

# NTPS Discipline Handbook

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<b>Acronyms</b>	<b>Full form</b>
DCDD	Department of Corporate and Digital Development
EAP	Employee Assistance Program
HR	Human Resources
ICAC	Independent Commissioner Against Corruption
ICAC Act	Independent Commissioner Against Corruption Act 2017
NTPS	Northern Territory Public Sector
OCPE	Office of the Commissioner for Public Employment
PSEMA	Public Sector Employment and Management Act 1993

# NTPS Discipline Handbook

## 1. Purpose

The NTPS Discipline Handbook (the handbook) is an aid to understanding disciplinary processes under the *Public Sector Employment and Management Act 1993* (PSEMA).

The purpose of the handbook is to provide general guidance from the Commissioner for Public Employment on these processes for employees and managers.

This handbook does not bind, or substitute, decision makers acting in accordance with the PSEMA, and in response to the unique set of facts of each actual case.

Sample letters have been included in this handbook as a guide only. The actual correspondence used during a discipline process will differ, depending on the applicable circumstances.

## 2. Discipline in the NTPS

Discipline in the NTPS is a formal process, conducted in accordance with legislative requirements set out in the PSEMA, and in accordance with the principles of natural justice. The process can have serious ramifications for employees, including the loss of employment, and accordingly, must be undertaken with proper care.

Disciplinary actions may be subject to review by the Public Sector Appeals Board or the Fair Work Commission.

Discipline is not a substitute for management action and the need for managers to undertake early intervention to address unacceptable conduct. An early conversation, even in the context of a likely discipline process, provides the best chance of:

- the cessation of unacceptable conduct
- early resolution
- preserving working relationships, and
- avoiding an unnecessary and protracted dispute.

There may be occasions, however, when it is necessary and appropriate to commence a disciplinary process directly, in the absence of any prior intervention - such as in cases involving serious misconduct where there is a requirement to remove an employee from the workplace.

Workforce Relations, within the Department of Corporate and Digital Development (DCDD), provide specialist assistance and advice in relation to discipline in the NTPS. Agencies should engage with the Workforce Relations for support with discipline processes.

## 3. What this handbook covers

- Legislative basis for disciplinary processes
- Steps in a discipline process
- Sample letters.

## 4. What this handbook does not cover

- Managing unsatisfactory performance - Managers are responsible for proactively managing the performance of their employees through performance development generally, and performance improvement initiatives
- Appeals about disciplinary decisions.

## 5. PSEMA discipline framework

Discipline processes in the NTPS are underpinned by a formal legislative framework contained within Part 8 of the PSEMA.

The framework sets out:

- conduct by an employee which constitutes a breach of discipline (section 49 of PSEMA)
- when a Chief Executive Officer may take disciplinary action against an employee (section 49A)
- when an employee can be required to undertake a medical examination (section 49B)
- the types of disciplinary action that can be applied to an employee (section 49C)
- suspension of an employee (section 49E)
- summary dismissal of an employee (section 50)

The disciplinary framework applies to all NTPS employees, other than employees on a fixed period or casual contract, Executive Contact Officers or Chief Executive Officers. For these employees, disciplinary matters are dealt with through other mechanisms.

## 6. Natural justice

The common law principle of natural justice applies to disciplinary processes under PSEMA. This principle is also reflected in Employment Instruction 3 – Natural Justice.

Natural justice means that:

- an employee who may be adversely affected by an impending decision must be informed of any adverse information or other relevant information that may be taken into account by the decision maker
- the employee must be given a reasonable opportunity to respond to that information, including providing any evidence they wish to include in their response
- the decision maker must impartially consider the employee's submissions prior to making a decision, and
- the decision maker must not have a personal interest in the outcome of a decision, and must make the decision in a fair and considered manner, based on a consideration of all relevant information.

## 7. Support person

An employee must be offered the opportunity to bring a support person to all meetings relating to a disciplinary process. A support person can be a friend, relative, work colleague, HR professional, another manager within the NTPS, or a union delegate or union official.

A support person is not an advocate for an employee. A support person provides the employee with support during the meeting, take notes and can adjourn the meeting for a break if required. The employee will be required to do most of the speaking as the support person cannot advocate for the employee during the meeting. However, the support person can ask clarifying questions.

The support person ensures the meeting is procedurally fair for the employee by making sure they are given an opportunity to respond and ask relevant questions. The support person can intervene and stop the meeting if the employee is too upset to continue or needs a break. Support persons may play a more active role during meetings if the employee has a significant disability or English is not their first language.

Further guidelines on the role of a support person are available on the OCPE website.

## 8. Steps in the discipline process

The receipt of allegations,<sup>1</sup> a complaint or other observation of breach of discipline,<sup>2</sup> will ordinarily be the catalyst for consideration of a possible disciplinary process.

A number of preliminary considerations will inform the approach to be taken by a manager.

The steps of a discipline process would then include the following:

1. Providing the employee with the allegations and supporting information for response
2. Making a decision on the alleged breach of discipline (the disciplinary findings)
3. Proposing disciplinary action and providing the employee with an opportunity for response
4. Making a decision on disciplinary action

A flowchart of the discipline process is included at Schedule 1 to this handbook.

The steps in the discipline process may vary, depending on the nature of the allegations and the information available. For example, in cases of serious misconduct, the decision maker may determine that summary dismissal is warranted.<sup>3</sup>

## 9. Preliminary considerations

A number preliminary considerations will take place, prior to the commencement of a disciplinary process. These are discussed below.

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<sup>1</sup> This could include a reference from the Office of the Independent Commissioner Against Corruption (ICAC) pursuant to s18 of the *Independent Commissioner Against Corruption Act 2017*. The ICAC may provide a brief of evidence to a public body for this purpose

<sup>2</sup> For the purposes of this handbook, the term 'allegations' is used to describe conduct subject to a disciplinary process

<sup>3</sup> See section 50 PSEMA

### 9.1 *Decision maker*

The Chief Executive Officer of an agency is the primary decision maker in relation to disciplinary matters under the PSEMA. A Chief Executive Officer can delegate their powers or functions to another person.

Accordingly, an agency will need to determine who the decision maker will be in a disciplinary process. It may be helpful for a copy of the relevant part of the instrument of delegation to be retained on file by the decision maker.

The decision maker should be clear about what decisions they are making at all stages and what authority they have to make the relevant decision.

The decision maker must be impartial and bring an open (not pre-determined) mind to the disciplinary matter.

### 9.2 *Preliminary assessment*

A preliminary assessment of the allegations should be undertaken to determine the most appropriate response to those allegations. This would include consideration of matters such as:

- whether the allegations give rise to reporting obligations under other legislation. For example, as a mandatory report of improper conduct under the *Independent Commissioner Against Corruption Act 2017*,<sup>4</sup> or as a mandatory report under the *Care and Protection of Children Act 2007* or the *Domestic and Family Violence Act 2007*, or in accordance with obligations set out in the NTPS Code of Conduct<sup>5</sup>
- whether it is necessary for the employee to be removed from their current role, because of customer or worker health and safety, financial risk or public interest
- whether further information is required, and how this information should be obtained. For example, through discussion with the employee or an investigation
- whether, on balance, the allegations appear frivolous or vexatious
- whether management action is the best response, or whether the matter warrants commencement of a discipline process. Further information may be required before making this decision.

Examples of matters that may support the commencement of a discipline process include:

- the potential educative benefits of management action will be insufficient on their own
- the serious nature of the allegations (including the impact on stakeholders)
- an effective deterrent is required because it is not the employee's first instance of such conduct, management action has been taken previously, or a previously completed 'management of unsatisfactory performance process' has failed to result in improved conduct overall, or
- not commencing a discipline process may have a negative impact on the relevant workforce.

In determining the appropriate approach, consideration should be given to the resources to be expended and the proportionality to the seriousness of the matter.

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<sup>4</sup> <http://icac.nt.gov.au>

<sup>5</sup> i.e. 'A Public Sector Officer has a duty to report any unethical behaviour, improper conduct, fraud, corrupt act or wrongdoing by any other Public Sector Officer' (See Code of Conduct at paragraph 25)

### 9.3 *Case manager*

A case manager is generally appointed to provide support to the manager and the decision maker, by providing advice and assistance with the disciplinary process. For example, in drafting correspondence, arranging meetings with the employee and if required, securing an independent investigator.

The case manager would typically be an employee of the Workforce Relations unit within DCDD.

### 9.4 *Meeting with the employee*

Generally, a face-to-face meeting with the employee who is subject to allegations should be arranged as early as possible.

The allegations should be discussed with the employee and the employee provided with copies of relevant material (for example a report or letter detailing the allegations) and have their meaning and purpose explained.

More than one meeting may need to occur depending on the process adopted.

An employee must be offered the opportunity to bring a support person to all meetings.

### 9.5 *Suspension from employment*

In some cases it may be appropriate for an employee to be suspended from their employment pending further investigation of allegations. The PSEMA provides a mechanism to suspend an employee who is subject to a discipline process at section 49E.

Suspension may only be imposed if the decision maker is of the opinion that the suspected breach of discipline is of such a serious nature that the employee should not continue performing the duties they are assigned to perform pending the making of a disciplinary decision.

Suspension should be a last option. Alternative duties and work locations should be considered first, prior to suspension.<sup>6</sup>

The PSEMA does not prescribe the factors to consider when determining whether alternative duties are available; however, there must be evidence that alternative arrangements have been considered. Relevant considerations include:

- where the provision of alternative duties or work location will address any risks identified as being associated with the alleged conduct if the employee remains in the workplace
- the employee's skill set
- the availability of duties or meaningful work that is required to be performed in the current or an alternative location
- the risk that retaining the employee in the workplace could compromise the health and safety of employees, customers and members of the public.

An employee should be given an opportunity to respond to a proposed suspension or a proposed transfer to other duties.

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<sup>6</sup> s35 of PSEMA permits the transfer of an employee to perform other duties and to other locations

Suspension from employment has serious consequences for both the employee and the workplace. While investigations may vary in time from case to case, disciplinary processes and suspensions should be concluded as soon as possible, and preferably within three months.

Suspension from employment *without remuneration* should only be considered if the allegations are of such a serious nature that termination of the employee's employment would be likely, and there is already strong evidence supporting this outcome.

An employee who is suspended does not accrue leave for the period of suspension. At the conclusion of the disciplinary process, if the employee is not terminated from employment or formally suspended as an outcome of that process, the employee will have their leave credited for the period of their suspension. If the employee had been suspended without remuneration, the employee will be paid their lost remuneration for that period.<sup>7</sup>

See:

- [Sample letter 1: Proposed suspension from duty](#)
- [Sample letter 2: Decision on suspension](#)

#### 9.6 *Summary dismissal*

Summary dismissal means the immediate termination of an employee (i.e. termination without notice). Summary dismissal may be applied where the misconduct by the employee is of such a nature that it is in the public interest that the employee be immediately dismissed from the NTPS. PSEMA provides for summary dismissal at section 50.

Natural justice should be provided so far as possible, taking into account the circumstances surrounding the misconduct.

Examples of situations which may justify summary dismissal include those where clear evidence exists that the employee has engaged in theft, fraud or violence.

#### 9.7 *Investigation*

The nature of the allegations themselves will inform whether an investigation is necessary.

An early conversation with the employee about their alleged conduct may prevent the need for an investigation or a discipline process.

Investigations may be conducted either by an internal or external provider. However, an investigation should only be commenced in circumstances where it is reasonably likely that if the breach of discipline is substantiated, it would result in disciplinary action.

#### 9.8 *Confidentiality considerations*

All participants in a discipline process must remain mindful of their ethical responsibilities, including any responsibility to maintain confidentiality.

All parties should be directed not to discuss the matter in the workplace.

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<sup>7</sup> Section 49E(6)

### 9.9 *Interaction with other proceedings*

Some allegations that are raised may require a referral to the police and/or to the Independent Commissioner Against Corruption (the ICAC). If a disciplinary matter involves a criminal element or suspected improper conduct it must be reported to the ICAC.<sup>8</sup>

The ICAC is obliged to consider whether the allegations reach the threshold for ICAC investigation and, in the event the ICAC does not investigate, or if there is interest from multiple entities, the ICAC must coordinate a response.<sup>9</sup>

In these circumstances, any further action in relation to the allegations must be in accordance with the directions given by the ICAC.

### 9.10 *Whistleblower protection*

Whistleblower protection is a fundamental principle of administrative law and features in the Part 6 of the *Independent Commissioner Against Corruption Act 2017* (the ICAC Act).

A disciplinary process which is used as a form of whistleblower retaliation is an offence under section 101 of the ICAC Act and carries a maximum penalty of 400 penalty units or imprisonment for two years.

### 9.11 *Timeliness*

It is in the interests of all parties that discipline processes are finalised in a timely manner.

Delays in both decision making and obtaining responses may occur, but should be minimised wherever possible. When a delay is due to an employee or witness being absent due to illness, a medical certificate may be required.

Ongoing delays can have a serious detrimental effect on the wellbeing of all parties involved in a discipline matter and can have lasting effects on the workplace. Agencies must prioritise the finalisation of discipline matters.

## 10. Step 1: Provide the employee with the allegations

An employee must be provided with an opportunity to respond to allegations as part of the disciplinary process. Natural justice is the process whereby the decision maker provides a right of reply to any potentially adverse outcome before reaching a decision regarding a discipline outcome.

Natural justice ensures decision-making is fair and that the final decision is reasonable.

The employee should be provided with written details of each allegation, the alleged breaches of discipline, and the evidence being relied on for each breach of discipline.

The employee should be provided a reasonable opportunity to respond to the allegations. This should include a reasonable time to seek advice and prepare a response. Consideration should also be given to any health issues affecting the employee's ability to respond, the complexity of the matter or the seriousness of the discipline action contemplated.

[See: Sample letter 3: Alleged breaches of discipline](#)

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<sup>8</sup> See Mandatory Reporting Directions and Guidelines pursuant to section 22 of the *Independent Commissioner Against Corruption Act 2017*

<sup>9</sup> See section 3(e) *Independent Commissioner Against Corruption Act 2017*

## 11. Step 2: Decision on alleged breach of discipline

The decision maker will need to determine whether a breach of discipline can be substantiated.

The decision maker should consider all information available to them and make their decision on the balance of probabilities (i.e. it is more probable than not). The strength of evidence necessary to establish an allegation on the balance of probabilities may vary according to the seriousness of the issues involved.

The employee should be advised in writing of the findings made in relation to each alleged breach of discipline. The advice should clearly explain the findings for each allegation, including the evidence relied on to reach that finding, and whether the allegation establishes a breach of discipline.

If no breach of discipline has been established the employee should be advised accordingly.

If the decision maker is satisfied, on reasonable grounds, that the employee has committed a breach of discipline, they must then consider the appropriate disciplinary action that should be applied.

See: [Sample letter 4: Decision on disciplinary finding \(no breach of discipline\)](#)

## 12. Step 3: Proposing disciplinary action

Where one or more breaches of discipline have been found (disciplinary findings), the decision maker needs to decide the appropriate form of disciplinary action to take.

The employee should be advised in writing of the proposed disciplinary action, the grounds for taking the action and given a reasonable opportunity to submit reasons why the action should not be taken.<sup>10</sup>

The forms of disciplinary action permitted under the PSEMA<sup>11</sup> include:

- no further action
- formal caution
- requirement to undertake training, counselling or other remedial activities
- require the employee to forego a benefit or entitlement (other than an entitlement arising under an enterprise agreement)
- payment of a fine not exceeding the employee's remuneration for 10 days
- reduction in salary
- transfer of the employee to other duties or to another agency
- suspension from employment without remuneration, or
- termination of employment.

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<sup>10</sup> See s 49A(3)(b) of PSEMA

<sup>11</sup> See Section 49C of PSEMA

Disciplinary action must be appropriate and reasonable, having regard to the nature of the breach of discipline. Disciplinary action is intended to be a deterrent to an employee, and to provide a clear message that breaches of discipline are not acceptable or tolerated in the NTPS.

The following factors are relevant considerations in determining the disciplinary action that should be applied:

- the seriousness of the disciplinary finding and nature of the conduct that is the subject of the breach of discipline
- the employee's classification level and expected level of awareness about their performance or Code of Conduct obligations
- whether extenuating or mitigating circumstances applied to the employee's actions
- the employee's overall work record including previous management interventions and/or discipline proceedings
- the employee's explanation (if any)
- whether the employee has accepted responsibility for their actions, made admissions or expressed an understanding of the inappropriate nature and consequences of their actions
- the degree of risk to the health and safety of employees, customers and members of the public
- the impact on the employee's ability to perform the duties of their position
- the employee's potential for modified behaviour in the work unit or elsewhere
- the likely impact the disciplinary action will have on public and customer confidence in the unit/department and its proportionality to the gravity of the disciplinary finding.

If a decision to take no further action is made, the discipline process concludes at that point and the employee should be informed of that decision in writing. This will generally occur at the same time as the employee is told the outcome of the disciplinary finding.

See:

- [Sample letter 5: Decision on disciplinary finding \(breach of discipline, no action taken\)](#)
- [Sample letter 6: Decision on disciplinary finding \(proposed disciplinary action\)](#)

## 13. Step 4: Decision on disciplinary action

After an employee has been provided with an opportunity to respond to proposed disciplinary action, a final decision on the disciplinary action to be taken will need to be made.

The employee should be advised of this final decision, the reasons for the decision, and the decision maker's consideration of any information provided by the employee.

If it is decided to impose disciplinary action that is different to that initially proposed, the employee may be given a further opportunity to comment on the appropriateness of the new proposed action. However, a further opportunity to comment may not be required if the revised disciplinary action is objectively less onerous<sup>12</sup> than the original action proposed.

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<sup>12</sup> For example, where the proposed disciplinary action was for a reduction of the employee's increment/pay-point within the existing designation of the employee, but after considering the employee's response, the decision maker determines to order the employee to undertake training instead

Employees should be provided information regarding their appeal rights, including information regarding the Public Sector Appeals Board available on the [Office of the Commissioner for Public Employment](#) (OCPE) website.

#### Refer - Sample letter 7: Decision on disciplinary action

The employee will be advised in writing that the disciplinary action is being implemented, including all relevant details attaching to and arising from the action.

It is preferable that such advice is provided at a face to face meeting with the employee.

A decision to take disciplinary action takes effect on the day the notice is given to the employee or a later day specified in the notice.

All records associated with the discipline process should be managed in accordance with departmental record and information management requirements, and [Employment Instruction 9 – Employee Records](#).

## 14. Taking of disciplinary action if an employee changes agency

An employee who transfers to another NTPS agency during a disciplinary process will remain liable for any subsequent disciplinary action arising from that process.

Section 49D of the PSEMA enables the new Chief Executive Officer to take disciplinary action against the employee on behalf of the original agency.

## 15. Concluding a disciplinary investigation when an employee resigns their employment

There may be times when an employee resigns from their employment in the NTPS while a disciplinary process is underway. In some cases this may be coincidental, but in other cases, it may be because the employee wishes to avoid the negative consequences associated with a disciplinary outcome.

The PSEMA does not prevent an investigation into breaches of discipline being concluded.

In some cases there may be a public interest in completing an investigation after an employee has resigned. For example, where the allegations are particularly serious and there is compelling evidence to support the alleged breaches having been committed.

At the time of notifying their resignation, the agency may give notice to the employee that it intends to complete a disciplinary investigation and make findings. The employee should be provided with an opportunity to respond and make submissions prior to the finalisation of that process. No disciplinary action can be taken against someone who is not an NTPS employee.

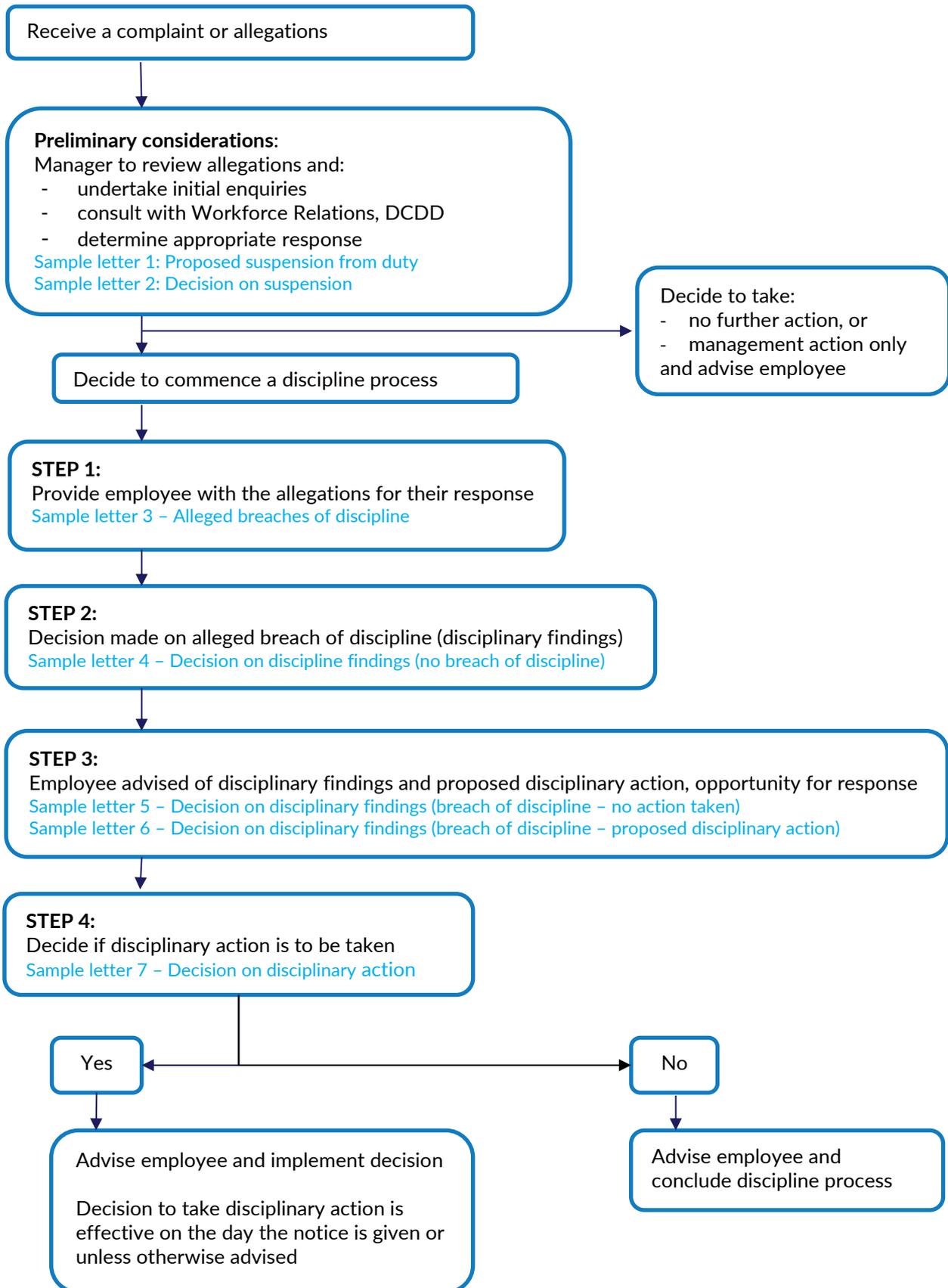
A copy of the investigation findings and any response received from the employee should be placed on the employee's employment record and would then be available for consideration in the event of the employee subsequently seeking re-employment in the NTPS.

There may be little or no public interest in continuing with an investigation in cases where the allegations are relatively minor in nature, the investigation is still at the early stages and/or there would be a significant amount of time involved and cost to an agency to complete the investigation, or the employee has left the jurisdiction and is unlikely to return to the Territory.

## 16. Legislative authority and related information

- [Part 8 - Discipline, Public Sector Employment and Management Act 1993](#)
- [Part 1A - Section 5F – Performance and Conduct Principle, Public Sector Employment and Management Act 1993](#)
- [Employment Instruction 3 – Natural Justice](#)
- [Commissioner’s Guideline – Natural Justice](#)
- [Employment Instruction 12 – Code of Conduct](#)
- [Employment Instruction 13 – Appropriate Workplace Behaviour](#)
- [Commissioner’s Guideline – Appropriate Workplace Behaviour](#)
- Agency Human Resource Delegations
- Relevant agency policies, procedures and guidelines

## Schedule 1 – Discipline process - flow chart



## Schedule 2 – Sample Letters

### Sample letter 1: Proposed suspension from duty

[Address Block]

Dear [insert name]

**Re: Proposed suspension from duty**

I have received [a report/ information] dated [insert date] concerning an alleged breach of discipline [insert overview of breaches]. In accordance with [insert description of delegation e.g. HR delegations of XX date] I have been delegated the functions of the Chief Executive Officer for this matter.

Section 49E of the *Public Sector Employment and Management Act 1993* (PSEMA) provides that an employee may be suspended from duty if the Chief Executive Officer is of the opinion that the alleged breach of discipline is of such a serious nature that the employee should not continue performing the duties they are assigned to perform pending the making of this decision.

This is to inform you that I have formed the view that you may have committed a breach/breaches of discipline. Due to the serious nature of the alleged breach of discipline, I am considering suspending you [with or without] remuneration, for a period of [e.g. three (3) months], or until I have made a final decision in this matter, whichever is the sooner.

I invite you to respond in writing why you should not be suspended from duty [with or without] remuneration and provide any information or explanation that you believe is relevant. Your response, if any, must reach me within [insert reasonable timeframe, eg. 48 hours] after the date of this letter. If no response is received within this time, I will make a decision about your suspension based on the material currently available.

While this discipline process is ongoing I direct you to make yourself available for the purpose of assisting with any investigations or inquiries relating to this matter.

Please be aware that, in order to safeguard the integrity of this process, any matters which are the subject of the process are to remain confidential. Consequently, you are directed to not discuss this matter with your work colleagues or any person likely to have information relevant to the allegation(s) against you, other than your union or support person.

You are reminded that your obligations under the Code of Conduct continue to apply throughout and following the conclusion of the discipline process.

**Further Information and Available Support**

I appreciate that receiving this notification and dealing with the issues it raises may be difficult. If you would like support, the Employee Assistance Program (EAP) has a range of confidential and professional counselling services that I encourage you to access. You may also wish to seek advice and assistance from your union.

You may choose an EAP from the list below:

Employee Assistance Program	Telephone number
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xxx	1800 xxx xxx

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If you have any questions about the contents of this letter please do not hesitate to contact [*insert name of contact*] on [*insert telephone number and email address*].

Yours sincerely

Decision Maker

Position Title

Date

## Sample letter 2 – Decision on suspension

[Address Block]

Dear [insert name]

### RE: Notice of intention to suspend from duty [with or without] remuneration

I refer to my letter dated (*insert date of proposed suspension from duty letter*) in which I invited you to respond to why you should not be suspended from duty [*with or without*] remuneration in relation to the following alleged breaches of discipline:

- [*insert allegation(s)*]

I have now carefully considered the material before me, including your response received [*insert date received*]. I note in particular [*insert summary of relevant response information and the delegate's response to same*].

In accordance with section 49E of the *Public Sector Employment and Management Act 1993* (PSEMA) I have decided to suspend you [*or not*] from duty [*with or without*] remuneration as I suspect that you have committed a breach of discipline and that the suspected breach of discipline is of such a serious nature that you should not continue performing the duties you are assigned to perform pending the making of a decision in this matter.

Your suspension will take effect immediately on your receipt of this letter and will remain in place until [*insert end date of suspension, which cannot be more than 6 months in total*] or unless otherwise determined.

During your suspension you are directed to not attend the [*work unit/branch/department*] or any other departmental site without obtaining permission from [*your manager/case manager*] on telephone number 89xx xxxx.

While this discipline process is ongoing I direct you to make yourself available for the purpose of assisting with any investigations or inquiries relating to this matter.

To assist in protecting the integrity of this process, you are directed to not discuss this matter with your work colleagues or any person likely to have information relevant to the allegation(s) against you, other than your advisor, union or support person.

You are further reminded that your obligations under the Code of Conduct continue to apply throughout and following the conclusion of this process.

As previously advised, the Employee Assistance Program is available and offers a confidential and professional counselling and support service, refer contact details below. You may also wish to seek advice and assistance from your union.

Employee Assistance Program	Telephone number
xxx	1800 xxx xxx
xxx	1800 xxx xxx
xxx	1800 xxx xxx

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xxx	1800 xxx xxx

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If you have any questions about the contents of this letter please do not hesitate to contact [*insert name of contact*] on telephone number xxx.

Yours sincerely

Decision Maker  
Position Title

Date

## Sample letter 3 – Alleged breach of discipline

[Address Block]

Dear [insert name]

### RE: Alleged breach/es of discipline

I have received [a report/information] dated [insert date] [prepared/provided] by [investigator/complainant] concerning your alleged conduct. In accordance with [insert description of delegation e.g. HR delegations of XX date] I have been delegated the functions of the Chief Executive Officer for this matter (if applicable).

Your alleged conduct may amount to a breach/es of discipline as set out below:

#### Breach 1 [insert]

- Insert the relevant part of the report/evidence relating to the allegation that is being relied on
- Insert the section of the *Public Sector Employment and Management Act 1993* (PSEMA), Code of Conduct or policy which has allegedly been breached and how the allegation, if proven, would establish a breach of discipline under s49 of the PSEMA.

#### Breach 2 [if relevant repeat particulars for any additional breaches of discipline]

A copy of [refer to all documents enclosed e.g. relevant provisions from Part 8 of the PSEMA, other relevant legislation, the Code of Conduct (or relevant extracts); the investigation report (or relevant extracts), witness statements, copies of relevant hard and electronic documents] are enclosed for your consideration.

You are invited to respond in writing to this/these alleged breach/es of discipline and provide reasons as to why a disciplinary finding should not be made against you. Your response should provide any information or explanation that you believe could be relevant.

You are required to provide your written response to me **within** [insert reasonable timeframe, eg **14 calendar days**] of the date of this letter. If no response is received within this time, I will make a final decision based on the material I currently have available.

While this discipline process is ongoing I direct you to make yourself available for the purpose of assisting with any investigations or inquiries relating to this matter.

#### Possible disciplinary action

If I find that you have committed a breach of discipline, you may be subject to disciplinary action.

Section 49C of the PSEMA sets out the range of possible disciplinary actions that may be taken against you if you have committed a breach of discipline. Among other things, this includes: taking no further action; formal caution; order to undertake training, counselling or other remedial activities; reduction in salary; transfer to other duties or to another agency; suspension without remuneration; or termination of employment.

#### Confidentiality

Please be aware that, in order to safeguard the integrity of this process, any matters which are the subject of the process are to remain confidential. Consequently, you are directed to not discuss this matter with

your work colleagues or any person likely to have information relevant to the allegation(s) against you, other than your union or support person.

You are further reminded that your obligations under the Code of Conduct continue to apply throughout and following the conclusion of the discipline process.

**Further Information and Available Support**

I appreciate that receiving this notification and dealing with the issues it raises may be difficult. If you would like support, the Employee Assistance Program (EAP) has a range of confidential and professional counselling services that I encourage you to access. You may also wish to seek advice and assistance from your union.

You may choose an EAP from the list below:

<b>Employee Assistance Program</b>	<b>Telephone number</b>
xxx	1800 xxx xxx

If you have any questions about the contents of this letter please do not hesitate to contact [*insert name of contact*] on [*insert telephone number and email address*].

Yours sincerely

Decision Maker  
Position Title

Date

## Sample letter 4 – Decision on disciplinary finding (no breach of discipline)

[Address Block]

Dear [insert name]

### RE: Decision on disciplinary findings

I refer to my letter dated [insert date of alleged breach of discipline letter] in which I invited you to respond to alleged breach/es of discipline under the *Public Service Employment and Management Act 1993 (PSEMA)* and provide reasons as to why a disciplinary finding should not be made against you.

I acknowledge receipt of your response on [insert date received].

The alleged breach/es of discipline that were made against you are as follows:

- Breach 1 [insert]
- Breach 2 [if relevant repeat for any additional breaches of discipline]

I have considered all of the information and evidence, including your response, and have determined that the alleged breach/es of discipline is not substantiated [include reasons] [where appropriate distinguish between factual findings about conduct / performance and findings about disciplinary grounds (i.e. the facts may establish that a particular event occurred but the delegate may not be satisfied that it constitutes a breach of discipline)].

As I am satisfied that you did not commit a/any breach of discipline, the discipline process is now finalised. Please note, this matter remains confidential and should not be discussed in the workplace. In accordance with employment record protocols, information relating to this process will be retained on a confidential departmental file.

If you have any questions about the contents of this letter please do not hesitate to contact [insert name of contact] on telephone number xxx.

*[Where appropriate – insert information eg: Thank you for your willing participation in this process/ professionalism you have displayed / need to be vigilant about adherence to the Code of Conduct]*

Yours sincerely

Decision Maker  
Position Title

Date

## Sample letter 5 – Decision on disciplinary finding (breach of discipline, no action taken)

[Address Block]

Dear [insert name]

### RE: Decision on disciplinary finding

I refer to my letter dated [insert date of alleged breach of discipline letter] in which I invited you to respond to alleged breach/es of discipline under the *Public Service Employment and Management Act 1993* (PSEMA) and provide reasons as to why a disciplinary finding should not be made against you.

I acknowledge receipt of your response on [insert date received].

After considering all of the information and evidence, including your statements/response, I now make the following finding/s in relation to [the/each] breach of discipline.

#### Breach 1 [insert]

I have determined that the breach of discipline [is/is not] substantiated on the basis that [support why the allegation is or is not substantiated, outline the behaviour/conduct that supports the specific disciplinary ground, summarise the evidence relied on and the employee's response.]

[Repeat for each breach of discipline and make finding for each whether it is or is not substantiated.]

Based on consideration of all the facts, however, I have determined that no disciplinary action should be imposed against you because [insert reason for decision]. Therefore I now consider this discipline process is concluded.

As previously advised, the Employee Assistance Program is available to you. These services are completely confidential. You may also wish to seek advice and assistance from your union.

Please note, this matter remains confidential and should not be discussed in the workplace.

If you have any questions about the contents of this letter please do not hesitate to contact [insert name of contact] on [insert telephone number and email address].

Yours sincerely

Decision Maker  
Position Title

Date

## Sample letter 6: Decision on disciplinary finding (and proposed disciplinary action)

[Address Block]

Dear [insert name]

### RE: Decision on disciplinary finding

I refer to my letter dated [insert date of alleged breach of discipline letter] in which I invited you to respond to alleged breach/es of discipline under the *Public Service Employment and Management Act 1993* (PSEMA) and provide reasons as to why a disciplinary finding should not be made against you.

I acknowledge receipt of your response on [insert date received].

After considering all of the information and evidence, including your statements/response, I now make the following finding/s in relation to [the/each] breach of discipline.

- Breach 1 [insert]

I have determined that the breach of discipline [is/is not] substantiated on the basis that [support why the allegation is or is not substantiated, outline the behaviour/conduct that supports the specific disciplinary ground, summarise the evidence relied on and the employee's response.]

[Repeat for each breach of discipline and make finding for each whether it is or is not substantiated.]

### Proposed disciplinary action

Having determined that a breach of discipline has occurred, I am now required to determine the disciplinary action that should be imposed against you. Section 49C of the PSEMA sets out the range of possible disciplinary actions that may be taken.

I am currently giving serious consideration to imposing the following disciplinary action:

- [insert the proposed disciplinary action and reasons]

I now invite you to respond to the proposed discipline action and provide reasons as to why I should not take that action. Your written response, if any, must reach me **within** [insert reasonable timeframe eg **7 calendar days**] after the date of this letter. If no response is received within this time, I will make a decision final decision based on the material I currently have.

As previously advised, the Employee Assistance Program is available to you. These services are completely confidential. You may also wish to seek advice and assistance from your union.

Please note, this matter remains confidential and should not be discussed in the workplace.

If you have any questions about the contents of this letter please do not hesitate to contact [*insert name of contact*] on [*insert telephone number and email address*].

Yours sincerely

Decision Maker  
Position Title

Date

## Sample letter 7: Decision on disciplinary action

[Address Block]

Dear [insert name]

### RE: Decision on disciplinary action

I refer to my letter dated (*insert date of Decision of disciplinary finding letter*) in which I invited you to respond to why the following disciplinary action should not be imposed under section [insert the section 49C(1)(xxx)] of the *Public Sector Employment and Management Act 1993* (PSEMA), namely [insert disciplinary action that was proposed].

I have carefully considered all the evidence available to me, including your response received [insert date received].

[Address points raised by the employee in their response]

Accordingly, following my earlier decision of (*date of decision on disciplinary finding*) under section 49(x) of PSEMA that you [insert the breach/es of discipline e.g. failed to uphold the performance and conduct principle or otherwise contravenes the PSEMA], I have decided to impose the following disciplinary action under section 49C:

- [insert the disciplinary action here]
- [if disciplinary action varies from what was originally proposed explain why]

[This paragraph will depend on the disciplinary action taken - there is no appeal right for actions under 49C(1)(b)(i)-(iv), only a grievance right per s 59(1)(aa)(ii)] As an employee of the NTPS, [section 59A/ section 59(1)(aa)] of the PSEMA affords you the right to [appeal/ seek a review of] my decision. Any such [appeal/ request for a review] should be lodged within 14 days of your receipt of this letter with:

Public Sector Appeals and Grievance Review  
 Level 10, Charles Darwin Centre  
 19 The Mall  
 Darwin NT 0800  
 Email: [psab@nt.gov.au](mailto:psab@nt.gov.au)  
 Phone: (08) 8999 4129

In accordance with employment record protocols, a record of this action will be retained on a separate confidential disciplinary file and may be a factor in the consideration of any future disciplinary process initiated against you. Your personnel file will contain only the outcome of the disciplinary action and a notation that a separate disciplinary file exists.

As previously advised, the Employee Assistance Program is available to you. These services are completely confidential. You may also wish to seek advice and assistance from your union.

Please note, this matter remains confidential and should not be discussed in the workplace.

If you have any questions about the contents of this letter please do not hesitate to contact [*insert name of contact*] on [*insert telephone number and email address*].

Yours sincerely

Decision Maker  
Position Title

Date