MISCONDUCT

Procedural Guidelines for Dealing with misconduct as a Disciplinary Matter and the Taking of Disciplinary Action

1 Purpose

These Procedural Guidelines are issued for the purpose of dealing with allegations of misconduct as a disciplinary matter and the taking of disciplinary action against an employee of the Ambulance Service under Part 3 of the Ambulance Services Regulation 2005 (the Regulation).

The Guidelines also set out the process related to taking remedial action instead of disciplinary action where appropriate and reasonable to do so.

2 Application and Effect

The Procedural Guidelines apply to employees of the Ambulance Service who are defined to mean persons employed in staff or senior executive positions, including those on probation.

If the Chief Executive or delegate decides to deal with an allegation of misconduct as a disciplinary matter, it must do so in accordance with the Procedural Guidelines. The Procedural Guidelines in relation to Misconduct are mandatory and legally enforceable.

2.1 Procedural Fairness

The Procedural Guidelines are subject to the rules of procedural fairness. Throughout the disciplinary process, the principles of procedural fairness must be followed. The employee must be advised in writing of the alleged misconduct. This requires specific details to be put to the employee:

- The employee must also be advised that the allegation, if treated as a disciplinary matter, may if proven, result in disciplinary action with a range of penalty options from a caution or reprimand to dismissal.

- The employee must have the opportunity to respond to the allegation.

- An employee found to have engaged in misconduct shall be given a separate opportunity to make submissions in relation to any proposed disciplinary action to be taken, including an interview with the Chief Executive.
During any interview or inquiry that may be held in relation to the allegation, the employee may be represented by a solicitor, barrister or agent. All steps in the process are to be completed in a timely and expeditious fashion.

3 **Delegation - Chief Executive**

The Chief Executive is to deal with alleged misconduct by an employee.

The Chief Executive may delegate the function to deal with allegations of misconduct as a disciplinary matter.

In delegating the authority to deal with a disciplinary matter, the entire function including the tasks of determining whether the employee has engaged in misconduct and that of imposing the relevant disciplinary action or otherwise, should be delegated to the same person.

In these guidelines, a reference to the ‘Chief Executive’ is to be read as to include a delegate.

4 **Timeframes**

The disciplinary process is to be complied within a timely and expeditious fashion.

As a guide only, uncomplicated matters should generally be concluded after 10 to 12 weeks from when the Chief Executive receives the initial allegation.

Irrespective of the complexity of the matter, after 12 weeks from the receipt of the allegation, the Chief Executive is to advise the employee the subject of the allegation/s in writing, (see Sample letter 10) of the anticipated time for the current stage to conclude and outline the reasons for any delays to date or anticipated delays. Reasons for a delay may include:

- the complexity of the matter
- exceptional circumstances
- a request for delay by an external investigating authority
- availability of the employee.

Similar advice is to be sent each subsequent 6 weeks after the first advice (see Sample letter 11).

5 **Terminology**

Disciplinary action means the penalty options defined at section 15(1) of the Regulation, namely, any one or more of the following:
• dismissal from the Ambulance Service,
• directing the employee to resign, or to be allowed to resign, from the Ambulance Service within a specified time, if the employee is on probation—annulment of the employee’s appointment,
• except in the case of a senior executive officer—reduction of the employee’s classification or position,
• a caution or reprimand.

Disciplinary process means the process by which allegations of misconduct are dealt with as a disciplinary matter.

Remedial action means the options defined at section 15(1) of the Regulation to deal with an allegation of misconduct as a remedial matter, namely:

• counselling,
• training and development,
• monitoring the employee’s conduct or performance,
• implementing a performance improvement plan,
• the issuing of a warning to the employee that certain conduct is unacceptable or that the employee’s performance is not satisfactory,
• transferring the employee to another position in the Ambulance Service that does not involve a reduction of the employee’s classification or position,
• any other action of a similar nature.

The “remedial” process means to adopt the remedial method with respect to the management of the matter, and to deal it by utilising one of the above outcomes.

Unsatisfactory professional conduct in relation to an ambulance officer includes any of the following (Clause 15, Part 3)

• any conduct that demonstrates that the knowledge, skill or judgment possessed, or care exercised, by the ambulance officer in clinical practice is significantly below the standard reasonably expected of an ambulance officer of an equivalent level of training or experience

• the ambulance officer’s failure without reasonable excuse to comply with a direction by the Ambulance Service to provide information with respect to a complaint under Part 3 of the Ambulance Services Regulation 2005 against the ambulance officer

• any other improper or unethical conduct relating to the ambulance officer.

6 Misconduct

Misconduct is specifically defined in the Regulation to include, but not be limited to the following:
• A contravention (whether by act or omission) of any provision of the Act or the Regulation
• Unsatisfactory professional conduct
• Performance of duties in a manner justifying taking disciplinary action
• Taking detrimental action (within the meaning of the Protected Disclosures Act 1994) against a person that is substantially a reprisal for the person making a protected disclosure within the meaning of that Act.
• Taking any action against another person that is substantially a reprisal for an internal disclosure made by that employee.

6.1 Misconduct – employee not on duty or prior to appointment as employee

Misconduct may relate to an incident or conduct that happened while the employee was not on duty or before the employee was appointed to his or her position. In determining whether such conduct should be dealt with as a disciplinary matter the Chief Executive should have regard to the objects of Part 3 of the Regulation, that is:

• To protect the health and safety of the public by providing mechanisms to ensure that employees of the Ambulance Service are fit to perform their duties,
• To ensure that the public interest is protected,
• To maintain appropriate standards of conduct and work-related performance in the Ambulance Service;
• To protect and enhance the integrity and reputation of the Ambulance Service.

The Chief Executive should consider:

• Whether there is a relevant connection between the conduct and the employee’s position and duties
• the context of the incident
• the ‘age’ of the incident or offence
• whether the incident was considered fundamental to the decision to employ /promote the employee
• the employee’s employment record and history
• whether remedial action is more appropriate
• whether there are other options which might be applied such as referral to Employee Assistance Providers, alcohol and drug rehabilitation and anger management counselling.
6.2 Misconduct – employee resigns or retires prior to action being taken

Disciplinary action arising from misconduct can still be taken even though the employee has retired or resigned prior to the action being taken.

Whether to pursue action after an employee has resigned or retired depends on a number of factors such as:

- the seriousness of the allegation or incident
- the practicality of maintaining contact with the former employee and
- the cost/benefit to the Service of pursuing the matter.

Taking disciplinary action does not affect the former employee’s retirement or resignation or the relevant benefits and liabilities.

6.3 Protected Disclosure

A protected disclosure is a disclosure made within the meaning of the Protected Disclosures Act 1994.

The object of the Protected Disclosures Act 1994 is to encourage and facilitate a disclosure, made in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector. In this regard, s20 (1) of that Act makes it a criminal offence to take “detrimental” action against another person that is substantially in reprisal for the other person making a protected disclosure. An offence against s20 (1) of the Protected Disclosures Act 1994 constitutes misconduct and is specifically provided for at s45 of the Act.

Detrimental action means action causing, comprising or involving any of the following:

- Injury, damage or loss;
- Intimidation or harassment;
- Discrimination, disadvantage or adverse treatment in relation to employment;
- Dismissal from, or prejudice in, employment; and
- Disciplinary proceeding.

It is important to understand that the onus of proof in relation to any proceedings for an offence against s20 requires the defendant to prove that detrimental action taken against a person was not substantially in reprisal for the person making a protected disclosure. This is a reversal of the usual standard, which requires the prosecution to prove the case.
6.4 Internal disclosure

An internal disclosure means a disclosure made by an employee of the Ambulance Service regarding alleged misconduct by another employee of the Ambulance Service. It is a specific ground of misconduct to take any action against another employee that is substantially in reprisal for that employee making an internal disclosure.

7 External notification requirements

The Chief Executive is to notify as required under law or policy, specified external agencies and Departments of allegations made, and disciplinary processes taken, in relation to certain behavior, incidents and conduct.

In general, external notification needs to be made when any action is taken to investigate matters that have been the subject of allegations involving any of the following matters:

- Child abuse
- Sexual misconduct which involves children, is directed at children, or takes place in the presence of children
- Acts of violence committed by the employee in the course of employment which involves children, is directed at children, or takes place in the presence of children
- Certain criminal offences
- Corrupt conduct.

Appendix A contains an overview of external reporting requirements

8 The process comprises of five stages:

8.1 Complaint or concern raised
8.2 Assessment
8.3 Investigation
  8.3.1
    - Who conducts investigations
    - suspension or alternative duties
    - absence of employee
    - confidentiality
    - advising an employee of an investigation
  8.3.2 Interviews
    - employee subject of investigation
    - others
8.3.3 Opportunity to respond to allegations

8.3.4 Investigation Report

8.4 Initial decision

8.5 Implementation of final decision

8.1 An allegation may arise from a number of sources, including:

- consumer complaints
- clinical reviews
- management referrals
- protected disclosures
- staff grievances
- external sources such as the Independent Commission Against Corruption or the NSW Ombudsman.

Information should be taken in writing. If the person making the allegations or reporting the behaviour or incident is not in a position to put his/her issues and evidence in writing, an appropriate senior officer should conduct an interview with the person with a view to producing a statement. Any evidence that is known to the complainant or manager/supervisor, including dates, times and potential witnesses should be included.

When an allegation of misconduct is made to the Chief Executive, or where he/she becomes aware an employee may have engaged in misconduct, the Chief Executive may decide:

- to deal with the allegation as a disciplinary matter, in which case these Procedural Guidelines must be complied with
- to take remedial action
- to both dismiss the allegation and decide to take no further action against the individual but take general management action.
- to take no further action in relation to the allegation or incident,
- to dismiss the allegation

Similarly, notwithstanding a decision to take remedial action, if it appears that the employee also engaged in other misconduct during that period, the Chief Executive may deal with the alleged misconduct as a disciplinary matter.

8.2 Assessment

In deciding whether to deal with an allegation by remedial action or as a disciplinary matter, the Chief Executive should assess the matter and have
regard to the facts, seriousness and nature of the particular incident. This may be able to be done solely on the paperwork provided to the Chief Executive. Alternatively, it may involve a preliminary investigation or review of the facts.

This preliminary assessment is not the main investigation and, if undertaken, should be limited to obtaining sufficient information to allow the Chief Executive to determine what course of action to take. It is not mandatory to have a preliminary investigation or review.

If remedial action is taken the employee may elect to place his or her comments in relation to the facts and/or the remedial action on their personnel file.

Consideration should be given to:

- whether it is an isolated incident
- the seriousness of the incident
- the circumstances surrounding the incident
- the employment history of the employee
- the status of and position held by the employee
- the reputation of the Service and the public sector
- the impact on the organisation and other employees

8.3 Investigation

The Chief Executive shall appoint a suitably experienced and qualified person to prepare an investigation report in relation to the allegations (see Sample letter 2). The conduct of an investigation may vary depending upon the particular case and its circumstances and the complexity or otherwise of the issues, incidents and facts of the matter.

This step, like all in the process should be completed in a timely and expeditious fashion. Any delays in the process should be appropriately recorded and monitored by the Service.

An investigation of the allegation shall not include a formal hearing involving the calling and cross-examination of witnesses. Any investigation conducted into alleged misconduct may include:

- A review of documentary material
- Inspection of the workplace or site of incident
- Interviewing all relevant persons, including the employee, connected with the allegation or incident
- Taking statements from the employee or other relevant person.

Where an investigation needs to be deferred as the result of an investigation by external authorities, such as the ICAC, NSW Ombudsman, or the Police,
the employee may continue working, be moved to another job or suspended, in accordance with the Regulation (see below):

Where such deferral occurs, as much of the investigation as possible should be completed. However, it is usually appropriate to await the outcome of court proceedings.

8.3.1 **Who conducts the investigation?**

The investigation shall be conducted by persons who:

- Understand the investigation process
- Have no direct involvement with the matter subject to investigation – that is, are free from actual or perceived bias
- Are not or perceived to be biased because of some personal interest in the matter by reason of personal involvement or friendship with the employee
- Are objective and do not prejudice the matter.
- Are suitably experienced and qualified.

When considering who should conduct the investigation, the following is relevant:

- the nature of the allegations/incidents;
- the experience of the officer which enables him/her to undertake an investigation;
- the resources required during the investigation;
- any specialist knowledge which may be required;
- the benefit of engaging an external investigator.

The Chief Executive should not have any role in the disciplinary process including the conduct of investigation if he/she is the source of the initial allegation against the employee.

The person who is the source of the allegation should not have any involvement in the disciplinary process as either an investigator or in exercising the functions of the Chief Executive.
Suspension or alternative duties

Decisions in relation to this issue are to be based on the facts, nature and seriousness of the matter in the context of the employee’s position. Consideration should be given to the appropriateness of the employee continuing in their usual duties. If inappropriate to do so the first option is to place the employee on alternative duties or duties at another location (see Sample letter 1).

Clause 23 of the Regulation allows for suspension from duty with or without pay if:

- an allegation that an employee has engaged in misconduct is being dealt with as a disciplinary matter, or
- an employee is charged with having committed a serious offence.

Where it is inappropriate for the employee to be suspended, Premier’s Memorandum 94-35 (see Appendix B) sets out the circumstances in which suspension with pay or without pay is appropriate. A decision to suspend without pay will only be made in exceptional circumstances.

Please note:

- All decisions in relation to suspension should be reviewed at least every 30 days.
- The position of a suspended employee shall not be permanently filled while they are on suspension.
- If the employee is a shift worker on a permanent and regular basis or has worked shift work regularly for the previous 3 months, and has been:
  - suspended, or
  - allocated alternative duties pending the outcome of a criminal or misconduct investigation, or

Suspension is not a penalty. It is a protective measure whilst the disciplinary process is being undertaken.
• placed on duties which resulted in a loss of shift penalties and other allowances, and

• subsequently advised that there is no finding of guilt against them; then the employee is to be reimbursed for the loss of shift penalties and other allowances that relate to work or conditions, that were withheld whilst on suspension or transfer to alternative duties. (Refer NSW Health Circular 96/48- Appendix 5)

Absence of employee

The Investigation may only be conducted in the absence of the employee if:

• The employee fails to attend an interview; and
• there are no reasonable circumstances mitigating the failure of the employee to attend an interview; and/or
• efforts are made to ascertain why the employee did not or does not want to attend an interview and are documented.

Absence of an employee does not present investigation confidentiality

Confidential information obtained during the investigation shall not be disclosed except for the purpose of the investigation or any action arising from the investigation, or for the purpose of obtaining advice from the union and/or a legal representative. This is to protect the integrity of the process and the privacy rights of the persons concerned.

Similarly, all witnesses, including the employee the subject of the investigation and his/her representative, should be advised that they should not discuss the matter with any person other than the investigator or their legal representative or a union representing the interests of the employee.

Advising an employee of an Investigation

Generally, once the Chief Executive decides that alleged misconduct is to be dealt with as a disciplinary matter, the employee will be advised, in writing, of the allegation/s (details as known at that point in time subject to concerns as outlined below) as soon as practicable, having regard to the nature and circumstances of the matter. Such advice should generally be done within a few days of an investigator being appointed (See Sample letter 4).
It is to be made very clear to the employee that the allegation/s are being treated as a disciplinary matter that may result in disciplinary action being taken with the severest penalty being dismissal.

The employee should be provided with information on:

- his/her right to formally respond to the allegations, prior to any further action being taken
- his/her right to have representation at any interviews
- where considered necessary, the provision for him/her to have an interpreter present at any meetings
- the support services available to him/her (eg an Employee Assistance Program).

Where the Chief Executive is reasonably concerned that the nature of the allegation or circumstances surrounding the matter may lead to the destruction of evidence, harassment or victimisation of suspected complainants, it may be appropriate that the allegation/s is not provided at first instance.

8.3.2 Interviews

Interviews are an important part of preparing an Investigation Report. A person conducting an investigation may chose to conduct a formal (fact finding) interview as part of the investigation in order to elicit information from a witness or a person under investigation. Alternatively, the person conducting the investigation may chose to take a written statement.

An interview should not be confused with the process of allowing the employee who is the subject of an investigation to formally respond to the allegation of misconduct

An interview is an optional procedure designed to gather further information. Allowing an employee to respond to an allegation of misconduct is a separate process which may be conducted either by calling for oral or written submissions, it cannot be dispensed with as is required by clause 17(2)(b) of the Regulation.

Employee the subject of allegation

If the employee the subject of the allegation is to be interviewed, the interview requirements set out in these guidelines are to apply. The employee is also to be advised that the allegation, if treated as a disciplinary matter, may, if proven, result in disciplinary action with the severest penalty being dismissal. The employee is also advised that anything said at the interview may be taken into
consideration by the Chief Executive in deciding if the employee has engaged in misconduct.

The employee should be advised in writing of what action has been determined.

Prior to providing the employee with an opportunity to respond to the allegations under clause 17(2) (b), a fact finding interview may be conducted with the employee (see Sample letter 4b).

Other interviews

Other people such as a witness to alleged misconduct may have to be interviewed as part of the investigation process (see Sample letter 3).

Witnesses should be advised that the information they provide may be disclosed to the person the subject of the investigation. The interview may be sound recorded with the knowledge of the interviewee.

Notification and advice of a fact finding interview

An employee facing an allegation of misconduct, called to an interview as part of the investigation must be provided with:

- At least 24 hours notice of the interview.
- Notification of the time, date, location, nature and purpose of the interview and the names and titles of the employees conducting the interview.
- A copy of the Procedural Guidelines.
- The allegations to be discussed at the interview (as best known at this point in time).
- The opportunity to make comment on any relevant issue, and to give his or her version of the relevant event(s).
- Advice that an observer (who may be a union representative or a practising legal practitioner) may be present.

If the matter concerns a Protected Disclosure the identity of the person who made the disclosure is only to be disclosed if it is essential having regard to the principles of procedural fairness – that is, essential for the person to be able to respond to the allegations.
It is not appropriate to have a representative or observer who has been involved in the matter, or whose availability would mean that an unreasonable delay in the matter proceeding will occur. The employee should be advised that the role of an observer is not as an advocate. The observer should be told the name of an employee to whom any complaint of unfairness may be made. The employee may nominate a person, including a solicitor, barrister, union representative or agent to speak on his or her behalf or have a signing or language interpreter, if the employee has a hearing impairment, English is their second language and/or the employee's communication difficulties warrant this consideration.

- Advice that a copy of the record of interview/statement will be provided for signature and an indication of when it will be made available.

**Interview Procedures**

**Sound recording / interviews**

Regardless of the nature of the interview (fact finding/witness interview or a response under clause 17(2)(b)), interviews may be sound recorded, with the knowledge of the person being interviewed and conducted by the investigators appointed to conduct the investigation. Where possible a copy of the tape or disc should be provided to the employee interviewed.

Advise the witness that the interview will be recorded and the method that will be used. Sound recording may be suspended temporarily and replaced by note taking if particular circumstances warrant it and it has been requested by the employee.

**General**

The interviews must be conducted in private.

The investigators have the responsibility to be fair, courteous and impartial.

**Commencing the interview**

The investigator must:

- Advise the witness of the purpose of the interview.
- (Where applicable) explain the role of employee's representative.
(Where applicable) advise the employee/representative that if they wish to have a private discussion they should request a halt to proceedings.

Advise the employee that he/she will have an opportunity to fully respond to the questions asked and to provide comments with respect to relevant issues, which includes giving their version of the events in question.

Advise the employee that it is in their best interest to answer questions and have their version of events recorded.

During a section 17(2)(b) interview

The investigator must:

- Put each allegation/incident to the employee and invite him/her to respond
- Interview the person in relation to his/her response or other matters in relation to the allegation
- Avoid accusatory or intimidatory language or tone of voice
- Avoid making comments about the answer given
- Not indicate personal views or opinions or those of other people
- Ask the employee if there is anything else they wish to say.

During a fact finding or witness interview

The investigator should

- Invite the witness to give his/her version of events
- Avoid accusatory or intimidatory language or tone of voice
- Avoid making comments about the answer given
- Not indicate personal views or opinions or those of other people
- Ask the witness if there is anything else they wish to say.
- Ask the witness if there is any other document or material they should inspect.
- Ask the witness if there is any other person they investigator should speak to.

Concluding a section 17(2)(b) interview

Investigators should not indicate that any view has been formed.

Investigators must advise the employee:

- That following the completion of the investigation that a Report will be provided to the Chief Executive.
A decision will be made by the Chief Executive based on the facts and available information contained in the Investigation Report.

That the employee will be notified in writing of the outcome and where misconduct is established, the proposed action to be taken. Subject to any legislative or confidentiality requirements precluding disclosure, if disciplinary action is being considered the employee will receive a copy of the Investigation Report.

If the matter concerns a Protected Disclosure, the identity of the person who made the disclosure is only to be disclosed if it is essential having regard to the principles of procedural fairness – that is, essential for the person to be able to respond to the allegations. If the matter does not concern a Protected Disclosure the identity of the person who made the disclosure should be revealed.

That he/she will be given an opportunity to make submissions to the Chief Executive in relation to any proposed action before it is implemented – the submission may also include comments on the Investigation Report.

That, prior to a decision on penalty, he/she may request an interview with the Chief Executive accompanied by a representative.

When a copy of the record of interview/statement will be available for signature.

Investigators must advise the witness:

- When a copy of the record of interview/statement will be available for signature.
- That the matters discussed at interview are confidential and should not be discussed with any other person.
- That following the completion of the investigation that an Investigation Report will be provided to the Chief Executive.

Obligations post interview

Following interview, the investigator/s must:

- Prepare the record of interview/statements as soon as possible.
- Provide the employee and other witnesses with a copy of his/her record of interview/statement and invite him/her to read and sign all copies.
• Any issues about the content of the record of interview/statement should be discussed and resolved between the parties. The record of interview/statement should be altered to reflect the agreed changes.

• If the record of interview/statement is not agreed to and if the issues cannot be resolved, the employee or witness should be asked to submit a statement outlining their reasons for not signing the record of interview/statement. The investigators should also record their reasons for not agreeing to requested changes. These reports must be included in the Investigation Report.

Victimisation or harassment

If a witness informs the investigator that he/she is being victimised or harassed by the employee who is the subject of a misconduct investigation, The investigator should:

• inform the witness that they are not required to speak to the employee and that the alleged victimisation/harassment should be reported to the Chief Executive,
• not attempt to inquire into any such allegation because it is a separate allegation and requires independent consideration, and report the allegation in writing to the Chief Executive, or other senior employee delegated to such a role, so that the complaint can be dealt with.

8.3.3 Opportunity to respond to the allegations as required by clause 17(2)(b) of the Regulation

Where a response is to be made orally, the employee is provided with a letter from the investigator detailing the nature of the allegations and advising the time and place of the proposed interview (usually at least 7 days – the period will depend however upon the complexity and details of matter).

Where a written response is called for, a minimum of 7 to 10 days is given. Again, the period will depend on the complexity and details of the matter.

The letter (see Sample letter 5) must:

• specify in detail the issue/s alleged – this requires clarity with sufficient detail to enable an accurate response.

• give such relevant information that will fairly enable the employee to respond – this might include the date, time, location, and details of the alleged incident.
The letter may include any other documents and materials that may assist the employee under investigation to respond to the investigation, providing that the provision of such documents does not compromise the investigation, or the privacy, confidentiality or safety of any person who may have assisted the investigation.

In the case of an interview, the employee is to be advised that he/she may also bring any written submissions to the interview and is to be given 7 days (or longer in complex matters) from the interview to provide any further written submissions. The employee is also advised that he/she may bring an observer or representative.

Where the employee requests an extension of time, the investigator may agree to any extension of time which is reasonable, having regard to the overall circumstances of the case and the need to ensure procedural fairness.

8.3.4 The Investigation Report

The Investigation Report shall:

- consolidate all the material gathered during the investigation process.
- detail the allegation/s involving the employee
- outline the investigation process followed
- in relation to each allegation, set out the investigator’s view on the relevant facts as to whether, on the balance of probabilities the person has engaged in the alleged conduct, referring to material upon which the view is based
- if appropriate, indicate a view whether the matter should not continue to be treated as a disciplinary matter, including any comment on systemic or operational matters that need to be addressed
- include all relevant attachments, such as correspondence with the employee, disciplinary and other interviews, and witness statements.
- Be signed by the investigator(s).

The Chief Executive will be provided with a copy of the Investigation Report within the time specified. The Chief Executive has the discretion to extend the time required, having regard to the nature of the investigation, but it must be provided in a timely manner.
Further Inquiries following receipt of the Investigation Report

The Chief Executive may, for any reason (including matters raised by either the employee the subject of the allegation or the Investigator in the Investigation Report) decide to undertake further inquiries.

However, if further inquiries result in further allegations of misconduct, and the Chief Executive decides these allegations are to be treated as a disciplinary matter, the steps outlined above are to apply.

8.4 Initial Decision

In forming an opinion as to whether the employee has engaged in misconduct, the Chief Executive may only take into account those matters disclosed in the Investigation Report. The Chief executive may seek specialist advice (including professional and legal advice) prior to forming an opinion, but any final opinion must be the responsibility of the Chief Executive.

If the Chief Executive is of the opinion that the person has engaged in misconduct then consideration will be given to an appropriate disciplinary action, or alternative actions.

The employee is to be advised in writing of the opinion of the Chief Executive as to what disciplinary action, if any, is being considered. The employee will also be advised that he/she has 14 days to make a submission in relation to the disciplinary action the Chief executive is considering taking and that they may request an interview with the Chief executive.

Where the employee requests an extension of time, the Chief Executive may agree to any extension of time which is reasonable, having regard to the overall circumstances of the case and the need to ensure procedural fairness.

Implementing Decision Where Misconduct is not made out or it is determined no misconduct has occurred

If the Chief Executive has determined that the allegation/s of misconduct is not made out or that misconduct has not occurred, given the facts of the particular case, the employee must be notified in writing of that opinion (see Sample letter 6). The materials in relation to the matter including the Investigation Report are to be removed from any records or files held as to the individual employee (personnel files) but such records should be kept elsewhere. They should not be destroyed.

In determining whether the employee is to be subject to disciplinary action, remedial action, or no action, the Chief Executive should not adopt a policy
that a particular conduct will always attract the same punishment. Advice
may be sought from specialists (professional and legal) prior to making a
determination.

A Chief Executive is not obliged to impose a disciplinary action penalty on an
employee who has been found to have engaged in misconduct.

Matters outside the Investigation Report such as employment records,
previous warnings and disciplinary matters may be taken into account in
relation to deciding whether disciplinary action is appropriate and if so what
action should be taken, where it is determined misconduct has occurred.

Engaged in Misconduct – remedial action

If the Chief Executive is of the opinion the employee has engaged in
misconduct but that remedial action is appropriate given the facts of the
particular case, the employee must be notified in writing of that opinion with
details of the misconduct and the remedial action to be taken (see Sample
letter 7).

The employee is to be given the opportunity to make a submission if the
proposed remedial action is a transfer to a different workplace location in the
State.

Misconduct proven – no further action

If the Chief Executive is of the opinion the employee has engaged in
misconduct but that no action is to be taken given the facts of the particular
case, the employee must be notified in writing of that opinion with details of
the misconduct and the decision to take no action (see Sample letter 7).

Employee engaged in misconduct - disciplinary action being considered

If the Chief Executive is of the opinion that an employee has engaged in
misconduct and disciplinary action is being considered, then the Chief
Executive shall, prior to notifying the employee of this fact, give consideration
as to what is the most severe in the range of penalties that might conceivably
apply to such misconduct (“the severest penalty”).

In deciding what the severest penalty is, the Chief Executive shall have
regard to the objects of Part 3 of the Regulation that is:

- To protect the health and safety of the public by providing mechanisms
to ensure that employees of the Ambulance Service are fit to perform
their duties,
- To ensure that the public interest is protected,
• To maintain appropriate standards of conduct and work-related performance in the Ambulance Service;

• To protect and enhance the integrity and reputation of the Ambulance Service.

It is essential that the Chief Executive’s consideration of the severest penalty must not involve any pre-judgment as to what penalty, if any, is ultimately to be applied to the employee. Consideration of the actual penalty, if any to be applied, is not to occur until the steps outlined below have been carried out.

The Chief Executive shall consider the following:

• The facts of the case
• The impact of the conduct on the objectives in Part 3 of the Regulation.
• The degree of relevance of the conduct matter to the employee’s position and duties
• Skill, experience, position of the employee
• The nature and seriousness of the matter, including the effect and circumstance of the incident
• Mitigating or extenuating circumstances if available at this stage
• The employment history and general conduct history of the employee
• Whether the conduct or substantially similar conduct have previously been the subject of counselling or previous remedial or disciplinary action
• Whether policy and guidelines applicable to the conduct were in place, were known, or were being followed or required to be followed
• The effect of the proposed action on the employee

Engaged in Misconduct – disciplinary action

If the Chief Executive is of the opinion an employee has engaged in misconduct and that disciplinary action may be appropriate, the employee must be notified in writing of that opinion and of the disciplinary action being considered, including the severest penalty (see Sample letter 8).

Before any disciplinary action is taken the employee is to have an opportunity to make a submission in relation to the disciplinary action being considered and be given the opportunity to have an interview with the Chief Executive.

The written notification must state:

• The details of the misconduct (The full Investigation Report with all attachments should be included)
• The disciplinary action penalty/s being considered. The employee needs to be advised of the severest penalty that is being considered for the particular matter. In particular the employee should be advised if dismissal, a direction to resign, or annulment for an employee on probation is being considered.

• Outline the previous employment matters (such as past remedial actions, warnings or discipline matters or alternatively previous satisfactory work history) to be taken into account.

• That the employee has 14 days from the receipt of the written notice to make a submission and to provide any additional information which he/she considers should be taken into account in relation to the disciplinary action being considered before a final decision is made.

• The employee’s submission may address such matters including the opinion of the Chief Executive that the employee has engaged in misconduct, the Investigation Report or any extenuating and mitigating circumstances.

• The Chief Executive has discretion to extend the period for response if the employee applies for additional time and provides reasonable grounds for seeking the extension.

• That he/she will may have an interview with the Chief Executive and may be represented by a solicitor, barrister or agent, before a final decision is made. The request for an interview should be made within 5 days of receipt of the written response. The representative may speak on behalf of the employee at the interview but not attempt to cross examine the Chief Executive.

• That these further submissions and/or additional information will be considered before a final decision is made to implement the disciplinary action being considered.

Each step in the disciplinary process must be taken and documented before the Chief Executive may make a final decision.

Further inquiries

The Chief Executive may, for any reason including matters raised by either the employee or their representative, in making a submission in relation to the disciplinary action, decide to have a further inquiry.
However, if any further inquiry results in further allegations of misconduct, and the Chief Executive decides these allegations are to be treated as a disciplinary matter, the steps outlined above are to apply.

8.5 Implementation a Final Decision

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All stages including the final decision stage must be made in a timely and expeditious fashion.

The Chief Executive, having considered any submission made by the employee in respect to the disciplinary action being considered and having had an interview (if requested) shall make a final decision. A final decision may consist of disciplinary action, remedial action or no action. The employee shall then be advised in writing of the final decision and its date of effect (see Sample letter 9).

In making a decision as to the appropriate disciplinary action, the Chief Executive must exercise his/her discretion and not adopt a policy that a particular conduct will always attract the same punishment. All the issues outlined in 1 above are to be considered along with any submission made by the employee. The employee’s submission may have addressed such matters as the conduct, the Investigation Report or any extenuating and mitigating circumstances. If made, the Chief Executive shall also consider any submission made on behalf of the employee by a union. Taking disciplinary action does not affect a former employee’s retirement or resignation or the relevant benefits and liabilities.
Steps in Dealing with Allegations of Misconduct

1. Allegation of misconduct – Chief Executive decides whether to treat as a disciplinary matter or otherwise.

2. Person appointed to prepare an investigation report in relation to the allegations.

3. During course of investigation, employee given an opportunity to respond to the allegations – (Clause 11.6.3)

4. Investigation Report given to Chief Executive - includes investigator’s view on whether person has engaged in the alleged conduct.

5. Chief Executive considers if in his/her opinion the employee has engaged in misconduct.

6. Chief Executive determines whether to take disciplinary action or otherwise.

7. Employee advised of that opinion and of the disciplinary action being considered and given an opportunity to make a submission in relation to the disciplinary action being considered. Employee may request an interview with the Chief Executive.

8. Chief Executive makes a final decision. Final decision may be disciplinary action, remedial action or no action.