

**Guidelines**

# Disciplinary Process

These guidelines should be read in conjunction with our [Disciplinary Policy](#) and [Our Code](#), which outlines the principles we apply.

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# Summary of Disciplinary Process

These guidelines should be used in conjunction with advice obtained from District/Service Centre Human Resources (HR) and Employment Relations (ER) at any stage in the disciplinary process. Managers have an obligation to ensure disciplinary matters are dealt with appropriately, in a timely manner and respecting the need for confidentiality. All employees are expected to participate in good faith.

## **Initial Assessment**

If an issue is raised about an employee in relation to a potential breach of Our Code, an appropriate manager with guidance from HR should undertake an assessment of available relevant information to assess whether it requires further investigation.

## **Categorisation**

If established that we do have concerns the matter is referred to the appropriate manager, HR rep and Professional Conduct team member. The Professional Conduct team should be involved to assess if there is a potential criminal offending or if the allegation has resulted from a complaint against Police.

## **Criminal and Employment investigations**

If a matter is categorised as requiring a criminal investigation, we need to consider how and when to commence the employment investigation. Seek advice from ER when this occurs.

## **Restricted Duties, Suspension and Stand Down**

Restricted duties or suspension should only be considered where there is risk in allowing the employee to undertake their current duties or where it is necessary and appropriate to remove the employee under investigation from the workplace. Advice from HR must be sought prior to taking this step.

## **Drafting Allegations**

Notification of employment concerns or allegations should be made to employees as part of our good faith obligations - this should also include full disclosure of information that you have about the allegations.

## **Investigation – Initial steps**

If an employment investigation is required, an appropriate investigator should be appointed. This might be the Manager or for serious or complex matters another investigator may be appointed. The investigation should be scoped and planned to ensure the allegations are addressed and a decision on outcome can appropriately be made.

## **Investigation and Investigation Meeting**

The purpose of an employment investigation is to establish what conduct has occurred and whether that conduct is misconduct and the seriousness of it. The process includes meeting with the employee and their representative to obtain their version of events or explanation prior to finalising the investigation.

## **Making the decision**

Once the investigation is complete, and if misconduct has been established, a preliminary decision needs to be reached about what outcome or sanction may apply. Full consideration should be given to all available information. The employee needs to be informed of the preliminary decision and have the opportunity to comment accordingly either in person and/or in writing. Following consideration of any comments or submissions from the employee a final decision on outcome can be made.

### **Outcomes**

If misconduct is established there are two main outcomes available for consideration by the decision maker depending on the circumstances and conclusions reached as part of any employment investigation. These are a warning/final warning or dismissal.

Nothing prevents other appropriate outcomes that are not disciplinary sanctions, such as performance management or professional conversations.

Any employee aggrieved by any action taken in a disciplinary process may pursue the matter as an employment relationship problem. For further information see [Employment Relations Act 2000](#)

HR and ER are available to provide support and guidance throughout the disciplinary process

# Initial Assessment

## Purpose

To identify if there is an issue that Police needs to address or investigate. Alternatively there may already be enough information to determine that Police has concerns with the conduct and if a disciplinary process is appropriate.

## Who it applies to

In most circumstances a manager should be able to assess the matter with support and guidance from HR as required. If appropriate a more senior manager and HR may become involved and in potentially serious cases ER should also be notified and can provide additional support.

## What to consider

To undertake the initial assessment, available information that is relevant to the issue should be assessed and the following questions should be considered:

- Is there any substance to the matter or does Police need more information to decide whether or not there is substance to them?
- Is it necessary to notify and/or speak to the employee about the matter or speak with others involved to determine what the appropriate next step is?
- Is the alleged conduct a breach of Our Code, policies or employment agreements?
- What information is available for consideration
- What are the appropriate next steps

## Possible pathways

If the matter is assessed as...	then...
No conduct or performance concerns	No further action, however if the employee concerned has been notified and/or spoken to about the matter, notify them in writing
Potential misconduct or serious misconduct	The matter is referred to HR who will determine next steps in initiating an employment investigation. If there is also a criminal aspect work with PPC.
Performance issue	The manager will manage this and may seek advice from HR (see the performance management information).

## Confidentiality – need to know

This is an initial assessment only to establish if a disciplinary or other type of process is necessary or appropriate. A disciplinary process has not been commenced at this stage so it is critical the matter is handled sensitively and kept to a need to know basis.

# Categorisation

## Purpose

To determine whether allegations about an employees' conduct should be addressed, and if so, is it a performance matter, a potential breach of Our Code or a criminal matter. A formal categorisation may be required in situations where the matter is serious or complex in nature or the matter is potentially criminal. Consideration needs to be given to notifying the IPCA, if appropriate.

## Who categorises?

Generally a matter can be categorised between the manager and their HR representative.

If a matter is particularly serious or complex it should be categorised by the appropriate manager, HR and may include ER for guidance and Professional Conduct if there is a potential criminal offending or if the allegation has arisen from a complaint.

## Role of those categorising

- Review the information gathered to date and consider the nature of the situation and alleged conduct
- Determine if the matter needs to be investigated. It may be appropriate for the matter to progress straight to a disciplinary meeting with the employee where there is no requirement to gather more information (*for eg. Inappropriate internet usage where the manager has data related evidence*)
- Detail clear allegations (if they have already been identified, ensure they accurately reflect Police's concerns about the conduct) and specify how the alleged conduct does not appear to align with Our Code, policies and Our Values.

## What types of matters are considered?

- Internally identified matters that may involve a breach of Our Code or criminal offending
- Complaints that we have concerns about
- Notifiable incidents under section 13 of the Independent Police Conduct Authority Act or under the memorandum of understanding between Police and the IPCA.
- Significant Traffic matters

## What is not considered?

- Poor performance
- One off low level misconduct or mistakes that can be dealt with by the manager

## Types of possible outcomes

- No further action
- Performance management
- Employment investigation
- Criminal investigation

## Is the outcome an employment investigation? - what else should be considered?

- Is restricted duties, stand down or suspension appropriate? (See: [Restricted Duties, Suspension and Stand Down](#))
- Who should be the investigator? (See: [Investigation Initial Steps](#))

# **Criminal and Employment Investigations**

Where a matter leads to a criminal investigation, and possible misconduct is also identified, a separate employment investigation must be commenced with a separate investigator.

## **When to proceed with the employment investigation**

Aspects of the employment investigation which do not raise issues of self-incrimination may proceed where possible.

## **Requests to hold the employment investigation in abeyance**

Should an employee raise issues relating to the potential prejudice to their defence in the criminal proceedings and wish to have the employment investigation held in abeyance, then this must be given full consideration. Where this occurs, the National Manager: Professional Conduct and the National Employee Relations Manager must be consulted prior to any undertakings or decisions being notified to the employee.

Where employment matters have been held in abeyance, the National Manager: Professional Conduct and the National Employee Relations Manager must be consulted on when the employment matters may be recommenced.

Regardless of the outcome of the criminal justice process, Police will, where appropriate, undertake an employment investigation to determine whether there has been a breach of the Code of Conduct in relation to the same incident.

Any employment investigation that is not held in abeyance and is concluded prior to the end of the criminal justice process, cannot be revisited, regardless of the outcome of the criminal justice process.

# Restricted Duties, Suspension & Stand Down

Advice must be sought from Human Resources  
before the decision is made to place the employee on restricted duties or suspension

## Purpose

Restricted duties, suspension or stand down may be appropriate whilst an employee is under investigation to mitigate risks that may arise from the employee remaining in the workplace.

These risks may include:

- risk to the health and safety of the employee and others
- risk that the employee will interfere with the investigation
- risk that the employee will interfere with Police operations or disrupt police routines
- that the nature or gravity of the alleged conduct may prejudice the public interest or potentially damage the reputation of Police.

## Options

Police may:

1. allow the employee to remain in their current position, ensuring appropriate supervision is available;
2. move the employee onto restricted duties,
3. suspend the employee from duty
4. temporarily stand the employee down while an assessment of the situation is made

Unless there is an immediate and urgent need to remove the employee from their current position in order to assess the risks arising from having them present in the workplace, options 2, 3 and 4 should be exercised by putting a proposal to the employee and seeking their feedback on that proposal before making a decision.

**Suspension will be on full pay unless:**

- The employee is on leave without pay at the time of the suspension
- The employee refuses to engage with any employment investigation or otherwise obstructs the investigation process, and is given an opportunity to make submissions on the proposal to suspend without pay before any decision is made.

## Considerations

Police must consider:

- Whether or not the risks require urgent and immediate action, consult with HR if urgent immediate action is required.
- The duration and the need for regular reviews
- The conditions that will be imposed and ensure they are set out fully in the proposal and notice

## During the course of restricted duties or suspension

- Employees may be required to hand in their ID card and not be permitted to wear uniform or carry out any further police duty.
- Employees will ordinarily not be eligible to apply or be considered for promotion, transfer or any police advertised vacancy

- Already approved training will be put on hold. Employees on restricted duties may apply to the Deputy Chief Executive People, who will consider entry into or continuation in the framework on a case by case basis.
- Employees will not be eligible for external tertiary study assistance.
- Any existing approvals for secondary employment will be reviewed as soon as practical after suspension. Employees on restricted duties or suspension will not be allowed to undertake secondary employment during their police hours. They remain a Police employee under the Policing Act 2008 and are required to make themselves available for meetings.

## **Delegations**

Only those with delegated statutory authority can make the decision to suspend (link to [Delegations](#))

# Drafting Allegations

## Purpose

Clearly outlining the allegation to the employee is critical to:

- fully inform them of your concerns about their conduct
- explain why, if true, Police would consider the employees conduct unacceptable
- enable them to properly respond to the allegation

## Why is it so important for allegations to be clear?

- In keeping with good faith obligations, an employee has the right to know what they are alleged to have done
- They ensure Police's ability to determine an appropriate sanction and minimise the risk that any disciplinary outcome may be considered unfair and unjustified.
- It helps identify the appropriate course of action to take to investigate or address the matter. Clear and specific allegations are much easier to investigate.
- It assists the investigator to ensure all relevant facts are considered.
- If further information comes up during the investigation that gives rise to new allegations, or it becomes clear that the original allegations need to be replaced with new ones – it is easier to understand what has already been put to the employee.
- They ensure there is no need to update and reintroduce allegations to the employee, prolonging any investigation and subsequent disciplinary process.
- They ensure the investigation starts off with the correct focus and doesn't address aspects of the employee's behaviour or circumstances surrounding it that are irrelevant.

## Considerations

- The employee needs to know what it is we think they have done and why we have concerns about it. You don't need to set out all of the information at this stage though, provided the employee understands what it is you're concerned about and why.
- The nature of the allegation - whether the alleged conduct appears to have an element of intent which could mean it's potentially more serious than a mistake for example (although a mistake may still be investigated).
- How best to set out the allegations. For example, if there is more than one allegation, does it help to deal with them each individually, or are they better to be combined.

## Allegations should

- Include the specific time, date and location of the incident if possible
- Outlines what is understood to have happened
- Indicate the other person/people directly involved
- Explain why Police is concerned about the conduct

# Investigation Initial Steps

## Purpose

The purpose of an investigation is to establish and consider the facts of what happened and to assess whether the employees' actions were in breach of Our Code, Police's policies or employment agreements and Our Values. In planning the initial steps it may be determined that the allegations do not need to be investigated further (i.e. that we already have enough information to proceed straight to a disciplinary meeting with the employee)

## Who should be the investigator

- Someone objective and not involved in the matter – check for conflicts of interest.
- In many situations it will be appropriate for the employees' manager to be the investigator
- If the matter is of a serious or sexual nature a more senior manager may be appropriate
- If you have a choice of investigators, consider if there any specific areas of knowledge or skills that would be useful
- An external investigator may be appropriate but would normally only be utilised in exceptional cases, where additional independence is necessary or where the matter is complex or sensitive.
- The District Commander or National Manager with advice from their HR contact can determine who is best to investigate the matter.
- If the matter is subject to a criminal investigation, then there needs to be a separate investigator.

## Scope of the investigation

Planning the scope of the investigation at the beginning will help to ensure the investigation is appropriately comprehensive – everything is covered that is relevant to understanding what happened but ensures it does not get bigger than it needs to be and timeliness is maintained.

- Ensure there are clear allegations that accurately reflect Police's concerns and specifically how the alleged conduct does not align with Our Code, policies, employment agreements and Our Values – why do we have a problem with it. If this is not the case speak with the HR contact.
- How serious are the allegations? Keep in mind that the more serious the allegation, the more confident the decision maker needs to be of what has happened.
- Determine who is relevant to talk to – who is critical and relevant to the alleged matter, and what you will need to understand from them? At what point is it appropriate to speak to the employee?
- What other information do you need to gather and consider to establish the facts and understand what happened?
- What information needs to be disclosed to the employee?

## Remember

- Investigation approach is based on employment obligations of good faith
- Investigation should be conducted in a timely way
- Everyone is entitled to be treated with dignity
- Respect privacy and sensitive information – ensure information is kept on a need to know basis
- Ensure the employee knows what the allegations are and are provided with the information that we are relying on as an organisation to make the final decision.
- Keep an open mind - until the investigation has concluded there is no foregone conclusion.

# The Investigation

## Purpose

The purpose of an investigation is to establish and consider the facts of what happened and to assess whether the employees actions have been in breach of Our Code, Police's policies or employment agreements and Our Values.

## Your role as an investigator

- Provide unbiased independence – you need to complete the Conflict Of Interest declaration. ([link to conflict of interest form](#))
- To establish what happened, to analyse the facts and information gathered
- To establish if a breach of Our Code has occurred and if so, make a recommendation of whether it is misconduct or serious misconduct
- To keep an open mind throughout the investigation
- To consider credibility of witnesses and not rely on what other people say they were told
- Test the evidence in front of you if it is in dispute or very relevant to the outcome
- Remember the requirements of an employment investigation – it is not a criminal investigation

Remember - the more serious the allegation the more sure Police needs to be of what has

### Employment Investigation

- Expectation that the employee will participate and both employer and employee will uphold good faith obligations
- Relevant information is disclosed and the employee has time to consider it before commenting on it.
- Test is balance of probability, is it more likely than not that misconduct occurred? Not necessary to prove beyond a reasonable doubt. However we do need to be convinced that misconduct occurred, and have reasonable grounds to support that. The more serious the misconduct, or the possible consequences the stronger the supporting information and reasoning needs to be.

### Criminal Investigation

- No requirement to participate in good faith
- Investigative
- Don't necessarily disclose information and don't need to give them time to consider it
- Need to prove wrong doing beyond all reasonable doubt and require evidential sufficiency to meet that test.

## Interviews

- When engaging with any witnesses ensure they understand and maintain confidentiality and sensitivity.
- Stick to questions and discussion relevant to the matter or conduct alleged.
- Documentation is vital - take care to ensure your notes of the details and what was said are clear and comprehensive. If you want to digitally record the conversations the person needs to provide their consent for this.
- Ensure they are aware that their statement may be disclosed.
- If there is a conflicting information or statements consider interviewing other witnesses or providing rationale for taking one point of view over another.
- Plan and ask open ended questions and look to get a full understanding of the circumstances and seek clarity on any aspects of the events or witness account that is not clear.
- Verify the accuracy of your notes with the person interviewed.

# Investigation Meeting

## Purpose

- To hear from the employee regarding their view and explanation on the situation or conduct.
- To seek clarity or explore any aspect of the situation that is not clear or where witness accounts do not match.

## Before the meeting

- Ensure that the employee:
  - has sufficient notice of the meeting (link to template letter)
  - is aware of the allegations and concerns that you need to discuss with them
  - has received copies of all relevant information to be relied upon
  - has had the opportunity to bring along representation or support
- If the employee has indicated they have a representative then communication should be via them. When meeting with the employee the representatives role is to support the employee - not speak for them.
- Ensure you have an appropriate location booked prior to the meeting. Ensure the room has been booked for adequate time, sometimes meetings of this nature can take longer than expected. Ensure the room is also as private and quiet as possible.

Consider your investigation planning

## During the meeting

- Confirm that the employee is aware of and understands the allegations and concerns that you are going to discuss with them
- If you want to digitally record the conversation everyone in the room needs to be aware and consent to this.
- This meeting can be stressful for an employee and so if you need to take a break during the meeting then try to be flexible to accommodate this. Take a break if you need one too.
- Be honest and upfront with the employee if there are areas of concern or discrepancies or you don't believe they are being honest. This provides them the opportunity to correct any misunderstandings or provide further clarity and to respond to your views.
- Ask open ended questions and look to get a full understanding of the circumstances and utilise probing questions to seek clarity on any aspects of the events or witness account that is not clear.
- Check what other enquiries the employee thinks you need to make.

Stick to questions and discussion relevant to the matter or alleged conduct

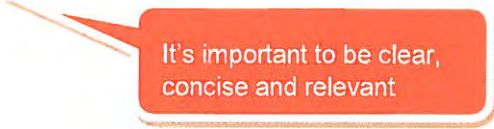
## After the meeting

- Ensure you review your documentation to ensure that you have captured everything discussed while it is fresh in your mind.
- Verify your meeting notes with the person interviewed
- Depending on any new information that has come to light you may need to meet with the employee or other people with relevant information a second time. If you gather any new information or evidence, be sure to give the employee a copy and the opportunity to comment on it.

## The investigation report

A concise and clear investigation report should be completed in a timely manner and should:

- Articulate the facts and relevant circumstances of what happened clearly
- Consider if the allegations are substantiated or not and explain why
- Provide the reasons why the behaviour does not align with the relevant policies, employment agreements and Our Code
- Make a recommendation based on a considered assessment as to level of seriousness (no breach, misconduct, serious misconduct) which provides the decision maker with a fair, factual and unbiased view.

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It's important to be clear,  
concise and relevant

- Send the draft report to the employee under investigation for their comment.
- Where the matter is viewed as serious misconduct, send the draft report to ER for review.
- Where the matter is also subject to an Independent Police Conduct Authority investigation (Category 1 or an identified Category 2 case), send the draft report to the Independent Police Conduct Authority investigator for their comment.

# Making the Decision

## Who makes the decision on sanction?

The table below outlined the delegation levels for decision makers. Consideration needs to be given to any conflict of interest, and appropriate judgement needs to be used when a potential conflict exists.

Delegations	Decision maker
Disciplinary warning	District Commander or National Manager and above. This may be delegated to Inspectors or equivalent level managers. Decisions are made in consultation with his or her manager and HR.
Dismissal	District Commander, General Manager: Training, National Manager: Communication Centres and SITE, Assistant Commissioners and above, in consultation with his or her manager and HR.

## Role

Your role as the decision maker is to step back and take a view from the organisations' perspective and consider whether misconduct has occurred in relation to the guidance in Our Code, and decide on an appropriate sanction. As outlined in Our Code the factors you should consider are:

- The nature and the circumstances
- Intent - did the employee knowingly make decisions or act out of line with Our Code, Our Values and policies?
- Their position, duties and responsibilities
- Their ability to fulfil their duties and responsibilities given the conduct
- The impact on the organisation and relationships
- The impact on the trust and confidence Police has in the employee
- How similar behaviour has been treated in the past.

Take advice from HR or ER at each decision point as necessary

Remember - the more serious the allegation the more sure you need to be as the decision maker of what has happened

## Two stages to making the decision

### 1. Preliminary decision

As the decision maker you need to consider all the facts and relevant information, the preliminary decision is the outcome you are leaning towards. This includes:

- The investigation report and any attached information and witness statements
- The investigation meeting notes with the employee and any explanation regarding the conduct
- Any submissions made by the employee or their representative
- Any available information on how similar matters have been treated

Once you have reviewed this information and have considered an appropriate outcome, the employee then needs to be notified of your preliminary decision and the reason for it,

## **2. Final decision**

- Prior to making your final decision, the employee is entitled to the opportunity to comment on your preliminary decision either in person and/or in writing.
- You need to consider any comments from the employee or their representative on the preliminary decision including any alternatives proposed.
- Make further enquiries if you need to or if any new information has come to light
- Respond to any comments or issues raised by the employee

At this stage you can then make your final decision. This final decision must be in writing to the employee.

## **3. Completion**

At the conclusion of an employment investigation, if the matter was initiated because of a complaint or notification to the IPCA a brief memo should be sent to the PPC manager to ensure the IPCA and complainant can be advised of the end result. It should include in brief, the nature of the allegation, the finding and outcome.

# Outcomes

## Options

In your role as the decision maker you need to decide based on the seriousness of the conduct and the appropriate sanction.

Outcomes such as no further action, performance management and professional conversation are available for findings of low level or no misconduct. These are not disciplinary outcomes.

For the main part there are two main types of disciplinary outcomes:

- Warning / Final warning
- Dismissal

If there are other additional outcomes under consideration as a consequence of the disciplinary process (e.g. a delay to awarding long service medals, revocation of good conduct medals, ineligibility for a CSI, change of duties, removal from specialist squads or demotion etc.) then further advice must be sought from HR or ER.

## Warnings

A warning serves to reiterate the conversations that have been had through the disciplinary process with the employee, outlining the conduct that Police finds unacceptable and clarifying the level of conduct expected in the future.

There are two levels of warning - warning and final warning however, for serious matters a final warning may be appropriate as a first response.

- **Warning:** generally for misconduct
- **Final warning:** generally for serious misconduct matters or where previous warnings have already been issued. A final warning is a step away from dismissal and could be considered a last chance for an employee to demonstrate the expectations of Police.

A warning must always be recorded in writing, it is effective from the date it is issued, and should:

- Specify the period the warning is effective for
- Detail future action or behaviour expectations
- Include any other elements considered appropriate as mentioned above
- Be placed on the employees personnel file - once a warning has expired, it remains on the personnel file.

## Dismissal

Once all the information has been reviewed, as the decision maker you can decide and in consultation with your manager and ER, that dismissal is an appropriate outcome. This is appropriate when you assess the conduct is such that Police can have no trust or confidence in the employee for example in instances such as:

- Further relevant misconduct occurs when the employee is on a current final warning
- There is a finding of serious misconduct warranting dismissal following an investigation
- There are repeated performance issues which have not been remedied through a performance management process which has led to the disciplinary process

ER can provide support and guidance in relation to this assessment.

As the decision maker you will also need to give consideration to alternatives to dismissal, including any alternative proposed by the employee.

### **Summary dismissal**

If the decision is made to dismiss, in most cases of dismissal notice will be provided however, in the most serious cases summary dismissal may be appropriate and the employee will not be required to work out their notice period.

