Employment Policy Framework

Misconduct Policy

Explanatory Notes

These Notes are mandatory supporting the Misconduct Policy MP 0027/16

Superseded by: MP 0040/16
1. BACKGROUND

1.1 The Explanatory Notes (Notes) support the practical application of the Misconduct Policy (Policy) and in particular the Misconduct Management Process.

1.2 The Notes represent suggested practice and are not binding. They are not intended to be procedural instructions and are not a substitute for complying with the requirements of the Policy.

1.3 ‘Suspected act of misconduct’ and ‘suspected breach of discipline’ have the same meaning and are referred to as ‘suspected misconduct’ in these Notes.

1.4 The Misconduct Management Process described by these Notes does not apply to employees subject to the provisions of Part 5 of the Public Sector Management Act 1994. The Public Sector Commission - Commissioner’s Instructions provide the procedural requirements for these employees.

2. FORMER EMPLOYEES

2.1 An Employing Authority may commence or continue a disciplinary process in relation to a person believed to be a former employee in circumstances where:

(a) the suspected breach of discipline occurred when the person was an employee of the Employing Authority; and

(b) the Employing Authority considers it appropriate to commence or continue a disciplinary process having regard to public interest considerations, some of which may be:

(i) the seriousness of the suspected breach of discipline;

(ii) whether it is an isolated incident;

(iii) the status and position held by the employee;

(iv) the length of time that has elapsed since the suspected breach of discipline occurred;

(v) the likely impact upon public confidence in the public sector or the relevant public sector body if the suspected breach of discipline is not dealt with as a disciplinary matter;

(vi) any mitigating factors relating to the personal circumstances of the person whether the person is, or is likely to be, re-employed in the public sector in the future; and

(vii) the likely cost and administrative burden involved in dealing with the suspected breach of discipline as a disciplinary matter.
3. PROCEDURAL FAIRNESS

3.1 There are significant consequences for not providing Procedural Fairness. For example, if a disciplinary matter is challenged in the Western Australian Industrial Relations Commission (Commission), whether the principles of Procedural Fairness have been correctly applied to the circumstances of the case may be a fundamental consideration. If the Commission finds that Procedural Fairness was not provided, and determines that this was a material failure, it is possible that the outcome may be ruled invalid.

3.2 The threshold to ensure compliance with the principles of Procedural Fairness may vary according to the circumstances of each case.

3.3 The Misconduct Management Process should be completed within a reasonable timeframe.

4. FALSE OR FRIVOLOUS COMPLAINTS

If at any stage during the Misconduct Management Process, the Decision Maker determines that an allegation is false, frivolous, misconceived or lacking in substance, they may dismiss the allegation. Where an allegation has been made falsely or frivolously Disciplinary Action may arise.

5. CONFIDENTIALITY

5.1 It is in the interests of all parties for confidentiality to be observed throughout the Misconduct Management Process. In correspondence, at the commencement of meetings and interviews, participants should be reminded of the preference that confidentiality is observed.

5.2 Issues of confidentiality, or a preference for anonymity should be managed according to the circumstances of each case. Neither can be guaranteed to a Complainant or witness as documents, evidence and identity may become known to ensure Procedural Fairness, or where an appeal has been made to the Commission.

6. ADVICE TO COMPLAINANT

6.1 Advice may be provided to a Complainant at the following times, to:
   - Acknowledge receipt of a complaint and confirm the process of the Policy is to apply
   - Confirm a decision to undertake an Investigation
   - Confirm the Misconduct Management Process has concluded and whether misconduct has been substantiated or not substantiated.
7. INVOLVEMENT OF OTHER PARTIES

7.1 Employees may request a support person to be present at any interviews or meetings held in relation to the Misconduct Management Process.

7.2 Employees should be reminded that they may seek advice or support from their union or other person at any stage of the Misconduct Management Process.

7.3 WA Health is not obliged to correspond or provide additional copies of documentation to other parties.

8. SUPPORTING MATERIAL

Material supporting the Misconduct Management Process is also available:

- Misconduct Template Letters
  [Insert Link]
9. THE MISCONDUCT MANAGEMENT PROCESS

PHASE 1: PRELIMINARY ASSESSMENT OF INFORMATION

<table>
<thead>
<tr>
<th>Step 1</th>
<th>A complaint or information received alleging misconduct by a WA Health employee must be reported to HR. HR must report the alleged misconduct to the Corporate Governance Directorate (CGD) if reasonable grounds exist to suspect the conduct concerns, or may concern misconduct (unless instructed otherwise by the Department CEO or an External Authority).</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1.1</td>
<td>When WA Health receives information about the alleged misconduct of an employee (Respondent), the information should be assessed to determine the most appropriate course of action.</td>
</tr>
<tr>
<td>1.1.2</td>
<td>The information about the alleged misconduct of an employee (named or otherwise), may be received as, but is not limited to:</td>
</tr>
<tr>
<td></td>
<td>(i) A verbal complaint (recorded in writing by the recipient);</td>
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<td></td>
<td>(ii) A written complaint;</td>
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<td></td>
<td>(iii) Behaviour observed (recorded in writing).</td>
</tr>
<tr>
<td>1.1.3</td>
<td>The information about the alleged misconduct of an employee may be received from anyone including WA Health employees, patients, clients, members of the public and External Authorities.</td>
</tr>
<tr>
<td>1.1.4</td>
<td>When information related to alleged misconduct arises from a patient complaint, the patient complaint may continue to be dealt with in accordance with the WA Health Complaints Management Policy simultaneously with the Misconduct Management Process.</td>
</tr>
<tr>
<td>1.1.5</td>
<td>Information about the alleged misconduct of a WA Health employee (named or otherwise) may also be reported under the Public Interest Disclosure Act 2003 (PID Act). Details about the PID Act and reporting can be found at: <a href="https://healthpoint.hdwa.health.wa.gov.au/integrity/reporting/Pages/public-interest-disclosure.aspx">https://healthpoint.hdwa.health.wa.gov.au/integrity/reporting/Pages/public-interest-disclosure.aspx</a></td>
</tr>
<tr>
<td>Step 2</td>
<td>The relevant line manager, with advice from HR, identifies the appropriate Decision Maker in accordance with the relevant Employing Authority’s applicable Authorities, Delegations &amp; Directions Schedule (Delegation Schedule).</td>
</tr>
<tr>
<td>1.2.1</td>
<td>Only the Employing Authority or an officer to whom the relevant powers and responsibilities have been delegated, can be the Decision Maker. The delegated authority and scope of decision-making powers and responsibilities are stipulated by the Delegation Schedule for each health service.</td>
</tr>
</tbody>
</table>
1.2.2 With the assistance of HR, the person who received the information of alleged misconduct, or the line manager, if not the same, should identify the correct Decision Maker in accordance with the relevant Delegation Schedule.

1.2.3 Any conflict of interest, perceived or real, should be identified and managed by the Decision Maker.

**Step 3** The Decision Maker undertakes a preliminary assessment of the information available. If necessary a Decision Maker may direct that further information be obtained. Such direction should be confirmed in writing.

1.3.1 Once the Decision Maker is identified and advised of the alleged misconduct, the Decision Maker will undertake, with the advice of HR, a preliminary assessment of the information available.

1.3.2 If there is sufficient information available, the Decision Maker may proceed to **Phase 1: Step 4**.

1.3.3 Where further information is necessary, the Decision Maker may direct a line manager, or other appropriate person to make enquiries and obtain further information or clarification. Assistance may be sought from HR.

1.3.4 Enquiries during a preliminary assessment are necessary only to establish whether there are reasonable grounds to suspect, or not suspect, misconduct. Enquiries should not reach a finding or conclusion on the substantive matter.

1.3.5 To the extent that it is necessary, and with regard to confidentiality, enquiries as part of a preliminary assessment may include, but are not limited to:

(i) Identifying whether further details are required from the Complainant or the person providing the information;

(ii) Speaking with the Complainant or the person providing the information to gain a better understanding of the information;

(iii) Speaking with other people who may have knowledge of the information including, where circumstances require, witnesses;

(iv) Reviewing any relevant documentation.

1.3.6 Appropriate care should be taken in assessing the extent to which enquiries are made. While specifics are desirable to identify the components of an allegation(s), the purpose of a preliminary assessment is not to particularise a complaint on behalf of a Complainant.

1.3.7 Once sufficient information is available, the Decision Maker determines whether there are reasonable grounds, based on all the information available to them at this stage, to suspect misconduct by the Respondent.

Superseded by: MP 0040/16
<table>
<thead>
<tr>
<th>Step 4</th>
<th>OR</th>
<th>OR</th>
</tr>
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<tbody>
<tr>
<td>If the Decision Maker finds there are reasonable grounds to suspect misconduct:</td>
<td><strong>If the Decision Maker does not find reasonable grounds to suspect misconduct but the matter requires other resolution:</strong></td>
<td><strong>If the Decision Maker does not find reasonable grounds to suspect misconduct:</strong></td>
</tr>
<tr>
<td>Go to Phase 2</td>
<td>Preliminary assessment ends</td>
<td>Document the final decision</td>
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<td></td>
<td>Go to Step 4(a)</td>
<td>Advise CGD</td>
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<td></td>
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<td>Process Ends</td>
</tr>
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</table>

**1.4.1** The Decision Maker may determine, based on all the information available, that reasonable grounds exist to suspect misconduct. If the Decision Maker determines reasonable grounds exist to suspect misconduct, proceed to **Phase 2**.

**1.4.2** While the Decision Maker may determine no reasonable grounds exist to suspect misconduct, the Decision Maker may identify issues arising from the information received that need to be addressed by another process or other WA Health policies.

**1.4.3** The Decision Maker may determine, based on all the information available, that there are no reasonable grounds to suspect misconduct or that the matter may be determined to be trivial or not amount to misconduct. This decision should be recorded and the preliminary assessment ends.
PHASE 2: DEALING WITH A REASONABLE SUSPICION OF MISCONDUCT

<table>
<thead>
<tr>
<th>Step 1</th>
<th>The Decision Maker must determine how to treat the suspected misconduct.</th>
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<tbody>
<tr>
<td>2.1.1</td>
<td>The Decision Maker may determine that commencing a Disciplinary Process (Phase 3) is not the most appropriate mechanism to deal with suspected misconduct.</td>
</tr>
<tr>
<td>2.1.2</td>
<td>The Decision Maker should determine whether to: (i) Treat the suspected misconduct as a disciplinary matter in accordance with the Disciplinary Process (Phase 3); OR (ii) Take no action.</td>
</tr>
</tbody>
</table>

To treat the matter as a disciplinary matter means: the Decision Maker determines there are reasonable grounds to suspect misconduct AND that if proven, may require Disciplinary Action. If so, proceed to the Disciplinary Process at Phase 3.

To take no action means: the Decision Maker determines no Disciplinary Action is required, the process ends and the decision is documented in sufficient detail as to be capable of review.

<table>
<thead>
<tr>
<th>Step 2</th>
<th>Deal with the suspected misconduct as a disciplinary matter under the Disciplinary Process. OR Decide not to treat the suspected misconduct as a disciplinary matter.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>↓ Go to Phase 3</td>
</tr>
<tr>
<td>2.2.1</td>
<td>If the Decision Maker determines to treat the suspected misconduct as a disciplinary matter, proceed to the Disciplinary Process at Phase 3.</td>
</tr>
<tr>
<td>2.2.2</td>
<td>The Decision Maker may determine the suspected misconduct should be addressed by Improvement Action or taking no action.</td>
</tr>
</tbody>
</table>

Go to Step 2(a)

Step 2 (a) Decide that it is appropriate to take Improvement Action or take no action.

- Document the final decision
- Advise CGD
Process Ends
PHASE 3: COMMENCING THE DISCIPLINARY PROCESS

The Decision Maker:

<table>
<thead>
<tr>
<th>Step 1</th>
<th>Informs the Respondent in writing of the suspected misconduct (Letter of Allegation) which includes:</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>(i) Identifying what the suspected act of misconduct is in breach of;</td>
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<td></td>
<td>(ii) Particulars of the allegation(s);</td>
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<tr>
<td></td>
<td>(iii) Appropriate document(s) relevant to the allegation(s);</td>
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<td></td>
<td>(iv) Confirmation the Misconduct Management Process provided by this Policy will apply;</td>
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<td></td>
<td>(v) Inviting a response in writing (not less than 7 days);</td>
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<td></td>
<td>(vi) Confirming the right to seek advice or support from a union or other person; and</td>
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<tr>
<td></td>
<td>(vii) Confirming the Disciplinary Action that may apply if suspected misconduct is substantiated.</td>
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</tbody>
</table>

3.1.1 The Letter of Allegation (LOA) should include:

(i) Sufficient detail to enable the Respondent to know what is alleged against them;

(ii) Where appropriate include copies of information or documentation (e.g. policies) relevant to the allegation(s);

(iii) A copy of the Misconduct Policy; and

(iv) Contact details and availability of the relevant Employee Assistance Provider (EAP).

3.1.2 The allegation(s) put to the Respondent should:

(i) Identify what each suspected act of misconduct is in breach of, i.e. which code, policy or instrument;

(ii) Specify the details (particulars) of each suspected act of misconduct;

(iii) Be written clearly and include information specific to each suspected act of misconduct;

(iv) Identify the relevant details of the suspected act of misconduct including location, dates, times, actions and/or behaviours;

(v) Be based on the information identified as part of the preliminary assessment.

3.1.3 The Respondent may seek an extension to the due date for their response to an LOA. Ideally such a request is made in writing to the Decision Maker with an explanation as to why the extension is sought. The Decision Maker should not unreasonably refuse an extension and
once the extension is approved it should be confirmed in writing with a revised date.

3.1.4 A decision to approve an extension should specifically advise the Respondent that if they fail to respond by the revised date, or elect not to provide a written response, a decision will be made based on the information available.

3.1.5 An LOA may be drafted with the assistance of HR and with input from Health Industrial Relations Service (HIRS) as required.

Step 2

Before or after Phase 3: Step 1 the Decision Maker may determine, or refer to an appropriate person to determine in accordance with the Delegation Schedule, whether the seriousness of the allegation(s) means the Respondent should be suspended from duty on full pay, partial pay or no pay. The decision may be varied at any time. Advice must be sought from HR and HIRS as appropriate. Inform Respondent in writing as soon as practicable.

3.2.1 Being suspended from duty means the Respondent is excluded from the workplace until the Disciplinary Process has concluded, or until the Decision Maker advises otherwise.

3.2.2 Being suspended from duty should only occur after the Decision Maker has made the decision to treat the matter as a disciplinary matter in accordance with Phase 2: Step 2, and before the Disciplinary Process is finalised.

3.2.3 The Decision Maker should be satisfied that appropriate grounds exist to suspend an employee from duty. Any decision in this regard is not punitive or a final determination in the Misconduct Management Process.

3.2.4 Before any proposed suspension may take effect the employee must be provided with a reasonable opportunity to respond in relation to the proposed suspension and this response must be genuinely considered.

3.2.5 The Decision Maker may consider temporarily relocating the Respondent rather than suspending from duty.

Step 3

Considers any response provided by the Respondent and determines the response:

Step 4

(A) does not satisfactorily address the allegation(s); and

OR

(B) requires further investigation.

OR

(C) satisfactorily addresses the allegation(s); and/or

Go to Phase 4

Superseded by: MP 0040/16
3.4.1 Further information or clarification related to an allegation(s) may be sought in writing from the Respondent.

3.4.2 The Respondent is not obliged to provide a response to an LOA.

3.4.3 Phase 3: Step 4 does not prevent a Decision Maker from determining a Disciplinary Process is no longer appropriate and informing the Respondent accordingly.

3.4.4 If the Decision Maker decides to treat a matter as disciplinary under Phase 3, the Decision Maker may at any stage of the Misconduct Management Process decide to take Improvement Action or no action. The Respondent should be advised of this decision in writing within 14 days.

3.4.5 Notice from a Respondent of their intention to resign does not automatically discontinue the Disciplinary Process during the notice period.

**PHASE 4: DISCIPLINARY INVESTIGATION**

The Decision Maker:

**Step 1** | Determines the scope of the Disciplinary Investigation and appoints an investigator in writing.
---|---
4.1.1 The investigation scope sets out the parameters of the Disciplinary Investigation into the suspected misconduct as agreed by the Decision Maker and the investigator.

4.1.2 The investigation scope illustrates what the Disciplinary Investigation will involve, in particular that the investigation is limited to the allegation(s) put to the Respondent (in the LOA) at Phase 3: Step 1. The investigation scope may also specify the witnesses to be interviewed and timeframes in which the investigation is to be
concluded.
Assistance may be sought from HR, CGD, HIRS or any other relevant party when determining the investigation scope.

4.1.3 The investigation scope should be documented in writing and signed by the Decision Maker and investigator.

4.1.4 An investigator is appointed in writing. The Decision Maker may appoint a relevant person within, or external to WA Health, or an organisation, as the investigator.

The Decision Maker may seek assistance from HR, CGD, HIRS and any other relevant party when identifying and appointing an appropriate investigator.

4.1.5 A Decision Maker cannot be involved in or undertake any part of the Disciplinary Investigation.

4.1.6 To address counter allegations, a Decision Maker may vary an investigation scope, may put an investigation on hold, or direct a new investigation.

4.1.7 If not conducting the Disciplinary Investigation, HR will liaise with the investigator to facilitate the Disciplinary Investigation. HR will provide the investigator with access to the relevant policies, any other resources required and act as the primary point of contact for the Disciplinary Investigation.

<table>
<thead>
<tr>
<th>Step 2</th>
<th><strong>Informs the Respondent in writing of the decision to proceed to Disciplinary Investigation and identifies the appointed investigator.</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2.1</td>
<td>The Decision Maker with the assistance of HR should inform the Respondent in writing of the decision to undertake an investigation and confirm the appointed investigator.</td>
</tr>
</tbody>
</table>

The investigator:

<table>
<thead>
<tr>
<th>Step 3</th>
<th><strong>Conducts the investigation in accordance with the agreed scope.</strong></th>
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</thead>
<tbody>
<tr>
<td>4.3.1</td>
<td>An investigation should not exceed the agreed investigation scope.</td>
</tr>
<tr>
<td>4.3.2</td>
<td>An investigation may include matters of mitigation identified by a Respondent.</td>
</tr>
<tr>
<td>4.3.3</td>
<td>An investigation scope may be varied by the Decision Maker to address counter allegations.</td>
</tr>
<tr>
<td>4.3.4</td>
<td>An investigation may be put on hold by a Decision Maker who may also direct a new investigation into any counter allegations.</td>
</tr>
<tr>
<td>4.3.5</td>
<td>Where information arises during an investigation that may result in further allegation(s), the investigator should refer to HR who will advise</td>
</tr>
</tbody>
</table>
the Decision Maker. Any new allegation(s) are subject to the process described by Phases 1, 2 and 3.

4.3.6 An investigator is required to observe the principles of Procedural Fairness during an investigation and address any conflicts of interest, perceived or real.

**Step 4** Submits their finding that the allegation(s) are substantiated or not substantiated within the agreed investigation scope and based on the available evidence.

4.4.1 Unless specifically directed to do otherwise, an investigator should make no further findings beyond the agreed investigation scope.

4.4.2 A Decision Maker may direct that an existing Disciplinary Investigation is put on hold to allow for new allegations to be joined to the existing Misconduct Management Process and a revised investigation scope determined.

4.4.3 Where new allegations arise, whether during a Disciplinary Investigation or otherwise, the process described by Phases 1, 2 and 3 should be completed.

**The Decision Maker:**

**Step 5** Receives and considers the written investigation report.

4.5.1 The Decision Maker should receive a written investigation report from the investigator outlining the investigation process and their findings. The investigation report should include, but is not limited to:

(i) Scope of investigation – allegation(s) of suspected misconduct;

(ii) Summary of Respondent’s interview;

(iii) Summary of other persons interviewed;

(iv) Overall summary of evidence;

(v) Assessment of evidence;

(vi) Findings – based on the Balance of Probabilities whether the allegation(s) are substantiated or not substantiated; and

(vii) Documents relied upon during the Disciplinary Investigation.

The investigation report should not include:

(i) Findings based on conduct, allegation(s) or documentation not put to the Respondent as part of the Disciplinary Process (Phase 3); or

(ii) Recommendations in relation to penalty or any other matter.

4.5.2 Where counter allegations are raised during an investigation, the investigator should contact HR who will advise the Decision Maker, who may also put an investigation on hold or direct a new investigation
into any counter allegations.

4.5.3 The Decision Maker should be satisfied that the findings of the investigation report are reasonably available based on the information available. HR may provide initial advice in this regard.

4.5.4 The Decision Maker should consider the investigation report and then determine whether to:

(i) Accept the investigation report and the investigator's findings. If so proceed to Phase 5;

OR

(ii) Find the investigation report does not adequately investigate the allegation(s) of suspected misconduct and refer the investigation back to the investigator for further investigation. The Decision Maker repeats Phase 4: Step 3, and then reconsiders the revised investigation report;

OR

(iii) Find the investigation report does not adequately investigate the allegation(s) of suspected misconduct and refer the investigation to a new investigator for further investigation. The Decision Maker repeats Phase 4;

(iv) Reject the investigation report entirely, or in part, and determine whether a new investigation is required. If so, contact CGD, HR and/or HIRS for advice. If a new Disciplinary Investigation is required, the Decision Maker repeats Phase 4 in its entirety;

OR

(v) Reject the findings of the investigation report and substitute own findings based on all information available. In this case the Decision Maker should clearly articulate their reasoning for rejecting the findings of the investigator and document the reasons and the information used to determine their own findings.

Advice may be sought from CGD, HR and/or HIRS.
PHASE 5: CONCLUDING THE DISCIPLINARY PROCESS

The Decision Maker:

Step 1 Based on all the information available, proposes to find on the Balance of Probabilities the suspected act(s) of misconduct are:

- Substantiated s173(2) breach of discipline and proposes:
  - (i) Termination of employment

- OR

- Substantiated (in part or in full) of a breach of discipline other than a s173(2) breach of discipline and proposes:
  - (i) Improvement Action; and/or
  - (ii) Disciplinary Action; or
  - (iii) No further action.

- OR

- Not substantiated and
  - (i) Advises Respondent in writing;
  - (ii) Documents the final decision; and
  - (iii) Advises CGD.

Process Ends

**Note**: There are certain limitations on actions that can be taken against a former employee. Where the former employee is no longer employed with the Employing Authority the only actions available are a fine and/or reprimand.

If the former employee is employed within the public sector or by another Employing Authority, the full range of actions are available but the former Employing Authority is required to consult with the subsequent Employing Authority before taking any action.

5.1.1 The Decision Maker having considered all the information available proposes that the suspected acts of misconduct are substantiated or not substantiated based on the Balance of Probabilities.

If substantiated, the Decision Maker also determines the proposed action to take, which may include:

- (i) Termination of employment (s173(2) breach of discipline);
- (ii) Improvement Action;
- (iii) Disciplinary Action pursuant to the HSA; or
- (iv) No action.

5.1.2 When determining the proposed action, the Decision Maker may consider factors including, but not limited to:

- (i) Whether it is an isolated act;
- (ii) The circumstances surrounding the act including the seriousness...
and the nature of the act;

(iii) The employment history of the Respondent;

(iv) The status and position held by the Respondent;

(v) The current and future safety of patients, employees and the wider community;

(vi) The reputation of the Employing Authority and WA Health; and/or

(vii) The impact on employees, the Employing Authority and whole of WA Health.

<table>
<thead>
<tr>
<th>Step 2</th>
<th>Advises the Respondent in writing (Letter of Intent) of the proposed finding, any proposed action, and provides the Respondent with an opportunity to respond in writing, with not less than 7 days, to the proposed finding and proposed action and prior to a decision being made.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2.1</td>
<td>Once the Decision Maker has made a proposed finding, the Decision Maker should, with the assistance of HR, advise the Respondent in writing by a Letter of Intent (LOI) within 14 days of making that finding.</td>
</tr>
<tr>
<td>5.2.2</td>
<td>The Decision Maker should identify in writing the reasons for their proposed finding and action, including all evidence relied upon to reach their finding.</td>
</tr>
<tr>
<td>5.2.3</td>
<td>Sufficient information should be provided to the Respondent to allow them to comment on the proposed findings and action. The Decision Maker should outline the proposed action and the reasons relied upon for such action.</td>
</tr>
<tr>
<td>5.2.4</td>
<td>Proposed findings should relate to each individual allegation as previously described to the Respondent in their LOA(s).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 3</th>
<th>Considers any response provided by the Respondent, including any issues cited in mitigation.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.3.1</td>
<td>The Decision Maker genuinely considers the Respondent’s response to the proposed finding and proposed action, including any mitigation, before finalising their decision and the action to be taken.</td>
</tr>
<tr>
<td>5.3.2</td>
<td>In considering any response, the Decision Maker may reconsider all the information available including any new information provided by the Respondent.</td>
</tr>
<tr>
<td>5.3.3</td>
<td>The Respondent is not obliged to provide a response to the Decision Maker’s proposed finding and proposed action.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Step 4</th>
<th>Advises the Respondent in writing of the decision and any action to be taken.</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.4.1</td>
<td>Advises the Respondent in writing of the decision and any action to be taken within 14 days of a final decision being made.</td>
</tr>
</tbody>
</table>
Step 5

(A) If the decision is termination or the finding may result in a risk to patient safety, the Employing Authority must:

↓

Go to Step 6

OR

(B) If the decision is not termination or the finding does not result in a risk to patient safety;

↓

Go to Step 8

Step 6

Notifies the Department CEO of a finding of misconduct when the Disciplinary Action is termination, or when the Employing Authority is of the opinion that the finding of misconduct could result in a serious risk to the safety of patients. This notification must be given in writing within 30 days of the finding being made.

The Department CEO may notify any Employing Authority of the Respondent when the Disciplinary Action is termination.

5.6.1 Notifies the Department CEO within 30 days of a finding being made if the Disciplinary Action is termination or when the Employing Authority is of the opinion that the finding of misconduct could result in a serious risk to patients or safety.

Step 7

If the Disciplinary Action is termination, any Employing Authority of the Respondent may deal with the matter as disciplinary by complying with Phases 3 and 5. The Employing Authority cannot action termination earlier than 30 days from being advised by the Department CEO at Step 6.

5.7.1 The Department CEO may notify any Employing Authority of the Respondent of the termination of the Respondent by another Employing Authority.

5.7.2 The subsequent Employing Authority cannot unilaterally impose the same Disciplinary Action on the Respondent without affording procedural fairness.

5.7.3 The Employing Authority should advise the Respondent of the notification received from the Department CEO and provide the Respondent with an opportunity to respond in writing (commence process at Phase 3 and seek HIRS advice).

5.7.4 The Employing Authority should consider any response before proposing to find that any suspected misconduct has been substantiated.

5.7.5 The Employing Authority should advise the Respondent in writing of any proposed finding and any proposed action, and provide the Respondent with an opportunity to respond in writing to the proposed finding and proposed action prior to a final decision being made (see Phase 5).
Step 8  Document and report the outcome of the Misconduct Management Process to HR and CGD.

Process Ends

Note: The Decision Maker can only propose Disciplinary Action within their delegated authority. If the Disciplinary Action which the Decision Maker considers most appropriate exceeds their delegated authority they must refer the matter to a Decision Maker with sufficient delegated authority, who must repeat Phase 5.

The Decision Maker should communicate their final decision in writing to the Respondent within 14 days of making that decision.

5.8.1  Document and report the final outcome of the Misconduct Management Process to CGD. Reporting the outcome is required by CGD for closure of the matter and Crime and Corruption Commission (CCC) reporting requirements.

5.8.2  Reporting a final decision may result in details of the Disciplinary Action being included within CGD’s Complaints Management System.

5.8.3  Where the Misconduct Management Process arose out of a complaint, the Decision Maker should advise the Complainant in writing that the matter has concluded.
9. **TERMS AND DEFINITIONS**

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td><strong>Balance of Probabilities</strong></td>
<td>The weighing up and comparison of the likelihood of the existence of competing facts or conclusions. A fact is proved to be true on the balance of probabilities if its existence is more probable than not. It is a test that requires a lesser burden of proof than the criminal test of ‘beyond reasonable doubt.’</td>
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<td><strong>Commission</strong></td>
<td>Western Australian Industrial Relations Commission or its constituent authorities</td>
</tr>
<tr>
<td><strong>Complainant(s)</strong></td>
<td>The person(s) making an allegation or complaint.</td>
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<tr>
<td><strong>Decision Maker</strong></td>
<td>The person occupying the nominated position authorised under the relevant Employing Authority’s Delegation Schedule, to commence the Misconduct Management Process and take Disciplinary Action.</td>
</tr>
<tr>
<td><strong>Disciplinary Action</strong></td>
<td>Pursuant to section 6 of the HSA, means any one or more of the following: (a) a reprimand; (b) the imposition of a fine not exceeding an amount equal to the amount of remuneration received by the employee in respect of the last 5 days during which the employee was at work as an employee before the day on which the finding of the breach of discipline was made; (c) transferring the employee to another health service provider with the consent of the Employing Authority of that health service provider; (d) if the employee is not a chief executive, transferring the employee to another office in the health service provider in which the employee is employed; (e) reduction in the monetary remuneration of the employee; (f) reduction in the level of classification of the employee; (g) alteration of the employee’s scope of practice or duties, or both; or (h) dismissal.</td>
</tr>
<tr>
<td><strong>Disciplinary Investigation</strong></td>
<td>The investigation pursuant to Phase 4 of the Policy.</td>
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</table>
| Employing Authority | An Employing Authority established under the HSA which at the time of publication includes:  
| Child and Adolescent Health Service;  
| East Metropolitan Health Service;  
| Health Support Services;  
| North Metropolitan Health Service;  
| South Metropolitan Health Service;  
| WA Country Health Service; and  
| Quadriplegic Centre. |
|---|---|
| External Authority | The Australian Health Practitioner Regulation Agency, CCC, PSC, Western Australian Police and any other relevant authority outside of WA Health. |
| Improvement Action | Pursuant to section 6 of the HSA, means any one or more of the following: actions by the Employing Authority of the employee for the purpose of improving the performance or conduct of the employee:  
(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; or  
(d) any other action of a similar nature. |
| **Procedural Fairness** | The right of the Respondent to:  
- Know the details of the alleged misconduct;  
- Be heard and present their case in response to the allegation(s);  
- Have decisions made by an unbiased Decision Maker who undertakes a proper assessment of the facts;  
- Have decisions made based on the evidence and the Balance of Probabilities; and  
- Respond to the proposed finding and action before the Decision Maker confirms their decision.  
The three main rules or principles:  
**Bias rule**  
- The Decision Maker (or person requested to investigate) acts fairly and without bias.  
- The Decision Maker (or person requested to investigate) does not hold, or is not perceived to hold, a vested or direct personal interest in the outcome of the process.  
**Hearing rule**  
- The Respondent is provided with notice of any allegation(s) against them, given a reasonable opportunity to respond to those allegation(s) or decisions affecting him or her, and their response is genuinely considered.  
**Evidence rule**  
- Decisions are based on logically probative evidence  
- Irrelevant considerations are not taken into account in making the decision. |
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<tr>
<td><strong>Respondent(s)</strong></td>
<td>The WA Health employee(s) against whom an allegation or complaint has been made.</td>
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<tr>
<td><strong>Section 173(2) of the HSA Breach of Discipline</strong></td>
<td>Where an employee of an Employing Authority refuses a direction to accept an offer of a suitable, alternative position or hinders or obstructs the redeployment and redundancy process.</td>
</tr>
<tr>
<td><strong>Victimisation</strong></td>
<td>Intentional unfavourable treatment such as aggression, refusing to provide information, ignoring a person, or not following a direction to have no contact with a person.</td>
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