**Policy**

**Misconduct and Discipline**

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| **Policy Statement** |

ACT Health’s objectives are to assist staff to meet their responsibilities in relation to Section 9 of the *Public Sector Management Act 1994* and the ACT Public Service Code of Conduct 2012 in order to:

* Create an environment of high work standard and conduct ;
* Ensure a high level of positive public opinion towards ACT Health and the ACT Public Service as a whole;
* Treat seriously, promptly and fairly all allegations of misconduct with due regard to procedural fairness, natural justice, confidentiality and privacy; and
* Create an awareness and understanding of these objectives.

The aim of the Misconduct and Discipline policy is to ensure efficient administration of staff misconduct and discipline processes and to maintain public confidence.

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| **Purpose** |

The purpose of this policy is to raise awareness among all ACT Health employees of the misconduct and discipline process that applies to all staff.

ACT Health is committed to ensuring that the misconduct and discipline process is managed in accordance with the relevant section of the relevant Enterprise Agreement.

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| **Scope** |

This applies to all ACT Health staff covered by the Health Directorate Enterprise Agreements, except casual employees. In applying these procedures to officers on probation, or fixed term employees who have been engaged for a continuous unbroken period of less than two years, the Delegate may determine that procedures and practices throughout the relevant agreement may be applied on an appropriate basis according to the circumstances of the case, and in accordance with the principles of procedural fairness and natural justice.

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| **Roles & Responsibilities** |

The employee is responsible for:

* Ensuring compliance with Section 9 of the *Public Sector Management Act 1994*.
* Following directions that are issued during the course of a misconduct and discipline matter.

The Manager is responsible for;

* Receiving complaints / reports of instances of misconduct and referring them to the Delegate for recording and assessment.
* Informing an employee after an evidence gathering process that no discipline action will be taken and no investigation process will be considered; or
* Discussing an employee’s behaviour after an evidence gathering process and advising them that the Delegate’s view is that the matter can be addressed informally.

The Delegate is responsible for:

* Making a decision as to whether a matter will be dealt with formally;
* Appointing an appropriately trained or experienced person (the investigating officer) to investigate the allegations,
* Informing the employee of any allegations;
* Finding if an allegation is proven or not proven;
* Deciding what discipline action will be taken once a matter is found proven;
* Referring the matter to Australian Health Practitioner Regulatory Agency (if covered by Health Practitioner Regulation National Law (ACT) Act 2010) if deemed necessary;
* Administering informed action under the misconduct and discipline provisions in the relevant Enterprise Agreement;
* Raising relevant issues with the People Services and Strategy Branch (PSSB);
* Informing the employee that they may have a union or other employee representative present during the interview to provide support during formal counselling or discipline action and allowing reasonable opportunity for this to be arranged;
* Making a determination on the balance of probabilities as to whether misconduct has occurred, after considering the report from the investigating officer; and
* Notifying the employee in writing where allegations are unsubstantiated and advising that no discipline action will be taken under these procedures.

The Investigating Officer is responsible for:

* Informing the employee in writing of the nature of the alleged misconduct, the nature of the proposed investigation, and the possible implications of the misconduct including the discipline actions available;
* Giving the employee a reasonable opportunity to respond to allegations, in writing and/or at a scheduled interview, before forming a conclusion;
* Providing the employee with at least twenty four hours written notice prior to conducting an interview, advise them if the interview is to be recorded electronically, and provide the employee with a copy of the record;
* Informing the employee that they may have a union or other employee representative present during the interview to provide support during formal counselling or discipline action and allowing reasonable opportunity for this to be arranged;
* Providing a record of the interview to the employee to correct any inaccuracies in the record and provide comments before signing the record. If the employee elects not to sign the record, then details of the offer will be noted.
* Taking any further steps considered necessary to establish the facts of the allegations and provide a written report to the Delegate as soon as practicable.

People Strategy & Services Branch (PSSB) is responsible for:

* Implementing this policy;
* Advising managers of the management of the policy;
* Advising staff of the details of the policy as it relates to them;
* Maintaining records of reported matters;
* Providing a quarterly summary of all reported cases to Deputy Director Generals (DDG); and
* Conducting or coordinating any investigations under an Enterprise Agreement.

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| **Evaluation** |

**Outcome Measures**

* Instances of misconduct formally reported are managed appropriately and efficiently.

**Method**

* PSSB will record all reported cases of misconduct and discipline by employees.
* Participants (employees/managers) are given the opportunity to evaluate the misconduct and discipline management process during investigative processes.
* PSSB will provide a quarterly report to the DDGs that will inform them of the reported cases of misconduct and discipline and the outcomes of those cases.

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| **Related Legislation, Policies and Standards** |

**Legislation**

*Public Sector Management Act 1994*

*Health Directorate Enterprise Agreement, 2011 – 2013*

*Health Directorate (Health Professionals) Enterprise Agreement, 2011 - 2013*

*Health Directorate (Medical Practitioners) Enterprise Agreement, 2011 – 2013*

*Health Directorate (Nursing and Midwifery) Enterprise Agreement, 2011 - 2013*

*Work Health and Safety Act 2011*

*Health Practitioner Regulation National Law (ACT) Act 2010*

*Fair Work Act 2009*

*Human Rights Act 2004*

**Policies**

Health Directorate, People Strategy & Services Branch (PSSB) Delegations Manual

Graduate Nurse Program SOP

Graduate Nurse Programs Policy

Women's Health Service - Clinical Supervision and Debriefing for WHS Counselling Staff

Incident Management Policy

Maternity - Graduate Midwife Program

Conflict Of Interest - Close Personal Relationships SOP

Flextime SOP

Second Job Policy

**Standards**

Public Sector Management Standards 2006

ACT Public Service Code of Conduct 2012

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| **Definition of Terms**  |

**Misconduct**

As described in the Enterprise Agreements, misconduct is defined as:

1. the employee fails to meet the obligations set out in section 9 of the Public Sector Management (PSM) Act (this may include bullying and harassment or discrimination);
2. the employee engages in conduct that has brought, or is likely to bring, the Directorate or ACT Public Service (ACTPS) into disrepute;
3. the employee returns to duty after a period of unauthorised absence and does not offer a satisfactory reason on return to work;
4. the employee is convicted of a criminal offence or where a court finds that an employee has committed an offence but a conviction is not recorded, taking into account the circumstances and seriousness of the offence, the duties of the employee and the interests of the ACTPS and/or of the Directorate; or
5. the employee fails to notify the head of service of criminal charges.

**Discipline Action**

In circumstances where the head of service, following an investigation or full admission by the employee, determines misconduct has occurred, and the head of service considers discipline action is appropriate, one or more of the following actions may be taken in relation to the employee:

1. formal counselling of the employee;
2. written warning;
3. written admonishment;
4. a financial penalty;
5. transfer temporarily or permanently to another position at level or to a lower level; or
6. termination of employment in accordance with the PSM Act.

Discipline action taken under this process must be proportionate to the degree of misconduct concerned. In determining the appropriate discipline action to be taken, the following factors must be considered:

1. the nature and seriousness of the misconduct;
2. the degree of relevance to the employee's duties or to the reputation of ACT Health;
3. the circumstances of the misconduct;
4. any mitigating factors, including any full admission of guilt; and
5. the previous employment history and the general conduct of the employee.

**Financial Penalties**

For the purposes of this Policy, financial penalties are:

1. reducing the employees increment level;
2. deferring incremental advancement; and
3. imposing a fine.

**Delegate**

Under the *PMS Act*, the Director General may delegate to a public sector officer, the director-general’s functions under that Act or any other law. The HR Delegations Manual lists the positions to which functions are delegated.

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