allegations against the employee are not substantiated and therefore the employee is not liable for discipline and no further action is required. If this is determined the employee must be advised of this in writing in a timely manner.

If the delegate determines that there is sufficient evidence available to substantiate the allegations but the delegate does not consider that the employee has breached any legislation, Code of Conduct, policy or procedure the delegate may consider administrative action is warranted. However, before making any final determination, the employee must be afforded procedural fairness as outlined in Section 4.3: *Part B*.

The decision to implement administrative actions cannot be taken into consideration when determining any future disciplinary matters, as no disciplinary finding has been made against the employee. No documentation relating to this decision is to be placed on an employee's personnel file.

If the delegate considers that there is sufficient evidence available to substantiate the allegations and that the employee's alleged conduct may have breached legislation, the Code of Conduct, policy or procedure the delegate may however determine that the commencement of a discipline process is not warranted. The delegate may determine to make an administrative decision to implement administrative actions.

However, before making any final determination, the employee must be afforded procedural fairness as outlined in *Section 4.3: Part B* of this procedure.

After the delegate considers the employee's response the delegate must advise the employee in writing of the outcome and/or any administrative and/or management actions that are to be imposed. Further, the process outlined in *Section 4.3: Part B* of this procedure needs to be followed in terms of dealing with an employee record that is detrimental to an employee's interests.

Where a disciplinary finding has been made and/or administrative action have been imposed, a notation is to be placed on the employee's personnel file which is to contain a reference to the existence of an investigation and/or discipline file and the details of the disciplinary finding made and any administrative actions that were imposed. The employee must be advised, in writing, that such a notation will be placed on their personnel file.

The employee must also be advised of their appeal rights. See section 9 of the procedure.

If the delegate has determined that the employee is liable for disciplinary action and considers it appropriate to impose a formal penalty under Section 188 of the *Public Service Act 2008* then they must proceed to the next stage of the discipline process.

5.4 Issuing second show cause notice— proposed penalty

Where the delegate determines that the appropriate action, in relation to the substantiated allegations, is to impose a disciplinary penalty, the delegate must issue the employee with a second show cause notice.

The second show cause notice provides the employee with an opportunity to comment on the delegate's decision and the proposed or recommended penalty and must outline:

- The findings against each allegation outlined in the first show cause notice, including the reasons for the decision in relation to each finding;
- Responses to the relevant points and employee's response to the first show cause notice (if any);
- The delegate's decision that the employee is liable for disciplinary action;
- The disciplinary penalty that the delegate is considering imposing or recommending; and
- The administrative and/or management actions that the delegate is considering imposing or recommending.

Section 188 of the *Public Service Act 2008* provides examples of disciplinary action (penalties) that can be imposed. They include, but are not limited to:

- Termination of employment;
- Reduction of classification level and a consequential change of duties;
- Transfer or redeployment to other public service employment;
- Forfeiture or deferment of a remuneration increment or increase;
- Reduction of remuneration level;
- Imposition of a monetary penalty;
- 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 cases where the delegate is proposing the penalty of transfer or redeployment to other public service employment the employee must be expressly advised, as a term of the discipline imposed, that they are not entitled to expenses as the transfer has arisen as a direct result of disciplinary action taken against the employee in accordance with section 188 of the *Public Service Act 2008*.

An employee will generally be given a period of seven (7) calendar days from the date of receipt of the second show cause notice to provide their response. This stage of the process is not an opportunity to review previous arguments regarding the determination of liability for discipline, rather an opportunity for the employee to comment on the appropriateness of the proposed disciplinary penalty.

Where the delegate considers the evidence relied upon to determine a liability for discipline under section 5.1 of this procedure is serious in nature and that it is in the interests of all parties to resolve the disciplinary process in a timely manner, the delegate may determine to issue the employee with correspondence that combines the actions required in sections 5.2 and 5.4 of this procedure. In accordance with the principles of procedural fairness, this correspondence must give the employee the opportunity to respond to the liability for discipline (pursuant to section 187 of the *Public Service Act 2008*) and the proposed penalty (pursuant to section 188 of the *Public Service Act 2008*). Where the delegate determines to take this course of action, it is at the delegate's discretion to determine the appropriate timeframe in which the employee is required to provide a response. The delegate should ensure that, where reasonable, the timeframes in the decision making process are appropriately consistent with the timeframes for response provided to employees.

5.5 Making a decision on the disciplinary penalty to be imposed

On receipt of the employee's response to the second show cause notice or at the end of the show cause period, if no response is received, the delegate must review all relevant material, including any information provided by the employee, prior to making a final decision on the disciplinary penalty to be imposed or recommended. Generally, a decision should be made within fourteen (14) days.

The penalty must be imposed in accordance with the provisions and requirements of Section 188 of the *Public Service Act 2008*.

In circumstances where the proposed penalty is dismissal the matter must be referred to the Director-General for a penalty decision. There is no delegation of termination of employment for disciplinary reasons. The referral must include a comprehensive briefing note on the issue/s with the originating delegate's recommendation, a statement of reasons regarding the elements of the decision, endorsement of this recommendation by line-management and all material relied on by the originating delegate in reaching their recommendation.

Where the delegate, after assessing all information, determines to impose a new disciplinary penalty that the employee has not been previously asked to comment upon, the employee must be given a further opportunity to comment on the new proposed disciplinary penalty and be issued with a further show cause notice which outlines the reasons for the delegate's decision. The process outlined in Step 4 above must be followed in these circumstances. This will ensure that the employee is provided with the opportunity to comment on the appropriateness of the proposed new disciplinary penalty in relation to only those allegations for which the employee has been found liable for disciplinary action.

5.6 Advising of penalty imposition

Once the final decision regarding a discipline penalty is made by the relevant delegate, the employee must be advised in writing of the imposition of the penalty. The employee must also be advised of their appeal rights which are outlined in section 9 of this procedure.

Employees must also be advised that there is a requirement pursuant to section 179A of the *Public Service Act 2008* that former public service employees may be required to disclose particulars of a serious disciplinary action before any appointment takes effect with a Queensland Public Sector organisation.

Further, the process outlined in *Section 4.3: Part B* of this procedure needs to be followed in terms of dealing with an employee record that is detrimental to an employee's interests.

Where a disciplinary penalty has been imposed, the personnel file is to contain a reference to the existence of a confidential investigation and/or discipline file and the outcome of the discipline process including any penalty that was imposed (See Step 7 of this procedure). The employee must be advised, in writing, that such a notation will be placed on their personnel file.

This stage includes the requirement to provide advice to QSS (payroll) regarding the imposition of the penalty where the penalty is:

- Termination of employment;
- Reduction of classification level and a consequential change of duties;
- Forfeiture or deferment of a remuneration increment or increase;
- Reduction of remuneration level; and/or
- Imposition of a monetary penalty.

Employees whose employment is terminated must be advised of their right to lodge an unfair dismissal application with the Queensland Industrial Relations Commission (QIRC) for reinstatement to their former position. See section 9 of the procedure.

In the case of termination of employment, the employee must also be provided with a letter within three (3) working days of the termination of employment date, stating the termination entitlements payable to the employee. QSS is responsible for calculating the termination payment entitlements.

5.7 Management of outcomes and documentation

Once the appeal period has expired (after twenty-one (21) days) or if any appeal lodged is dismissed, the delegate may then implement the disciplinary penalty. WRS is responsible for confirming that the appeal period has expired and an appeal has not been lodged.

The employee must be advised, in writing, of all relevant details around the implementation of the discipline penalty (i.e. when a decrease in remuneration will take effect).

The employee must also be advised of their obligation to disclose previous history of serious disciplinary action that has been taken against them pursuant to section 179A of the *Public Service Act 2008*. Employees must comply with the requirement to disclose, before employment takes effect, any serious disciplinary action taken against them under public sector disciplinary law involving:

- a. Termination of employment
- b. Reduction of classification level or rank

- c. Transfer or redeployment to other employment
- d. Reduction of remuneration level, or
- e. A disciplinary declaration under a public sector disciplinary law of termination of employment or reduction of classification level or rank.

The department's Recruitment and Selection Policy and Procedure provides more information in relation to the process to be followed.

Employees should also be made aware that in accordance with the department's Recruitment and Selection Procedure a discipline history check may be undertaken for all recommended applicants already working in the public sector. All previous discipline history information may be disclosed through the discipline history check process, not just serious discipline action taken. This may include disciplinary finding, disciplinary action and/or an administrative decision arising out of a discipline matter. Should this disclosure be detrimental to the employee, they must be given a reasonable opportunity to respond to any foreshadowed decision or before any adverse decision (e.g. a decision not to proceed with the appointment) is made pursuant to section 12 of the *Public Service Regulation 2008* (Dealing with employee record if detrimental to the employee's interest).

All documents from the discipline process, including any follow up or administrative decisions and actions must be recorded on the relevant confidential HR file and not placed on the employee's personnel file. Where a disciplinary finding has been made or a disciplinary penalty has been imposed, the personnel file is to contain a reference to the existence of the confidential investigation and/or discipline file and the outcome of the discipline process including any penalty that was imposed. Only WRS have the authority to arrange with QSS for a notation to be placed on an employee's personnel file.

5.8 Post-separation discipline

Should an employee resign during an investigation or discipline process the section 188A of the *Public Service Act 2008* provides for the chief executive (or delegate) to make a disciplinary finding against a former public service employee. When making that decision the delegate must consider the seriousness and nature of the allegations. Advice must be sought from the WRS Unit.

6. Delegations

Delegations are to be exercised in accordance with the department's Human Resource Management Delegations.

Delegation Schedules are reviewed on a regular basis to ensure they remain current and relevant to the operational needs of the department. It is recommended that delegate authority levels are confirmed prior to exercising any powers in relation to determination.

The authority to terminate the service of an employee (including temporary employees whose employment is being terminated due to disciplinary reasons) rests with the Director-General only.

7. Responsibilities

Divisional Human Resources (HR) Contact

- Work with managers/supervisors to implement processes to appropriately manage employee conduct and performance.

Delegated Officer (Delegate)

- Ensure that WRS is involved and consulted about all aspects of the investigation and discipline process including engagement of an investigating officer and the development of the terms of reference for the investigation.
- Authorise the conduct of an investigation and discipline process in accordance with this procedure.

Employees

- Work with their supervisors/managers in the improvement of their conduct or performance.
- Constructively participate in all performance improvement processes.
- Follow lawful directions to co-operate with official inquiries into workplace matters including providing information and assistance to department appointed investigators.
- Co-operate with local resolution processes that contribute to positively maintaining a harmonious and professional work environment.
- Maintain confidentiality surrounding investigation and discipline matters and not discuss these with work colleagues or any person likely to have information relevant to the allegations apart from their union, legal representative or support person.

Workforce Relations and Safety, Human Resources, Corporate Services

- Oversee the application of investigation and discipline processes in conjunction with the Divisional HR contact.
- Must be directly involved in all discipline matters.

- Arrange with QSS for a notation to be placed on an employee's personnel file that a discipline record exists in relation to an employee.

Managers and Supervisors

- Consider management action to encourage a positive change in an employee's conduct or performance as an alternative to formal disciplinary action.
- Implement communication and other processes for appropriately managing employee conduct and performance.
- Ensure that all documentation relating to such processes is kept in a secure location and that they only discuss the matter with officers who have a "need to know" and/or provide advice about the process.

Manager, Privacy and Ethics Unit, Corporate Services

- Report all suspected instances of Official Misconduct to the Crime and Misconduct Commission (CMC), in their role as CMC Liaison Officer.
- Provide advice to employees and departmental management on ethics matters including Official Misconduct and Public Interest Disclosures (PIDs) in their role as the department's PID Co-ordinator.

8. Employee complaints and appeals

An employee who is the subject of an administrative decision or action is entitled to lodge a complaint in accordance with the departmental Employee Complaints Management Policy and Procedure should they feel that the administrative decision is unfair or biased.

If the employee considers that the issue is not resolved following the finalisation of the complaints process, they may be able to lodge an appeal with the Industrial Registry (of the Qld Industrial Relations Commission (QIRC). The QIRC website at http://www.qirc.qld.gov.au/prod_form_leg/public_service_appeals/index.htm provides general information about appeals.

Employees considering an appeal should read this information and refer to the Public Service Commission Directive – Appeals, then seek further information on appeal rights from the Public Service Commission Advisory Service on telephone 1300 038 472 or email pscenquiries@psc.qld.gov.au before taking any action..

After an appeal has been lodged, the employee may only seek information from the Industrial Registry via email to qirc.registry@justice.qld.gov.au.

Discipline appeal

An employee who is the subject of disciplinary action pursuant to the *Public Service Act 2008* and who has a right of appeal, may appeal the decision of the department where they feel aggrieved over the decision to discipline or the severity of the penalty imposed (other than termination of employment).

An employee is eligible to lodge an appeal against the decision without previously using the department's employee complaints procedure.

An employee may not lodge an appeal until the discipline process is finalised and a decision has been made.

Where an employee decides to lodge an appeal, in accordance with the Public Service Commission *Appeals Directive*, the disciplinary action does not take effect until:

- (a) In the case where the employee's notice of appeal is received before the deadline – the commissioner allows or dismisses the appeal; or
- (b) In any other case — the end of the period of twenty-one (21) calendar days after the employee received the written notice of the decision.

Unfair dismissal applications

An employee whose employment is terminated as a result of disciplinary action may lodge an unfair dismissal application with the Queensland Industrial Relations Commission (QIRC) for reinstatement to their former position, within twenty-one (21) calendar days of the decision to terminate their employment.

An employee considering an unfair dismissal application should seek further information on their eligibility to lodge such an application from the QIRC Industrial Registry.

9. Definitions and glossary of terms

Administrative action - An action arising out of an administrative decision.

Administrative decision - A decision made by the department in relation to the administration of its affairs and includes the failure to make a decision within a specified timeframe where applicable.

Allegation - A stated belief or claim of unsatisfactory work performance or unacceptable behaviour and/or conduct.

Balance of probabilities - The civil standard of proof where a fact is proven if the delegate is reasonably satisfied that an event has occurred. The degree of probability varies according to the seriousness of the issues involved i.e. the more serious the allegation the higher the degree of probability that is required to satisfy the delegate that the claim is substantiated (known as the Briginshaw Test).

Caution/warning - An administrative action that foreshadows to an employee that any future incidences of conduct or behaviour that are a breach of an employee's obligations under legislation, Code of Conduct or departmental policy may result in the delegate commencing a discipline process.

Code of Conduct - Refers to the Code of Conduct for the Queensland Public Service. The purpose of the Code of Conduct is defined in section 10 of the *Public Sector Ethics Act 1994* as "... standards of conduct for public service agencies, public sector entities and public officials consistent with the ethics principles and values." The Code of Conduct applies to all public officials including all departmental employees (permanent, temporary and casual employees including SES and SO Officers, graduates and cadets) and contractors, consultants, trainees, work experience placements and volunteers.

Delegate - The officer within the department who has the delegated authority to determine investigation and disciplinary matters pursuant to the department's HRM Delegation.

Discipline process - The process followed to ensure that the principles of procedural fairness are observed by affording the employee the right of reply within a transparent process and a decision made by an objective decision-maker. This process commences when the delegate has determined that the employee may be liable for disciplinary action and a show cause notice is issued. The discipline process is distinct from the preliminary assessment and evidence gathering stages.

Disciplinary action - Action taken against a public service employee under section 188 of the *Public Service Act 2008*

Disciplinary finding - Means a finding that a disciplinary ground exists

Disciplinary ground - Means a ground for disciplining a public service employee under section 187 of the *Public Service Act 2008*. A disciplinary ground arises when the delegate is reasonably satisfied that the public service employee has contravened this section of Act without reasonable excuse.

Disciplinary penalty - The outcome of a discipline process that can be imposed against an public service employee in accordance with section 188 of the *Public Service Act 2008*.

Discloser - (also known as whistleblower) A person who makes a Public Interest Disclosure (PID) in accordance with the *Public Interest Disclosure Act 2010* (see also Protected Discloser definition).

Employee - A departmental employee is a person employed by the department as either a:

- *Public service officer (officer)* under section 8 of the *Public Service Act 2008* in either a permanent full-time or part-time capacity (e.g. administrative, professional and technical officers), some ranger staff who are employed under the *Queensland Public Service Award — State 2003*, the chief executive and Senior Executive Service (including Senior Officers); or
- *Temporary employee* under section 148 of the *Public Service Act 2008* in either a full-time or part-time capacity; or
- *Casual employee* under section 148 of the *Public Service Act 2008*; or
- *General (wages) employee* under section 147 of the *Public Service Act 2008* in either a permanent or temporary full-time or part-time or casual capacity (e.g. employee engaged under the Conservation, Parks and Wildlife Employees' Award — State Government 2003); or
- Trainee employed under the *Vocational Education Training and Employment Act 2000*.

Employee Assistance Service - Refers to the department funded confidential counselling and referral service.

Employee complaint - A complaint made by a current public service employee who has an honest belief based on reasonable grounds that:

- An administrative decision is unfair or unreasonable; or
- The conduct or behaviour of an employee, agent or contractor is unfair or unreasonable or constitutes sexual harassment or workplace harassment; and
- The decision, conduct or behaviour has a substantial and direct adverse effect on the employee concerned.

The following decisions cannot be the subject of an employee complaint:

- A decision about the policy, strategy, nature, scope, resourcing or direction of the department;
- A decision to discipline;
- A decision to retire an employee on the ground of ill-health under chapter 5, part 7 of the *Public Service Act 2008*; and
- A decision that is the subject of another complaint by the same employee under Employee Complaints Directive or another industrial instrument.

Grounds for discipline - As defined in section 187 of the *Public Service Act 2008* (see section 4 of this procedure).

Incident - An event which has occurred at work or outside the workplace which is relevant to an employee's work performance, official conduct or workplace behaviour that appears to constitute a breach of any relevant legislation, subordinate legislation, Code of Conduct and/or policy.

Investigating officer - A person engaged by the delegate to conduct an investigation into the allegation/s.

Misconduct - Defined under the *Public Service Act 2008* (section 187) as "inappropriate or improper conduct in an official capacity or inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public service".

Official Misconduct - Defined in the *Crime and Misconduct Act 2001*. Official Misconduct by a public sector employee involves carrying out duties in a way which lacks honesty and impartiality, breaches the community's trust or involves the improper use of official information. Conduct is not Official Misconduct unless it could (if proven) constitute a criminal offence or a disciplinary breach that could provide reasonable grounds for termination of employment.

Opportunity to Respond - A process to afford an employee subject to allegations procedural fairness and a mechanism to gather more information to enable the delegate to make a decision on allegations. It is not a discipline process.

Procedural fairness - Also referred to as natural justice. The rules of procedural fairness require that a delegate or investigator is not biased in any way, gives all parties a fair hearing, ensures all parties are informed and allowed to comment, and takes into account a person's point of view on any matter that adversely affects them. The principles of procedural fairness must be applied to investigations and discipline matters.

Protected discloser - A person who makes a PID in accordance with provisions contained within the *Public Interest Disclosure Act 2010* and who is granted protected status, previously known as "whistleblower protection status" (also see discloser).

Public Interest Disclosure - means a disclosure of information specified in the *Public Interest Disclosure Act 2010* (sections 12 and 13) and made to an appropriate public sector entity that has the responsibility or power to take appropriate action about the information disclosed or to provide an appropriate remedy.

Departmental employees are obligated to report their concerns relating to:

- a) Conduct of another person that could be official misconduct;
- b) Conduct of another person that could be maladministration that adversely affects a person's interests in a substantial and specific way;
- c) A substantial misuse of public resources (other than an alleged misuse based on mere disagreement over policy that may properly be adopted about amounts, purposes or priorities of expenditure);
- d) Substantial and specific danger to the environment;
- e) Substantial and specific danger to public health or safety;
- f) Substantial and specific danger to the health or safety of a person with a disability; or
- g) A reprisal because of a belief that a person has made, or intends to make a PID.

Serious disciplinary action - Means disciplinary action under a public sector disciplinary law involving:

- a) Termination of employment;
- b) Reduction of classification level or rank;
- c) Transfer or redeployment to other employment;
- d) Reduction of remuneration level, or
- e) A disciplinary declaration under a public sector disciplinary law of termination of employment or reduction of classification level or rank.

Suspension - In accordance with section 189 of the *Public Service Act 2008* the delegate may suspend an employee (general employees and officers) from duty if they reasonably believe the employee is liable for discipline under disciplinary law.

Section 137 of the *Public Service Act 2008* also provides for the delegate to suspend a public service officer in circumstances where the delegate believes that the proper and efficient management of the department might be prejudiced if the officer is not suspended.

Support person - A person involved in a support capacity to a departmental employee involved in an investigation or discipline process. The support person's role is only to provide support to the employee and not to advocate on behalf of the employee concerned. It should be noted that in accordance with the *Industrial Relations Act 1999* employees who are a member of a Union have a right to be represented by their Union during the interview process.

Stand down (general and temporary employees) - Employees who are not public service officers may be directed to take paid leave not chargeable to any leave account. This administrative action is called "stand down" and applies in circumstances where the delegate believes that the proper and efficient management of the department might be prejudiced if the employee remains in the workplace. The delegate must consider whether it is appropriate or practical for the employee to be assigned alternative duties to perform or is able to work from another location.

Whistleblower - See discloser and protected discloser.

Zero tolerance - An administrative action that places an employee on a no tolerance approach to their future behaviour and conduct where any future incidences of conduct or behaviour that are a breach of an employee's obligations under legislation, Code of Conduct or departmental policy may result in the delegate commencing a discipline process

10. Related documents

[NPRSR Performance and Development Planning Policy and Procedure](#)
[NPRSR Appropriate Behaviour Policy](#)
[NPRSR Employee Complaints Management Policy and Procedure](#)
[NPRSR Official Misconduct Complaints Procedure](#)
[NPRSR Performance Improvement Policy and Procedure](#)

[NPRSR Public Interest Disclosure Policy and Procedure](#)
[NPRSR Recruitment and Section Policy and Procedure](#)
[NPRSR Transfer at Level Policy and Procedure](#)
[NPRSR Work Experience Policy and Procedure](#)
[NPRSR Workplace Health and Safety Policy](#)

11. Further information

Should you require any further information or clarification, please contact: -

- Your Supervisor or Manager
- Your Divisional HR Contact
- Manager, Privacy and Ethics, Corporate Services
- Workforce Relations and Safety, Human Resources, Corporate Services

12. Storage of Information

Documents relating to discipline matters, investigation reports (that have been substantiated) and diminished performance matters (resulting in disciplinary penalty) must be retained permanently. Investigation reports, for matters that have not been substantiated, and performance management documentation must be retained for seven (7) years from the date of expiration of the finalisation of the investigation process. Documents relating to criminal charges and convictions (relating to serious cases) must be retained for ten (10) years and records (relating to non-serious cases) must be retained for seven (7) years after the original conviction or any subsequent related misconduct or criminal conviction, whichever is later.

All information must be managed and stored in relation to the privacy principles outlined in the Code of Conduct for the Queensland Public Service.

13. Review

This policy shall be reviewed within two years from the effective date of the policy.

14. Approval

Amended departmental procedure
<p>Signed:</p> <p>John Glaister Director-General Department of National Parks, Recreation, Sport and Racing</p> <p>Date: 07/06/2013</p>

15. Version History

Date	Version	Action	Description / comments
14 February 2013	1.0	Approved by Director-General	New NPRSR procedure for Director-General approval.
07 June 2013	1.1	Approved by Director General	Amended procedure for DG approval.
7 January 2014	1.02	Approved by A/Executive Director, Human Resources.	Updated links, authority section and removal of references to repealed Public Service Commission Directives.

16. Keywords

Investigation; discipline; discipline of a trainee; suspension; disciplinary action; penalty; grounds for discipline; procedural fairness; stand down.

17. Appendices

- Appendix A: Reporting Unacceptable Conduct that may be Criminal in Nature
- Appendix B: Suspension of an Employee of Stand Down of a General or Temporary Employee
- Appendix C: Discipline of a Trainee and/or Cancellation of a Traineeship Contract

APPENDIX A

REPORTING UNACCEPTABLE CONDUCT THAT MAY BE CRIMINAL IN NATURE

1. PROCESS

If the alleged unacceptable conduct is referred to the Queensland Police Service (QPS) because it may be criminal in nature, the following steps must be followed:

- The investigation must be suspended and the police contacted. Local management is responsible for reporting the matter to QPS. When reporting the matter, the local manager should nominate a point of contact within the department and request that the investigating police officer only contact that person. If there is any urgency associated with the matter, this should be specified.
 - A police officer will attend and record details of the matter. A Crime Reporting Information System for Police (CRISP) report will be raised and the department will be provided with a complaint acknowledgement form or advised of the CRISP Number.
 - The CRISP Report is referred to the relevant area of the QPS and an officer will be assigned to conduct the investigation. The investigating police officer should contact the nominated departmental contact within a reasonable time.
 - Coordination of further investigative or other departmental action can be negotiated between the nominated departmental contact and the QPS.
1. If the investigating police officer has not contacted the nominated departmental contact within a reasonable time and there is a need to contact the investigating police officer, the nominated departmental contact may contact the Manager, Right to Information and Privacy Unit of QPS. This officer will coordinate the collection of any relevant information and negotiate the potential release of information.
 2. The Manager, Privacy and Ethics and WRS must be advised immediately of conduct that may be criminal in nature.

APPENDIX B

SUSPENSION OF AN EMPLOYEE OR STAND DOWN OF GENERAL OR TEMPORARY EMPLOYEE

Suspension of an employee

Section 189 of the *Public Service Act 2008* provides that an employee may be suspended from duty where the delegate reasonably believes the employee is liable for discipline under disciplinary law. An employee suspended pursuant to this section may be suspended with or without remuneration.

- **Suspension with remuneration:** under section 190(2) of the *Public Service Act 2008*, natural justice is not required for suspension of an employee on normal remuneration. Once the delegate has determined to suspend an employee the department, in accordance with section 192 of the Act, must provide the employee with written notice stating:
 - the reasons for suspension as per section 189(1) of the Act;
 - when the suspension starts and ends (if an end date is known);
 - the remuneration to which the employee is entitled for the period of suspension;
 - the effect that the alternative employment may, under section 191 of the *Public Service Act 2008*, have on the entitlement.

It will be sufficient if the suspension period is described so that it is clear when it will cease - a specific end date may, but need not, be given. It is recommended that the suspension be reviewed on a regular basis to determine if an alternative to suspension has since been identified.

- **Suspension without remuneration:** under section 190(2) of the Act, an employee must be afforded natural justice before they can be suspended without remuneration. Suspension without remuneration should only be considered in circumstances where there is evidence in relation to the allegations (i.e. admission of the conduct by the subject officer) that is conclusive. This entails asking the employee to show cause as to why they should not be suspended without remuneration. When considering suspension without remuneration, the employee can be placed on suspension with full remuneration while the show cause process takes place.

The following steps need to be followed in order to suspend an employee without remuneration:

- a) The employee must be provided with a show cause notice stating that the department reasonably believes that the employee is liable to discipline. The employee need only be provided with the details of the allegations.
- b) The show cause notice must also clearly set out the factors on which the department based the reasonable belief that the proper and efficient management of the department might be prejudiced if the employee were not suspended. These factors will differ from case to case.
- c) The employee should be invited to respond to the show cause notice, usually within seven (7) calendar days.
- d) Before proceeding with the suspension, consideration should be given to the employee's response to the show cause notice (if any) and whether it is reasonable to form an opinion that the employee is liable to discipline and whether the proper and efficient management of the department might be prejudiced if the suspension didn't occur. There is no requirement to determine whether or not the allegations may be proven at this stage but only to determine whether the nature or circumstances of the matter alleged are such that the employee should not continue to perform their duties.
- e) The department must then consider the fairness of suspending the employee without remuneration, taking into account the submissions of the employee (if any) and matters relevant under legislation, such as proper use of public resources.
- f) Once the delegate has determined to suspend an employee the department, in accordance with section 192 of the Act, must provide written notice to the employee stating the suspension period and the day on which it takes effect. It will be sufficient if the suspension period is described so that it is clear when it will cease – a specific end date may, but need not, be given. The period of suspension could be described, for example, as the period from the date that the suspension takes effect until the determination of criminal charges.

Suspension of an officer

An officer can also be suspended under section 137 of the *Public Service Act 2008* where the delegate reasonably believes that the proper and efficient management of the department might be prejudiced if the employee were not suspended.

There is no requirement to determine whether or not the allegations may be proven at this stage but only to determine whether the nature or circumstances of the matter alleged are such that the employee should not continue to perform their duties.

An officer suspended pursuant to this section is entitled to remuneration on full pay.

See Actions to be taken to suspend or stand down an employee (below) for the process to suspend an officer under section 137 of the Act.

Stand-down of general or temporary employees

When considering whether to stand-down a general or temporary employee, the delegate must consider the same factors as relevant to determining the suspension of a public service officer (above). The delegate must reasonably believe that the proper and efficient management of the department might be prejudiced if the employee were not placed on stand-down.

There is no requirement to determine whether or not the allegations may be proven at this stage but only to determine whether the nature or circumstances of the matter alleged are such that the employee should not continue to perform their duties.

If it is determined that a general or temporary employee should be on stand down, the provisions of the *Industrial Relations Act 1999* preclude the stand-down of employees without pay for reasons other than those which are beyond the employers control or the employer is not responsible. Therefore, these employees are entitled to full remuneration for the period of the stand-down.

See Actions to be taken to suspend or stand down an employee (below) for the process to suspend a general or temporary employee.

APPENDIX C

DISCIPLINE OF A TRAINEE AND/OR CANCELLATION OF A TRAINEESHIP CONTRACT

1. Purpose

The purpose of this procedure is to outline the process the department must follow in regard to disciplining a trainee including the cancellation of a Traineeship Contract. Under certain circumstances, the Department of Education and Training (DET), specifically the Training and Employment Recognition Council may discipline a trainee over an issue regarding work performance, attitude, attendance, behaviour misconduct, serious misconduct, a breach of an Act, Code of Conduct or departmental policy and other behaviour that is considered inappropriate. This procedure is to be followed when all attempts to rectify the issues with the trainee have been unsuccessful.

2. Scope

This procedure applies to all trainees, including school-based trainees, employed by the department that are within the specified probationary period and/or have signed a Traineeship Contract with the department.

3. Procedure

Commencement of a formal discipline and/or cancellation process

The department is not permitted to take any formal disciplinary action against a trainee. Such action can only be taken by DET who is authorised under the *Vocational Education and Training Act 2000*.

In the event that a supervisor is experiencing problems with a trainee, before taking any action to discipline or remove the trainee, they must first contact the Divisional HR contact or Human Resources, Corporate Services. Depending on the situation and the stage of the traineeship, a range of actions may be taken.

Prior to the commencement of the formal process to discipline and/or cancel a training contract the manager/supervisor will be required to demonstrate what reasonable management action they have taken in an effort to resolve the issue prior to being escalated to this formal process.

Cancellation of a traineeship contract within the probationary period

The traineeship may be terminated during the probationary period by the giving of one (1) weeks' notice by either the department or the trainee. This can only be affected through DET. As a general rule the length of probation for a traineeship within the department is thirty (30) days.

If one (1) weeks' notice is NOT given:

- By the trainee, the department has the discretion to withhold one (1) week's wages in lieu of notice.
- By the department, the department must pay an amount equal to one (1) week's wages in lieu of notice.

It is important to seek advice from Human Resources, Corporate Services prior to proceeding with the action.

Extension of probationary period

Provisions exist that enable the department to extend the probationary period, however, an application must be received by the department's Traineeship Coordinator at least one (1) week prior to the completion of the probationary period, i.e. prior to the expiration of the thirty (30) days.

It is important to seek advice from Human Resources, Corporate Services prior to proceeding with the action.

Disciplinary action including cancellation of trainee contract subsequent to the probationary period

DET is the only authority permitted to take formal disciplinary action against a trainee. Disciplinary penalties could include:

- Reprimand;
- Imposing fine;
- Direction to comply with training contract;
- Suspending the trainee for up to thirty (30) days; and/or
- Cancelling the training contract.

If issues arise regarding the trainee's work performance; attitude; attendance or behaviour; misconduct; serious misconduct; a breach of an Act, Code of Conduct or departmental policy; or other behaviour that is considered inappropriate, the supervisor/manager must seek advice from Human Resources Corporate Services.

Where the department considers a trainee to be guilty of misconduct, as defined within the legislation, the department may seek suspension of the trainee by DET, on the basis of no pay for the duration of the suspension period. While the department has the right to apply for - and initially impose - suspension, that suspension can only be enforced with the approval of DET. Therefore supervisors/managers must contact Human Resources, Corporate Services, who must contact DET within one (1) day.

Offences that constitute misconduct include situations where the trainee:

- Fails to carry out a reasonable and lawful instruction that is consistent with his/her obligations under the contract;
- Is absent from work without the employer's consent or the authority of the *Vocational Education, Training and Employment Act 2000*;
- Is absent from training required under the training plan;
- Does not participate in training provided under the training plan;
- Fails, because of their deliberate neglect or default, to make reasonable progress in training provided under their training plan;
- Causes serious damage, or risk of serious damage, to the employer's business or business reputation; or
- Fails to produce his/her training record for inspection when requested.

All attempts to rectify the situation must have been exhausted before proceeding to the next step in the process. When attempts to rectify issues have been unsuccessful, DET must be notified and the department will be provided with a Training Consultant to mediate between the parties. If attempts to resolve the issue are still unsuccessful then DET will commence a Fair Procedures Process.

In accordance with the Fair Procedures Process DET will issue a Show Cause Notice to the trainee. This notice will identify the reasons for the proposed cancellation and then allow the trainee at least fourteen (14) calendar days to respond in writing. This allows the trainee the opportunity to "show cause" why the proposed action should not be taken. Once the trainee's response has been received DET will decide the matter based on the facts received and after careful consideration of responses.

4. Delegations

Only DET has the authority to discipline a trainee.

The Director-General, Deputy Director-General, Executive Director, or Executive Director Human Resources may approve the suspension of a trainee, however DET must be notified within one (1) day in order to have this enforced.

The HRM Delegation can be found on the departmental intranet. Delegation Schedules are reviewed on a regular basis to ensure they remain current and relevant to the operational needs of the department.

5. Responsibilities

Divisional Supervisor and/or Manager

Where a decision is made to discipline and/or cancel a Traineeship Contract within the probation period or subsequent to completion of the probationary period the trainee's supervisor/manager is required to:

- Notify the Divisional HR contact of the intention to request discipline and/or cancellation of the trainee's contract, providing specific detail why such action is sought. In the case of school-based trainees, contact Human Resources Corporate Services.
- Participate and comply with any direction recommended by the DET Training Consultant.

Divisional Human Resources (HR) contact

- Notify Human Resources, Corporate Services immediately upon becoming aware of a possible disciplinary and/or cancellation matter for a school based trainee.
- Provide relevant advice to the manager and/or supervisor as to the process they will be required to follow in cancelling a trainee's contract.
- Inform DET immediately upon becoming aware of the issue and request that formal action is instigated to discipline and/or cancel the trainee contract.
- Provide support and assistance where required during the process to the manager and/or supervisor, the trainee, and any other employees of the department who might be affected by the cancellation of a trainee's contract.

Human Resources, Corporate Services

- Inform WRS immediately upon becoming aware of any issues relating to a trainee.
- Inform DET immediately upon becoming aware of issues relating to a school-based trainee and request formal action is instigated to discipline and/or cancel the trainee's contract.
- Provide relevant advice to the Divisional HR contact as to the process they will be required to follow through the discipline and/or cancellation of a trainee's contract.
- Provide support and assistance where required during the process to the Manager and/or Supervisor, the trainee, and any other employees of the department who might be affected by the cancellation of a trainee's contract.

Department of Education and Training (DET)

- Once DET has been notified of the department's decision to request cancellation of the traineeship's contract and they have received sufficient detail on the reason for the proposed action then they will allocate a Training Consultant to the department to represent DET.
- The Training Consultant will provide mediation services to the department and will attempt to rectify the issues between the parties involved.

- If mediation is unsuccessful between the parties DET will then undertake a Fair Procedures Process by issuing a Show Cause Notice stating the following:
 - The proposed action under the relevant section of the Act;
 - The grounds for the proposed action;
 - An outline of the facts and circumstances that are the basis of the grounds;
 - An invitation to the affected person to show within a stated reasonable time (not less than fourteen (14) days after the notice is given) why the proposed action should not be taken;
 - The trainee will then be given fourteen (14) days from the date of receipt of the letter in which to respond, in writing, to the findings outlined in the letter and to state why they believe disciplinary action should not be taken against them;
 - DET will decide on the matter once a response to the Show Cause Notice is received from the affected trainee or the time allowed for a response has elapsed, whichever is the earlier; and
 - DET will then issue an information notice to the trainee and the department formally notifying them of the decision.

6. Forms

All forms associated with discipline and termination or cancellation of a traineeship contract are generated and completed by DET.

7. Employee complaints and appeals

If requested, DET will provide officers - senior training support consultants and training consultants - from local regional offices to assist in the resolution of conflict in the workplace. These officers are professional in their intervention and are trained to assist by encouraging the parties involved to identify problems in dispute, explore and determine outcomes and to reach mutually acceptable resolutions to the problems, within the terms of the training contract.

If a trainee disagrees with a decision made by DET on any traineeship matter, the trainee can:

- Request a review of the decision by the local office of DET;
- Refer the matter to the Training Ombudsman; or
- Lodge an appeal with the Queensland Industrial Relations Commission.

8. Definitions and glossary of terms

Code of Conduct - Refers to the Code of Conduct for the Queensland Public Service. The purpose of the Code of Conduct is defined in section 10 of the *Public Sector Ethics Act 1994* as "... to provide standards of conduct for public service agencies, public sector entities and public officials consistent with the ethics principles and values." The Code of Conduct applies to all public officials including all departmental employees (permanent, temporary and casual employees including SES and SO Officers, graduates and cadets) and contractors, consultants, trainees, work experience placements and volunteers.

Probation - The period where all parties can assess the trainee's compatibility and suitability to the traineeship. As a general rule the probation period for a full time traineeship is thirty (30) days. The actual period is stipulated in the Traineeship Contract.

Serious misconduct - Means any of the following theft, assault fraud, being at work under the influence of liquor or a drug, causing imminent risk of serious bodily injury or work caused illness or a dangerous event happening, or behaving in a way that is inconsistent with the continuation of a registered training contract.

Traineeship - Employment based training declared by the Training and Employment Recognition Council to be a traineeship

Trainee - An employee who is being trained in a traineeship is a "trainee" if:

- (a) a traineeship contract has been signed by the parties to the contract, whether or not the contract has been registered under the *Vocational Education, Training and Employment Act 2000*; or
- (b) the probationary period for the traineeship has not ended.

Traineeship contract - A contract in the approved form for the training and employment of a person in a traineeship.

9. Related documents

- *Industrial Relations Act 1999*
- *Order— Apprentices' and Trainees' Wages and Conditions (Queensland Government Department and Certain Government Entities) 2001*
- *Vocational Education, Training and Employment Act 2000*
- Department of Education and Training — Apprenticeship and Traineeship Fact Sheets
- Code of Conduct for the Queensland Public Service

10. Further information

For further information or clarification, please contact:

- Divisional HR Contact
- Human Resources, Corporate Services

11. STORAGE OF INFORMATION

Documents relating to discipline matters, investigation reports (that have been substantiated) and diminished performance matters (resulting in disciplinary action) must be retained permanently. Investigation reports, for matters that have not been substantiated, and performance management documentation must be retained for seven (7) years from the date of expiration of the finalisation of the investigation process. Documents relating to criminal charges and convictions (relating to serious cases) must be retained for ten (10) years and records (relating to non-serious cases) must be retained for seven (7) years after the original conviction or any subsequent related misconduct or criminal conviction, whichever is later.