MISCONDUCT AND DISCIPLINE POLICY

1 SCOPE
This policy applies to all staff of WA Health, which incorporates the following entities:

- Department of Health;
- Metropolitan Health Services;
- WA Country Health Service;
- Peel Health Service.

This policy will also apply to any other entities which become part of WA Health.

This is a system-wide policy which will be supported by guidelines designed to assist with the policy’s implementation and the effective management of misconduct and discipline issues.

This policy supersedes the policies and documents listed in Section 9 of this document (Superseded Policies & Documents).

It is the responsibility of managers to ensure all staff for whom they are responsible are aware of and have access to this policy.

2 POLICY STATEMENT
The principles and values expressed in the Western Australian Public Sector Code of Ethics and the WA Health Code of Conduct describe the standards of behaviour expected of those working in the public health sector.

WA Health does not condone misconduct and unacceptable behaviour in the work place, and will respond to acts of misconduct appropriately, which may include the taking of disciplinary action, reporting suspected misconduct to the Corruption and Crime Commission (CCC) and if necessary, the termination of employment or involvement with WA Health.

WA Health acknowledges that reports of misconduct can help improve the effectiveness of the public health sector and the public sector generally. To support the Director General’s statutory obligation to report all incidents of suspected misconduct to the CCC, all staff should report incidents of suspected misconduct as soon as practicable to an appropriate person within WA Health, to WA Health’s Corporate Governance Directorate or to the CCC.
WA Health will ensure that, in handling allegations of misconduct and taking any consequential action, all legal requirements are complied with and the principles of natural justice are met.

3 DEFINITIONS & ABBREVIATIONS

3.1 Definitions

**Breach of Discipline**
A ‘breach of discipline’ is a broad term used to describe a range of inappropriate behaviour and occurs if a staff member:

(a) disobeys or disregards a lawful order;
(b) contravenes:
   (i) any legislative requirement, public sector standard or code applicable to them; or
   (ii) the WA Health Code of Conduct;
(c) commits an act of misconduct;
(d) is negligent in the performance of their work-related functions; or
(e) commits an act of victimisation.

**Misconduct**
Within WA Health Misconduct falls within two categories, the first is Misconduct that is reportable to the Corruption and Crime Commission (CCC) and is defined by s4 of the Corruption and Crime Commission Act 2003 (CCC Act).

**Category 1:**
The CCC has paraphrased the CCC Act definition in terms of three types of misconduct. These occur where a public officer:

1. Behaves corruptly in their role as a public officer;
2. While acting in their official capacity, commits an offence punishable by imprisonment for two years or more; or
3. Is involved in a breach of trust, or acts with some element of dishonesty or lack of integrity and is involved in conduct that could reasonably result in their dismissal.

All such acts that fall within this first type of misconduct are to be reported to the CCC.

**Category 2:**
The second category of misconduct includes behaviour or actions which may not result in an employee being dismissed or being reported to the CCC. This may include an employee who:
(a) disobeys or disregards a lawful order; or
(b) contravenes any provision of the *Public Sector Management Act 1994* or other relevant legislation applicable to that employee; or
(c) contravenes a public sector standard, code of ethics or WA Health policy; or
(d) is negligent or careless in the performance of his or her functions.

**Public Officer**

‘Public officer’ is defined by the *Criminal Code*, and includes:

(a) A person exercising authority under a written law;
(b) A public service officer or employee within the meaning of the *Public Sector Management Act 1994* (PSM Act);
(c) A member, officer or employee of any authority, board, corporation, commission, local government, council of a local government, council or committee or similar body established under a written law; and
(d) Any person holding office under, or employed by, the State of Western Australia, whether for remuneration or not.

The *CCC Act* uses the same definition.

For the purposes of the *CCC Act* and this policy, every staff member of WA Health is a public officer.

[See s1 of the *Criminal Code*; s3 of the *CCC Act*].

**Staff / Staff Member**

‘Staff’ and ‘staff member’ encompass all persons working in or for WA Health (whether full-time, part-time, contractor or volunteer).

For the purposes of this policy and the *CCC Act*, ‘staff’ and ‘public officer’ are interchangeable concepts.

**Victimisation**

‘Victimisation’ occurs if a staff member takes, or threatens to take, detrimental action against another person without authority or justification, including someone who has made, or intends to make:

(a) A general complaint or grievance;
(b) An objection relating to discriminatory treatment;
(c) A complaint under the *Equal Opportunity Act 1984*; or
(d) A disclosure under the *Public Interest Disclosure Act 2003*. 

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3.2 Abbreviations

CCC  Corruption and Crime Commission


HR  Human Resources

PSM Act  Public Sector Management Act 1994

4 REPORTABLE MISCONDUCT

4.1 Conduct & Misconduct

All staff of WA Health are expected to behave in accordance with the principles and values set out in the Western Australian Public Sector Code of Ethics and the WA Health Code of Conduct.

Implicit in that expectation is an obligation on staff to not engage in or promote misconduct.

For government agencies in Western Australia, including WA Health, the legal definition of misconduct is set out in s4 of the Corruption and Crime Commission Act 2003 (CCC Act). This definition has been broken down into three types of behaviour:

1. Where a public officer behaves corruptly in their role as a public officer.

   Examples of this type of misconduct include:
   - Misusing the power of their office to gain a benefit or cause detriment to another person;
   - Passing on confidential information to give someone an unfair advantage;
   - Taking a payment or other inducement to decide a matter in a certain way.

2. Where a public officer acting in their official capacity commits an offence punishable by imprisonment for two years or more.

   Examples of this type of misconduct include:
   - Stealing from an employing public sector agency;
   - Misusing a government credit card or travel allowance entitlements;
   - Assaulting a fellow officer, a person under care or a client.

3. Where a public officer is involved in a breach of trust, or acts with some element of dishonesty or lack of integrity and is involved in conduct that could reasonably result in their dismissal.

   Examples of this type of misconduct include:
   - Repeated falsification of timesheets;
   - Misuse of computing facilities to download inappropriate material;
   - A public sector nurse who also does part-time work for a private agency steals from an agency client;
A staff member assaults another staff member while attending a private function.

The examples above should not be considered an exhaustive list of inappropriate actions. They are provided as a guide as to what types of behaviour fall into the three different types of behaviour which could constitute misconduct.

The behaviour of staff outside their work-related activities can also amount to misconduct, particularly if it involves conduct with the potential to adversely affect WA Health’s reputation or a staff member’s ability to do their work honestly and impartially. For off-duty behaviour to amount to misconduct, however, there will usually be a relevant connection between the conduct in question and the work the staff member does or is involved in.

4.2 Reporting Misconduct

4.2.1 Reporting to the CCC

Under the CCC Act, the Director General is required to notify the CCC of any matter suspected, on reasonable grounds, that concern misconduct by a staff member of WA Health. This notification by the Director General to the CCC must be done as soon as practicable after becoming aware of the suspected misconduct.

To assist the Director General meet this statutory obligation, WA staff should report suspected misconduct as soon as practicable to an appropriate person within WA Health.

4.2.2 The Corporate Governance Directorate

To ensure all information concerning misconduct is identified and assessed consistently across the sector, the Corporate Governance Directorate (the Directorate) is to be advised of all reports of suspected misconduct concerning WA Health staff as soon as practicable. It is generally the responsibility of the HR Division of the relevant area to coordinate reporting of suspected matters of misconduct to the Directorate.

The Directorate is responsible for assessing all suspected misconduct-related matters within WA Health and for determining whether they come within the jurisdiction of the CCC.

The Director, Corporate Governance is responsible for determining what initial action is appropriate and who should undertake it (eg the Directorate, the relevant area health service or an external consultant).

If a matter is considered CCC-notifiable, the Directorate will assemble the relevant information and coordinate all reporting to, and liaison with, the CCC.

More information relating to reporting of misconduct can be found in the WA Health Misconduct Reporting (see Section 8 of this document (Related Policies & Documents)).

4.2.3 Reporting to Other Agencies

Depending on the conduct in question and who is involved, WA Health may elect or be obliged to report matters or provide information to other agencies or organisations, including the following (this is not an exhaustive list, and is subject to change):
- Medical Board of Western Australia;
- Nurses & Midwives Board of Western Australia;
- Office of the Auditor General for Western Australia;
- Office of the Public Sector Standards Commissioner;
- Western Australian Ombudsman;
- Western Australia Police.

The reporting requirements in relation to such agencies and organisations may be governed by specific legislation or subject to other factors, and the type and nature of the information provided to them can vary.

5 DISCIPLINE

5.1 Statutes, Awards and Contractual Agreements

Staff are subject to a variety of statutes, awards and contractual agreements pertaining to their employment or involvement with WA Health. The particular arrangement an individual staff member works under may vary according to the legal entity for which they work, their employment status (eg employee, contractor, volunteer) and their occupation. With the different statutes, terminology can sometimes be different from common or already understood definitions.

For example, matters involving misconduct allegations against staff who are subject to Part 5 of the *Public Sector Management Act 1994 (PSM Act)* must be handled in accordance with the requirements of the *PSM Act* and the related regulations and guidelines, which particularly refers to ‘discipline’ and ‘breaches of discipline’.

It should be noted that whilst some parts of the *PSM Act* apply to all staff of WA Health, Part 5 of the Act (which specifically addresses misconduct and discipline) generally only applies to staff employed by the Department of Health – and in the main does not apply to staff employed by Health Services.

It is important for decision-makers considering action relating to alleged breaches of discipline to take into account the terms of any contracts, relevant awards, applicable legislation and the requirements of common law. These variables may dictate the form of the appropriate disciplinary process.

The general principles contained in this WA Health Policy and associated Guidelines are consistent with all relevant agreements and legislation. To the extent of any inconsistency, the relevant clauses of the award, agreement or legislation override this policy and associated guidelines. Further advice on this can be obtained through the relevant HR area.

5.2 Disciplinary Processes

The WA Health process to be followed in relation to misconduct and breaches of discipline, is referred to as the disciplinary process.

For area health services staff (ie those staff who are not generally covered by Part 5 of the *PSM Act*), the disciplinary process to be followed is outlined in WA Health Misconduct & Discipline Guidelines for Metropolitan Health Service and WA Country Health Service staff.
For Department of Health staff (ie those staff of the Department who are generally covered by Part 5 of the PSM Act), the disciplinary process to be followed is outlined in the Department of Premier & Cabinet publication ‘Disciplinary Procedures Guide’ (November 2007).

Staff are encouraged to contact their local HR representative if they need to clarify whether Part 5 of the PSM Act applies to them or not.

6 SUPPORTING DOCUMENTS
- Disciplinary Procedures Guide (Department of the Premier and Cabinet): Department of the Premier and Cabinet - Disciplinary Procedures
- WA Health Misconduct & Discipline Guidelines: Metropolitan Health Service and WA Country Health Service Staff.

The OPSSC is presently reviewing the Standards. Information about the ‘Draft New Public Sector Standards’ can be viewed on: www.opssc.wa.gov.au/standardsreview2009
- WA Health Authorities, Delegations & Directions Schedules:
- WA Health Misconduct and Discipline Guidelines (in preparation)

7 RELEVANT LEGISLATION
- Criminal Code
- Equal Opportunity Act 1984
- Financial Management Act 2006
- Freedom of Information Act 1992
- Industrial Relations Act 1979
- Public Interest Disclosure Act 2003
- Public Sector Management Act 1994 and associated regulations and guidelines
- State Records Act 2000

Copies of the current versions of the above (and other) legislation can be obtained online from the State Law Publisher: www.slp.wa.gov.au

8 RELATED POLICIES & DOCUMENTS


9 SUPERSEDED POLICIES & DOCUMENTS


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