



## Reporting and Handling Misconduct Policy

### Policy Statement

The community entrusts the Department for Child Protection (the Department) with a very special role; to provide for the protection and care of its most vulnerable members – children. In carrying out this vital role, employees of the Department are expected to maintain high standards of conduct and integrity at all times.

Taking action in cases of suspected misconduct is aimed at protecting the integrity of the Department, its employees and its services and thereby maintaining public confidence in its administration. Therefore, all employees of the Department must report acts of suspected misconduct in accordance with this policy.

Likewise, line managers receiving complaints or reports about suspected misconduct, whether reported by an employee of the Department or non-employee, are to report the matter in accordance with this policy.

### Purpose of this Policy

This policy is to ensure there is a consistent and comprehensive response to all allegations of suspected misconduct. It also ensures allegations of suspected misconduct are centrally recorded which will enhance the Department's ability to identify trends and eliminate many of the factors that enable misconduct to occur. It provides a basis for the ongoing review of how the Department deals with misconduct, so that the Department can build a misconduct resistant culture.

## BACKGROUND

### Standards of conduct

The minimum standards of conduct expected of all employees, trainees, contractors, board members and volunteers who are engaged by the Department are set out in the Public Sector Code of Ethics, the Department's Code of Conduct, the Public Sector Standards, the *Public Sector Management Act 1994* and any applicable regulations.

### Reportable misconduct



In general terms, reportable misconduct is when someone acts dishonestly, fails to act impartially or deliberately acts wrongly, or acts in a manner that breaches the public's trust in the public service. Examples of typical acts of misconduct that need to be reported to ISU include:

- Improper use of official information;
- Unauthorised access or release of confidential information;
- Unauthorised use of crown property for private purposes;
- Abuses of privileges of employment;
- Violence in the workplace;
- Use of abusive, insulting or obscene language;
- Inappropriate behaviour due to alcohol or substance abuse;
- Disregard for safety rules;
- Dishonesty, theft or misappropriation of money;
- Conviction of an offence rendering the employee unfit for employment in the public sector organisation

A more detailed list of the types of matters that arise within the Department has been compiled within a Misconduct Classification Schedule.

### Non-reportable misconduct

It is not always clear where the cut-off between non-reportable and reportable misconduct lies and each case will be considered on its own merits. To build a greater understanding about the types of matter that can be reportable and non-reportable a number of case studies have been developed which can be located in AM 2.1.07 Reporting and Handling Misconduct.

Examples of non-reportable misconduct *may* include:

1. An employee found smoking in a non-smoking area directly outside the workplace;
2. An employee found making an unreasonable number of personal phone calls while working;
3. An employee who is late to work on a number of occasions

Persistent non-compliance in respect to the above examples, particularly where the issue has been raised with the employee previously, may need



to be referred to the Director for reporting to the Integrity Services Unit (ISU).

## Protection for employees reporting misconduct

The Department recognises it takes courage for employees to speak up about misconduct and will take all reasonable steps, in addition to legislated protections, to protect employees from any detrimental action or reprisals as a result of making a report.

- Section 29(1) of the *Corruption and Crime Commission Act 2003* (CCC Act) provides employees with immunity from any criminal liability when notifying the CCC of suspected misconduct. The CCC Act also creates the following offences intended to further protect anyone assisting the CCC:
  - Victimisation
  - Dismissal
  - Causing detrimental action or injury
- An employee making a disclosure under the *Public Interest Disclosure Act 2003* will be protected in three ways:
  - Immunity from civil or criminal liability and protected from dismissal and termination of employment of for any breach of a duty of secrecy or confidentiality as a result of making a disclosure;
  - The Department must take reasonable steps to protect disclosers from detrimental action;
  - Protection of the discloser's identity.
- Victimisation committed by employees is considered a serious breach of discipline and may result in an employee's dismissal.

## Confidentiality

Every employee has a duty of confidentiality and it is particularly important in handling complaints and reports about misconduct. Discussions should be limited to those involved in handling or resolving the matter. It is not a breach of confidentiality to seek assistance from the ISU.

All documentation related to reported incidences of misconduct, whether substantiated or not, will be maintained securely at the ISU.



## Management of complaints and grievances – contact register

There are a number of avenues available to employees in relation to the reporting and resolution of certain matters that do not relate to misconduct. This includes matters such as employee grievances, breach of standards claims and occupational safety and health. Details of the avenues available and advice on who to contact for support is available at AM 1.3.09 Workplace Issue and Grievance Resolution.

## Mandatory reporting of child sexual abuse

Legislation to introduce mandatory reporting of child sexual abuse in Western Australia, the *Children and Community Services Amendment (Reporting Sexual Abuse of Children) Act 2008*, was passed by Parliament in June 2008. Where a report is received by the Mandatory Reporting Service of Crisis Care that an employee is suspected of child sexual abuse, the matter will be communicated to the ISU and DOCU who will formulate a response in partnership with ChildFIRST.

## Duty of Care Unit

All reports received by the Duty of Care Unit about a child in the CEOs care where it is alleged the child has been harmed or neglected by an employee will be communicated to the ISU who will formulate a response in partnership with ChildFIRST.

## Complaints Management Unit

All allegations of employee misconduct that are received by the Complaints Management Unit will be referred to the ISU for an appropriate response.

# REPORTING MISCONDUCT PROCEDURES FOR EMPLOYEES

## Reporting suspected misconduct



Employees must report suspected misconduct by another employee and this must be done in a timely manner. There are a number of ways in which an employee can make a report about misconduct:

- **Line manager/Director**

Employees may make a confidential report to their line manager or Director. Line managers need to refer reportable misconduct to their Director who will inform the ISU so that an appropriate response can be assessed.

- **Integrity Services Unit**

Employees may make a confidential report directly to the ISU by telephone 9222 2778 or by email: [misconduct.reporting@dcp.wa.gov.au](mailto:misconduct.reporting@dcp.wa.gov.au)

Depending on the type of information being reported, the ISU may need to report the matter to the Corruption and Crime Commission and/or WA Police.

- **Corruption and Crime Commission**

Employees may make a report directly to the Corruption and Commission by telephoning 9215 4884 or 1800 809 000 (outside Metro).

- **Public Interest Disclosure**

Employees may make a public interest disclosure to a public interest disclosure officer at the ISU.

## HANDLING REPORTS PROCEDURES FOR MANAGERS/DIRECTORS





These procedures guide line managers and Directors on the steps to follow once a report related to suspected misconduct has been received; whether or not the report is lodged by an employee or non-employee. Reports about former employees must also be responded to in accordance with these procedures.

### **Step 1: Reporting the matter to the Integrity Services Unit**

Directors receiving complaints and reports about reportable misconduct must report the matter to the ISU without delay. Matters can be reported using the Misconduct Advice form located in AM 2.1.07 Reporting and Handling Misconduct.

The minimum information that should be provided to the ISU will include:

- The name, position and contact details of the complainant or reporter.
- The name, position and contact details of the employees who may be involved.
- The name, position and contact details of any witnesses.
- The dates, time frames and places in which the events in question may have occurred.
- A concise description of what happened.
- Details of relevant documentation or other evidence.
- Whether it is a written or verbal complaint/report and when the matter was first raised.
- The outcome being sought by the person reporting the matter if known.

Directors should use caution in collecting this information and only source the information from the complainant. In some instances it may be appropriate for the complainant/reporter to provide this information directly to the ISU.

Employees can report misconduct to ISU in a number of ways:

- Reporting Misconduct form
- Telephone: 9222 2778
- Confidential email: [misconduct.reporting@dcp.wa.gov.au](mailto:misconduct.reporting@dcp.wa.gov.au)



- Facsimile: 9222 2808

## Assistance Tools

To assist Directors or their delegate dealing with suspected misconduct a number of assistance tools have been developed and are available in AM 2.1.07 Reporting and Handling Misconduct.

### 1. Misconduct Classification Schedule

This lists types of misconduct and provides explanatory notes to accompany each sub-category.

### 2. Risk Assessment Guide

This will assist Directors in forming a view about whether the matter will be dealt with via a disciplinary process or whether it is likely the matter will be assessed as suitable for Local Management Resolution. The matter will still to be reported to ISU irrespective of the view formed; however, ISU will take into account that view and will work collaboratively with Directors to align their assessment process with those views.

### 3. Misconduct Assessment Scenarios

A number of scenarios have been developed to build a better understanding of what matters will be viewed as non-reportable (trivial) misconduct and when reportable misconduct matters will be dealt with by the Local Management Resolution process or discipline process.

## Step 2: ISU assessment

There are a number of outcomes that will follow once a matter is reported and assessed by ISU:

- ISU are required to report suspected misconduct to the Corruption and Crime Commission in accordance with s28 of the *Corruption and Crime Commission Act 2003*.
- The CCC may choose to progress an investigation into the allegation/s, although this is rare.



- Depending on the circumstances of the case, ISU may also refer the matter to the WA Police who may commence a criminal investigation.
- The matter is assessed as suitable for Local Management Resolution and returned to the respective Director for action and report. This process is overseen by the ISU.
- The matter is referred to the discipline process and managed by the ISU in accordance with the relevant legislation, Department policies and procedures.

When making a decision about whether to refer a matter to the discipline process or Local Management Resolution process, ISU acknowledge Directors are well placed to understand the nature of the complaint or report; the parties involved and the environmental context. ISU will take into account the views of Directors on the appropriate mechanism to deal with a matter provided they meet the standards expected by the *Corruption and Crime Commission Act 2003* and the *Public Sector Management Act 1994*.

Where a matter is referred to the discipline process the procedures outlined in the Department's Discipline Policy will apply. Further information of the discipline procedures for non public service employees is found in the Department's publication, 'An Employee Guide to the Department's Discipline Process'.

## LOCAL MANAGEMENT RESOLUTION





## PROCEDURES FOR DIRECTORS

These procedures guide Directors on the appropriate action to take once a matter has been assessed by the ISU as suitable for the Local Management Resolution (LMR) process or Improvement Action (IA). Improvement Action under the *Public Sector Management Act 1994* is synonymous with LMR. The decision to refer a matter under LMR lies with the Director Standards and Integrity. This decision is documented by the ISU and maintained on a confidential file at the ISU offices.

### **Step 1: Referral to the local level**

Where it has been determined that a matter can be responded to using a LMR process, ISU will refer the matter to the respective Director using a LMR referral package.

### **Step 2: Discussion with the employee**

As it has been determined that the matter does not warrant an investigation, information should not be sought from any person or source other than the employee in question.

The questions asked of the employee will be simple and limited to the matters raised in the report or complaint. The Director is required to make notes of the discussion so that there is an accurate record of the process. These should be maintained securely at the local level.

To assist with the LMR process, a sample discussion template has been developed and will be included in the package.

### **Step 3: Improvement actions**

Depending on the circumstances of the case it may be appropriate for any actions between the employee and the Director to be implemented and monitored as part of the employee's on-going performance management arrangement. This may include training, supervision and mentoring arrangements.

The outcome of an LMR may include;

- a) counselling;
- b) training and development;
- c) issuing a warning to the employee that certain conduct is unacceptable or that the employee's performance is not satisfactory; and
- d) any other action of a similar nature.



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#### **Step 4: Notifying ISU of the outcome**

Following a discussion with the employee, Directors must inform ISU on the outcome within 30 days of receiving the file using the LMR report template.

ISU is required to notify the Corruption and Crime Commission in relation to the outcome of a matter involving misconduct.

#### **Step 5: Notifying the complainant**

Where a complaint or report was raised at the local level it may be appropriate for the Director to provide a written response to the complainant, otherwise, the ISU will provide a complainant outcome letter. A copy of the letter should be attached to the LMR Report.

Where the complaint or report was addressed to the Director General, the Complaints Management Unit, the ISU or any work unit at Head Office, it will be the responsibility of the ISU to notify the complainant of the outcome.

Where a complaint has been made by a child in the care of the CEO, ISU and Directors must consider the most appropriate manner in which to provide that child updates on the progress of their complaint and on the outcome of the complaint process. Letters to young people should be written in clear and simple terms and consideration should be given to providing the child's parent/s with advice on the outcome of the process where appropriate.

#### **Delegations**

The delegated authority to report suspected misconduct to the Corruption and Commission is: Manager Integrity Services Unit

The delegated authority to commence discipline action and/or improvement action in respect to suspected misconduct is:

Positions Level 1 to 7: Director Standards and Integrity  
Positions Level 8 and above: Director General

#### **Glossary of Terms**

**Line manager:** A supervisor, team leader, manager, or any person who holds a more senior position to that of the person making a report about misconduct.



### Legislative Base / Authority

- *Corruption and Crime Commission Act 2003*
- *Public Sector Management Act 1994*
- *Public Sector Management (General) Regulations 1994*
- Public Sector Code of Ethics
- Department for Child Protection Code of Conduct

### Forms and Appendices

- Sample letter to complainant
- Reporting Misconduct form
- Local Management Resolution covering letter

### Related Policies and Links

- Code of Ethics
- DCP Code of Conduct
- Public Interest Disclosure Procedures
- A guide to public interest disclosures
- An Employee Guide to the Department's Discipline Process
- Misconduct Classification Schedule
- Risk Assessment Guide
- Assessment Case Studies
- Contact Register for Management of Complaints and Grievances
- Crisis Care/ISU protocols for managing report of child abuse involving employees
- CMU/ISU protocols for managing complaints that relate to case practice and misconduct
- DOCU/ISU protocols for managing complaints and reports that relate to child abuse or neglect and misconduct

### Effective Date

28 March 2011