

Disciplinary Process in NSW Health - A Framework for Managing

Document Number PD2005_225

Publication date 27-Jan-2005

Functional Sub group Personnel/Workforce - Conduct and ethics
Personnel/Workforce - Industrial and Employee Relations

Summary Framework of principles for disciplinary policy and procedures to ensure matters are dealt with effectively in public health organisations and Ambulance Service.

Author Branch Workplace Relations and Management Branch

Branch contact 9391 9357

Applies to Area Health Services/Chief Executive Governed Statutory Health Corporation, Board Governed Statutory Health Corporations, Affiliated Health Organisations - Non Declared, Affiliated Health Organisations - Declared, NSW Ambulance Service

Distributed to Public Health System, Health Associations Unions, NSW Ambulance Service, NSW Department of Health

Review date 27-Jan-2010

File No. 98/3025-1

Previous reference 2001/112

Issue date 30-Nov-2001

Status Active

Director-General

This Policy Directive may be varied, withdrawn or replaced at any time. Compliance with this directive is **mandatory** for NSW Health and is a condition of subsidy for public health organisations.

CIRCULAR

File No	98/3025-1
Circular No	2001/112
Issued	30 November 2001
Contact	Jutta Sund (02) 9391 9378 Employee Relations

A FRAMEWORK FOR MANAGING THE DISCIPLINARY PROCESS IN NSW HEALTH

This circular applies to the public health system, consisting of area health services, statutory health corporations and affiliated health organisations (section 6, Health Services Act 1997). It does not apply to the Department of Health, which is covered under the *Public Sector Management Act and Regulation*.

The vast majority of NSW Health staff perform effectively and conduct themselves in a professional and ethical manner at work. However, there will be occasions when, in order to maintain the proper and efficient functioning of a Health Service, effective disciplinary procedures are required to address serious or on-going performance problems, misconduct or inappropriate workplace behaviour.

Issues related to managing discipline are always sensitive and may be contentious, both for the individuals involved and their organisations. Therefore, consistent and well managed disciplinary policy and practices are essential for maintaining an ethical culture and promoting confidence, trust and good communication.

For the disciplinary process to be effective, it must be simple, practical to use and based on the principles of procedural fairness. It must be clearly and concisely communicated to all staff to ensure they have an understanding of their rights and responsibilities.

The purpose of this document is to provide a framework of principles for Health Service disciplinary policy and procedures to ensure that disciplinary matters are dealt with effectively.

It is important to note that the disciplinary process does not serve as a replacement for the requirement for managers to manage for performance. Best practice in performance management is outlined in Departmental circular 2000/68 'Managing for Performance – A Better Practice Approach'.

Inquiries in relation to this circular should be directed to Health Service Human Resources staff. Only Human Resources staff from Health Services should contact the Department.

Robert McGregor
Acting Director-General

Distributed in accordance with circular list(s):

A 111	B	C 102	D	E	73 Miller Street North Sydney NSW 2060
F	G	H 97	I	J	Locked Mail Bag 961 North Sydney NSW 2059
K	L	M	N 21	P	Telephone (02) 9391 9000 Facsimile (02) 9391 9101

In accordance with the provisions incorporated in the Accounts and Audit Determination, the Board of Directors, Chief Executive Officers and their equivalents, within a public health organisation, shall be held responsible for ensuring the observance of Departmental policy (including circulars and procedure manuals) as issued by the Minister and the Director-General of the Department of Health.

NSW HEALTH

**A FRAMEWORK FOR MANAGING
THE DISCIPLINARY PROCESS**

February 2005

Table of contents

About this document	1
Introduction.....	1
Responsibility	1
Authority	1
Version	1
Updates and feedback.....	1
Related policies and manuals.....	1
Related legislation	1
Additional references/ resources	1
1. Introduction	1
1.1. Purpose and scope of this document	2
1.2. What a disciplinary process is	2
1.3. Underlying principles	2
1.4. Definitions.....	3
1.5. Responsibilities.....	3
2. NSW Health framework	3
3. Guidelines for managing the disciplinary process	4
3.1. Legal context	5
3.2. Key stages of the disciplinary process.....	5
3.2.1. Assessment and investigation	5
3.2.2. Recommendation/decision about disciplinary action	9
3.2.3. Communicating findings and action to be taken	10
3.2.4. Records of disciplinary proceedings	10
Appendix A: Mandatory notification requirements	10
Appendix B: Protected Disclosures Act	13
Appendix C: Checklist – Key stages in managing the disciplinary process	14

About this document

Introduction:	<p>A consistent and well-managed disciplinary policy and procedure promotes:</p> <ul style="list-style-type: none">• ethical culture and behaviour• confidence, trust and good communication between staff, managers and supervisors;• a positive effect on the health and welfare of all staff;• sustained morale and job satisfaction;• improved quality of work and patient/customer service and satisfaction;• commitment to corporate goals;• increased productivity; and• a reputation as a good employer. <p>A consistent and well managed disciplinary policy and procedure avoids or minimises:</p> <ul style="list-style-type: none">• unfair outcomes;• loss of time in dealing with disciplinary issues;• potential for legal action and damages; and• undesirable and costly staff turnover.
Responsibility:	<p>This document was prepared by the Employee Relations Division, NSW Department of Health.</p>
Authority:	<p>It is a condition of subsidy under the Accounts and Audit Determination that Health Services comply with Departmental Circulars.</p>
Version:	<p>November 2001</p>
Updates and feedback:	<p>This document will be updated to reflect any changes to legislative and policy requirements. Feedback is welcome and should be directed to the Director, Employee Relations.</p>
Related policies and manuals:	<p><i>Incidents Reportable to the Department - Circular 97/58</i> <i>Managing for Performance - A Better Practice Approach - Circular 2000/68</i> <i>NSW Health System Code of Conduct - Circular 98/79</i></p> <p><i>Policy Framework and Best Practice Guidelines for the Development of Health Service Grievance Management Systems - Circular 99/45</i> <i>Policy and Procedure for Employment Screening of Staff and other Persons in Child Related Areas - Circular 2000/55</i> <i>Procedures for Recruitment and Employment of Staff and Other Persons - Vetting and Management of Allegations and Improper Conduct - Circular 97/80</i></p>
Related legislation:	<p><i>Anti-Discrimination Act 1977</i> <i>Child Protection (Prohibited Employment) Act 1998</i> <i>Commission for Children and Young People Act 1998</i> <i>Freedom of Information Act 1989</i> <i>Government and Related Employees Appeal Tribunal Act 1980</i> <i>Health Services Act 1997</i> <i>Independent Commission Against Corruption Act 1988</i> <i>Industrial Relations Act 1996</i> <i>Occupational Health and Safety Act 2000</i> <i>Ombudsman Amendment (Child Protection and Community Services) Act 1998</i> <i>Privacy and Personal Information Protection Act 1998</i> <i>Protected Disclosures Act 1994</i></p>
Additional references/ resources:	<p>www.ahri.com.au (Australian Human Resources Institute) www.shrm.org (Society for Human Resource Management – USA)</p>

1. Introduction

1.1. Purpose and scope of this document

All alleged breaches of discipline relating to misconduct, serious performance issues or inappropriate behaviour involving staff of Health Services need to be addressed and resolved within the context of the relevant legislation, industrial instruments and the principles of procedural fairness.

The purpose of this document is to provide a framework for the disciplinary process. This framework has been developed to assist Chief Executive Officers, human resource practitioners and line managers to meet legislative, contractual and common law requirements in the area of discipline.

The framework applies to serious breaches of discipline (see Definitions) or recidivist smaller offences, and should not be used for matters best dealt with by performance management strategies, conciliation/mediation, counselling, or training.

All Health Services are expected to review their current Disciplinary Policy, practices and procedures to ensure consistency with the framework outlined in this document.

1.2. What a disciplinary process is

A disciplinary process is an administrative procedure, based on procedural fairness, used by a Health Service to ensure a standardised approach when addressing the behaviours or actions of an individual which may fall short of the documented policies, procedures and guidelines, or professional standards expected by the Health Service.

The disciplinary process provides the Health Service and the individual with an opportunity to restate standards for conduct and to implement corrective action.

The disciplinary process does not serve as a replacement for the requirement for managers to manage for performance, which includes day to day coaching, training and supervision. In relation to performance issues, the disciplinary process is the last resort, generally only triggered when other strategies to arrest declining performance or poor behaviour (eg training, counselling) have not been successful.

1.3. Underlying principles

The key principles underpinning an effective disciplinary process are:

- **Procedural fairness** – The principles of procedural fairness require a decision-maker to give the person who is the subject of a disciplinary process a fair hearing and an opportunity to present his/her own case. Further, the decision-maker must be unbiased and disinterested in the outcome of the disciplinary process, and must base his/her decision on relevant evidence, capable of affecting the assessment of the allegations in issue.
- **Respect** - all parties are treated with respect throughout the process. Respect is defined as the quality of showing regard or consideration for another.
- **Cultural sensitivity** – the language, culture and religion of all parties involved are respected and taken into consideration throughout the process.

Probity of process - processes for undertaking communication and producing and storing documentation in a transparent and accountable way.

1.4. Definitions

NSW Health

For the purpose of this document, 'NSW Health' refers collectively to the public health system, consisting of area health services, statutory health corporations and affiliated health organisations (section 6, Health Services Act 1997).

Health Service

For the purposes of this document, 'Health Service' refers individually to a public health organisation, as defined in section 7 of the Health Services Act 1997 – that is, an area health service specified in Schedule 1 to the Act; a statutory health corporation specified in Schedule 2 to the Act, or an affiliated health organisation specified in Schedule 3 to the Act.

Breach of discipline

An employee may be guilty of a breach of discipline if he/she:

- engages in any misconduct;
- consumes or uses alcohol or drugs on-duty, or off-duty in a manner that seriously affects his/her work performance;
- intentionally disobeys, or intentionally disregards, any lawful order made or given by a person having authority to make or give the order;
- is negligent, careless, inefficient or incompetent in the discharge of his/her duties;
- engages in any disgraceful or improper conduct; or
- takes any detrimental action (within the meaning of the Protected Disclosures Act 1994) against a person that is substantially in reprisal for the person making a protected disclosure within the meaning of the Act.

1.5. Responsibilities

Department of Health

The Department of Health is responsible for setting the framework for implementation by Health Services that is consistent with legislation and the principles of procedural fairness.

Chief Executive Officers

Chief Executive Officers of Health Services are responsible for ensuring that a disciplinary policy and procedures are developed, implemented, monitored and reviewed within their Health Service.

Chief Executive Officers are responsible for reporting to the appropriate agency, and managing any allegations of any offence involving sexual activity, indecent acts, physical violence or the threat of physical violence by their staff against another person.

Managers/supervisors

Managers/Supervisors are responsible for managing workplace performance and consistently applying their Health Service Disciplinary Policy and Procedures in cases where a disciplinary issue is identified.

Managers are responsible for notifying their Health Service Chief Executive Officer of any allegations of any offence involving sexual activity, indecent acts, physical violence or the threat of physical violence by their staff against another person.

All staff

All staff must fulfil the conditions of their employment contract and adopt the prescribed standards of conduct and performance as set out by legislation and their Health Service Code of Conduct.

All staff have a requirement under the Health Services Act 1997 to notify their Chief Executive Officer if a conviction or charge is laid against them relating to sexual misconduct or violent behaviour (refer to Appendix A, Mandatory Notification Requirements).

2. NSW Health framework

Chief Executive Officers must ensure that the key features outlined in this Framework are incorporated, as minimum standards, in Health Service disciplinary policies and procedures.

THE FOLLOWING STANDARDS MUST BE REFLECTED IN HEALTH SERVICE DISCIPLINARY POLICIES AND PROCEDURES:

- Assessment and investigative processes are in place to identify the key facts of an alleged breach of discipline before any other action is taken;
- the staff member who is the subject of the allegation is:
 - advised of the nature and perceived seriousness of the alleged breach of discipline;
 - given an opportunity to adequately state their case at the appropriate stage within the process;
 - given an opportunity to correct/comment on any relevant statement(s) relating to their case at the appropriate stage within the process;
 - advised of findings from any investigation/proceedings;
 - given the opportunity to respond to a decision on punishment before the punishment is imposed; and
 - made aware of rights and appeal mechanisms, including the right to have a support person present at any disciplinary hearing.
- adequate records are kept at all stages of the disciplinary process and securely stored to maintain confidentiality.

The following Sections of this document provide, as guidance material, information on legal considerations and each of the key stages of the disciplinary process.

3. Guidelines for managing the disciplinary process

3.1. Legal context

Health Services must ensure that all disciplinary action is managed in accordance with any relevant industrial instruments, legislative, contractual and common law requirements.

Common law is unwritten law, derived from the traditional law of England, as developed by judicial decision making. In the employment arena there is a considerable amount of common law, and the principles it encompasses should be reflected in Health Service disciplinary policy and procedures.

In relation to statute law, Part 6, Section 88 of the Industrial Relations Act 1996 deals with matters to be considered in determining a claim for unfair dismissal.

While this does not relate directly to the commencement of disciplinary action in a Health Service, it highlights some of the principles considered fundamental to the provision of procedural fairness as seen by the NSW Industrial Relations Commission (IRC).

In summary, the principles considered in determining an unfair dismissal claim, as outlined in Part 6, Section 88 of the Industrial Relations Act 1996, are:

- whether a reason for the dismissal was given to the applicant;
- if any reason was given, its nature, whether it had a basis in fact and whether the applicant was given the opportunity to make out a defence or give an explanation for his or her behaviour; and
- whether a warning of unsatisfactory performance was given before the dismissal.

The previous conduct of the individual is also considered in unfair dismissal cases. Health Services must also ensure that the disciplinary process is managed in line with the set Health Service policy and procedures. The case involving Paul Antonakopoulos & State Bank of NSW (1999) highlighted the principle that while the decision of an employer to terminate the services of a staff member may in itself be fair, the failure to follow the appropriate procedures in reaching this decision may of itself constitute a dismissal which is considered harsh, unjust or unreasonable.

3.2. Key stages of the disciplinary process

The disciplinary process should contain the following stages: assessment and investigation of the alleged breach of discipline; recommendation and decision about possible disciplinary action to be taken; communicating findings and action to be taken; and maintaining records of the proceedings and action taken. Each of these is explained in greater detail in the following.

3.2.1. Assessment and investigation

Where there is knowledge, or a reasonable belief, that a breach of discipline has occurred, the following broad steps should be followed when managing the situation:

Receiving information on the alleged breach of discipline:

Information on the alleged breach of discipline should be received 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, Health Services should conduct an interview with the complainant or manager with a view to producing a transcript or statement for the signature of the complainant or manager.

Any evidence that is known to the complainant or manager, including dates, times and potential witnesses should be included.

For breaches of discipline reported under the Protected Disclosures Act, refer to Circular 98/101 and relevant Health Service procedures.

Where a Chief Executive Officer believes that the breach of discipline alleged against a staff member is of a **very serious nature** he/she can, as a risk management strategy, consider the options of temporary transfer or suspension from duty, pending the outcome of an investigation.

Notifying relevant parties:

Staff member/s who are the subject of an alleged breach of discipline must be advised, in writing, of the nature of the allegations as fully as is reasonable in the circumstances.

If providing details of the allegations/incidents may lead to the destruction of evidence, Health Services should communicate only the broad nature of the allegations/incident to the staff member.

In addition to being notified of the nature of the alleged breach of discipline the staff member should be provided with information on:

- the process to be undertaken;
- his/her right to formally respond to the allegations (usually in an interview/hearing) for Health Service consideration, prior to any further action being taken;

- his/her right to have a support person (eg a union representative, fellow employee) present at any meetings;
- where considered necessary, the provision for him/her to have a spokesperson (eg interpreter) present at any meetings; and
- the support services available to him/her (eg an Employee Assistance Program).

Health Services, in notifying the relevant parties, must consider whether they have any additional mandatory reporting responsibilities, such as the Ombudsman in the case of child abuse, the Police in criminal matters and the ICAC in the case of corrupt conduct (refer to Appendix A, Mandatory Notification Requirements).

Conducting the investigation:

The purpose of an investigation is to determine whether evidence exists to substantiate the alleged breach of discipline.

When appointing an appropriate officer to conduct the investigation, these matters must be considered:

- 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; and
- the benefit of engaging an external investigator.

To ensure that the process is thorough and systematic, the following issues should be addressed, in writing, prior to commencing an investigation:

- identification of key stakeholders (eg: witnesses, alleged victim(s), other external agencies, the staff member who is the subject of the allegation);
- the manner in which information/evidence collected will be recorded (eg: transcripts of interviews, statements);
- on-going liaison with relevant external agencies (refer to Appendix A for Mandatory Notification Requirements) to ensure that any external investigations are not prejudiced in any way by internal Health Service actions; and
- the form of the final report.

An investigation may include, for example, an inspection of the workplace site, a review of relevant documents, and interviews with all relevant persons, including the employee who is the subject of the allegation.

Conducting an interview with the staff member who is the subject of the allegation: In general, investigations should include an interview with the staff member who is the subject of the allegation. The purpose of such an interview is to give the staff member an opportunity to put forward his/her version of the alleged facts and an explanation or mitigating circumstances for them.

No more than two people should conduct the interview. They must have no involvement in the disciplinary matter that is the subject of the interview, and must be impartial in their conduct of the interview.

The interviewee should be given at least 24 hours' notice prior to the interview. He/she should be advised of the nature and purpose of the interview, his/her right to have a support person present, as well as of the role of the support person. A support person may be, for example, a fellow employee or a union representative. The role of the support person is not to represent or speak on behalf of the interviewee in an interview, but rather to act as an adviser to the employee as to his/her rights in relation to the disciplinary process prior to and/or following the interview. With the approval of the interviewer(s), the interview may also include breaks to allow for discussion between the interviewee and the support person. The support person does not take an active role in the actual interview unless there are perceived problems with the **procedural** aspects of it, which should be brought to the attention of the interviewer(s).

However, where it is judged that the interviewee is incapable of speaking effectively on his/her behalf or of understanding the full meaning of the matters involved, the interviewee should be informed that he/she may nominate a person to speak on his/her behalf or be provided with a sign or language interpreter.

In the interest of all parties, particularly in potentially serious disciplinary matters, it is important that the proceedings of the interview are recorded accurately. Tape recording is generally accepted as the most accurate and efficient way of doing this. Recording of the interview must happen only with the interviewee's knowledge. The interviewee must also be advised of how the recording will happen, and assured that he/she will receive a copy of the transcript of the interview or a copy of the tape or video (if the interview is being recorded by such means) for review. Transcripts, tapes and videos are not to be edited.

During the interview, each allegation should be put to the interviewee, who should be invited to respond, give his/her version of events, and comment on any relevant issue. At the end of the interview, the interviewee should be advised of the estimated date by which a decision will be made.

The interviewee is to be provided with a copy of the record as soon as possible and invited to read and sign all copies.

**3.2.2. Recommendation/
decision about disciplinary
action**

If at the conclusion of the investigation the matters are considered serious and there is appropriate evidence to support the allegations, a recommendation may be made to commence disciplinary action.

A separate decision maker is to make the final decision.

In deciding whether disciplinary action should be taken against the staff member/s who is the subject of the alleged breach of discipline, the responsible officer must consider the:

- nature of the matters;
- evidence collected during the investigation;
- findings of the investigating officer;
- staff member's responses;
- previous work history of the staff member; and
- nature of the staff member's duties.

It must be emphasised that each case must be treated on its individual merits, and the form of action to be taken decided on a case by case basis.

Applying standards of proof

In *Briginshaw v Briginshaw* (1938) the High Court confirmed the principle that the standard of proof applicable in civil matters is the 'balance of probabilities'.

Further, it was held that the strength of the evidence necessary to establish a matter on the balance of probabilities may vary according to the nature or gravity of the fact to be proved.

Therefore, in considering whether to proceed to disciplinary action the standards of proof required must be considered. If the outcome of the disciplinary action is likely to result in dismissal, the standard of proof applied must be higher than for action that is not likely to result in dismissal.

3.2.3. Communicating findings and action to be taken

Once the investigation phase has been completed, the staff member who is the subject of the alleged breach of discipline must be advised, in writing, of any findings from the investigation that have an impact on or relate to him/her. He/she must be given the opportunity to respond to the findings within a reasonable time period.

The person against whom the alleged breach of discipline is made has a right to access relevant information taken into consideration by the decision-maker prior to the making of a decision (eg letters of complaint, statements made by other staff members and/or patients, relevant incident reports, transcripts of relevant interviews, etc). However, in some circumstances it is appropriate to limit access to some information (eg where a breach of discipline has been raised under the Protected Disclosures Act). Health Services may wish to consider releasing information from third parties only following formal consultation (eg under the conditions of the Freedom of Information Act 1989).

It should be noted that the decisions with respect to guilt and punishment are two separate and distinct decisions, and the person against whom the allegation of a breach of discipline is made has a right to respond to each.

Where a penalty is to be imposed on a staff member, he/she should be given an opportunity to make submissions to the decision-maker prior to the imposition of the penalty. However, under certain serious circumstances where the risk to patients/other staff members is assessed to be unacceptable, a penalty may take effect immediately (eg child abuse).

3.2.4. Records of disciplinary proceedings

State Records NSW recommends that discipline and counselling records be maintained on a separate Counselling/Disciplinary file (General Disposal Authority GDA3 - Personnel Records). A summary of relevant information should also be placed on the staff member's Personnel file.

The information kept on a disciplinary file must include:

- the content of the allegations;
- the staff member's position at the time of the allegations;
- the date/s on which the alleged breach of discipline occurred;
- the nature of the disciplinary procedure;
- a summary of the evidence obtained during the disciplinary process;
- full transcripts (or, where not available, summaries) of interviews, statements and any other evidence collected;
- any responses provided by the staff member who is the subject of the disciplinary proceedings;
- the findings of the investigation; and
- any penalties imposed or action taken

Appendix A: Mandatory notification requirements

Introduction

Chief Executive Officers of Health Services are to ensure that they comply with any mandatory reporting requirements applicable to allegations/incidents related to their employees. This Appendix provides an overview on such requirements, and is intended as a general guide only. Further information is available from relevant Departmental Circulars.

**Allegations/incidents
patient/client abuse**

of Any allegations/incidents involving patient/client abuse are to be reported to the following:

- The NSW Police Service
- Staff Records Management Unit, Department of Health
- where the victim is under 18 years of age, the Department of Community Services
- Health Care Complaints Commission; and
- the relevant Professional Registration Board

For further information, refer to **Circular**

{ **97/80**, *Procedures for Recruitment and Employment of Staff and Other Persons – Vetting and Management of Allegations and Improper Conduct.*

**Allegations/incidents of child
abuse**

In addition to the above requirements, the following applies to any allegations/incidents of child abuse:

- A copy of the final investigation report, including any recommended action, must be forwarded to the Ombudsman's Office with a copy sent to the Department of Health Staff Records Management Unit.
- In addition, the Commission for Children and Young People (CCYP) requires notification of any relevant completed disciplinary proceedings for the 5 years prior to this legislation coming into effect (July 2000).

The following details are to be forwarded to the CCYP:

- the full name of the person who was the subject of the disciplinary proceedings;
- the date of birth of the person who was the subject of the disciplinary proceedings;
- the date of completion of the disciplinary proceedings;
- the name of the organisation which holds the full details of the record of the disciplinary proceedings; and
- contact details of the person, including the position title, in the Health Service to whom any enquiries should be made.

A copy of this information is to be forwarded via the Department of Health Staff Records Management Unit.

The Health Service must advise the staff member that the above details have been provided to the Commission for Children and Young People.

For further information, refer to **Circulars**

{ **2000/100**, *Protecting Children and Young People*;
{ **2000/55**, *Policy and Procedure for Employment Screening of Staff and Other Persons in Child Related Areas*; and
{ **99/65**, *Ombudsman Amendment (Child Protection and Community Services) Act 1998 – Allegations of Child Abuse.*

Serious sex or violence offences	<p>The Health Services Act 1997 establishes requirements for employees and contractors to notify the Chief Executive Officer of the Health Service where they have been charged with or convicted of a “serious sex or violence offence”. The Chief Executive Officer is then required to notify the Director-General of the Department of Health of the matter. The Act also provides for action to be taken by Public Health Organisations after such a notification.</p> <p>For further information, refer to the Health Services Act 1997:</p> <ul style="list-style-type: none"> { Part 3, <i>Criminal and disciplinary matters concerning visiting practitioners</i>, Sections 99-104; and { Part 2, <i>Criminal and disciplinary matters concerning employees in NSW Health Service</i>, Sections 117-121.
Professional misconduct	<p>The above also applies to employees and contractors who have had a finding of professional misconduct made against them.</p>
Other criminal offences	<p>All potential criminal offences must be reported to the NSW Police Service.</p>
Allegations/incidents of corrupt conduct	<p>Any matter that is suspected on reasonable grounds to concern corrupt conduct must be reported to the Independent Commission Against Corruption (ICAC). A copy of such a notification must also be forwarded to the Department of Health.</p> <p>For further information, refer to Circular</p> <ul style="list-style-type: none"> { 2000/41, <i>Reporting Possible Corrupt Conduct to the Independent Commission Against Corruption</i>.
Other matters	<p>Certain other matters may require referral to the Department of Health. For further information, refer to Circular</p> <ul style="list-style-type: none"> { 97/58, <i>Incidents Reportable to the Department</i>.

Appendix B: Protected Disclosures Act

This Appendix provides details on information on the Protected Disclosures Act 1994 and consequences for staff who make a disclosure and who are implicated in misconduct.

The act of making a disclosure, and seeking protection under the Protected Disclosures Act 1994, should not shield a staff member from the reasonable consequences flowing from any involvement in misconduct.

The Protected Disclosures Act 1994 specifically states that a disclosure that is made solely and substantially with the motive of avoiding dismissal or other disciplinary action is not a protected disclosure.

In some circumstances an admission may be a mitigating factor when considering disciplinary or other action. Where it appears to a Chief Executive Officer that disciplinary action or criminal proceedings against a staff member who makes a disclosure and is implicated in the disclosure are possible, it may be in the public interest that the Chief Executive Officer:

- makes submissions to the Director of Public Prosecutions (DPP) for the DPP to request indemnity against prosecution of the staff member from the Attorney- General; or
- exercises a discretion not to institute disciplinary action, with reasons for this being documented.

In determining appropriate action, a Chief Executive Officer may consider:

- the seriousness of the alleged misconduct disclosed by the staff member;
- the likelihood of uncovering the alleged misconduct in the absence of a disclosure (a 'but for' test);
- the extent and the level of substantiated involvement of the staff member in the alleged misconduct or in any other substantiated or admitted acts of misconduct, and the seriousness of that misconduct;
- the length of time since the alleged misconduct;
- the relevance and the importance of the information disclosed by the staff member;
- the degree of co-operation by the staff member during investigation of the alleged misconduct;
- previous work history and a willingness to acknowledge wrong doing on the part of the staff member; and
- the seriousness of the alleged misconduct committed by the staff member and whether the misconduct occurred once or was repeated.

Further information on managing this situation is available in Departmental circular 98/101 'Policy and Guidelines for the Development of Protected Disclosures Procedures in Health Services'.

Introduction:

THIS CHECKLIST SUMMARISES THE PROCEDURES TO BE FOLLOWED WHEN MANAGING THE DISCIPLINARY PROCESS. FOR MORE DETAILED INFORMATION REFER TO THE CORRESPONDING SECTION IN THIS DOCUMENT.

3.2.1.ASSESSMENT AND INVESTIGATION

Receiving the allegations/notification of incidents/complaints

The matter is received in writing, or a transcript or statement of an interview is produced.	<input type="checkbox"/>
The complainant has been informed of the process to be undertaken to manage the allegations (including any notification requirements).	<input type="checkbox"/>
The allegations provide clear, precise information (including witnesses, times and dates).	<input type="checkbox"/>
Access is provided to counselling and medical services for the parties involved and their families (if deemed appropriate).	<input type="checkbox"/>

Notifying the relevant parties of the allegations

The staff member has been advised in writing of: <ul style="list-style-type: none"> • the nature of the allegations (if appropriate); • the process to be undertaken. • his/her right to formally respond to the allegations; • his/her right to have a support person present at each meeting (eg a union representative, a fellow employee, etc.); • the provision for him/her to have a spokesperson (eg interpreter) present at any meetings, where this is considered necessary; and • the support services available to him/her (such as an Employee Assistance Program). 	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

Conducting an investigation

An appropriately experienced internal/external investigator has been identified (more complex/sensitive investigations may require a specialised investigator).	<input type="checkbox"/>
The investigating officer liaises with external agencies to ensure procedures are not compromised (eg Police, Ombudsman, Health Care Complaints Commission).	<input type="checkbox"/>
The staff member has been advised of any changes to his/her employment while awaiting the outcome of the investigation (ie suspension with pay, transfer, etc).	<input type="checkbox"/>
Key people have been identified (eg witnesses).	<input type="checkbox"/>

The scope of the investigation has been determined.	<input type="checkbox"/>
The evidence collected is based on fact and not hearsay.	<input type="checkbox"/>
Records of interviews or statements have been made and signed by the relevant parties.	<input type="checkbox"/>

Conducting an interview

The interviewer/s has/have no involvement in the disciplinary matter in question.	<input type="checkbox"/>
The interview is conducted in an impartial and objective manner.	<input type="checkbox"/>
The interviewee is given 24 hours notice of the interview, and is advised of its nature and purpose, and of his/her right to have a support person, and, where deemed necessary, a spokesperson present.	<input type="checkbox"/>
The interviewee is informed that the interview will be recorded, and of how this will happen.	<input type="checkbox"/>
The interviewee is invited to respond to allegations and give his/her version of events.	<input type="checkbox"/>

3.2.2. RECOMMENDATION/DECISION ABOUT DISCIPLINARY ACTION

A report is prepared which outlines whether the allegations are substantiated or unsubstantiated and makes recommendations on the appropriateness of commencing the disciplinary process.	<input type="checkbox"/>
<p>The following points are considered in deciding whether disciplinary action should be taken:</p> <ul style="list-style-type: none"> • nature of the matters; • evidence collected during the investigation; • findings of the investigating officer; • staff member's responses; • previous work history of the staff member; and • nature of the staff member's duties. 	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>

3.2.3. COMMUNICATING FINDINGS AND ACTION TO BE TAKEN

The staff member has been advised, in writing, of the outcome of the investigation and any proposed action to be taken.	<input type="checkbox"/>
The staff member has been provided with access to relevant information taken into consideration by the decision-maker prior to the making of a decision.	<input type="checkbox"/>

The investigator advises relevant external parties of findings/recommendations from the investigation (those agencies that require mandatory reporting).	<input type="checkbox"/>
The staff member is given an opportunity to respond to the findings from the investigation.	<input type="checkbox"/>
The staff member is given the opportunity to make submissions in relation to the penalty prior to its imposition.	<input type="checkbox"/>
The staff member is advised, in writing, of appeal mechanisms (in relation to the Health Services investigation).	<input type="checkbox"/>

3.2.4. RECORDS OF DISCIPLINARY PROCEEDINGS

Records have been kept which include information on the: <ul style="list-style-type: none"> • content of the allegations; • staff member's position at the time of the allegations; • date/s on which the alleged breach of discipline occurred; • nature of the disciplinary procedure; • evidence obtained during the disciplinary process (in summary format); • findings of the investigation; and • penalties imposed or action taken. 	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>
	<input type="checkbox"/>