WA Health

Disciplinary Investigation Report Writing Guide

This report writing guide and template is provided to assist delegated investigators (internal and external to WA Health) appointed by a relevant decision maker to undertake a WA Health disciplinary investigation, in accordance with the current WA Health Misconduct and Discipline Policy (Sept 2009).

A template with the mandatory cover page and report headings is attached at the end of this document. An explanation of the requirements for each heading is below.

This writing guide was approved by the Ethical Conduct and Governance Committee on 7 February 2013.
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Executive summary

An executive summary is integrated into an investigation report at the discretion of the writer to meet the needs of the audience. It should be considered for long, complex reports, or where otherwise requested, indicated and justified.

An Executive Summary it should include as a minimum:

- The alleged misconduct (or for Public Service Officers\(^1\) employed under part 3 of the *Public Sector Management Act 1994*, the alleged breach of discipline) as it appears on the letter of allegation to the employee (the respondent) and letter of engagement to the investigator.

- Summary of the investigator’s discussion about the relevant evidence.

- The investigator’s conclusion based on the evidence. The standard of proof being the Balance of Probabilities.

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\(^1\) Please see the Definitions section at the end of this document for an explanation of the difference between Public Service Officers and Public Officers.
1. Introduction

The Introduction is intended to outline for the decision maker (DM), what to expect from the report. It should be brief but include:

- the purpose of the report
- the context to the investigative process, i.e. the investigation is conducted in accordance with the *WA Health Misconduct and Discipline Policy* and *Misconduct and Discipline Guidelines*.

The investigator also needs to specify in the report which industrial instrument’s disciplinary process applies to the respondent, if any.

It is the DM’s responsibility (not the investigator’s) to reach a decision in regards to:

a) in what way the alleged acts by the respondent could be held to constitute a breach of discipline or misconduct as defined within the *WA Health Misconduct and Discipline Policy*

b) the specifics of the possible misconduct (or for Public Service Officers possible breach of discipline), i.e. which aspect of which policy, and/or code of conduct and/or code of ethics has been contravened.

The information in a) and b) should have been given to the respondent at the time of putting the allegations to them, so that the respondent has adequate information about the allegations against them, as per their procedural rights.

c) what action may be taken, if any, following the investigation may include:
   - disciplinary action (applying a penalty in accordance with the relevant industrial instrument); and/or taking improvement action; and/or
   - taking no action;

d) details of the complaint and/or other agency (CCC) requests:
   - if there has been a complaint refer to the complainant [by whom], to [who the complaint was referred to]
   - if there is a direction from the CCC then refer to the CCC request/direction.

In certain circumstances, WA Health may release a copy of an investigation report in whole or in part to the respondent, relevant external agencies e.g. Australian Health Practitioner Regulation Agency (AHPRA), or in response to a *Freedom of Information Act 1992 (WA)* application. Advice should be sought from the relevant Human Resources or Health Industrial Relations officer if a request is made to release the investigation report.
Example of report text

Introduction
The purpose of this report is to describe the disciplinary investigation into allegations of misconduct by a WA Health employee [who], on [when], at [where], that involved [what - as an overview].

The respondent [name] is employed pursuant to [name of the relevant industrial agreement]. The respondent is employed as a [position, classification, hours and length of service].

If substantiated, the alleged actions by [name] would breach the WA Health Code of Conduct, in that they could constitute a failure to demonstrate ethical behaviour [and/or Responsible Care and/or Respect for People] by committing an act or acts of Misconduct as defined in the WA Health Misconduct and Discipline Policy.

The investigation report will be provided to [name of decision maker identified in the letter of allegations to the employee] for [his/her] determination.

Example if the matter has been notified to the CCC

Employees of WA Health are public officers and therefore fall within the jurisdiction of the Corruption and Crime Commission (CCC).

The alleged conduct in this matter constitutes misconduct as defined in the Corruption and Crime Commission Act 2003 (the Act).

The CCC formally referred the allegations to WA Health on [date] pursuant to s33(1) (c) and 37(3) of the Act for investigation within a reasonable period [include any additional instructions that may have accompanied the referral].

WA Health have been directed pursuant to s40(1) of the Act to report to the CCC as soon as practicable on the outcome of the investigation of the allegations.

2. Allegation(s)

This section should be limited to the specifics of the allegations, which are central to the investigation and the report.

The allegations listed in this section must match those put to the respondent in the letter of allegation.

Failure to observe this requirement may breach the principles of procedural fairness which may compromise the integrity of an investigation and subsequent findings.
3. Relevant Policies and Procedures

This section is to focus the investigator and decision maker on the policy or procedure (or even legislation) that is suspected of being breached and how that may interact with the WA Health Code of Conduct. The following is the suggested format:

The investigation was informed by the WA Health Policies and WA Health Code of Conduct.

The [WA Health Policy/NMHS Policy/SMHS Policy/CAHS Policy/WACHS Policy ...] were/was seen as applicable to the allegation/s and this investigation. The relevant section/s is/are:

[Appropriate extract from the relevant policy or policies spelled out here]

If a breach of the above was substantiated then the section of the Code of Conduct titled [Responsible care/Respect for people/Ethical behaviour] was seen as applicable. The following is the relevant extract from the Code:

[Appropriate extract from the WA Health Code of Conduct]

Example of report text

The WA Health Policy – Acceptance of Gifts Policy OD 0354/11 was seen as applicable to the allegation/s and this investigation. The relevant sections are:

**Accepting offers of gifts**

Unless otherwise approved by the relevant Director/Head of Department and equivalent or above, WA Health employees must not accept any gift, with the exception of token gifts, the offer of which may arise from or in connection with performance in their official capacity.

and

If a gift, other than a token gift, is offered, approval must be sought for acceptance using the following process:

4.1 The employee to whom the gift is offered must notify the responsible Director/Head of Department in writing ...

and

4.3 Once the employee is informed by the Director/Head of Department, the employee must notify the person who offered the gift as to the decision, particularly if a decision is made to refuse the gift.

If a breach of the above was substantiated then the section of the Code of Conduct titled Ethical behaviour was seen as applicable. The following is the relevant extract from the Code:

*We will not accept any unauthorised gifts in the course of our employment.*
4. Investigation scope

The investigation scope describes the parameters for the investigation which were agreed to, as part of the scoping process, and approved by the DM.

The scope should make clear to the reader what the disciplinary investigation is about, and be:

- limited to the allegations specified [as listed in the Allegations section];
- in the context of the WA Health Misconduct and Discipline Policy.

This section needs to include what is in-scope and may also require a statement of what is not in-scope to clarify for the DM what will, and what will not, be dealt with in the report.

**Failure to observe these steps may breach the principles of procedural fairness which may compromise the integrity of an investigation and any subsequent findings.**

**In-Scope**

**Example of Report Text:**

The scope of this disciplinary investigation is to determine if, on the Balance of Probabilities, the allegations of misconduct by [name], as, specified at Section 3 of this report are substantiated or not.

**Staying within scope: new additional matters**

The scope of an investigation should be identified and authorised at the outset by the relevant DM, at the time that the DM decides to have the matter investigated and appoints an investigator.

If, at any stage of an investigation, new or additional allegations and/or issues arise, these must be:

1. clearly identified and
2. referred to the appropriate DM to determine:
   a) if the new matters need to be put as new allegations to the respondent.

In this instance the investigation may be suspended and the matters considered by the DM, who will:

- advise the respondent that the investigation has been suspended and will resume at the time the DM has considered the new issues, and at this time, the DM will formally put any new allegations to the respondent;
- consider the respondent’s response (if any);
- determine if the new allegations require investigation, including if they can be included in the current (suspended) investigation or not;
- advise the investigator of the decision about the new information/issues (where required);
• approve the amended scoping document (where applicable);
• formally approve the resumption of the investigation; and
• advise the respondent about the resumption of the investigation and if the new matters will be included or not.

Rationale:
The new matters fall outside the original scope that was approved by the DM.
An investigator must not continue to investigate and/or reach findings about matter(s) to which the respondent has not had their procedural right to respond and have their response considered by the DM.

and/or

b) If the new matters need to be put as new allegations to another respondent, and if they are related.

In this instance the investigation may be suspended and the matters considered by the DM, who will:
• advise the respondent that the investigation will be suspended and will resume at the time the DM has considered the new issues, and at this time, the DM will formally put any allegations to the new respondent;
• consider the new respondent’s response (if any);
• determine if the new allegations require investigation, including if they can be included in the current (suspended) investigation or not (If not, a separate process would need to commence);
• advise the investigator of the decision;
• approve the amended scoping document (if applicable);
• approve the resumption of the investigation (if applicable);
• advise the respondent about the resumption of the investigation and if the new matters will be included or not; and
• inform the new respondent of an initiation of an investigation into the alleged misconduct.

Rationale:
The new matters fall outside the original scope that was approved by the DM.
A new matter may require a new assessment for legislative or criminal reporting purposes (CCC, WA Police or AHPRA).
An investigator must not continue to investigate and/or reach findings about matter(s) to which the respondent has not had their procedural right to respond, and/or the response considered by the DM.

and/or
c) If the new matters are systemic and not specifically related to the respondent.

If the matters are systemic and present as a possible ongoing risk, they need to be addressed separately.

In this instance the investigation may not need to be formally suspended, however, the matters must be raised with, and considered by the DM, who will determine if the matters require a separate report by the investigator. If so, the investigator will then report on the issues arising and the evidence discovered, but make no formal finding, other than to bring the detail to the attention of the DM to determine the next course of action. Any new matters raised no longer have a place in the original investigation report (which relates to particular respondent(s) and the allegations made to them at the outset).

Rationale:
The other new matters fall outside the original scope that was approved by the DM.

These separate matters may require a new assessment for legislative or criminal reporting purposes (CCC, WA Police or AHPRA).

An investigator must not continue to investigate and/or reach findings about matter(s) in a report about a respondent, to which the respondent is not answerable.

and/or
d) How to deal with counter allegations by the respondent.

Where counter allegations are made by the respondent, including as mitigation to the allegations made against them, the investigation may not need to be formally suspended. However, the counter allegations must be raised with, and considered by, the DM, who will determine if any or all of the matters are directly relevant to the current investigation and how they should be addressed, or whether they require a separate disciplinary process.

The options available to the DM are to:

• suspend the investigation and commence a separate disciplinary process and consider if these new matters can appropriately be integrated into the current investigation by amending the scope; or
• investigate/treat the matters separately.

The investigation report may include reference to counter allegations/mitigating circumstances made at the time of the investigation.

Rationale:
While counter allegations as mitigation may be relevant to the findings of the current disciplinary process and/or investigation e.g. provocation, they need to be considered in a procedurally fair manner.

Failure to observe these steps may breach the principles of procedural fairness which may compromise the integrity of an investigation and any subsequent findings.
Out of Scope

This section needs to specify what is out of scope for the investigation, and if required, identify the external agencies to which the matters have been reported, to address any other possible breaches of legislation and/or regulation.

While some breaches of discipline may give rise to criminal allegations, WA Health conducts administrative, disciplinary investigations and not criminal investigations. If a possible criminal offence is uncovered during the investigation it is to be brought to the attention of the DM as soon as possible so that it can be reported to the WA Police.

Example of report text

The alleged breach(es) of the WA Health Code of Conduct may also constitute:

- a breach of the WA Criminal Code;
- a breach of the *Australian Nursing and Midwifery Council (ANMC) Code of Ethics for Registered Nurses* and the *ANMC Code of Professional Conduct for Midwives*; or
- unprofessional conduct and/or professional misconduct and be notifiable to the Australian Health Practitioner Regulation Agency (AHPRA) as a significant departure from accepted professional standards that places the public at risk of harm.

The allegations have NOT been investigated in the context of the above legislation and/or regulations.

The allegations have been reported to WA Police and/or AHPRA. The status of the matter reported are that both WA Police and/or AHPRA have no objections to WA Health proceeding with an administrative investigation. WA Police and/or AHPRA have asked to be advised of the outcome of that investigation.

Where a matter has been reported to an external agency, WA Police in particular, the investigation should only proceed when WA Police advise that the internal investigation will not jeopardise their Police inquiries. This may require the DM following up with WA Police.

Requests for the investigation report from AHPRA need to be formalised through a formal ‘Notice to Produce’ document (AHPRA Schedule 5, Part 1 of the *Health Practitioner Regulation National Law* (the National Law): requirement for information). A copy of the investigation report can be provided to WA Police without a formal request however original documents and other business records of WA Health should only be provided under an ‘Order to Produce’ (WA Police: s52 of the *Criminal Investigations Act 2006*).
5. Background

This section sets out the background of the allegations – i.e. the details necessary to adequately reflect the context of the allegations.

The background needs to be directly relevant to the case, the event/incident/complaint.

The purpose of the background information is also to provide the DM with an overview of what has occurred to date (prior to the investigation), including any preliminary inquiry in the lead up to forming a suspicion of misconduct/breach of code/policy.

A detailed chronology of events, as a separate document (or ‘running sheet’), is generally necessary for the investigation file, with information drawn from it as necessary for the background and other areas of the report.

Background information must be factual and objective to avoid accusations of bias arising against an investigator.

Example of report text

Mr XX, the respondent to the allegations, is employed by WA Health as [his position title], and has been working in the [name of department] for [number of years/months].

Mr XX is the complainant’s [Mr YY’s] direct supervisor and they have been working together in the department for [number of years/months].

On [date], Mr YY made complaint to [Name of and position title person who received the complaint] about the alleged incident that occurred in the [name the place] on [date].

On [date], the complaint was raised by [name of person having received the complaint] with the [name and position title of whomever the most senior person/HR officer/decision maker is related to this matter] and the matter was reviewed by [name of the decision maker] and it was determined based on [what – describe how the suspicion of misconduct was formed], that the matter needed to be formalised as a disciplinary matter.

On [date] the matter was reported to CGD for assessment of the matter for reporting purposes. At this time it was also reported to WA Police.

On [date] WA Police advised that they would not be undertaking an investigation because [list the reason given] and advised WA Health that they had no objection to WA Health undertaking its own internal inquiry.

On [date] the allegations were reported to CCC, who referred the matter back to the [name of health service] to undertake appropriate investigatory action, and request that they be advised of the outcome and provided a copy of the report.

On [date] the allegations were put to the respondent by [name of decision maker].

[Attachment number - include the letter of allegation as an attachment to this report].

On [date], Mr XX, the respondent provided his response in which he denied any wrong doing. [Attachment number - include the letter of response as an attachment to this report].
On [date], [name of the decision maker], having considered the response from the respondent, reached a decision that the matter required further investigation and referred the matter to [name of the investigating officer/department/company]. [Attachment number - include the letter/email of instruction to proceed with investigation and scope, as an attachment to this report].

The investigating officer [Name] was appointed on [date] and the investigation commenced on [date].

6. Investigation

Inquiries conducted/documents obtained

The section will include:

- the full list of matters/evidence investigated;
- clarification about any evidence not analysed, and the reasons why;
- clarification of witnesses not interviewed and the reasons why;
- a list of any documents reviewed (e.g. rosters; incident report forms; any other records/documents that are relevant);
- a list of the witnesses interviewed: include the names, positions (if an employee), and/or relationship to the respondent/complainant and the date of interview; and
- any relevant documentary evidence and interview summaries as attachments to the report).

In the event that there has been liaison with external bodies, for example, the CCC, WA Police or AHPRA, the detail about what was undertaken should be included in this section. For example: Contact was made with the Sexual Assault Squad and they advised that they did not intend to investigate. (This can be critical if contact was made with other agencies that guided the direction of the investigation, including if an investigation was suspended for a time).

A full discussion about how/why this evidence is relevant to the investigation and how it contributes to a mounting argument to substantiate the allegations or not, should be limited to the Section 6: Discussion of evidence.

Each available line of enquiry must be explored to ensure the principles of procedural fairness are observed and all the available information is considered and provided to the DM. Failing to do so may compromise the integrity of an investigation and any eventual findings.

Example of report text

The investigation was conducted in accordance with the WA Health Misconduct and Discipline Policy, and the Misconduct and Discipline Guidelines. Following an assessment of the information received [from where], an investigation plan was prepared and agreed to by the investigator’s line manager or other authorised person.
Having examined the allegations the following inquiries were conducted:

- review of the staff rosters;
- review of the incident reports;
- review of the written formal response to the allegations; and
- interviews with the respondents and relevant witnesses.

7. Discussion of evidence

Discuss the evidence in order of the documents listed above/or as they relate to the investigation in a logical order. Describe the evidence in terms of the relevance to the investigation and/or findings. Only provide as much detail as is necessary for the DM to understand the relevance of the evidence, including if it was ruled out as not being legitimate or relevant, and why this was the case.

It is appropriate (and good practice) to have on file, all the details explored/analysed during the investigative process as a record of the details of the investigation.

Rationale:

Documenting details of the analysis of evidence throughout the investigation process is good practice and vital for the purpose of keeping adequate and transparent records of the analysis undertaken, but not all detail is necessary in the body of the final investigation report for the DM. Any documents drafted by the investigator during the analysis phase should be reviewed and edited to ensure only the pertinent aspects and details are included in the final investigation report and/or attached as an appendix where relevant.

Examples of details not necessary to the final report might include multiple forms reviewed as part of the analysis, or spreadsheets which cross reference information such as time sheets, swipe care records and rosters, or a review of policy which details all the analysis.

Example of Report text

The scope of this investigation is to make a finding that, on the Balance of Probabilities, the allegations of misconduct made against Mr XX are substantiated or not.

Following analysis of the evidence obtained (as listed above), the following aspects were identified as directly pertinent.

Example (if applicable)

6.1 Review of the staff rosters: [provide the detail]
6.2 Review of the incident reports: [provide the detail]
6.3 Review of the written formal response to the allegations: [provide the detail]
6.4 Review of CCTV footage of the canteen: [provide the detail]
6.5 Review of relevant policies and procedures: [provide the detail]
6.6 Interviews with the respondents and relevant witnesses: [provide the detail]
Conducting interviews and management of interview information

Investigation interviews must comply with the *WA Health Misconduct and Discipline Policy* and related guidelines to ensure procedural fairness.

The critical features in regards to investigation interviews for the purpose of this report are as follows:

- If sufficient details from the complainant have not already been provided by the DM, an interview of the complainant should be conducted to ensure the accuracy and adequacy of the details provided to date.

- Interviews with all relevant witnesses must be conducted where possible, in particular those listed by the complainant and the respondent – where they indicate they believe these people have some relevant information.

- Audio recording all interviews is best practice as is (where applicable), having in attendance, a corroborator. This is particularly important to the interview with the complainant, the respondent and key witnesses.

- Where audio recording the interview is not possible or the witness refuses to be recorded, detailed notes will be required and provided to the witness to read and verify by signing a copy of the notes that they are a true and accurate reflection of the matters discussed. This document must also be signed by the witness, and a copy provided to them upon request.

- Document in the report only the pertinent aspects of the interviews. Under normal circumstances, in this section of the report, bullet points, of the salient aspects of the interview are sufficient. The full summary of interview must be attached for reference by the DM.

- Use of direct quotes should be limited to the pertinent statements made by the witness.

- Transcription of digitally recorded interviews is not necessary in every case and is generally at the discretion of the investigator.

**Example of Report Text**

**Interview with Mr YY**

Mr YY was interviewed on [date]. Also present was his support person [name]. The interview was recorded and a summary is attached [Attachment number]

Mr YY is employed as [position title] with [name of department/service etc].

His role includes [provide an overview of the role].

At interview Mr YY stated the following:

- On [date] he was in the canteen area when Mr XX approached him, there were two other people there at the time [names].

- Mr XX yelled out to Mr YY asking him to come and see him.

- Mr YY said to Mr XX that he was on his lunch break and that he would see him later.
Mr XX became angry and approached him saying that he needed to discuss a matter urgently.

Mr YY objected and started to walk away.

Mr XX yelled out to him that he didn’t care if he was on his lunch break.

Mr YY then turned around to respond to Mr XX when Mr XX punched Mr YY in the chest.

Repeat for all interviews conducted, including the detail of the pertinent aspects.

8. Findings

The Allegations

This section must draw together the analysis of the evidence to logically describe how, on the Balance of Probabilities the evidence substantiates, or not, the allegations. This section outlines the basis upon which the investigator reaches the conclusions made.

Balance of Probabilities is the standard of proof required to substantiate an allegation. It means the weighing up and comparison of the likelihood of the existence of competing facts and conclusions. A fact is proven to be true on the balance of probabilities if its existence is more probable than not, or it is established by a preponderance of probability.²

Example of Report text

Following analysis of all the evidence, including the interviews and review of all relevant documents and relevant policy, an assessment of the evidence was made in regards to the two particulars to the allegation listed below.

Allegations

It is alleged Mr XX has committed an act of misconduct in that:

On 21 July 2012, while at work at the Marigold Hospital [place and other contextual detail, if it was noted in the allegations to the respondent by the DM] Mr XX,

1. punched Mr YY in the chest

2. yelled at Mr YY and stated that “he (Mr YY) would be sorry and that he (Mr XX) would make sure he (Mr YY) doesn’t work here for much longer.”

Allegation 1:

That Mr XX punched Mr YY in the chest.

The evidence supports the above allegation against Mr XX because:

² Workplace Info

• Mr XX and MR YY both said at interview that they were in the canteen at the time of the alleged incident.
• Three witnesses [names] stated that they saw My YY and Mr XX in the Mr YY was at work and in the canteen area at the time.
• Mr XX stated he had an altercation with Mr YY at the time.
• Witness Ms ZZ stated that she saw Mr XX punch Mr YY in the chest, but said it wasn’t hard.
• Witness Mr WW stated that while he did not see Mr XX punch Mr YY, he said he saw Mr XX step backwards away from Mr XX and grab his chest as though he had been hit, and Mr XX looked very angry.

Allegation 2:
That Mr XX yelled at Mr YY and stated that “He [Mr YY] would be sorry and that he [Mr XX] would make sure he [Mr YY] doesn’t work here for much longer.”

The evidence does not support the above allegation against Mr XX because:
• While
  a) Mr XX and Mr YY both said at interview that they were in the canteen at the time of the alleged incident
  b) three witnesses [names] stated that they saw My YY and Mr XX in the Mr YY was at work and in the canteen area at the time
  c) Mr XX stated he had an altercation with Mr YY at the time.
• witness Ms ZZ stated that she did not hear anyone yelling, but saw that after the punch Mr XX looked concerned about Mr YY and tried to help him. She added that Mr YY had pushed him away, but said it wasn’t hard.
• Witness Mr WW stated that while he did not see Mr XX punch Mr YY, he said he saw Mr XX step backwards away from Mr XX and grab his chest as though he had been hit, and Mr XX looked very angry.
• Mr XX denied that he yelled at him or stated to Mr YY that “He would be sorry and that he would make sure he doesn’t work here for much longer.”

9. Conclusion
This section concludes the report by clearly articulating the findings reached. It must tie in the allegations – nothing new should be included here.

The conclusion must include a definitive statement on each allegation that they are substantiated (and supported by evidence), not substantiated (based on the evidence or if there is no evidence) or inconclusive (there is some evidence, but not sufficient to make a conclusion) – therefore not substantiated (but with this qualification).
Example of Report text

Assessment of the evidence gathered in the course of the investigation supports, on the balance of probabilities, the following conclusions:

Allegation 1: That Mr XX punched Mr YY in the chest.

**Allegation 1 is supported by the evidence and therefore, on the balance of probabilities, the allegation is SUBSTANTIATED.**

Allegation 2: That Mr XX yelled at Mr YY and stated that “He would be sorry and that he would make sure he doesn’t work here for much longer.”

**Allegation 2 is not supported by the evidence and therefore, on the balance of probabilities, NOT SUBSTANTIATED.**

10. Recommendation(s)

This section is the end of the report.

It is important to note that the audience for the investigation report is ultimately the DM, but may also be the:

- CCC;
- WA Police;
- AHPRA;
- the Director General; or
- the respondent and/or Unions on the respondent’s behalf.

The final draft of the report is to be provided to the investigator’s line manager or other authorised person to ensure that the report has addressed the allegations and contains sufficient information for the DM to consider.

Once the investigator’s line manager or other authorised person has signed off the draft report it should be finalised and forwarded to the DM.

It is outside the scope of the investigation and the report to make recommendations, particularly in regards to:

- a) penalty in relation to the respondent(s);
- b) systemic issues (should be under a separate report to the DM); or
- c) any further action.

All of the above are decisions for the DM. The only recommendation made by the investigator in this section of the report is to refer the report and the findings for consideration by the relevant DM.

Recommendations regarding penalty and/or about any issues of mitigation should be addressed in a covering memo to the report by an appropriate human resources consultant.
Example of Report text

Recommendations:

1. This confidential Investigation Report is forwarded to [name the relevant area and the CE or ED] for consideration and management comment prior to finalisation to the DM for his/her consideration.

2. As this matter was also a referral from the Corruption and Crime Commission (CCC) to WA Health the final report will be forwarded to the CCC by the Corporate Governance Directorate [only if a reported matter].

Submitted for consideration.

Investigating officer: [Name] [Title]
Branch/Unit/Company:
Date: [Date of draft report]

Management review of draft report
I agree/do not agree with the conclusions reached in this draft report.
[Specify points of difference, if the conclusions are not agreed]

Manager: [Name] [Title]
Date: [Date of review]
## List of attachments (example)

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</table>
# Definitions

<table>
<thead>
<tr>
<th>Term</th>
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<tbody>
<tr>
<td>Breach of Discipline</td>
<td>As defined under the <em>Public Sector Management Act 1994</em>, Part 5, Division 3, s80: An Employee who – (a) disobedys or disregards a lawful order or (b) contravenes – (i) any provisions of the Act applicable to that employee; or (ii) any public sector standard or code of ethics or (c) commits an act of misconduct or (d) is negligent or careless in the performance of his or her functions or (e) commits an act of victimisation within the meaning of Section 15 of the <em>Public Interest Disclosure Act 2003</em> commits a breach of discipline.</td>
</tr>
<tr>
<td>Decision Maker</td>
<td>The officer delegated to make decisions in regards to commencing, progressing and taking further action, in a disciplinary matter for a particular employee.</td>
</tr>
<tr>
<td>Disciplinary Action</td>
<td>An action taken by the employing authority in relation to an act of misconduct or breach of discipline. The allowable action is determined by the relevant industrial instrument that applies to the respondent in a matter – either the <em>PSM Act</em> (for Public Service Officers), or the relevant Industrial Award/Agreement current at the time.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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</table>
| Disciplinary Process                             | The Disciplinary Process that applies to all WA Health employees under the *Misconduct and Discipline Policy*, is modelled on the *PSM Act*, section 81(1)(a) which refers to employees relevant to Part 5 of the *PSM Act* in the first instance. The term “disciplinary process” under the *WA Health Misconduct and Discipline Policy* refers to all actions:

- commencing after the employing authority decides to treat a matter as disciplinary (in that it may conclude with disciplinary action against that employee), by reaching a decision, on reasonable grounds, that an allegation of misconduct against a particular employee(s) may have occurred

and

- before any disciplinary finding, or decision to take any further action, is made.³                                                                                                                                                                                                 |

| Investigation - Administrative                    | Sometimes also referred to as an ‘Inquiry’ or ‘Administrative Inquiry’                                                                                                                                                                                                                                                                  |

| Investigation - Disciplinary                      | Is an investigation undertaken once a disciplinary process has commenced by the relevant Decision Maker (having determined an investigation is warranted and having approved an appropriate scope) to substantiate, or not, the allegation of a breach of discipline/misconduct, on the ‘balance of probabilities’.                                                                                      |

| Investigation - Non-disciplinary/ preliminary inquiry | Is an investigation/inquiry undertaken to gather sufficient information (and not more) for the relevant Decision Maker to reach a decision to treat a matter as disciplinary (in that it may conclude with disciplinary action against that employee) by deciding, on reasonable grounds, that an allegation of misconduct against a particular employee(s) may have occurred. |

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<table>
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<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>Misconduct: Applicable to all WA Health employees</td>
<td>Where a public officer</td>
</tr>
<tr>
<td>• disobeys or disregards a lawful order and/or</td>
<td></td>
</tr>
<tr>
<td>• contravenes any provision of the <em>Public Sector Management Act 1994</em> or other relevant legislation applicable to that employee and/or</td>
<td></td>
</tr>
<tr>
<td>• contravenes a public sector standard, code of ethics or WA Health policy/code of conduct and/or</td>
<td></td>
</tr>
<tr>
<td>• is negligent or careless in the performance of his or her functions and/or</td>
<td></td>
</tr>
<tr>
<td>• behaves corruptly in their role as a public officer and/or</td>
<td></td>
</tr>
<tr>
<td>• while acting in their official capacity, commits an offence punishable by imprisonment for two years or more and/or</td>
<td></td>
</tr>
<tr>
<td>• is involved in a breach of trust, or acts with some element of dishonesty or lack of integrity and is involved in conduct that could reasonably result in their dismissal.</td>
<td></td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
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<tr>
<td>---------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Misconduct: CCC Act definition</td>
<td>Misconduct occurs if</td>
</tr>
<tr>
<td>(a) a public officer corruptly acts or corruptly</td>
<td>a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer’s office or employment</td>
</tr>
<tr>
<td>fails to act in the performance of the functions</td>
<td></td>
</tr>
<tr>
<td>of the public officer’s office or employment</td>
<td></td>
</tr>
<tr>
<td>(b) a public officer corruptly takes advantage of</td>
<td>(b) a public officer corruptly takes advantage of the public officer’s office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person</td>
</tr>
<tr>
<td>the public officer’s office or employment</td>
<td></td>
</tr>
<tr>
<td>(c) a public officer whilst acting or purporting</td>
<td>(c) a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by two or more years’ imprisonment</td>
</tr>
<tr>
<td>to act in his or her official capacity, commits</td>
<td></td>
</tr>
<tr>
<td>an offence punishable by two or more years’</td>
<td></td>
</tr>
<tr>
<td>imprisonment</td>
<td></td>
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<tr>
<td>or</td>
<td></td>
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<tr>
<td>(d) a public officer engages in conduct that</td>
<td></td>
</tr>
<tr>
<td>(i) adversely affects, or could adversely affect,</td>
<td>(d) a public officer engages in conduct that</td>
</tr>
<tr>
<td>directly or indirectly, the honest or impartial</td>
<td>(i) adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public officer or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct</td>
</tr>
<tr>
<td>performance of the functions of a public authority</td>
<td>(ii) constitutes or involves the performance of his or her functions in a manner that is not honest or impartial</td>
</tr>
<tr>
<td>or public officer whether or not the public</td>
<td>(iii) constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer</td>
</tr>
<tr>
<td>officer was acting in their public officer capacity</td>
<td></td>
</tr>
<tr>
<td>at the time of engaging in the conduct</td>
<td></td>
</tr>
<tr>
<td>(ii) constitutes or involves the performance of</td>
<td>(iv) involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person, and constitutes or could constitute –</td>
</tr>
<tr>
<td>his or her functions in a manner that is not</td>
<td>(v) an offence against the Statutory Corporations (Liability of Directors) Act 1996 or any other written law</td>
</tr>
<tr>
<td>honest or impartial</td>
<td></td>
</tr>
<tr>
<td>or</td>
<td>(vi) a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the Public Sector Management Act 1994 (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>----------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Procedural Fairness</td>
<td>Procedural fairness has three main rules or principles:</td>
</tr>
<tr>
<td></td>
<td><strong>1. The Bias Rule:</strong></td>
</tr>
<tr>
<td></td>
<td>• WA Health (or the person requested to investigate) acts fairly and without bias</td>
</tr>
<tr>
<td></td>
<td>• WA Health (or the person requested to investigate) does not hold, or is not perceived to hold, a vested or direct interest in the outcome of the process.</td>
</tr>
<tr>
<td></td>
<td><strong>2. Hearing Rule:</strong></td>
</tr>
<tr>
<td></td>
<td>• The employee is provided with notice of any allegations against them, given a reasonable opportunity to respond to those allegations or decisions affecting him or her, and their response is genuinely considered.</td>
</tr>
<tr>
<td></td>
<td><strong>3. Evidence Rule:</strong></td>
</tr>
<tr>
<td></td>
<td>• Decisions are based on logically probative (compelling) evidence</td>
</tr>
<tr>
<td></td>
<td>• Irrelevant considerations are not taken into account in making the decision.</td>
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| PSM Act              | *Public Sector Management Act 1994* – provides for the administration of the Public Sector of Western Australia and the management of the Public Service and of other public sector employment. |

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<td>Public Officer</td>
<td>‘Public Officer’ is a term defined in the <em>Criminal Code Act 1913</em> (the Criminal Code) and is referred to in the <em>CCC Act</em>:</td>
</tr>
<tr>
<td></td>
<td>As it relates to WA Health, all staff of WA Health (whether employed under the <em>PSM Act</em>, the <em>Hospitals and Health Services Act 1927</em> or under other arrangements, including contractors and volunteers) are public officers as that term is defined by the Criminal Code, which states that a public officer is:</td>
</tr>
<tr>
<td></td>
<td>• a person exercising authority under a written law</td>
</tr>
<tr>
<td></td>
<td>• a public service officer or employee within the meaning of the <em>PSM Act</em></td>
</tr>
<tr>
<td></td>
<td>• a member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law</td>
</tr>
<tr>
<td></td>
<td>or</td>
</tr>
<tr>
<td></td>
<td>• any person holding office under, or employed by, the State of Western Australia, whether for remuneration or not.</td>
</tr>
<tr>
<td>Public Service Officer</td>
<td>An executive officer, permanent officer or term officer employed in the Public Service under part 3 of the <em>Public Sector Management Act 1994</em>.</td>
</tr>
<tr>
<td>Public Sector Body</td>
<td>Agency, ministerial office or non-SES organisation.</td>
</tr>
<tr>
<td>Respondent</td>
<td>Used to refer to the person against whom an allegation has been made and is required to provide a response as part of a disciplinary investigation.</td>
</tr>
<tr>
<td>Substantiate</td>
<td>“To establish by proof or competent evidence”.5</td>
</tr>
<tr>
<td>WA Health</td>
<td>Includes the following employing authorities: Department of Health, Metropolitan Health Service, Peel Health Service, WA Country Health Service.</td>
</tr>
</tbody>
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Attachment 1

Report template

You can either use an A4 Report style B in the appropriate colour for your organisation from the WA Health intranet: http://intranet.health.wa.gov.au/Communications/styleguide/template.cfm

OR

The template (below) available on the Corporate Governance Directorate [intranet site].

The headings listed in the template below are mandatory for all disciplinary investigation reports.
Investigation Report:

Allegations of [overview/title of the alleged behaviour]
[date]

Investigator: [Name]
Of: [Company/Branch/Unit]
Manager: [name of the line manager or other authorised person]
Local case file number: [Identifier allocated by the Health Service]
CMS: [Corporate Governance Directorate database allocated number]
Trim: [Trim number allocated by Records Management]

CONFIDENTIAL INFORMATION
Property of WA Health
Table of Contents

Executive Summary (optional)
1. Introduction
2. Allegation(s)
3. Relevant Policies and Procedures
4. Investigation scope
5. Background
6. Investigation
7. Discussion of evidence
8. Findings
9. Conclusions
10. Recommendations

Submitted for consideration.

Investigating officer: [Name] [Title]
Branch/Unit/Company: 
Date: [Date of draft report]

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Superseded by: MP 0027/16
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