



Discipline

1. Purpose

The purpose of this policy is to specify the principles and minimum requirements which the Department of Health (the department) applies to ensure a fair, reasonable and consistent approach to the management of matters that may concern a breach of discipline.

The Department's management of disciplinary matters must comply with the:

- *Public Sector Management Act 1994* (PSM Act)
- *Public Sector Management (General) Regulations 1994*
- Commissioner's Instruction No.3 - Discipline - General
- Commissioner's Instruction No. 4 - Discipline - Former Employees
- the Public Sector Standards in Human Resource Management - Discipline Standard (the Discipline Standard).

The department acknowledges the potential impact disciplinary processes may have on individuals and teams involved. In the interests of promoting a safe, respectful and ethical workplace, the department is committed to ensuring that suspected breaches of discipline are addressed through a process which is consistent, procedurally fair and aims to protect the safety of all parties involved.

2. Applicability

This policy is applicable to department employees, whether permanent, fixed-term, or casual, who are employed pursuant to Part 3 of the PSM Act (PSM Act employees) or section 22(1) of the *Health Services Act 2016* (Non-PSM Act employees).

While Non-PSM Act employees are outside the scope of the disciplinary provisions of Part 5 of the PSM Act¹, for the purpose of this policy the provisions of the PSM Act and above mentioned instruments will be applied in the management of such disciplinary matters to the extent to which they are consistent with relevant legislation, awards, agreements, common law or terms of employment.

Where relevant, this policy is also applicable to former department employees, who were appointed as PSM Act employees, in accordance with CI4.

Department of Health policies do not apply to Health Service Provider employees. For discipline requirements in relation to Health Service Providers, refer to [MP0127/20 Discipline Policy](#) and any relevant local policies or procedures.

¹ Note exception: s 76(3) of the PSM Act does apply to non-PSM Act employees in the case of lawful redeployment directions.

3. Policy requirements

3.1 Principles

The management of all suspected breaches of discipline within the department are required to be conducted in accordance with the following principles:

- All reports of suspected breaches of discipline will be dealt with seriously, fairly and with appropriate confidentiality.
- Anonymous complaints will be managed with the same attention to detail, objectivity and sensitivity as other matters reported.
- Processes related to suspected breaches of discipline are to be:
 - conducted in a manner which is fair, reasonable and consistent,
 - dealt with using as little formality and as soon as reasonably practicable.
- The department recognises that disciplinary processes can have a significant impact on respondents, complainants, witnesses, managers and investigators. Wherever possible and reasonable, processes should be managed in a manner that minimises unnecessary harm, maintains dignity and respect, and supports the wellbeing of those involved.
- The principles of procedural fairness are applied to all disciplinary processes.
- Decisions are impartial, transparent, based on an assessment of all available facts and circumstances, and are capable of review.
- Employees are encouraged to speak up and report suspected breaches of discipline.

3.2 Requirement to report suspected breaches of discipline

Employees must report any breach or suspected breach of discipline in a timely manner to:

- their line manager (or the next tier of their line management where appropriate),
- Human Resources via email to: DoH.HR@health.wa.gov.au, or
- System-Wide Integrity Services via email to: DoHIntegrity@health.wa.gov.au, or via the Integrity Advisory Line: 1800 000 224.

Employees may also make a disclosure about a breach or suspected breach of discipline to a [Public Interest Disclosure Officer](#) under the [Public Interest Disclosure Act 2003](#).

Employees may also make reports which may relate to:

- suspected serious misconduct to the Corruption and Crime Commission
- suspected minor misconduct to the Public Sector Commission
- suspected criminal behaviour to WA Police
- concerns regarding registered health practitioners to the Australian Health Practitioner Regulation Agency.

3.3 Handling of complaints or incidents

For all complaints or incidents reported that may concern a breach of discipline, the department will ensure:

- a fair, and consistent process for the assessment and management of suspected breaches is applied
- appropriately skilled officers assess and manage disciplinary matters
- documented arrangements exist for the processes related to the:
 - receipt of complaints, or any information received, regarding an employee's conduct

- assessment and notification of suspected minor and serious misconduct, pursuant to section 4 of the *Corruption, Crime and Misconduct Act 2003*
- appointment of the decision maker and any change to the decision maker
- recording of all decisions made to ensure they are transparent and capable of review, including the rationale for the decision that reflects the assessment of the seriousness of the matter
- carrying out of investigations (where required)
- management of case records
- appropriate support and communication are maintained with affected parties throughout the process, including the provision of periodic status updates where matters remain ongoing
- all matters are recorded in the Case Management System (the CMS), as soon as reasonably practicable, in accordance with CMS protocols
- all matters are concluded as soon as reasonably practicable.

3.4 Risk mitigation

In response to a complaint or incident, it may be determined that immediate action is required to actively mitigate against risks to staff, the public, other individuals, business continuity or the preservation of evidence.

Actions to mitigate against these risks may include, but are not limited to:

- altering the scope of an employee's duties
- directing an employee to work at a different location
- directing an employee away from the workplace
- proposing suspension (on full, partial or no pay).

Risk mitigation actions are to be taken for the sole purpose of mitigating risk while a discipline process is progressed. These actions should not be perceived as an inference of wrongdoing and do not constitute a disciplinary action.

The action taken to mitigate against a risk should always be the action which has the least adverse impact on all parties involved and on the department.

3.5 Disciplinary process

Should a decision be made to treat a complaint or incident as a disciplinary matter, procedural fairness will be applied. As a minimum this entails:

- all involved officers, including decision makers and investigators, acting fairly and without bias, and without holding a vested or direct personal interest in the outcome of the process, and that all issues of perceived or actual bias, or conflicts of interest, are appropriately recorded and resolved
- decisions being made based on logically probative (i.e. compelling) evidence and the balance of probabilities, with irrelevant information not considered
- written notification of any allegations being provided to the respondent, with sufficient detail to enable them to know what is alleged, and the range of actions which may be taken should the allegations be substantiated

- the respondent having a reasonable opportunity to present their case in response to the allegations, and for any response to be heard and genuinely considered prior to the making of any finding
- within 14 days of a finding being made, written notification being provided to the respondent outlining the finding, any proposed action and reasons for the decision
- the respondent being given reasonable opportunity to respond to any adverse finding and action, and for any response to be heard and genuinely considered prior to the finalisation of any disciplinary action in relation to a finding
- the respondent being provided with written notification of the finalised outcome of the disciplinary matter and advised in writing of the avenue to appeal the decision to the WA Industrial Relations Commission.

Every disciplinary matter must be actively case managed, including consideration of communication requirements, support needs, foreseeable delays, and actions necessary to progress the process in a timely manner.

The decision maker may at any stage of the disciplinary process decide to take improvement action, no action or discontinue the process.

Discontinued discipline processes are only to be recommenced if substantial and fresh material evidence or information becomes available, that in the department's view warrants proceedings being commenced.

Where a suspected breach of discipline relates to a person who is on secondment to the department, the department may either:

- provide available information to secondee's employing authority to determine how to appropriately address the suspected breach of discipline, or
- request the secondee's employing authority delegate the relevant powers to the department for the duration of the disciplinary process to investigate a matter.

Discipline processes relating to former employees will be managed in accordance with CI4. CI4 does not apply to former employees who were not appointed pursuant to Part 5 of the *Public Sector Management Act 1994*.

Refer to the Department of Health Discipline Process Flowchart for a high-level overview of process steps.

3.6 Employee support

Employees subject to disciplinary processes must be advised they may request a support person or representative to be present at any meetings or interviews in relation to the disciplinary process.

The role of a support person is to provide reassurance and advice to the employee, but not to actively participate in the process, such as answering questions on the employee's behalf or being a witness.

Where appropriate, employees should be made aware of available support options, which may include the [Employee Assistance Program](#), reasonable adjustments, workplace supports, cultural supports or other relevant assistance.

3.7 Confidentiality

All employees involved in a disciplinary process are obliged to maintain the confidentiality of the matter. This is necessary to ensure fair treatment and process, minimise the risk of victimisation, avoid defamation proceedings, and to respect the privacy of all parties involved. A breach of confidentiality may constitute a breach of discipline.

In some instances, it may be necessary to provide relevant persons (e.g. executives, directors, managers etc) with a limited level of awareness regarding a specific discipline process. The disclosure of this information should only be provided to ensure relevant staff can effectively address ongoing risks that the alleged conduct (or actions taken in response to the conduct) may present.

3.8 Roles and responsibilities

3.8.1 Employees

- Employees are required to report any breach or suspected breach of discipline as prescribed in 3.2.
- When participating in a disciplinary process, employees are required to do so in a respectful manner and maintain appropriate confidentiality.

3.8.2 Managers

- Managers are required to report any breach or suspected breach of discipline as prescribed in 3.2, and escalate any concerns raised with them which relate to a breach or suspected breach of discipline to Human Resources or System-Wide Integrity Services (SWIS).
- Managers are required to take reasonable steps to prevent and respond to inappropriate behaviour within the workplace and seek assistance from Human Resources when required.
- Managers who are aware of and are assisting with a disciplinary process, must take reasonable steps to support the wellbeing of employees involved in disciplinary processes and maintain appropriate communication with affected parties throughout the process.

3.8.3 Human Resources

Human Resources are responsible for:

- providing support to employees (including managers) in relation to responding to inappropriate behaviour within the workplace.
- advising employees how they may obtain additional support when required.
- working in collaboration with SWIS to ensure concerns which relate to a breach or suspected breach of discipline are referred to SWIS.

3.8.4 System-Wide Integrity Services

SWIS are responsible for:

- ensuring documented arrangements exist for the process related to the management of suspected breaches of discipline.

- coordinating and conducting processes in relation to suspected breaches of discipline.
- ensuring notifications to external agencies regarding suspected breaches of discipline are made where required (e.g. Corruption and Crime Commission, Public Sector Commission, WA Police etc).

4. Compliance monitoring

SWIS will support compliance monitoring of this policy through:

- a monthly report to the Director General on the status of all suspected breaches of discipline
- the Quarterly Integrity Report which is provided to the Director General, Department Integrity Group, Department Executive Committee and Risk and Audit Committee on a quarterly basis. This report contains a de-identified overview of reported suspected breach of discipline matters and a trend analysis.

SWIS, on behalf of the Director General, may:

- review CMS data associated with matters that may concern a breach of discipline for compliance with this policy
- monitor and review matters for assurance purposes in relation to compliance with:
 - the Discipline Standard
 - the requirements within this Policy, including the minimum requirements for procedural fairness, and ensuring that decision making is transparent and reviewable
- provide reports to oversight agencies about matters which may concern a breach of discipline using CMS data.

5. Related documents

The following documents are mandatory pursuant to this policy:

- [Discipline Process Flowchart](#)

6. Supporting information

The following documents support implementation of this policy:

State Legislation

- [Corruption, Crime and Misconduct Act 2003](#)
- [Public Interest Disclosure Act 2003](#)
- [Public Sector Management Act 1994](#)
- [Public Sector Management \(General\) Regulations 1994](#)

Public Sector Commission

- [Commissioner's Instruction No.3 - Discipline - General](#)
- [Commissioner's Instruction No. 4 - Discipline - Former Employees](#)
- [Commissioner's Instruction No. 40 – Ethical Foundations](#)
- [Public sector standards in human resource management - Discipline Standard](#)
- [Managing workplace behaviour - A guide for agencies](#)
- [Guide to the disciplinary provisions contained in Part 5 of the PSM Act](#)
- [Disciplinary investigations under Part 5 of the PSM Act - A guide for agencies](#)

WA health system

- [MP 0124/19 Code of Conduct Policy](#)

Department of Health

- [Authorisations and Delegations Register](#)

7. Definitions

The following definitions are relevant to this policy.

Term	Definition
Balance of probabilities	The weighing up and comparison of the likelihood of the existence of competing facts or conclusions. A fact is proven 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'. The standard of evidence required to meet the balance of probabilities test increases with the seriousness and consequences of the allegation.
Breach of discipline	For PSM Act employees, under section 80 of the PSM Act: <i>An employee who —</i> (a) <i>disobeys or disregards a lawful order; or</i> (b) <i>contravenes —</i> (i) <i>any provision of this Act applicable to that employee; or</i> (ii) <i>any public sector standard or code of ethics; or</i> (c) <i>commits an act of misconduct; or</i> (d) <i>is negligent or careless in the performance of his or her functions; or</i> (e) <i>commits an act of victimisation within the meaning of section 15 of the Public Interest Disclosure Act 2003,</i> <i>commits a breach of discipline.</i> In relation to breaches of discipline related to Non-PSM Act employees, the term breach of discipline has the same definition. Note, Part 5 of the PSM Act applies to Non-PSM Act employees who disregard a lawful redeployment direction under section 76(3) of the PSM Act.
Case Management System (CMS)	The database administered by SWIS, used to enter, track and report cases of conduct that may concern a breach of discipline.

Data	Qualitative and quantitative information collected to be examined, considered and used as a basis for analysis and reporting. Data may be drawn from sources including but not limited to the CMS, investigation reports, and case files.
Decision Maker	The person occupying the nominated position authorised under the Department's Authorisations and Delegations Schedule and/or Policy matters and other functions not authorised or delegated, to commence the disciplinary process, make findings in relation to disciplinary matters and take disciplinary action. Refer to the Authorisations and Delegations Register .
Disciplinary action	For employees employed pursuant to Part 3 of the PSM Act, under section 80A of the PSM Act: <i>disciplinary action, in relation to a breach of discipline by an employee, means any one or more of the following –</i> (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 public sector body with the consent of the employing authority of that public sector body; (d) if the employee is not a chief executive officer or chief employee, transferring the employee to another office, post or position in the public sector body 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) dismissal. In relation to breaches of discipline related to Non-PSM Act employees, the term disciplinary action means any one or more of the following: (a) a reprimand; (b) transferring the employee to a Health Service Provider pursuant to section 141 of the <i>Health Services Act 2016</i>; (c) transferring the employee to another office, post or position in the Department; (d) dismissal.

Improvement action	For PSM Act employees, under section 3 of the PSM Act: <i>improvement action means any one or more of the following actions by an employing authority in respect of an employee for the purpose of improving the performance or conduct of the employee –</i> (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; (d) any other action of a similar nature. In relation to breaches of discipline related to Non-PSM Act employees, the term improvement action has the same definition.
Investigation	An investigation is a systematic process where the facts relating to a complaint or incident that may concern a breach of discipline are established through the collection of evidence and the consideration of the prevailing circumstances. All investigations undertaken must result in or lead to an outcome.
Minor misconduct	The term minor misconduct has the same definition as provided within section 4 of the <i>Corruption, Crime and Misconduct Act 2003</i>
Non-PSM Act staff	Wages or other staff appointed pursuant to section 22(1) of the <i>Health Services Act 2026</i>, which includes but is not limited to medical practitioners, registered nurses and other staff who have not been appointed as PSM Act staff.
PSM Act staff	A public service officer appointed pursuant to Part 3 of the PSM Act. PSM Act staff are covered by the Public Sector CSA Agreement 2024 or its replacement.
Procedural fairness	A common law principle relating to how a decision maker should act when making decisions that may adversely impact upon a person's rights or interests. Procedural fairness requires the observance of the following rules: Bias rule • Decision makers and investigators act fairly and without bias.

	- Decision makers and investigators do not hold, or are 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 allegations against them, given a reasonable opportunity to respond to those allegations or decisions affecting them, and their response is genuinely considered. Evidence rule - Decisions are logical and based on evidence. - Irrelevant considerations are not taken into account in making the decision.
Respondent	The employee against whom an allegation or complaint has been made.
Serious misconduct	The term serious misconduct has the same definition as provided within section 4 of the <i>Corruption, Crime and Misconduct Act 2003</i>
Support person	A person of the employee's choosing who may be a trusted colleague, family member, friend or representative of the union whose presence acts to reassure the employee and create a more comfortable environment. The role of support person is to provide support and advice to the employee.
Victimisation	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.

8. Approval and review

This mandatory policy is approved in accordance with the approval authority described in the Policy Governance Procedure and will be reviewed as required to determine effectiveness, relevance and currency. At a minimum it will be reviewed every 3 years.

Version	Effective from	Effective to	Amendment(s)	Approval
1.0	9 November 2021		Original version	Dr D J Russell-Weisz, Director General
2.0	TBC			

The review table indicates previous versions of the mandatory policy and any significant changes.

The owner of this policy is the **Executive Director, Office of the Director General**

Enquiries relating to this policy may be directed to DoHIntegrity@health.wa.gov.au.

DRAFT

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