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## WACHS Discipline Guide

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## 1. Background

The Discipline Guide (Guide) supports the practical application of the Discipline Policy (MP 0127/20) (Policy) and describes the process to be followed in discipline matters.

## 2. False or Frivolous Complaints

If at any stage during the Process, the Decision Maker (DM) 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, the matter may be dealt with as a suspected Breach of Discipline.

## 3. Confidentiality

It is in the interests of all parties for confidentiality to be observed throughout the Process. At all times, consideration must be given regarding the disclosure of information and if it is provided, why it is being provided, to whom and for what purpose.

A preference for anonymity should be managed according to the circumstances of each case and whether the matter would meet the threshold of a Public Interest Disclosure in accordance with the Public Interest Disclosure Act 2003 (PID Act).

Anonymity cannot 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 Industrial Relations Commission.

## 4. Advice to Complainant

Advice is to be provided to a Complainant to:

- acknowledge receipt of a complaint and where the matter is to be dealt with as a disciplinary matter, confirm the matter will be managed consistent with the Policy;
- confirm a decision to undertake a Disciplinary Investigation; and
- confirm the Process has concluded and advise of the outcome.

## 5. Involvement of Other Parties

A Respondent may have a support person present at any interviews or meetings held in relation to the Process.

A Respondent should be reminded that they may seek advice or support from their union or other person at any stage of the Process.

## 6. Record Keeping

Documented decisions relating to each matter should be maintained to ensure the details of the matter (including all decisions) are capable of review.

## 7. A Suspected Breach of Discipline: The Process

The DM can, at any stage of the Process, decide to take Improvement Action, no action, or discontinue the Process and document their decision, ensuring that it is transparent and capable of review.

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|--|---|--|------------|--|
| <b>Step 1</b>  | <p>The employing authority assesses information received that may concern a Breach(es) of Discipline by an Employee or Former Employee.</p> <p><b>Continue to Step 2</b></p>  |  |            |  |
| <b>Step 2</b>  | <p>The employing authority determines if the information may concern a Breach(es) of Discipline.</p> <p>The employing authority may seek further information to assist in the determination, including information from the party subject of the information / concerns.</p>  |  |            |  |
|  | <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; background-color: #e1eef6; vertical-align: top;"> <p><b>2A</b><br/>Confirms the matter does <u>not</u> concern a Breach(es) of Discipline, (i.e. grievance or performance issues) and is managed by the line manager accordingly.</p> <p><b>Continue to Step 12</b></p> </td> <td style="width: 10%; text-align: center; vertical-align: middle;"><b>OR</b></td> <td style="width: 40%; background-color: #e1eef6; vertical-align: top;"> <p><b>2B</b><br/>Confirms the matter <u>may</u> concern a Breach(es) of Discipline and a Decision Maker (DM) is allocated.</p> <p><b>Continue to Step 3</b></p> </td> </tr> </table>  | <p><b>2A</b><br/>Confirms the matter does <u>not</u> concern a Breach(es) of Discipline, (i.e. grievance or performance issues) and is managed by the line manager accordingly.</p> <p><b>Continue to Step 12</b></p>  | <b>OR</b>  | <p><b>2B</b><br/>Confirms the matter <u>may</u> concern a Breach(es) of Discipline and a Decision Maker (DM) is allocated.</p> <p><b>Continue to Step 3</b></p>  |
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| <b>Step 3</b>  | <p>The DM determines whether to treat the matter as disciplinary or non-disciplinary.</p>   |  |            |  |
|  | <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; background-color: #e1eef6; vertical-align: top;"> <p><b>3A Risk Assessment</b><br/>A risk assessment and/or further enquiries are undertaken and the DM determines any immediate action required to mitigate risks, which may include to:</p> <ul style="list-style-type: none"> <li>(i) take no action; or</li> <li>(ii) propose suspension, on full pay, partial pay or without pay;<br/>or</li> <li>(iii) relocate/alter the Respondent's scope of practice or duties.</li> </ul> </td> <td style="width: 10%; text-align: center; vertical-align: middle;"><b>AND</b></td> <td style="width: 40%; background-color: #e1eef6; vertical-align: top;"> <p><b>3B Notification and Reporting Assessment</b><br/>The Manager Integrity Unit ensures that an assessment and/or further enquiries are undertaken to determine if notification and/or reporting is required pursuant to the <i>Corruption, Crime &amp; Misconduct Act 2003</i> (CCM Act) and the <i>Health Services Act 2016</i> (HS Act).</p> <p><b>Continue to Step 4</b></p> </td> </tr> </table> | <p><b>3A Risk Assessment</b><br/>A risk assessment and/or further enquiries are undertaken and the DM determines any immediate action required to mitigate risks, which may include to:</p> <ul style="list-style-type: none"> <li>(i) take no action; or</li> <li>(ii) propose suspension, on full pay, partial pay or without pay;<br/>or</li> <li>(iii) relocate/alter the Respondent's scope of practice or duties.</li> </ul> | <b>AND</b> | <p><b>3B Notification and Reporting Assessment</b><br/>The Manager Integrity Unit ensures that an assessment and/or further enquiries are undertaken to determine if notification and/or reporting is required pursuant to the <i>Corruption, Crime &amp; Misconduct Act 2003</i> (CCM Act) and the <i>Health Services Act 2016</i> (HS Act).</p> <p><b>Continue to Step 4</b></p> |
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|               |   |           |  |           |   |
|---------------|---|-----------|--|-----------|---|
| <b>Step 4</b> | <p><b>4A Non-Disciplinary</b></p> <p>The DM determines to take:</p> <ul style="list-style-type: none"> <li>(i) no action; or</li> <li>(ii) Improvement Action.</li> </ul> <p><b>Continue to Step 12</b></p> | <b>OR</b> | <p><b>4B Disciplinary – Insufficient information</b></p> <p>The DM determines the information available is insufficient and either:</p> <ul style="list-style-type: none"> <li>(i) makes further enquiries to determine if allegations can be formed; or</li> <li>(ii) appoints an investigator to commence an investigation to the stage where the information available is sufficient to form allegations.</li> </ul> <p>The enquiries or investigation are not to reach a finding.</p> <p><b>Continue to Step 5</b></p> | <b>OR</b> | <p><b>4C Disciplinary – Sufficient information</b></p> <p>The DM determines the information available is sufficient to form allegations.</p> <p><b>Continue to Step 6</b></p> |
|---------------|---|-----------|--|-----------|---|

**Step 5** Where the enquiries or investigation result in the forming of allegations – **Continue to Step 6**

Where enquiries of investigation establish that the matter is not disciplinary or the information available is insufficient to form allegations – **Continue to Step 12**

**Step 6** A Letter of Allegation (LOA) is provided to the Respondent.

**Continue to Step 7**

|               |   |           |   |
|---------------|---|-----------|---|
| <b>Step 7</b> | <p><b>7A</b></p> <p>The DM considers the response from the Respondent and</p> | <b>OR</b> | <p><b>7B</b></p> <p>The DM considers the response from the Respondent and</p> |
|---------------|---|-----------|---|

|                      |  |   |
|----------------------|--|---|
| <p><b>OR</b></p>     | <p>determines the response is sufficient to reach a finding based on:</p> <ul style="list-style-type: none"> <li>(i) admissions made; and/or</li> <li>(ii) no further information required</li> </ul> <p><b>Continue to Step 9</b></p> <p><b>7C</b></p> <p>The DM considers the response from the Respondent and determines that an investigation be undertaken and appoints an investigator. If the investigation has already commenced (step 4B(ii)) the matter may be referred back to the investigator or an alternate investigator appointed.</p> <p><b>Continue to Step 8B</b></p> | <p>determines the response provided is insufficient to make a finding and seeks:</p> <ul style="list-style-type: none"> <li>(i) more information or further clarification from the Respondent; and/or</li> <li>(ii) further inquiries from other sources</li> </ul> <p><b>Continue to Step 8A</b></p> |
| <p><b>Step 8</b></p> | <p><b>8A</b></p> <p>The DM seeks more information in writing from the Respondent, considers the response.</p> <p><b>Continue to Step 9</b></p>   | <p><b>OR</b></p> <p><b>8B</b></p> <p>The investigator submits the Investigation report to the DM for their consideration.</p> <p><b>Continue to Step 9</b></p>  |
| <p><b>Step 9</b></p> | <p>The DM, having considered all the available information makes a finding that, on the Balance of Probabilities either:</p>   |   |
|                      | <p><b>9A</b></p> <p>The suspected Breach of Discipline <u>other than</u> a s173(2) Breach of Discipline is substantiated (in part or in full) and proposes:</p> <ul style="list-style-type: none"> <li>(i) Improvement Action; and/or</li> <li>(ii) Disciplinary Action, which may include dismissal; or</li> <li>(iii) No further action be taken.</li> </ul> <p><b>Continue to Step 10</b></p>   | <p><b>OR</b></p> <p><b>9B</b></p> <p>The suspected Breach of Discipline is not substantiated and proposes improvement Action.</p> <p><b>Continue to Step 10</b></p>   |

|                |   |  |
|----------------|---|--|
| <b>OR</b>      | <p><b>9C</b><br/>The suspected Breach of Discipline is not substantiated and no further action is required</p> <p><b>Continue to Step 12</b></p>  | <p><b>9D</b><br/>The s173(2) suspected Breach of Discipline has been substantiated and proposes dismissal.</p> <p><b>Continue to Step 10</b></p> |
| <b>Step 10</b> | <p>The DM advises the Respondent in writing of the finding and any proposed Disciplinary Action and/or Improvement Action in a Letter of Intent (LOI). The LOI provides the Respondent with an opportunity to respond in writing to the proposed Disciplinary Action</p> <p><b>Continue to Step 11</b></p>  |  |
| <b>Step 11</b> | <p>The DM considers any response provided by the Respondent, including any mitigating or other relevant factors and advises the respondent in writing of the final decision and any Disciplinary Action and/or Improvement Action to be taken and implements the action (if required).</p> <p>The Employing Authority reports to the Department CEO of a finding of a Breach(s) of Discipline when the Disciplinary Action is dismissal, or when the Employing Authority is of the opinion that the finding of a Breach(s) of Discipline 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.</p> <p><b>Go to Step 12</b></p> |  |
| <b>Step 12</b> | <p>Document the outcome of the process and comply with all record keeping and reporting requirements.</p> <p><b><u>Process End</u></b></p>  |  |

## 8. Terms and Definitions

| Term   | Definition  |
|--|---|
| <b>Breach of Discipline Section 173(2) of the Health Services Act 2016</b> | <p>A Breach of Discipline arising out of disobedience to, or disregard of, a lawful order referred to in section 173(2) of the HS Act:</p> <p>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.</p> |
| <b>Complainant(s)</b>  | The person(s) making an allegation or complaint.  |
| <b>Decision Maker</b>  | The person occupying the nominated position authorised under the relevant Employing Authority’s Authorisations Schedule, to commence the Disciplinary Process and take Disciplinary Action.   |

| Term                              | Definition   |
|-----------------------------------|--|
| <b>Disciplinary Action</b>        | <p>Pursuant to section 6 of the HS Act in relation to a Breach of Discipline by an Employee, means any one or more of the following:</p> <ul style="list-style-type: none"> <li>(a) a reprimand;</li> <li>(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;</li> <li>(c) transferring the Employee to another health service provider with the consent of the Employing Authority of that health service provider;</li> <li>(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;</li> <li>(e) reduction in the monetary remuneration of the Employee;</li> <li>(f) reduction in the level of classification of the Employee;</li> <li>(g) alteration of the Employee’s scope of practice or duties, or both; or</li> <li>(h) dismissal.</li> </ul> |
| <b>Disciplinary Investigation</b> | <p>For the purpose of this Policy, a Disciplinary Investigation is a systematic process to discover the facts / particulars relating to the complaint /incident that may concern a Breach of Discipline and leads to the examination and analysis of the evidence.</p> <p>All Disciplinary Investigations must result in or lead to an outcome.</p>  |
| <b>Employee</b>                   | <p>Pursuant to section 6 of the HS Act an Employee means a person employed in a Health Service Provider and includes –</p> <ul style="list-style-type: none"> <li>(a) the chief executive of the Health Service Provider</li> <li>(b) a health executive employed in the Health Service Provider</li> <li>(c) a person employed in the Health Service Provider under section 140</li> <li>(d) a person seconded to the Health Service Provider under section 136 or 142</li> </ul>   |

| Term                       | Definition  |
|----------------------------|---|
| <b>Employing Authority</b> | <p>Pursuant to section 103 of the HS Act Employing Authority means –</p> <ul style="list-style-type: none"> <li>(a) in relation to a chief executive – the Department CEO;</li> <li>(b) in relation to a health executive employed in a health service provider –               <ul style="list-style-type: none"> <li>(i) if the health service provider is a board governed provider – the board;</li> <li>(ii) if the health service provider is a chief executive governed provider – the chief executive;</li> </ul> </li> <li>(c) in relation to a health service provider or an Employee (other than a chief executive or a health executive) in the health service provider, the chief executive or board on whom the power to employ or engage Employees is conferred.</li> </ul>  |
| <b>Enquiries</b>           | <p>For the purpose of this Policy, enquiries means seeking information from relevant parties to clarify the content of a complaint/incident/feedback, and/or determining the information available and relevant to progress an assessment of the matter pursuant to this Process. Enquires may include, but are not limited to:</p> <ul style="list-style-type: none"> <li>(i) obtaining further details from a Complainant or person providing the information; and/or</li> <li>(ii) speaking with a Complainant or person providing the information to gain a better understanding of the information that may be available; and/or</li> <li>(iii) speaking with other people who may have knowledge of the information or incident; and/or</li> <li>(iv) reviewing any relevant documentation available to the Employing Authority.</li> </ul> |
| <b>Improvement Action</b>  | <p>Pursuant to section 6 of the HS Act, improvement action, in relation to an Employee, 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:</p> <ul style="list-style-type: none"> <li>(a) counselling;</li> <li>(b) training and development;</li> <li>(c) issuing a warning to the Employee that certain conduct is unacceptable or that the Employee’s performance is not satisfactory; or</li> <li>(d) any other action of a similar nature.</li> </ul>  |
| <b>Respondent</b>          | <p>The Employing Authority’s Employee or Former Employee against whom an allegation or complaint has been made.</p>   |



| Term                   | Definition   |
|------------------------|--|
| <b>Serious Offence</b> | <p>Has the same meaning as section 80A of the <i>Public Sector Management Act 1994</i>:<br/>                     Serious Offence means —</p> <ul style="list-style-type: none"> <li>(a) an indictable offence against a law of the State (whether or not the offence is or may be dealt with summarily), another State or a Territory of the Commonwealth or the Commonwealth; or</li> <li>(b) an offence against the law of another State or a Territory of the Commonwealth that would be an indictable offence against a law of this State if committed in this State (whether or not the offence could be dealt with summarily if committed in this jurisdiction); or</li> <li>(c) an offence against the law of a foreign country that would be an indictable offence against a law of the Commonwealth or this State if committed in this State (whether or not the offence could be dealt with summarily if committed in this jurisdiction); or</li> <li>(d) an offence, or an offence of a class, prescribed under section 108 (see Offences Prescribed).</li> </ul> |

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|                     |  |                        |                 |
|---------------------|--|------------------------|-----------------|
| <b>Contact:</b>     | Director, Industrial Relations (C. Reid / J. Love) |                        |                 |
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