

## PURPOSE

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The purpose of this policy is to set out a formal disciplinary process when misconduct or serious misconduct is alleged against a Ministry employee.

## POLICY STATEMENT

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The Ministry is committed to following a disciplinary process that is fair and reasonable.

The Ministry will follow a disciplinary process that ensures:

- employees are fairly advised of allegations that may lead to disciplinary action being taken against them and of the potential consequences of those allegations
- a fair investigation takes place into allegations made against employees
- employees receive a fair opportunity to respond to allegations made against them
- employees' responses, submissions and other input is fairly considered before a final decision is made
- employees receive a fair opportunity to provide comment as to what disciplinary action should be taken, if allegations against them are found to be established.

## SCOPE

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This policy applies to all Ministry employees.

## OUR POLICY

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### Definitions

**Misconduct:** behaviour by an employee that breaches the Ministry's Code of Conduct, a Ministry policy or some other obligation that applies to an employee in their employment, including for example the express or implied terms of an employee's employment, the State Services Commissioner's Standards of Integrity and Conduct, or statutory obligations that may apply to a position.

**Serious misconduct:** misconduct that by reason of the nature, extent, seriousness or consequences of the employee's behaviour, may destroy or irreparably harm the trust and confidence the Ministry is able to have in the employee.

**Investigator:** the person who undertakes an investigation into allegations against an employee. The Investigator may be the employee's manager or some other person (internal or external to the Ministry) who is able to investigate allegations properly and impartially. The Investigator may be appointed by the employee's manager or by a Ministry manager senior to the employee's manager. Investigators should be appointed in consultation with HR Business Partners.

**Decision Maker:** the person who makes a final decision about whether allegations against an employee are established and if so, whether disciplinary action against an employee should be taken. The Decision Maker must be a manager within the Ministry who holds delegated authority to take any disciplinary action that may be a possible outcome of the investigation.

Allegations	<p>Where it is alleged that an employee has engaged in misconduct or serious misconduct the Ministry will write to the employee and:</p> <ul style="list-style-type: none"> <li>(a) set out the nature of the allegations</li> <li>(b) advise that the allegations will be investigated</li> <li>(c) advise who the Investigator and Decision Maker will be (if known)</li> <li>(d) advise as to the seriousness of the allegations, for example whether alleged conduct may potentially be found to be misconduct or serious misconduct</li> <li>(e) advise as to the potential disciplinary action that may be taken if the allegations are found to be established</li> <li>(f) notify the employee of their right to seek independent advice from their union or a lawyer</li> <li>(g) notify the employee of their right to bring a union or legal representative, or support person with them to any meeting forming part of the disciplinary process</li> <li>(h) provide initial documentation that may support the allegations.</li> </ul>
Preliminary meeting	<p>The Ministry will invite the employee to attend a preliminary meeting. The preliminary meeting may occur by teleconference or through audio-visual technology where the Investigator and the employee are based in different locations.</p> <p>The preliminary meeting is a forum for:</p> <ul style="list-style-type: none"> <li>(a) the Investigator to outline the matters set out above in the section entitled “<i>Allegations</i>”</li> <li>(b) the Investigator to outline the process that will be followed by the Ministry to investigate the allegations</li> <li>(c) the employee to identify any person/s the employee believes should be interviewed or any material that should be considered as part of the investigation</li> <li>(d) the employee to provide any initial response to the allegations that they may want the Investigator to be aware of during the investigation.</li> </ul> <p>Any initial response the employee chooses to provide is voluntary and the employee is under no obligation to provide an initial response at the preliminary meeting.</p> <p>If the employee decides to provide an initial response to the allegations at the preliminary meeting and the Investigator is satisfied with the explanation the Investigator can, in consultation with People &amp; Performance, decide to conclude the disciplinary process and take no further action.</p> <p>If the employee decides to provide an initial response to the allegations at the preliminary meeting and admits the conduct alleged, the Investigator may rely on that as proof of misconduct or serious misconduct. In these circumstances the Investigator will not be obliged to make further inquiries or hold a substantive interview with the employee, and may choose to proceed to prepare an investigation report.</p>
Investigation	<p>The Investigator will undertake a fair investigation into the alleged facts giving rise to the allegations against the employee. This will usually include:</p> <ul style="list-style-type: none"> <li>(a) interviewing witnesses to alleged events or other individuals who may have information relevant to the investigation; and</li> <li>(b) gathering and assessing relevant documents or other evidence that may be relevant to the investigation.</li> </ul> <p>Prior to the substantive interview, at the next stage, the Investigator will provide the employee with a copy of all relevant documents or other material arising from the investigation (including notes of interviews conducted). The employee will be provided with a reasonable opportunity to consider such material.</p>

Substantive interview	<p>The Investigator will invite the employee to attend a substantive interview.</p> <p>The substantive interview is a forum for:</p> <ol style="list-style-type: none"> <li>(a) the employee to provide any response, explanation, comment, submission or other input in relation to the allegations or information arising from the investigation; and</li> <li>(b) the Investigator to put questions to the employee about the allegations or the alleged facts or events on which the allegations are based, or information arising from the investigation.</li> </ol> <p>The Investigator will consider the employee’s responses and other input in forming views about whether the allegations against the employee are established or not.</p>
Investigation report	<p>The Investigator will prepare an investigation report for the Decision Maker. The investigation report should set out:</p> <ul style="list-style-type: none"> <li>• the alleged facts or events giving rise to the allegations</li> <li>• the inquiries undertaken by the Investigator</li> <li>• a summary of the relevant information obtained during the investigation</li> <li>• a summary of the responses, explanations, comments or other input provided by the employee</li> <li>• relevant documents or other evidence relied on by the Investigator.</li> </ul> <p>The Investigator should set out his or her views as to the relevant facts and state whether or not the Investigator considers the allegations to be established, with reasons.</p> <p>The Investigator will provide to the employee a copy of the investigation report in draft and give the employee a reasonable opportunity to consider the draft report and provide comments or input in writing.</p> <p>After considering any input provided by the employee about the draft investigation report, the Investigator may decide whether or not to amend the report. Whether the Investigator decides to amend the report or not, a copy of any written input (or a summary of any verbal input) received from the employee should be attached to the final investigation report.</p> <p>The Investigator will provide a copy of the final investigation report to the Decision Maker and the employee.</p>
Decision Maker preliminary views	<p>After considering the investigation report, the Decision Maker should write to the employee setting out his or her preliminary views as to whether the allegations against the employee are established and inviting the employee to attend a disciplinary meeting.</p> <p>Where the Decision Maker expresses a preliminary view that one or more of the allegations against the employee are established, the Decision Maker should also set out a preliminary view as to the disciplinary action that the Decision Maker considers may be appropriate to take in the circumstances.</p>
Disciplinary meeting	<p>Where the Decision Maker has formed a preliminary view that one or more allegations against the employee may be established the Decision Maker will invite the employee to attend a disciplinary meeting.</p> <p>Where the Decision Maker and the employee are located in different locationsthe disciplinary meeting may, by agreement between the Decision Maker and the employee, occur through audio-visual technology.</p> <p>At the disciplinary meeting the employee will be given the opportunity to provide any response, explanation, comment, submission or other input in relation to the allegations, the investigation report, and/or the Decision Maker’s preliminary views.</p> <p>The Decision Maker will consider the employee’s input and should, if practicable, make a</p>

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final decision during the disciplinary meeting as to whether or not the allegations against the employee are established.

Where the Decision Maker decides that one or more of the allegations against the employee are established, the employee will be invited to provide submissions or other input about what disciplinary action or penalty should be imposed in the circumstances.

At the end of the disciplinary meeting, the Decision Maker may make a decision as to what disciplinary action should be imposed and may convey that decision to the employee verbally at first instance. Alternatively the Decision Maker may at his or her discretion give the employee additional time to make final submissions as to the issue of appropriate disciplinary action following the disciplinary meeting. In such circumstances the Decision Maker will not make a final decision about the disciplinary action to be taken until he or she has received and considered the employee's final written submissions or until the timeframe for the employee to provide such submissions has expired.

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Decision on disciplinary action

Following the disciplinary meeting the Decision Maker will confirm or notify the employee of his or her final decision in writing.

The Decision Maker may also, at the request of the employee, convey his or her decision verbally by such means as are practical and available in the circumstances.

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Suspension

The Ministry recognises that suspending an employee from their employment while a disciplinary process is undertaken is a serious matter.

Suspension may be contemplated where the Ministry holds concern that there may be a genuine and unacceptable risk to any part of its business, to the integrity of its investigation, to the safety or wellbeing of any person, or otherwise when the temporary removal of the employee from the workplace is considered necessary to prevent, preclude or minimise the risk of potential harm to any person, property or process.

There is no presumption that an employee who is suspended will be dismissed.

There is no presumption that an employee who is not suspended will not be dismissed.

Prior to making a decision to suspend, the Ministry will advise the employee in writing that suspension is being considered pending the outcome of a disciplinary process, and will give the employee an opportunity to provide comment, submissions or other input about whether suspension is appropriate in the circumstances.

A meeting will be convened to enable a manager who has delegated authority to make a decision to suspend (per the HR Delegations Schedule) to hear and consider input from the employee about whether suspension is appropriate and to consider possible alternatives to suspension.

Potential suspension situations often involve urgency and meetings to consider suspension must often be convened on short notice. Accordingly, meetings to consider an employee's suspension may occur by teleconference or through audio-visual technology where the manager and the employee are based in different locations.

Where an employee's suspension is being contemplated, the Ministry may place the employee on special leave on pay for up to two working days as an interim measure. This is in recognition of the urgent nature of possible suspension situations and serves as an opportunity for both parties to take independent advice and make suitable arrangements for the meeting at which the Ministry will hear and consider input from the employee about whether suspension is appropriate.

Where an employee is suspended from his or her employment, suspension will be on pay.

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Warnings

Where a disciplinary process leads to allegations against an employee being found to be established but results in disciplinary action falling short of dismissal, the Ministry may elect

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to warn the employee.

The following types of warnings may be available options:

**Verbal warning**

A verbal warning will generally be appropriate for misconduct that is low-level or minor in nature.

**Written warning**

A written warning is more serious than a verbal warning and will generally be appropriate for first instances of misconduct or for low-level misconduct when the employee has previously been given a verbal warning.

**Final written warning**

A final written warning is more serious than a written warning and will generally be appropriate in instances of:

- serious misconduct that does not result in dismissal
- misconduct where the employee has previously been given a written warning
- misconduct where further misconduct may lead to the employee's dismissal.

All warnings (including verbal warnings) must be recorded in writing. Warnings should specify the conduct the employee is being warned for and advise the employee of the further disciplinary consequences that may follow if the employee acts in a similar way or otherwise engages in further misconduct or serious misconduct.

Warnings may state that they will remain in force for a specified period of time. On the expiry of any such period the warning will no longer remain in force.

Whether warnings remain in force or are expired will be relevant to consideration of what disciplinary action should be imposed should the employee engage in further misconduct. While warnings that remain in force will generally carry more weight in terms of making a decision about the disciplinary action that should be taken, a pattern of expired warnings may also be a relevant factor.

Any warning, including expired warnings, may be relied on by the Ministry as proof that it has previously been made clear to an employee that misconduct or serious misconduct of a particular type is unacceptable to the Ministry. Expired warnings will not be removed from an employee's personal file.

The Ministry does not require any particular type or number of warnings to have been issued before dismissal may become an appropriate penalty for repeated instances of misconduct or serious misconduct. Such decisions depend on the nature, extent, seriousness or consequences of the employee's misconduct or serious misconduct.

Nothing in this policy detracts from the principle that dismissal, including summary (instant) dismissal may be imposed by the Ministry without prior warning in instances of serious misconduct.

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Police involvement

Where allegations are made that involve alleged or potential criminal behaviour by an employee, managers must notify their own manager and seek advice from People & Performance. The Ministry has guidelines in place for making a complaint to the Police and managers must not of their own accord involve Police in matters relating to employees except in legitimate emergencies.

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Performance management

The process outlined in this policy is a disciplinary process that applies when allegations of misconduct or serious misconduct are made against an employee of the Ministry.

Any disciplinary action that may be taken against an employee for unsatisfactory work performance should be addressed in accordance with the Ministry's Unsatisfactory Work

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Performance Policy and not under this policy.

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People &  
Performance

Managers are encouraged to seek advice from an HR Business Partner in relation to all disciplinary matters and processes.

Managers must seek advice from an HR Business Partner in relation to any matter that:

- may result in dismissal if the allegations against an employee are found to be established
  - may have involved possible criminal behaviour by an employee.
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## RESPONSIBILITIES

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Employees

- To keep themselves informed of, and comply with, the Ministry's Code of Conduct, policies and procedures of the Ministry, and any legislative requirements that apply to their work.
- To comply with the law at all times.

Managers

- To ensure that employees are aware of the standards of conduct and performance required of them in their employment.
- To follow fair and reasonable disciplinary processes when required in accordance with this policy.
- To seek advice from People & Performance as required in relation to issues of employee conduct, including in relation to formal disciplinary matters and otherwise as set out in this policy.

People &  
Performance

- To provide advice and assistance to managers as required.

## RELEVANT LEGISLATION

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- Employment Relations Act 2000
- State Sector Act 1988
- Privacy Act 1993
- Human Rights Act 1993
- Protected Disclosures Act 2000

## RELATED POLICIES AND PROCEDURES

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- Code of Conduct
- State Services Commission Standards of Integrity and Conduct 2007
- ICT Acceptable Use policy
- Conflicts of Interest policy
- Harassment policy
- Privacy Act and Personal Information policy
- Personal Gain Through Employment policy
- Fraud and Corruption policy
- Protected Disclosures policy
- HR Delegation policy and HR Delegation Schedule

CONTACT	AskHR	OWNER(S)	General Manager, People and Performance
LAST REVIEWED	April 2018	NEXT REVIEW	April 2020
LAST UPDATED	April 2016		