



Guidelines for the Management of Conduct and Performance NSW TAFE Commission Staff

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1. Legislative scheme

These Guidelines for the Management of Conduct and Performance of NSW TAFE Commission staff are compliant with the *TAFE Commission Act 1990* arising from the *TAFE Commission Amendment (Staff Employment) Act 2011*. The TAFE Commission is a corporation and as an employer is required to comply with the Commonwealth's *Fair Work* legislation.

2. Application of provisions

2.1 Conduct and Performance Procedures

The Guidelines for the Management of Conduct and Performance (the Guidelines) apply generally to TAFE Commission NSW staff (i.e. permanent employees) who are employed under the *TAFE Commission Act 1990*.

They do not apply to persons who are employed on a probationary, temporary or casual basis.

2.2 Procedures relating to bankruptcy, private and secondary employment, prohibited persons and notification of serious criminal offences

The provisions for dealing with prohibited persons, bankruptcy and private and secondary employment and notification of serious criminal offences apply to all persons employed under the legislation set out in section 2.1 above. They also apply to temporary employees employed under the legislation.

2.3 Application of existing policies

The Guidelines must be applied following the correct application of the procedures below, where relevant:

- [*Responding to Allegations Against Employees in the Area of Child Protection*](#)
- [*Complaints Handling Policy Guidelines*](#)
- [*Procedure For Managing Unsatisfactory Performance \(Teachers and Institute Managers employed by the NSW TAFE Commission\)*](#).

If there is any inconsistency between the Guidelines and the above procedures, subject to any statutory requirement contained in the procedures, the Guidelines shall prevail over the procedures.

3. Purpose and operation

3.1 Policy Statement

The objects of the Guidelines for the Management of Conduct and Performance are:

- a) to maintain appropriate standards of conduct and work related performance for TAFE Commission staff
- b) to protect and enhance the integrity and reputation of the TAFE Commission; and
- c) to ensure the public interest is protected.

These Guidelines demonstrate the management of conduct and performance in respect of staff of the TAFE Commission is consistent with the rules of procedural fairness.

Performance issues, in particular, can be dealt with using a remedial framework, with disciplinary action being taken where there has not been satisfactory improvement.

The option to take remedial action, instead of disciplinary action, is also available in cases of misconduct and conviction of a serious criminal offence at the discretion of the Managing Director or delegate. It is important to apply a risk-based approach to managing issues of conduct and performance.

The approach taken in each case will depend on the nature and seriousness of the issue. Each allegation of misconduct should be assessed, and a considered decision should be made in deciding whether to take disciplinary or remedial action.

Importantly, if having decided that a disciplinary approach should be taken and the facts of the matter later support a remedial approach, remedial action may be taken. Similarly, if having decided to take remedial action and further allegations of misconduct arise, the matter may be dealt with as a disciplinary matter.

Flexible options which incorporate support and assistance provide officers and permanent employees with the opportunity to improve to an agreed performance standard. Where appropriate, remedial action may provide a better outcome for both the officer and the TAFE Commission.

Discipline or review processes must be applied consistently without bias and each case should be considered upon its merits. There are a range of disciplinary options and an indicative range of options for remedial action.

Managers are responsible for managing conduct and performance issues of employees in a fair, timely, expeditious and transparent manner.

4. Principles underpinning the guidelines

A key tenet of these Guidelines is that a staff member is entitled to be treated fairly and transparently at every stage of the disciplinary process.

Investigations and disciplinary processes must be conducted according to the rules of procedural fairness.

4.1 Timeliness

A disciplinary or remedial process should be taken without delay. It is in the interests of all parties for the matter to be resolved in a timely and expeditious manner.

In some cases where other agencies are involved, internal investigative and disciplinary processes may be delayed. For example, reasonable delay may occur where another external investigating body, such as the NSW Police Force, Community Services, NSW Ombudsman or Independent Commission Against Corruption (ICAC), has requested that the Department's process be deferred while it carries out an investigation.

Other matters that may impact on timeliness include:

- the complexity of the issues
- number of witnesses involved
- the need to seek external or internal expert advice
- the impact of delay on the fairness of the process, or matters arising from the process such as the suspension of the member of staff
- the health or well being of the member of staff.

4.2 Procedural fairness

Essentially, procedural fairness is a legal safeguard applying to an individual whose rights or interests are or could be affected.

Procedural fairness serves an important function in the investigation of complaints by:

- providing a means of checking facts and identifying major issues;
- exposing weaknesses in the investigation; and
- informing the basis and direction of investigation.

A fundamental rule of procedural fairness is that a person be advised of the allegations against them and have an opportunity to reply to them.

The procedural guidelines are to ensure that a member of staff to whom an allegation of misconduct relates:

- is to be advised in writing of the alleged misconduct and that the allegation may lead to disciplinary action being taken;
- must be given an opportunity to respond to the allegation; and
- must be provided with a subsequent opportunity to make submissions in relation to disciplinary action that the decision maker is considering taking.

Further, the guidelines give an opportunity for the member of staff to request a meeting with the decision maker prior to a final decision on the action to be taken.

Procedural fairness also encompasses matters such as:

- making reasonable enquiries or investigations prior to making a decision; and
- ensuring the decision maker has no direct interest and is unbiased in the matter.

4.3 Deciding each matter on its merits

While disciplinary and remedial processes must be applied in a consistent manner, each matter must be treated on its individual merits and the form of action taken tailored to the individual matter. Only relevant factors must be taken into account and any irrelevant considerations must be disregarded.

This means that the same misconduct, unsatisfactory performance or serious offence conviction (unless it gives rise to a person becoming prohibited to work in child related employment) will not necessarily lead to the same disciplinary or remedial action being imposed. The circumstances of each case may be different. The relevance of the matter to the member of staff's position and duties may differ.

5. Glossary/dictionary

The Act means the *Technical and Further Education Commission Act 1990*

The Amending Act means the *TAFE Commission Amendment (Staff Employment) Act 2011*.

The Department, unless otherwise specified, means the Department of Education and Communities and the NSW TAFE Commission

Decision maker means the officer/s delegated by the Managing Director to make certain decisions about remedial or disciplinary actions

Delegated officer means the officer/s delegated by the Managing Director to undertake certain actions

Disciplinary action includes:

- dismissal from the NSW TAFE Commission;
- directing the member of staff to resign or to be allowed to resign from the NSW TAFE Commission within a specified time;
- reduction in the member of staff's salary or demotion to a lower position in the TAFE Commission;
- a caution or reprimand.

Managing Director means the Managing Director of the TAFE Commission

Prohibited person is defined in Division 2 of Part 7 of the *Commission for Children and Young People Act 1998*, which includes a person who is convicted of a serious sex offence, the murder of a child, or a child-related personal violence offence or becomes subject to registration requirements under the *Child Protection (Offenders Registration) Act 2000*.

Remedial action means any one or more of the following:

- counselling – informal and formal;
- training and development;
- monitoring the individual's conduct or performance;
- implementing a plan addressing unsatisfactory performance;
- the issuing of a warning that certain conduct is not acceptable or that the member of staff's performance is not satisfactory;

- a transfer to another position that does not involve a reduction in salary or demotion; or
- any other action of a similar nature, including mentoring, staff rotation, supervision or referral to relevant policies.

These arrangements allow an alternative to disciplinary action, where relevant and appropriate in the circumstances of the case, and particularly as a first intervention when dealing with unsatisfactory performance.

Serious offence is defined in the Act and means a criminal offence that is punishable by imprisonment for 12 months or more in New South Wales, or an offence committed elsewhere than New South Wales, that if it were committed in New South Wales, would be an offence so punishable. (A person does not have to receive a penalty of 12 months imprisonment – if the offence can attract such a penalty it is classified as a serious offence).

6. Appropriate use of disciplinary or remedial action

Taking remedial action may be relevant in the following situations:

- managing unsatisfactory performance;
- dealing with misconduct including when the decision maker is of the opinion that the member of staff has engaged in misconduct, where the imposition of remedial action is appropriate;
- when a member of staff has been found guilty of an offence.

Similarly, taking disciplinary action is relevant in the following circumstances:

- when the decision maker is of the opinion that the member of staff has engaged in misconduct, and it is appropriate;
- in dealing with unsatisfactory performance, where the performance is still unsatisfactory after a performance improvement program has been completed;
- where a member of staff has been found guilty of a serious offence, where it is appropriate.

6.1 Use of disciplinary options

The disciplinary options are:

Dismissal

Dismissal should be regarded as the most serious option available.

Directing the officer or permanent employee to resign or to be allowed to resign

This option should only be considered where a decision has been made that the member of staff should no longer be employed by the TAFE Commission. This means that should the person not resign, dismissal is the only alternative.

Reduction of the officer or permanent employee's salary or demotion to a lower position

This may be relevant in some disciplinary cases, including those that arise from continued unsatisfactory performance, where remedial action or a performance improvement program has not resulted in improved performance. A demotion may be permanent or for a particular period. Such action must be done in consultation with all affected parties.

A caution and/or reprimand

All cautions and/or reprimands should be confirmed in writing. The caution and/or reprimand should clearly state:

- the standard of conduct or performance that is required; and
- the possible consequences of a repetition of the conduct.

6.2 Use of remedial options

Counselling – informal and formal

Performance: Informal counselling should be part of daily supervision and enables an early response to unsatisfactory performance.

Formal counselling would normally be required in situations where unsatisfactory performance continues or where it is beyond the scope of informal counselling.

Conduct: Counselling may also be used in relation to conduct matters where it is considered that it is not appropriate to undertake disciplinary action.

Training and development

Training and development should be a usual part of managing staff to enable them to perform their work to the required standard. Where it is used in a remedial context, it should be relevant to the area of performance or conduct targeted.

Monitoring the member of staff's conduct or performance

This process enables on-going monitoring and feedback to the member of staff. The process should be transparent with feedback being a key aspect to the process. Monitoring performance or conduct may highlight areas requiring development or training.

Implementing a performance improvement plan

Any performance improvement plan must comply with the relevant procedures e.g. see Procedures for Managing Unsatisfactory Performance – Teachers and Institute Managers employed by the NSW TAFE Commission. Where a performance improvement plan is proposed, there should be discussion between the relevant parties with agreement being reached where possible.

Issuing a warning

Any warning needs to be specific about the conduct or performance that is not satisfactory and be clear as to what expectations there are in relation to ongoing conduct and performance. It should also indicate what assistance could be provided to the member of staff to enable him or her to meet the proper standard.

Transferring at current pay rate

This is particularly relevant when there are reasons to believe that the issue is related to the member of staff's present work environment or that the work is outside the person's capability and that training and development will not be sufficient to remedy the problem. Transfer can offer the person a fresh start and removes him or her from the particular environment. The person must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The decision maker should be satisfied the person has no valid reason for refusing the transfer.

Induction

Induction is a particularly useful tool when new material and/or processes are introduced.

Mentoring

Mentoring can enable peer assistance and support to be provided. It is important that the mentor understands the nature of the issue to be addressed and should be a role model in relation to the areas of concern.

Staff rotation

This option may assist the member of staff to better understand the nature of the work undertaken by the TAFE Commission and expose the person to different processes. It may assist in improving performance by developing such understanding or by enabling the person to learn from other employees.

Referral to relevant policies

Sometimes unsatisfactory performance or conduct can be due to unfamiliarity with relevant policy. In such a case referral to the correct policies and procedures and an explanation of their relevance and effect, may assist the person to reach the expected standard of performance.

7. Procedural guidelines for dealing with misconduct

The Managing Director is to deal with alleged misconduct by a member of staff. The Managing Director has delegated this function to particular decision makers who understand the disciplinary process and have the resources available to undertake the delegated function.

7.1 Timeframes

The process for dealing with misconduct is to be undertaken in a timely and expeditious fashion.

As a guide only, uncomplicated matters should generally be concluded within three months from when the initial allegation is made.

Some matters will take longer to finalise for a range of reasons (N.B. [Section 4.1](#) of these Guidelines) but members of staff should be advised of allegations as soon as practicable.

Except as set out below, irrespective of the complexity of the matter, the Managing Director or delegate will, after 18 weeks from receipt of the allegations by the Managing Director or delegate, advise the member of staff who is the subject of the allegation(s) in writing (see [sample letter 17](#)) of the progress of the investigation, the anticipated time it is expected to conclude and outline the reasons for any delays to date and expected delays.

Reasons for a delay may include complexity of the matter, exceptional circumstances, a request for delay by an external investigating authority, or availability of the member of staff. Similar advice is to be sent each subsequent 12 weeks after the first advice.

For allegations of misconduct that also raise reportable allegations under the *Ombudsman Act 1974* or allegations of criminal conduct, irrespective of the complexity of the matter, the Managing Director or delegate will, after 18 weeks from the date when a decision is made to proceed with such allegations as allegations of misconduct, advise the member of staff who is the subject of the allegation(s) in writing (see [sample letter 17](#)) of the progress of the investigation and the anticipated time it is expected to conclude and outline the reasons for any delays to date or anticipated delays.

Reasons for a delay may include complexity of the matter, exceptional circumstances, a request for delay by an external investigating authority,

or availability of the member of staff. Similar advice is to be sent each subsequent 12 weeks.

In any event, if a decision is made not to proceed with allegations of misconduct as a disciplinary matter, the member of staff will be advised of the allegations and the fact that they are not being proceeded with under these guidelines.

7.2 What is misconduct?

Misconduct is defined as:

- (a) engaging in, or having engaged in, any conduct that justifies the taking of disciplinary action e.g. conduct that may be contrary to the *Code of Conduct* and/or other established policies of the Department or NSW TAFE Commission;
- (b) taking any detrimental action (within the meaning of the *Public Interest Disclosures Act 1994*) against a person that is substantially in reprisal for the person making a public interest disclosure within the meaning of that Act; or
- (c) taking any action against a person that is substantially in reprisal for an internal disclosure made by that person.

Misconduct is defined as not only conduct that may have occurred while the member of staff is on duty but can relate to an incident or to conduct that happened while the member of staff was not on duty, or conduct that occurred before the member of staff was appointed to his or her position.

The term "misconduct" applies to many different factual situations but usually involves deliberate acts.

7.3 What is serious misconduct?

Some misconduct can constitute serious misconduct.

Serious misconduct is defined in the Fair Work Regulations 2009 as follows:

REG 1.07

- (1) For the definition of serious misconduct in section 12 of the Act, serious misconduct has its ordinary meaning.
- (2) For sub-regulation (1), conduct that is serious includes both of the following:
 - a. Wilful or deliberate behavior by an employee that is inconsistent with the continuation of the contract of employment;

- b. Conduct that causes serious and imminent risk to:
 - i. The health or safety of a person; or
 - ii. The reputation, viability or profitability of the employer's business.
- (3) For sub-regulation (1), conduct that is serious misconduct includes each of the following:
- a. The employee, in the course of the employer's employment, engaging in:
 - i. Theft; or
 - ii. Fraud; or
 - iii. Assault;
 - b. The employee being intoxicated at work;
 - c. The employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee's contract of employment.
- (4) Sub-regulation (3) does not apply if the employee is able to show that, in the circumstances, the conduct engaged in by the employee was not conduct that made employment in the period of notice unreasonable.
- (5) For paragraph (3) (b), an employee is taken to be intoxicated if the employee's faculties are, by reason of the employee being under the influence of intoxicating liquor or a drug (except a drug administered by, or taken in accordance with the directions of, a person lawfully authorized to administer the drug), so impaired that the employee is unfit to be entrusted with the employee's duties or with any duty that the employee may be called upon to perform.

7.4 What is a Public Interest disclosure?

A public interest disclosure is a disclosure made within the meaning of the *Public Interest Disclosures Act 1994*

The object of the *Public Interest Disclosures Act 1994* is to encourage and facilitate a disclosure, made in the public interest, of corrupt conduct, maladministration and serious and substantial waste in the public sector. In this regard, s20(1) of that Act makes it a criminal offence to take "detrimental" action against another person that is substantially in reprisal for the other person making a disclosure. An offence against s20(1) of the *Public Interest Disclosures Act 1994* constitutes misconduct and in some circumstances may constitute serious misconduct.

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

- injury, damage or loss;
- intimidation or harassment;
- discrimination, disadvantage or adverse treatment in relation to employment;
- dismissal from, or prejudice in, employment; and
- disciplinary proceedings.

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

7.5 What is an internal disclosure?

An **internal disclosure** means a disclosure made in good faith by a person regarding the alleged misconduct of another person. It is a specific ground of misconduct for anyone to take any action against another person that is substantially in reprisal for that person making an internal disclosure.

An internal disclosure means a disclosure made in good faith by a person regarding the alleged misconduct of another person.

7.6 Procedural fairness

The Guidelines are subject to the rules of procedural fairness. Throughout the investigative and disciplinary process, the rules of procedural fairness must be followed.

The rules of procedural fairness are outlined at [section 4.2](#).

7.7 When must allegations of misconduct be externally notified?

These Guidelines reflect the legislative requirements of the Department to report certain allegations of misconduct to the NSW Ombudsman, the Community Services, the NSW Police Force (if the allegations potentially constitute a criminal offence) and the Independent Commission Against Corruption (ICAC).

The outcomes of investigations of allegations of reportable conduct of a child protection nature against employees are also required to be reported

to the Commission for Children and Young People (CCYP) if there is evidence or some evidence that reportable conduct may have occurred.

Certain external reporting requirements are outlined in the following documents:

[Responding to Allegations against Employees in the Area of Child Protection – 23 April 2004](#)

[Protecting and Supporting Children and Young People – Revised Procedures \(March 2010\)](#)

[Working With Children Check Guidelines issued by the Commission for Children and Young People](#)

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

- risk of significant harm to children or young people;
- sexual misconduct that involves children, is directed at children, or takes place in the presence of children;
- acts of violence committed by the employee in the course of employment which involves children, is directed at children, or takes place in the presence of children;
- certain criminal offences, including fraud;
- corrupt conduct.

7.8 What are the stages in the investigation and disciplinary process?

The process for dealing with an allegation of misconduct can be divided into three discrete stages:

Stage 1 - Initial determination of an appropriate course of action when dealing with an allegation of misconduct;

Stage 2 - Investigation, if it is determined that an investigative response is required;

Stage 3 - Determination about appropriate outcome. This could involve dismissal of the allegation/s, no further action, remedial action, disciplinary action or a combination of remedial and disciplinary action.

7.8.1 Stage 1 - Initial determination of an appropriate course of action when dealing with an allegation of possible misconduct

The Department has a number of procedures which must be followed in conjunction with these Guidelines when determining an appropriate course of action for responding to an allegation or incident of misconduct. These procedures differ depending on the type of allegation. Hyperlinks to the relevant procedures are provided.

If there is any inconsistency between the Guidelines and the above procedures, subject to any statutory requirement contained in the procedures, the Guidelines shall prevail over the procedures.

Child Protection

The process for determining an appropriate course of action when dealing with an allegation of a child protection nature against an employee is outlined in [Responding to Allegations against Employees in the Area of Child Protection](#). These procedures clarify that the Managing Director or delegate is required to respond to all allegations of a child protection nature against employees, either by conducting an investigation or undertaking local management procedures. (For the purposes of these Guidelines – local management procedures are not considered to be an investigation.) All allegations against employees of a child protection nature must be immediately notified to the Employee Performance and Conduct Directorate (EPAC) Ph: 9266 8070, which will determine the appropriate process for dealing with the allegation.

If these allegations constitute “reportable conduct” (as defined by the *Ombudsman Act* and *Commission for Children and Young People Act*, these allegations must also be reported to the NSW Ombudsman’s Office.

Other Allegations

For all other allegations of misconduct the process for determining an appropriate course of action is outlined in the investigation model in the policy document [Complaints Handling Policy Guidelines](#). This document identifies the officers or permanent employees to whom allegations are referred.

When an allegation of possible misconduct is made to the appropriate delegated officer (as defined in the [Complaints Handling Policy Guidelines](#)), or he or she is made aware, or becomes aware, by any means, that an officer may have engaged in misconduct, that delegated officer may decide:

- to dismiss or take no further action in relation to the allegation or incident;
- to take no further action against the individual but to take general management action;

- to deal with the allegation by using the negotiation procedure outlined in [Complaints Handling Policy Guidelines](#);
- to arrange for an investigation of the allegations; or
- to refer the matter to a decision maker to take appropriate action.

Although a decision maker may initially have decided to take remedial action, if it appears that the member of staff engaged in additional misconduct during that period, the decision maker may determine that the matters require investigation.

In deciding what action to take upon receiving an allegation, the delegated officer should assess the matter and consider the facts, seriousness and nature of the particular incident. This may be able to be done solely on the paperwork. Alternatively it may require an investigation.

If the member of staff subject of the allegation is to be interviewed, the requirements under [section 7.8.2.2\(5\)](#) should apply. The member of staff must also be advised that the allegation if treated as a disciplinary matter may, if proven, result in disciplinary action. In such situations the member of staff must also be advised of the range of disciplinary actions to be considered. The person must be advised that anything said during the interview may be taken into consideration if the matter is subject to an investigation, and also by the decision maker if required to decide if the person has engaged in misconduct.

Consideration should be given to matters such as:

- whether it is an isolated incident;
- the seriousness of the incident;
- the age of the incident;
- the circumstances surrounding the incident;
- the employment history of the member of staff;
- the status of and position held by the member of staff;
- the reputation of the TAFE Commission, the Department and the public sector; and
- the impact on the organisation and other employees.

Remedial action can be taken - if an allegation is made that a member of staff may have engaged in misconduct. A determination that misconduct has occurred does not have to be made for remedial action to be imposed by a decision maker.

The member of staff who is subject to the allegation must be advised in writing that remedial action is going to occur and the nature of that remedial action (see [sample letter 1](#)). If it is decided to treat the allegation as a disciplinary matter, the member of staff is to be advised in

accordance with [section 7.8.2.2 \(4\)](#) of these Guidelines (see [sample letter 4](#)).

If the remedial action proposed is to transfer the member of staff to a location that would require the person to move residence, the decision maker must provide the person with the opportunity to provide a submission about their views of the transfer. The decision maker should be satisfied the member of staff has no valid reason for opposing the transfer.

7.8.2 Stage 2 – The investigation stage

If a workplace manager determines that an allegation of possible misconduct requires an investigation, a suitably experienced and qualified person must be appointed to conduct an investigation. The conduct of an investigation will vary depending upon the particular case and its circumstances and the complexity or otherwise of the issues, incidents and facts of the matter. This step, like all in the process, should be completed in a timely and expeditious manner.

Any delays in the process should be appropriately recorded and monitored.

In those matters where either Community Services or the NSW Police Force are investigating, the Department is usually required to wait for those agencies to complete their investigation or enquiries before commencing its own. In some cases a Departmental investigation will occur in conjunction with other agencies. Interagency liaison will occur to ensure that there is an appropriate response to meet the needs of all parties without undue delay. However the time taken to complete an investigation is sometimes outside the control of the Department.

Where a Departmental investigation needs to be deferred as the result of an investigation by external authorities, such as ICAC, NSW Ombudsman, or the NSW Police Force, the member of staff may continue working, be moved to another job or suspended with or without pay. The action taken, if any, will depend upon the particular circumstances.

All stages of dealing with the allegation should continue unless requested by the external authority to not proceed. If all stages are not completed and the member of staff is charged criminally it is usually appropriate to await the outcome of the court proceedings.

This stage enables the issues to be fully explored before any final decision is made in relation to the allegation/s. It also includes continuation of an internal investigation where external authorities have completed any relevant investigation.

If the member of staff is charged with criminal offences it is usually appropriate to await the outcome of any court proceedings.

The Managing Director, decision maker or notifying officer should not have any role in conducting the investigation or disciplinary process if they are the source of the initial allegation against the member of staff.

7.8.2.1 What happens if a member of staff needs to be removed from duty during an investigation?

Decisions in relation to this issue are to be based on the facts, nature and seriousness of the matter in the context of the member of staff's position. The first consideration should be whether it is appropriate for the member of staff to continue in their usual duties.

In considering whether it is appropriate for a member of staff to remain on duty, a risk assessment should be undertaken. The risk assessment should consider the risk to any complainant or class of complainants or potential witnesses, the risk to the member of staff themselves, the risk to any investigation and the risk to the Department itself.

If the decision is that it is not feasible to manage identified risks while the member of staff remains on duty, the first option is to place him or her on alternative duties or duties at another location (see [sample letter 2](#)).

If a placement on alternative duties is not feasible and the alleged conduct is of a serious nature, the member of staff may be suspended from duty with pay (see [sample letter 3](#)). Such an option would only be considered in circumstances where an alternative duties placement could not be reasonably located. Alternative duties is the preferred option and any suspension with pay must be reviewed every 30 days.

If the member of staff has been charged with a serious criminal offence which if proven may result in imprisonment for 12 months or more, or which would upon conviction, result in the member of staff being classified as a prohibited person, he or she may be suspended from duty without pay. Such a decision should be made in accordance with the [Premier's Memorandum 94-35](#) which states that suspension without pay should only occur in exceptional circumstances such as those outlined above (see [sample letter 3](#)).

This decision must be reviewed at least every 30 days.

Suspension is **not** one of the disciplinary options available, following a finding that misconduct has occurred. It is a protective measure while the disciplinary process is being undertaken.

It should be noted that a member of staff suspended without pay will accrue salary during the period of suspension. During this period the salary is withheld.

Any salary withheld under these provisions will be forfeited to the State unless the Managing Director otherwise directs, or the salary was due to

the member of staff in respect to a period before the suspension was imposed.

The position of a suspended officer or member of staff shall not be permanently filled while they are on suspension.

If no disciplinary action is taken against the member of staff or he or she is found not guilty in relation to a criminal matter, he or she will be paid the salary that was withheld.

7.8.2.2 What happens during an investigation?

As outlined in [section 7.8.1](#), the Department has procedures in place for dealing with allegations of different types of misconduct and undertaking investigations where required.

However there are common procedural requirements which should be adhered to when undertaking an investigation. These include:

1. The investigation shall be conducted by an appropriate investigator/s.

The investigator/s should:

- understand the investigation process;
- have no direct involvement with the matter subject to investigation – that is, be free from actual or perceived bias;
- have no personal involvement or friendship with the member of staff who is subject to the allegation/s;
- be objective and not prejudge the matter; and
- be suitably experienced and qualified to undertake the investigation.

2. The investigation should be conducted in a confidential manner.

Confidential information obtained during the investigation should not be disclosed except for the purpose of the investigation or any action arising from the investigation, or for the purpose of obtaining advice from the relevant union and/or a legal representative. This is to protect the integrity of the process and where child protection principles or any other legal requirement permit, the privacy rights of the person concerned.

Similarly, all witnesses, including the member of staff the subject of the investigation and his or her support person, should be advised that they should maintain confidentiality and not discuss the matter except for the purposes of the investigation or to meet their personal health or support needs.

If a witness informs the investigator at any time that he or she is being victimised or harassed by the member of staff who is the subject of a misconduct investigation, the investigator should refer them to the Department's [Complaints Handling Policy Guidelines](#) policy and report the allegation in writing to the appropriate delegated officer.

3. The absence of the member of staff should not preclude investigation

The investigation may only be conducted in the absence of the member of staff if:

- the member of staff fails to attend an interview or to provide a written response;
- there are no reasonable circumstances mitigating the failure of the member of staff to attend an interview or provide a written response;
- reasonable efforts are made to ascertain why the member of staff did not provide a response.

4. Allegations must be put to the member of staff subject to the investigation and the member of staff must be provided with an opportunity to respond to the allegations.

The member of staff subject to the allegations must be informed about an investigation as soon as practical (see [sample letter 4](#)).

The member of staff will be advised, in writing, of the specific details of the allegation/s (details as known at that point in time subject to concerns as outlined below) as soon as practicable, having regard to the nature and circumstances of the matter. This requires sufficient detail to enable an accurate response. The letter should also give such relevant information that will fairly enable the officer to respond – this might include the date, time, location and details of the alleged incident. The member of staff should also be advised that the allegation if proven, may result in disciplinary action. This should occur as soon as it is clear what the allegations are (see [sample letter 5](#)).

It may not be possible to put detailed allegations to the member of staff until after interviews with any witnesses are conducted and the allegations are clarified (see [section 7.8.2.2. \(6\)](#) – General conduct of interviews).

Where the Managing Director is reasonably concerned that the nature of the allegation or circumstances surrounding the matter may lead to the destruction of evidence, harassment or

victimisation of suspected complainants it may be appropriate that allegation/s is not provided at first instance.

The member of staff will be given a period of no less than 14 days in which to respond to specific allegations or they may request an interview. This allows them to get appropriate support and advice.

The member of staff is to be advised that he/she may also bring any written submissions to any interview that takes place and is to be given 7 days (or longer in complex matters) from the interview to provide any further written submissions.

Applications for an extension of time will be considered, if reasonable, having regard to the overall circumstances and the need to ensure procedural fairness. If no response is forthcoming or if the officer states that they do not intend to respond, it will be deemed that the allegations have been denied.

The member of staff should also be advised that the allegation if proven, may result in disciplinary action.

5. Notification and advice of interview

A member of staff against who misconduct is alleged, who agrees to an interview as part of the investigation must be provided with:

- at least 24 hours notice of the interview;
- notification of the time, date, location, nature and purpose of the interview and the name/s of the officer/s conducting the interview;
- advice about how to access the Guidelines on the Department's website;
- the allegations it is intended to canvass at the interview, to the extent that the allegations are clearly known at this time. If the matter concerns a protected disclosure the identity of the person who made the disclosure is only to be revealed if it is essential for procedural fairness i.e. for the member of staff against whom misconduct is alleged, to be able to respond to the allegations;
- the opportunity to make comment on any relevant issue, and to give his or her version of the relevant event/s;
- advice that a support person may be present. It is not appropriate to have a representative or observer who has been involved in the matter, or whose availability would mean an unreasonable delay in the matter proceeding;

- advice that the role of the support person is as a witness or adviser and not as an advocate, and that their presence is a safeguard against unfair practices;
- advice that the member of staff may nominate a person to speak on his or her behalf. This applies if the investigator has reason to believe that the member of staff does not have the capacity to speak effectively or to understand the implications of the interview. Such persons will normally be another officer or union representative but shall not be a legal advocate. A language or signing interpreter should be used if the member of staff has language or hearing difficulties;
- advice that a copy of the record of interview (either a tape or transcript) will be provided upon request;
- advice that any admissions made will be taken into account should the matter proceed to be dealt with as a disciplinary matter.

6. General conduct of interviews (with the consent of the member of staff)

Not all investigations will require interviews to be conducted prior to a response being sought from the member of staff. Interviews will depend on the nature of the misconduct, the sources of evidence, the availability of witnesses and the willingness of the person subject to the allegations to be interviewed.

If a member of staff subject to an allegation wishes to be interviewed, they may have a support person of their choice present and the investigator will explain the support person's role. The support person may be a representative of the member of staff's union, a colleague, family member or a legal representative. However the support person may not act as a legal advocate or cross examine the investigator during the interview.

The interviewer will reiterate that the role of the support person is that of witness to the interview or adviser and not of advocate, and that their presence is a safeguard against unfair practices.

The member of staff will be informed of their rights and provided with information about the investigation process. They will be advised about the purpose of the interview.

The member of staff will be advised that he or she will have an opportunity to fully respond to the questions asked and to provide comments with respect to relevant issues, which includes providing their understanding of the events in question.

Other people may have to be interviewed as part of the process. This may include alleged victims or potential witnesses. They will be advised at interview that the information they provide may be disclosed to the person the subject of the investigation and/or they may be required to give evidence at any appeal or review, should a matter proceed to that stage.

Procedural information will be provided to ensure witnesses understand the implications of providing information to the investigator. A support person may be present. The role of the support person is as a witness or adviser. This may be a union representative or a legal representative but the support person may not operate as a legal advocate and may not cross examine the investigator.

Interviews will be conducted in private. The investigators must be fair, courteous and impartial.

An audio recording device will generally be used to record interviews and a copy of the record or transcript offered. However, this is subject to permission being given by the interviewee for an electronic record. In the cases where interviews are not recorded, notes will be taken. A copy of any interview transcript or notes should be offered to the interviewee.

A statement may be sought from an interviewee. If a statement is prepared, a copy will be offered to the interviewee.

7. Commencing an interview

The investigator must:

- advise the member of staff that the interview will be recorded. Sound recording can be suspended temporarily and replaced by note taking upon request;
- advise the member of staff of the purpose of the interview;
- clarify the role of the support person;
- advise the support person that they can request a halt to the interview if they wish to speak privately to the officer;
- advise the member of staff that any admissions made may be used in the decision making process;
- advise the member of staff that he or she will have an opportunity to respond to the questions asked and to provide comments about relevant issues, including providing their version of events.

8. During the interview

The investigator must:

- put each particular of the allegation/s to the member of staff and invite him or her to respond;
- clarify their response or any other matters relating to the allegation/s;
- avoid accusatory or intimidatory language or tone of voice;
- avoid making comments about the answer given;
- not indicate personal views or the views of other people;
- ask the member of staff if there is anything else they wish to say.

9. Concluding the interview

The investigator should not indicate that any view has been formed. The investigator must advise the member of staff:

- that following the completion of the investigation an investigation report will be prepared;
- a decision will be made on the facts and information contained in the investigation report;
- that the member of staff will be advised in writing of the outcome and where misconduct is established, the proposed action to be taken;
- if disciplinary action is being considered that they will receive a full copy of the investigation report subject to any legislative or confidentiality requirements precluding disclosure;
- that he or she will have an opportunity to make a submission to the decision maker in relation to any proposed disciplinary action before it is implemented. The submission may include comments on the investigation report and if applicable, on the opinion that misconduct has occurred. Also, the member of staff may attend an interview with the decision maker accompanied by a support person.
- that they will be provided with a copy of the interview transcript or the tape.
- if applicable, that the member of staff should advise the investigator if the record of interview is not agreed to and the basis for disagreement. If the record of interview is transcribed, the member of staff can seek changes to the written document. If the investigator does not agree to the changes, the requested changes and the reasons for not agreeing to the changes must be recorded.

10. Collection of additional evidence

Other sources of evidence may be sought if the investigator assesses that the investigation must rely on evidence other than witnesses.

These may include:

- documentary evidence such as photographs, emails and workplace records;
- site inspections;
- expert evidence such as technical and forensic evidence.

11. Managing victimisation or harassment

If a witness informs the investigator that they are being victimised or harassed by the member of staff who is the subject of an investigation, the investigator should:

- inform the witness that they are not required to speak to the member of staff and that the alleged victimisation/harassment should be reported to the appropriate delegated officer under [Complaints Handling Policy Guidelines](#)
- should check if the witness has Public Interest Disclosure status. If so advise the witness to contact the Public Interest Disclosure Coordinator immediately
- not attempt to inquire into any such allegation because it is a separate matter and requires independent consideration; and
- report the allegation in writing to the Public Interest Disclosure Coordinator or the delegated officer, so that the complaint can be managed.

12. Preparation of the investigation report

The investigator examines the evidence and analyses any submission received from the member of staff.

The investigator should prepare an Investigation Report that:

- consolidates all the material gathered during the investigation process;
- details the allegation/s involving the member of staff;
- outlines the investigation process followed;
- provides a factual analysis of the evidence;

- provides the investigator's view on the relevant facts as to whether, on the balance of the probabilities the member of staff has engaged in the alleged conduct, referring to material upon which the view is based;
- provides an assessment of whether the conduct appears to constitute misconduct if the investigator believes that the conduct as alleged has occurred;
- sets out the investigator's recommendation, if appropriate, on whether the matter should be treated as a disciplinary matter, including any comment on systemic or operational matters that need to be addressed;
- includes all relevant attachments, such as correspondence with the member of staff, disciplinary and other interviews, and witness statement/s.

13. Finalisation of the investigation

If the investigator is satisfied that the facts do not support the allegation of misconduct, a recommendation that the matter be dismissed or no further action be taken should be forwarded to the investigator's workplace manager or supervisor.

If the workplace manager determines that the allegation/s of misconduct is not sustained, a finding that the allegation is dismissed and/or no further action should be taken will be made.

The member of staff will be advised that the allegation/s is not sustained and that no action will be taken. The complainant is also advised of the outcome of the investigation.

If the investigation sustains the allegations, the report and any supplementary evidence must be forwarded to the decision maker to determine any further action. The decision maker must hold the appropriate delegation to take action.

7.8.3 Stage 3 - Determination about appropriate outcome by decision maker

7.8.3.1 How does the decision maker form an opinion about whether misconduct has occurred?

In forming an opinion of whether the member of staff has engaged in misconduct, the decision maker will have access to the investigation report, and any supporting evidence or material underpinning the report.

The decision maker may seek specialist advice (including Departmental and legal) or make further enquiries including requesting further investigation of certain matters prior to forming an opinion but any final opinion must be the responsibility of the decision maker. Should it be necessary to put further allegations to the member of staff, the above process must be followed.

In determining whether misconduct has occurred the decision maker must consider:

- the investigation report and supporting documentation;
- the member of staff's response and any supporting documentation (including any interview).

For a decision maker to be satisfied that an allegation of misconduct is proven, it is not necessary that each of the particulars of that allegation be made out as a matter of fact. The question for the decision maker is whether the person has engaged in misconduct, not merely whether the facts set out in each particular have been established. It is open for the decision maker to find that the person has engaged in misconduct even where the decision maker has found that one or more, but not each and every one of the particulars of the allegation have been found proven.

The TAFE Commission bears the onus of proving that the member of staff engaged in misconduct as alleged. The standard of proof required is that required in civil proceedings. That is, the decision maker may find the allegation of misconduct proved only if he or she is satisfied of the relevant facts on the balance of probabilities. This is a lower standard of proof than the criminal standard of 'beyond reasonable doubt'.

In relation to an allegation of misconduct where the potential findings against a member of staff or the consequences for that member of staff (i.e. they may result in dismissal of the member of staff) the decision maker should ensure that he or she is 'reasonably satisfied' that the allegation of misconduct has been established (See *Briginshaw v Briginshaw* (1938) 60 CLR 336 at 362)

" ... reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequences of the fact or facts to be proved. The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters 'reasonable satisfaction' should not be produced by inexact proofs, indefinite testimony, or indirect inferences."

If the decision maker has formed the view that the person has engaged in misconduct, then consideration must be given to appropriate action.

7.8.3.2 If misconduct is not found

The decision maker may determine that the facts do not support the allegation of misconduct. In this case the decision maker may determine that misconduct is not sustained and will advise the member of staff and the complainant (where appropriate) in writing (see [sample letter 6](#)).

The materials in relation to the matter including the investigation report, are to be removed from any records or files held as to the individual member of staff (personnel files) but such records should be kept elsewhere. They should not be destroyed but retained consistent with the *State Records Act*. For example, all records of child protection investigations are retained by EPAC under restricted access.

7.8.3.3 If misconduct is found

The decision maker, when of the opinion the member of staff has engaged in misconduct, must exercise discretion in making a determination. In determining the appropriate course of action, the decision maker should not adopt a policy that a particular conduct will always attract the same punishment. Advice may be sought from specialists (Departmental and legal) prior to making a determination.

A decision maker is not obliged to impose disciplinary action on a member of staff who has been found to have engaged in misconduct.

If the decision maker determines that misconduct has occurred, they may decide to do the following:

- dismiss the matter and/or take no further action;
- take no further action against the member of staff but to take management action to address any systems or organisational issues;
- take remedial action with respect to the member of staff;
- take disciplinary action against the member of staff;
- take both remedial and disciplinary action against the member of staff;
- refer the matter to the appropriate delegate for decision on disciplinary action, if the recommended disciplinary action may result in dismissal from the member of staff's employment.

7.8.3.4 What issues should be considered when determining an appropriate course of action following a finding that misconduct is proven?

The decision maker needs to consider:

- the facts of the case;
- the impact of the conduct on the objectives of the scheme for the management of conduct and performance (see [section 3.1](#) of these Guidelines);
- the nature and seriousness of the proven misconduct, including the effect and circumstance of the incident;
- whether the member of staff poses an ongoing risk to children;
- the degree of relevance of the conduct matter to the member of staff's position and duties;
- the employment history and general conduct history of the member of staff;
- whether the conduct or substantially similar conduct has previously been the subject of remedial or disciplinary action;
- whether policies and guidelines applicable to the conduct were in place, were known, were being followed or required to be followed;
- mitigating or extenuating circumstances if available at this stage;
- any personal circumstances of the member of staff and whether these may have contributed to any misconduct e.g. health issues, particular stressors on the member of staff;
- the effect of the proposed action on the member of staff.

Matters outside the investigation report and supporting documentation, such as employment records, monitoring programs and substantiated disciplinary matters may be taken into account when deciding whether disciplinary action is appropriate and if so what action should be taken.

7.8.3.5 Misconduct proven – no further action

If the decision maker is of the opinion the member of staff has engaged in misconduct but that no further action is to be taken given the facts of the particular case, or the trivial nature of the conduct found proven, the member of staff will be notified in writing of that opinion with details of the misconduct and the decision to take no further action (see [sample letter 7](#)).

7.8.3.6 Misconduct proven – remedial action

If the decision maker is of the opinion the member of staff has engaged in misconduct but that remedial action is appropriate given the substantiated allegations in the particular case, the person must be notified in writing of that opinion with details of the misconduct and the remedial action to be taken (see [sample letter 7A](#)).

Remedial action is defined in [section 6.2](#) and can constitute one or more of the following:

- counselling;
- training and development;
- monitoring the member of staff's conduct or performance;
- implementing a plan addressing unsatisfactory performance where performance issues are assessed as having contributed to the misconduct;
- issuing a warning to the member of staff that certain conduct is unacceptable or that his or her performance is not satisfactory;
- transferring the member of staff to another position of a like nature that does not involve a reduction of salary or demotion. (A change of location that involves a change of the member of staff's residence requires the person being given an opportunity to make a submission prior to the final decision being made. The decision maker should be satisfied that the member of staff has no valid reason for opposing the transfer);
- any other action of a similar nature.

7.8.3.7 Misconduct proven – disciplinary action

If the decision maker has determined that on the balance of the probabilities a member of staff has engaged in misconduct and that disciplinary action may be appropriate, he or she must be notified in writing of that opinion (see [sample letter 8](#)).

The written notification must include:

- the details of the misconduct that the decision maker is of the opinion the member of staff has engaged in;
- the full investigation report with all supporting attachments, subject to any legislative or confidentiality requirements precluding disclosure. (If the matter concerns a Public Interest Disclosure or confidentiality the identity of the person who made the disclosure is only to be revealed in the investigation report if it is essential having regard to the principles of procedural

fairness – that is, essential for the person to be able to respond to the allegation);

- an outline of the disciplinary action that the decision maker is considering imposing or recommending, including the severest disciplinary action that is being considered for the particular matter. In particular the member of staff must be advised if dismissal, or a direction to resign is being considered;
- any previous employment matters (such as past remedial actions, monitoring programs, or discipline matters or alternatively previous satisfactory work history) to be taken into account;
- the advice that the member of staff has 14 days from the receipt of the written notice to make a submission and to provide any additional information which he or she considers should be taken into account in relation to the disciplinary action being considered before a final decision is made. The member of staff's submission may address such matters including the finding of the decision maker that he or she has engaged in misconduct, the findings of the investigation report or any extenuating and mitigating circumstances. The decision maker shall also consider any submission made on behalf of the officer by the union.
- the decision maker has the discretion to extend the period for response, having regard to the overall circumstances and the need to ensure procedural fairness, if the member of staff applies for additional time and provides reasonable grounds for seeking the extension.
- the advice that the member of staff will be given an opportunity to have an interview with the final decision maker, accompanied by a union or other representative (not taking a legal advocacy role) before a final decision is made. The support person may speak on behalf of the officer but may not cross-examine the decision maker. A request for an interview should be made within 7 days of receipt of the written response.
- the interview is not an opportunity to further examine evidentiary material or to provide extensive submissions on the evidence. The purpose of the interview is for the decision maker to determine the appropriateness of a particular disciplinary action.
- the advice that these further submissions and/or additional information will be considered before a final decision is made to implement the disciplinary action being considered.

Each step in the disciplinary process must be taken and documented before the decision maker may make a final decision. It is essential that the decision maker's consideration of the most severe disciplinary action,

must not involve any pre-judgement as to what disciplinary action, if any, is ultimately applied to the officer.

In making a decision as to disciplinary action, the decision maker must consider all the material before them, including the content of any interview or further submissions from the member of staff.

In determining disciplinary action, the decision maker should consider the same issues outlined in [section 7.8.3.4](#).

The disciplinary action that may be considered by the decision maker includes:

- a caution or reprimand;
- reduction of the member of staff's salary or demotion to a lower position;
- directing the member of staff to resign, or to be allowed to resign within a specified period;
- dismissal.

The decision maker is not precluded at this stage from ordering remedial action in conjunction with disciplinary action. For example, a decision maker may consider that a member of staff should be reprimanded for their conduct, transferred to another section or College and directed to undertake training in certain policies relating to the area of misconduct.

If the disciplinary action **does not** involve removal of the member of staff from employment, the delegated decision maker will determine the disciplinary action and advise the person in writing of that determination.

If the disciplinary action may involve removal of the member of staff from employment, a recommendation will be forwarded to a senior officer who is the delegated decision maker for disciplinary action that involves dismissal from employment. Any requested interview will be held with the final decision maker.

The member of staff will be advised in writing of the final decision as to disciplinary action and if applicable, the date from which the decision becomes effective (see [sample letter 9](#)).

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

7.8.4 Dismissal is to be with notice (or payment in lieu of notice) unless the misconduct constitutes serious misconduct.

In circumstances where a decision is made to dismiss a staff member on the basis of misconduct (which does not reach the definition of serious misconduct) the TAFE Commission must provide notice of dismissal (or payment in lieu of notice) in accordance with the National Employment Standards, or in the event that a member of staff is covered by a modern award, the provisions relating to notice of dismissal provisions must be applied.

The decision-maker should seek advice about the applicable notice provisions.

7.8.5 Legal advice

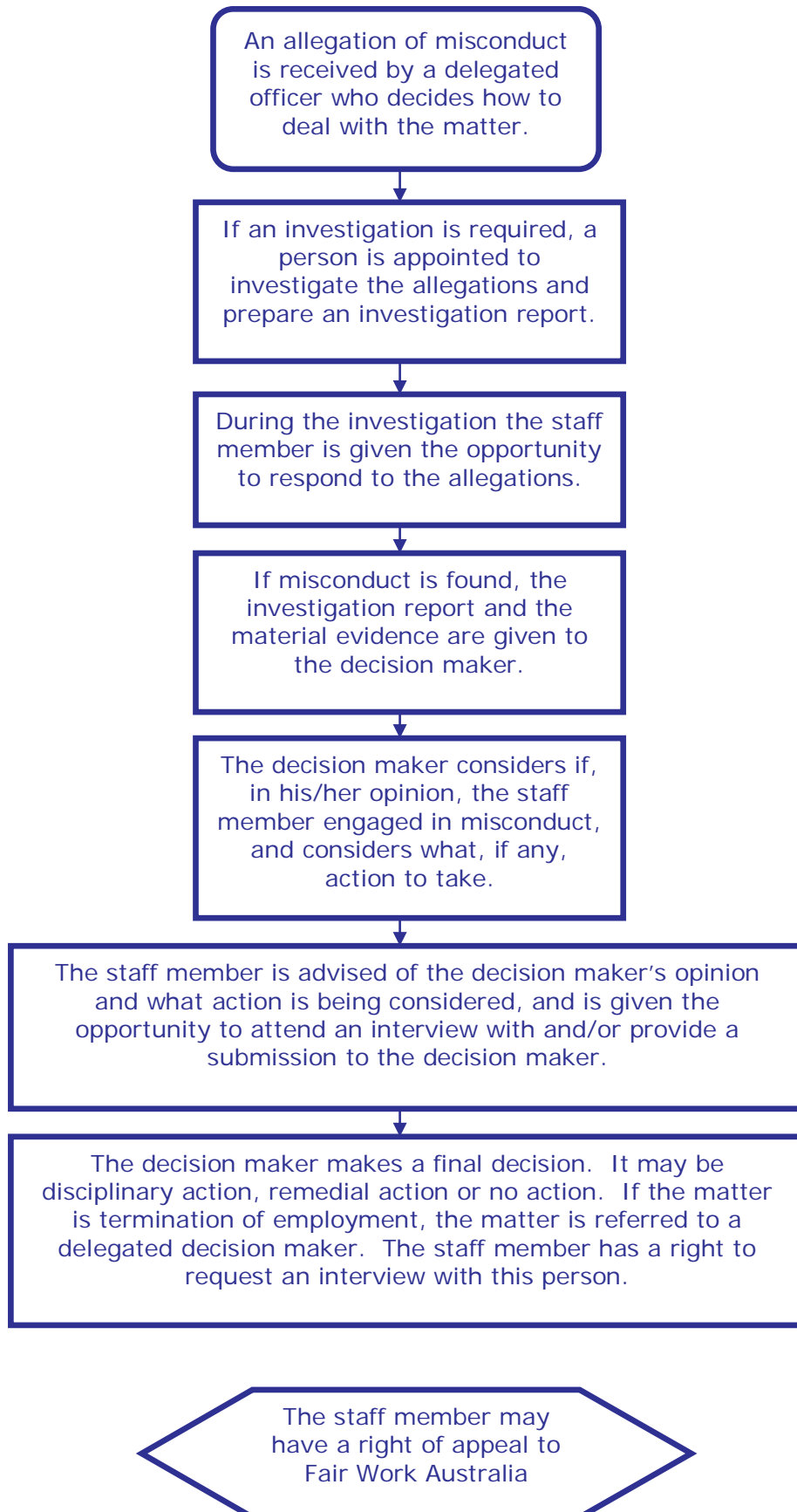
Although there is no right to formal legal representation during an interview with the decision maker, all parties have a right to access legal advice throughout the investigative and disciplinary process. This includes the member of staff who is subject to the allegations, the investigator and the decision maker.

7.8.6 Rights of appeal

There will be no internal right of appeal of a decision as to disciplinary action.

However, the member of staff may be able to seek appropriate external review. Such review may include an application to Fair Work Australia or other appropriate body

Disciplinary process



8. Procedural guidelines for dealing with unsatisfactory performance

All members of staff are responsible for performing their duties efficiently and competently.

If following a review of a member of staff's performance an opinion is formed that he/she is not performing their duties in a satisfactory manner, a performance improvement program may be implemented;

The member of staff must participate in any such performance improvement program in the manner required by the program;

The performance improvement program is to be on terms and is to be implemented for such period as the Managing Director or delegate considers appropriate.

The Managing Director will delegate his or her functions to deal with unsatisfactory performance to an officer who understands the process and has the resources available to him or her to carry out the delegated function.

8.1 Responding to unsatisfactory performance

Workplace managers are responsible for ensuring that members of staff under their control meet required work standards. It is important that members of staff who are not meeting the required standards have those issues addressed as soon as performance difficulties are identified.

Generally, unsatisfactory performance means not meeting agreed tasks, or timeframes or standards of work. The agreed standards can be in a work plan or in any other documentation. Any standard that is applied must be relevant to the member of staff's position description, duty statement or articulated criteria.

8.2 Performance management

The following strategies should be implemented and referred to in dealing with instances of unsatisfactory performance:

- provide and adhere to induction and probation programs;
- ensure there are clearly articulated work standards and performance requirements which are reasonable and attainable;

- provide development plans to assist the member of staff to reach expected work standards;
- ensure that there is a clear understanding of the work to be performed;
- ensure training and development opportunities, both on and off the job, are provided;
- remove barriers to effective performance.

In dealing with any instance of unsatisfactory performance the workplace manager should examine whether the following standard EEO measures have been implemented with respect to the officer or permanent employee:

- ensuring equitable allocation of work, acting in higher grade opportunities, if appropriate;
- appointing members of staff on their ability to perform the job;
- ensuring fair and equitable distribution of overtime and leave;
- ensuring fair performance assessment and development.

8.3 Consideration of organisational and non-work-related factors

The workplace manager/supervisor must consider factors which may contribute to the unsatisfactory performance.

Factors contributing to poor performance may include:

- organisational factors (e.g. poorly managed restructuring; poor work and job design with subsequent lack of challenge in work; ineffective recruitment and selection resulting in a "mismatch" of people and jobs; inappropriate planning, resourcing and competing deadlines);
- management practices (e.g. inappropriate or unacceptable management approach; inconsistent application of performance standards; biases, changes in opinion or lack of care or commitment on the manager's part);
- training and development needs (e.g. inadequate induction and explanation of job role/responsibilities; insufficient skills, training, or experience to perform the duties and responsibilities of the position; unsupported introduction of new technology);
- poor communication between management and employees (e.g. inadequate performance evaluation and feedback);
- social factors (e.g. disruptive personality clashes within the work environment);

- inappropriate work environment (e.g. workplace health and safety standards not being met; direct or indirect discrimination or workplace harassment); and
- personal issues (e.g. lack of motivation or commitment; health or other family problems; drug and alcohol misuse).

Performance difficulties that are not work-related may require intervention or assistance by management, employee associations, an employee assistance provider, or external individuals or organisations. The cause of performance difficulties needs to be identified and appropriate strategies developed, including implementation of an improvement program, to assist the member of staff deal with identified poor work performance.

Unsatisfactory performance should be dealt with by the workplace manager/supervisor as soon as performance difficulties are identified. The nature of the unsatisfactory performance should be clearly articulated, with reference to examples. This enables the member of staff and the manager or supervisor to be clear about the issues.

8.4 Remedial vs disciplinary action

Before implementing disciplinary action to deal with unsatisfactory performance, the workplace manager/supervisor must be satisfied that reasonable assistance has been provided to the member of staff through an improvement program to enable him or her to perform at the required standard.

The action taken in instances of unsatisfactory performance will be determined by what is reasonable in the circumstances including whether:

- the member of staff has key accountabilities or objectives that include performance criteria, standards and targets, and training and development plans;
- equal employment opportunities are available to the member of staff;
- organisational and non-work related reasons for unsatisfactory performance have reasonably been considered.

Disciplinary action is not the first choice in managing unsatisfactory performance, but may become necessary when performance is still unsatisfactory following an improvement program. Disciplinary action is only appropriate where performance remains unsatisfactory after the member of staff has been given a reasonable opportunity to improve his or her performance.

If the Managing Director or delegate is of the opinion that a member of staff is not performing in a satisfactory manner or to a satisfactory level he/she may decide to take remedial action.

8.5 Procedural fairness

The Guidelines are subject to the rules of procedural fairness.

The member of staff must have:

- the opportunity to respond to the opinion of the decision maker that his or her performance is still unsatisfactory after remedial action (including an improvement program) has been taken and he or she has been given a reasonable opportunity to improve;
- a separate opportunity to make representations in relation to any disciplinary action being considered, including the opportunity to meet with the decision maker prior to a final decision being made.

A member of staff the subject of these Guidelines should be provided with a copy of these Guidelines.

8.6 Assistance in applying the guidelines

The decision maker may seek advice from relevant "experts" to assist in forming a view as to how the matter might proceed. Advice can be sought from EPAC or the relevant human resource manager.

8.7 Performance principles generally

Dealing with unsatisfactory performance requires a staged process which is transparent, consistently applied and has regard to the particular circumstances of the case.

Improvement of performance and job satisfaction is the primary goal. Whilst remedial action will usually provide the desired results, it may be necessary to proceed with disciplinary action if the identified standards are not met and performance is still unsatisfactory. The process should also have regard to any relevant written documentation that may be in place.

Staff have a right to regular feedback about their performance.

The key stages for addressing unsatisfactory performance are:

- early intervention and informal counselling and support;
- undertaking a performance improvement program;

- undertaking disciplinary action or remedial action.

The primary responsibility for performance management is the member of staff's manager/supervisor. Early and effective informal counselling in most cases should address an unsatisfactory performance problem. It is only if action under this stage, has failed to rectify the unsatisfactory performance that consideration needs be given to involving the subsequent stages. The member of staff should be given reasonable verbal or written notice of the time, place and purpose of the proposed informal counselling session.

At the outset of the session the manager will:

- outline the purpose of the discussion;
- clarify expectations.

Early and effective informal counselling in most cases will address a work performance problem and inform the member of staff that their poor work performance is unacceptable.

The manager/supervisor will also:

- confirm the standards and explain how the member of staff's performance has differed from those standards by reference to the employees work examples or other relevant documentation;
- outline what she/he considers to be the applicable standards and explain how the member of staff's performance has departed from that standard with reference to the officer's work examples or other relevant documentation;
- provide an opportunity for the member of staff to respond to the manager's performance concerns.

Where there is no written correspondence following informal counselling, a diary note shall be made. The manager will advise her/his supervisor when informal counselling is being taken.

Early and effective informal counselling in most cases will address a work performance problem and inform the member of staff that their poor performance is unacceptable.

While it is always open to a workplace manager/supervisor to informally address performance issues with a member of staff, the TAFE Commission has established processes for formally addressing unsatisfactory performance, should informal processes of support and remedial action not be successful. These are the [*Procedures for Managing Unsatisfactory Performance*](#) (Teachers and Institute Managers employed by the NSW TAFE Commission).

The procedures outlined in the above documents should be followed when considering the first two stages for addressing unsatisfactory performance. If at the end of a performance improvement program the member of staff's performance is assessed to be satisfactory, no further action is required other than the usual periodic reviews.

These Guidelines have been developed to focus on the third stage of addressing unsatisfactory performance - the disciplinary or remedial process.

8.8 What happens to the member of staff if their performance has been assessed to be unsatisfactory?

If a staff member's performance has been assessed to be unsatisfactory following completion of a performance improvement program, they may be directed to alternative duties in a location where they are not carrying out the inherent duties of their position.

8.9 What is the process for dealing with unsatisfactory performance following a performance improvement program?

The matter will be progressed in accordance with the relevant procedures applicable to the member of staff.

8.10 Determination about appropriate outcome

All remedial and formal action contained in the Department's relevant improvement program and procedures as outlined in [section 8.7](#) must be completed before these guidelines apply.

If the performance of a member of staff is still assessed to be unsatisfactory following the completion of a performance improvement program or following his or her failure to participate in or to satisfactorily complete such a program the decision maker may take:

- remedial action
- disciplinary action
- a combination of remedial action and disciplinary action

The decision maker will advise the member of staff in writing that his or her performance remains unsatisfactory and that this assessment may lead to disciplinary action (see [sample letter 10](#)).

The notification should indicate:

- the details of the unsatisfactory performance against the criteria in the performance improvement program;

- that the decision maker is of the opinion that the performance is still unsatisfactory;
- that the decision maker is considering disciplinary action and the implications of that action including the most serious disciplinary action that may be imposed;
- a summary of the process taken to date including the reasonable opportunity the member of staff has had to respond to the opinion about his/her performance;
- advice that the member of staff will be provided with an opportunity to provide a submission in relation to any proposed disciplinary action;
- the member of staff's response will be taken into consideration in deciding whether to take disciplinary action.

8.11 Unsatisfactory performance resulting in disciplinary action

In making a decision about disciplinary action the decision maker must, prior to notifying the member of staff of this fact, give consideration as to what is the most severe disciplinary action that might apply to such unsatisfactory performance.

The decision maker must exercise his or her discretion and not adopt a policy that unsatisfactory performance will always attract the same disciplinary action.

In considering disciplinary action, the decision maker must consider:

- the facts of the matter;
- the impact of the unsatisfactory performance on the member of staff's work;
- the impact of the unsatisfactory performance of the objectives outlined in section 3.1
- the nature and seriousness of the unsatisfactory performance;
- the skill, experience and position of the member of staff;
- any mitigating or extenuating circumstances that may have contributed to performance difficulties;
- the employment history of the member of staff;
- whether the unsatisfactory performance has previously been the subject of counselling or previous remedial or disciplinary action; and
- the effect of the proposed action on the member of staff.

If the decision is to take disciplinary action the decision maker must write to the member of staff and include the following (see [sample letter 11](#)):

- the fact that the officer's response has been taken into account;

- the disciplinary action being considered, including the severest disciplinary action that is being considered for the particular matter. In particular the member of staff should be advised if a dismissal or a direction to resign is being considered;
- outline any previous employment matters (such as past remedial actions, monitoring programs or discipline matters or alternatively previous satisfactory work history) to be taken into account;
- advice that the member of staff has 21 days from the receipt of the letter to make a submission and to provide any additional information that he or she considers should be taken into account in relation to the disciplinary action being considered. The decision maker has discretion to extend the period for response if the member of staff applies for additional time within the 21 day period and provides reasonable grounds for seeking the extension. The decision maker shall also consider any submission made on behalf of the member of staff by the union;
- that he or she may request an opportunity to have an interview with the decision maker, accompanied by a union or other representative (not in a legal advocacy role) before the decision is made. A request for an interview should be made within 7 days of receipt of the written notice. Generally the decision maker should arrange to have the interview held within 14 days of receipt of the written response. The support person may speak on behalf of the member of staff but may not cross-examine the decision maker; and
- that these submissions and/or additional information will be considered before a decision is made to implement the disciplinary action being considered.

Each step outlined in the letter must be taken and documented before the decision maker makes a decision as to disciplinary action.

The disciplinary action that may be considered by the decision maker includes:

- a caution or reprimand;
- reduction of the member of staff's salary or demotion to a lower position;
- directing the member of staff to resign, or to be allowed to resign within a specified period;
- dismissal.

The decision maker is also not precluded at this stage from ordering remedial action instead of disciplinary action or in conjunction with disciplinary action if they are of the view that a matter could be more effectively addressed in this manner.

Having considered any submission made by the member of staff, or after interviewing the person, the decision maker shall make a final decision promptly and expeditiously.

The member of staff will be advised in writing of the final decision as to disciplinary action and if applicable, the date from which the decision becomes effective (see [sample letter 12](#)).

8.12 Unsatisfactory performance resulting in remedial action

All remedial and formal action contained in the TAFE Commission's relevant improvement program and procedures as outlined in [section 8.7](#) must be exhausted before these guidelines apply.

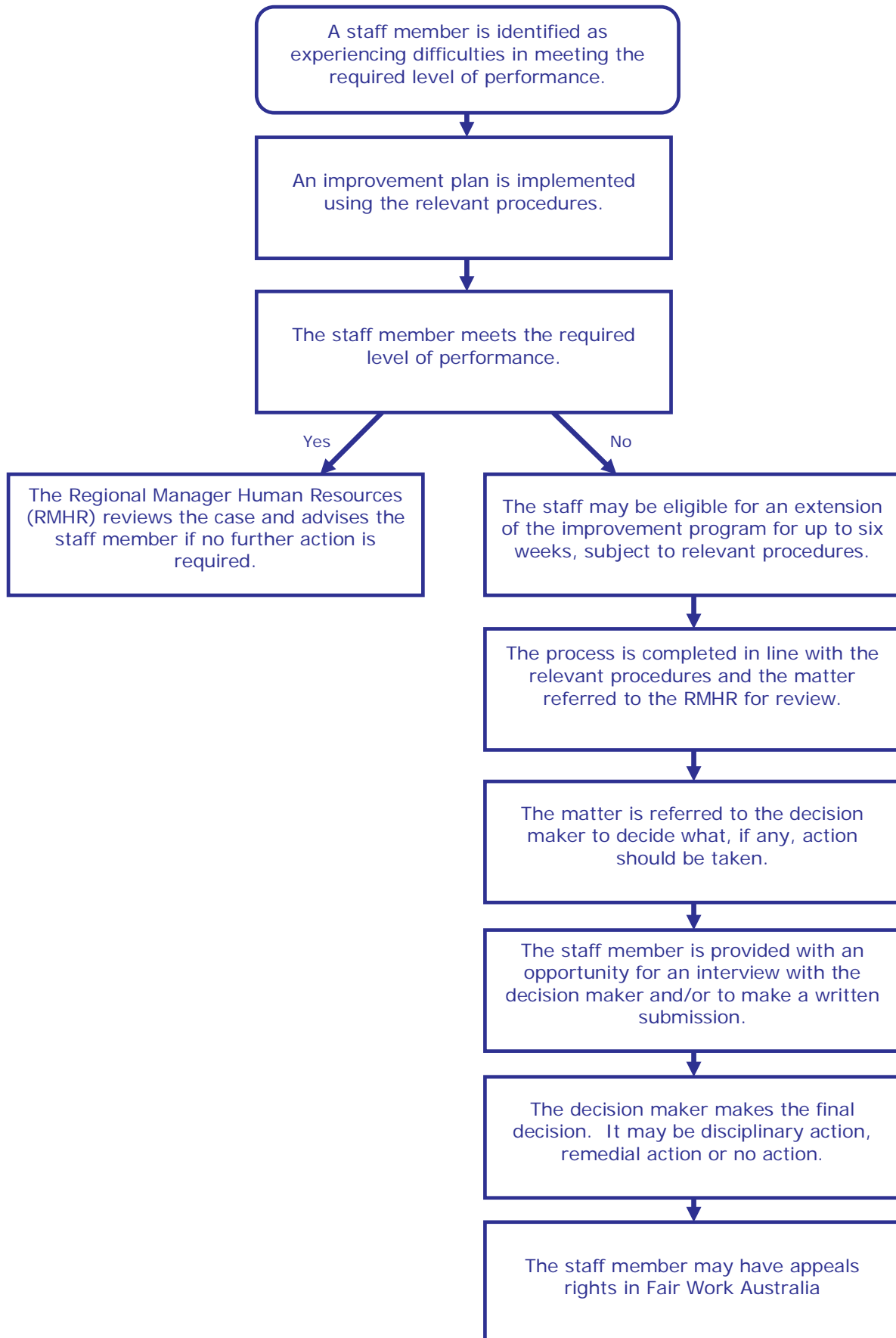
However the decision maker has the option to apply remedial action at any stage in the process if they determine that further remedial action may successfully address a person's performance difficulties.

If the decision maker determines that remedial action is warranted, the member of staff should be advised in writing of (See [sample letter 13](#)):

- the remedial action proposed;
- the reasons for the decision;
- the consequences of the decision;
- a summary of the process taken to date;
- that continuing unsatisfactory performance may lead to disciplinary action;
- advice on how to access further assistance if required.

Where the proposed remedial action is the transfer to another position that would require the member of staff to change residence, then the person must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The decision maker should be satisfied the person has no valid reason for refusing the transfer.

Dealing with unsatisfactory performance - TAFE



9. Guidelines for dealing with a serious criminal offence

These Guidelines apply to situations in which:

- a member of staff is charged with a serious criminal offence (that is one punishable by imprisonment for 12 months or more);
- a member of staff is found guilty of such an offence; and
- a member of staff is found guilty (including entering a plea of guilt) of serious sex offences or offences against children that would render them prohibited to work in child related employment (as defined by the amended *Commission for Children and Young People Act 1998*).

The Managing Director is responsible for taking action in respect of a member of staff found guilty of a serious offence. The Managing Director may delegate these functions to an officer who understands the process of dealing with a criminal offence and who has the available resources to undertake the delegated function.

9.1 Notification requirements

A member of staff who:

- (a) is charged with, or is found guilty of an offence that is punishable by imprisonment for 12 months or more in New South Wales; or
- (b) is charged with, or who is found guilty elsewhere than New South Wales of an offence, that if it were committed in New South Wales, would be an offence so punishable

must immediately report that fact to the TAFE Commission

In the TAFE Commission the role of receiving this information has been delegated to the workplace manager.

The workplace manager must immediately report that fact to the Institute Director. The Institute Director or delegate will then notify the Employee Performance and Conduct Directorate (EPAC) – 92668070.

If a senior officer or permanent employee in the branch or section in which the member of staff is employed, has reason to believe that the person has been charged with having committed, or has been convicted of a serious offence but has not reported that fact as required, he or she must report the matter as outlined above.

9.2 In what circumstances should consideration be given to removing the officer from duty following a criminal charge or criminal conviction?

Decisions in relation to this issue are to be based on the facts as they are known at the time. This will include:

- the nature and seriousness of the criminal charge in the context of the staff member's position;
- whether or not the person has made any admissions to the alleged offences;
- whether the person poses an unacceptable risk to a student or staff.

The [*Premier's Memorandum 94-35*](#) states that if a decision is made that a member of staff must be removed from duties pending trial or further investigation, consideration should initially be given to whether he or she can be placed on alternative duties. This means that the member of staff retains their salary and conditions but is required to work on other duties, generally away from their usual work site.

When a member of staff has been charged with a serious offence the Managing Director or delegate may suspend him or her from duty until the criminal charge has been dealt with or until the Managing Director, TAFE Commission or delegate notifies the person that the suspension has been lifted, however this should only be done under exceptional circumstances as defined in the [*Premier's Memorandum 94-35*](#).

A member of staff can be suspended with or without pay. All decisions about suspensions must be reviewed every 30 days.

It should be noted that a member of staff suspended without pay will accrue salary during the period of suspension. The Managing Director, TAFE Commission or delegate determines whether or not this salary will be withheld.

Any salary accrued for the suspension period is forfeited to the State unless the Managing Director, TAFE Commission or delegate directs otherwise.

If no disciplinary action is taken against the member of staff or the person is acquitted of the criminal matter, the person will be paid the salary that has been withheld.

The position of the member of staff shall not be permanently filled while the member of staff is suspended from duty.

Suspension is **not** one of the options available as disciplinary action but is a protective measure while the criminal charge is being considered.

9.3 Procedural fairness

When dealing with a member of staff who has been charged or convicted of a serious offence, the principles of procedural fairness must be followed.

9.4 At what point can the Department commence investigation of a criminal matter that directly relates to a member of staff's work?

The timing of conducting an internal investigation depends on the police investigation. Where the matter directly relates to the member of staff's work, there is usually no need unless requested by the NSW Police Force to suspend the internal investigation concerning an allegation of misconduct under the Guidelines. All stages of dealing with the allegation as a disciplinary matter should continue unless requested by the external authority to not proceed. If the process is not completed and the member of staff is charged by the NSW Police Force, it is usually appropriate to await the outcome of the court proceedings. Such matters are generally negotiated on a case by case basis having regard to timeliness, procedural fairness and the requirements of other agencies.

The Department should ensure that it is aware of the progress of a matter and acts promptly upon conclusion of the criminal proceedings.

9.5 Member of staff convicted of a serious offence

When a member of staff has been found guilty (with or without conviction) of a serious offence, the relevant material and facts can be forwarded directly to a decision maker. The decision maker may decide to:

- take disciplinary action
- take remedial action
- take no further action

A decision maker must exercise discretion in selecting the appropriate action and not adopt a policy that a particular serious offence will always attract the same punishment, unless the offence renders the member of staff prohibited to work in child-related employment. It should not be assumed that all other convictions will result in either disciplinary or remedial action.

However if a- member of staff becomes a Prohibited Person, this process set out in s 9.6.2 must be followed.

In all matters other than those involving a prohibited person, the decision maker should, if available, be provided with:

- the certificate of conviction;
- the Court's decision, which will outline findings made;
- where possible, a transcript of the Judge's/Magistrate's remarks in sentencing.

9.5.1 What issues should be considered in deciding the appropriate action?

In determining the appropriate action, the decision maker shall have regard to the objects of these guidelines outlined in 3.1:

- to maintain appropriate standards of conduct and work-related performance for members of staff in the TAFE Commission
- to protect and enhance the integrity and reputation of the TAFE Commission; and
- to ensure that the public interest is protected.

Issues to be considered include:

- whether the nature of the offence means that the member of staff poses an on-going risk to children;
- whether there is a relevant connection between the criminal matter and the member of staff's position and duties;
- the nature and seriousness of the offence;
- the employment history and general conduct of the member of staff;
- whether orders of the Court prevent the member of staff attending for work;
- issues taken into account in the judgement regarding mitigation or culpability which might be relevant to the member of staff's position and duties;
- the effect of the proposed action on the member of staff; and
- any mitigating or extenuating circumstances.

9.5.2 Decision process

9.5.2.1 No action

If the decision maker decides that no action is to be taken by the employer, the member of staff must be advised in writing of that decision (see [sample letter 14](#)).

9.5.2.2 Remedial action

If the decision maker decides that remedial action is to be taken, the member of staff must be advised in writing of the details of the remedial action to be taken (see [sample letter 15](#)). Where the proposed remedial action is the transfer to another position that would require the person to change residence, then he or she must be given an opportunity to make a submission with respect to such proposed remedial action before it is implemented. The decision maker should be satisfied the member of staff has no valid reason for opposing the transfer however the decision remains that of the decision maker.

9.5.2.3 Disciplinary action proposed

If the decision maker decides disciplinary action is appropriate, the member of staff must be notified in writing of that opinion and of the disciplinary action being considered, including the severest disciplinary action (see [sample letter 16](#)). Before any disciplinary action is taken, the member of staff has an opportunity to make a submission in relation to the disciplinary action being considered.

If the decision is to take disciplinary action the written notification must state:

- the fact that the member of staff's response will be taken into account;
- the disciplinary action being considered, including the severest disciplinary action that is being considered for the particular matter. In particular the member of staff should be advised if dismissal or a direction to resign is being considered.
- outline the previous employment matters, if any, to be taken into account;
- other materials to be taken into account (e.g. certificate of conviction (if available), transcripts from criminal proceedings, other criminal convictions);
- that the member of staff has 14 days from the receipt of the written notice to make a submission and to provide any additional information which he or she considers should be taken into account

in relation to the disciplinary action being considered before a final decision is made. The decision maker has the discretion to extend the period for response if the member of staff applies for additional time within the fourteen day period and provides reasonable grounds for seeking the extension. If made, the decision maker shall also consider any submission on behalf of the member of staff by the union.

- that he or she may request an opportunity to have an interview with the decision maker, accompanied by a union or other representative (not in a formal legal advocacy role) before a final decision is made. The request for an interview must be made within 7 days of receipt of the written notice. The member of staff's support person may speak on behalf of the person at interview but must not attempt to cross examine the decision maker.
- that these further submissions and/or additional information will be considered before a final decision is made to implement the disciplinary action being considered.

Each step outlined in the letter must be taken and documented before the decision maker may make a final decision.

9.5.2.4 Disciplinary action

In making a decision as to what disciplinary action to impose, the decision maker must consider all the material before them, including the content of any interview or further submissions from the member of staff. The decision maker should make a final decision promptly and expeditiously.

In determining the disciplinary action to impose the decision maker should take account of similar issues considered when determining the appropriate course of action to respond to the criminal matters. These were outlined in [section 9.5.1](#).

The disciplinary actions that may be considered by the decision maker include:

- a caution or reprimand;
- reduction of the member of staff's salary or demotion to a lower position;
- directing the member of staff to resign, or to be allowed to resign within a specified period;
- dismissal with notice (or payment in lieu of notice)
- dismissal without notice for matters that constitute serious misconduct.

The decision maker is not precluded at this stage from ordering remedial action in conjunction with disciplinary action if they are of the view that a

matter could be more effectively addressed through a remedial response as well.

If the disciplinary action does not involve removal of the member of staff from employment, the delegated decision maker will determine the disciplinary action and advise the member of staff in writing of that determination (see [sample letter 9](#)). Such determinations should be made in a timely manner, preferably within 14 days of receiving the member of staff's submission.

The member of staff will be advised in writing of the final decision as to disciplinary action and if applicable, the date from which the decision becomes effective.

9.5.3 Member of staff found not guilty of a serious charge

A "not" guilty finding or dismissal of the charge does not necessarily mean that the member of staff may not have engaged in misconduct. A criminal offence must be proved beyond reasonable doubt. The lesser civil standard of the balance of probabilities applies to misconduct matters.

In particular if the criminal matter concerned conduct while on duty, or conduct that posed a risk to children, consideration would need to be given to whether there is sufficient reason to deal with the matter as an allegation of misconduct.

Similar considerations apply where a criminal charge does not proceed to a hearing or the police decide not to lay any charges.

If it is decided to deal with the matter as an allegation of misconduct the guidelines will apply and should be followed. Every effort should be made to ensure that any further investigation is completed expeditiously as usually considerable time would have elapsed for the criminal procedures.

9.6 Serious offences must be notified to Managing Director

A member of staff who is charged with a serious offence must immediately report that fact to the TAFE Commission. See sections 9.1 of these guidelines.

If a member of staff who is employed in child related employment becomes a prohibited person they must immediately report that fact to the Managing Director by contacting their workplace manager.

The workplace manager must notify the Employee Performance and Conduct Directorate of the member of staff's circumstances.

If a workplace manager or another senior officer becomes aware that a member of staff has been charged or convicted with such offences, and

has not notified the Managing Director themselves, they must immediately notify the Employee Performance and Conduct Directorate.

9.6.1 Prohibited persons

A prohibited person is defined in Division 2 of Part 7 of the *Commission for Children and Young People Act 1998*, which includes a person who is convicted of a serious sex offence, the murder of a child, or a child-related personal violence offence or becomes subject to registration requirements under the *Child Protection (Offenders Registration) Act 2000*.

A conviction includes a charge proven in court. It includes a finding that the charge is proven, or that a person is guilty, even though the court does not proceed to a conviction.

In NSW it is an offence for a person who becomes a prohibited person to enter or remain in child related employment and it is also an offence for an employer including the TAFE Commission to employ or allow a prohibited person to remain in child related employment.

9.6.2 The process to be followed in circumstances where a member of staff becomes a prohibited person

Any member of staff who becomes a prohibited person must immediately be removed from working in a child related position.

In these circumstances, the member of staff will be immediately suspended without pay pending the outcome of the disciplinary process.

The decision maker should be provided with details of the relevant offences and a copy of the certificate of conviction (if available).

The decision maker should then provide to the staff member a written notice setting out the following:

- the member of staff's prohibited employment status including the reference to the relevant section of the *Commission for Children and Young People Act 1998*
- providing the member of staff with an opportunity to provide a submission or additional information as to why they should not be dismissed.
- The member of staff has 14 days from the date of the letter to make any such submission before a final decision is made.

At the expiration of the 14 days the decision maker is to review the relevant material including the member of staff's response, if any, and make a decision.

The member of staff will be advised in writing of the final decision and, if applicable the date from which the decision becomes effective. (see Sample letter 18).

If the member of staff's substantive position is in child related employment it is an offence pursuant to section 33E of the *Commission for Children and Young People Act 1998* to continue to employ the member of staff in child-related employment.

10. Sample Letters

10.1 Initial notification letter –if no disciplinary action (Sample letter 1)

To

(member of staff's name and address)

Dear

I have carefully considered an allegation of possible misconduct that was referred to me for consideration. The allegation was that you *(Specify the details of the misconduct)*

I have decided to take no further action in regard to the above allegation.

OR

I have decided to take remedial action.

The remedial action I propose is *(select from the options below – may be more than one)*:

- counselling
- training and development
- monitoring your conduct or performance
- implementing a plan addressing unsatisfactory performance
- the issuing of a warning to you that certain conduct is unacceptable or that your performance is not satisfactory
- transferring you to another position *(specify the position)*, this does not involve a reduction of salary or demotion to a lower position¹
- any other action of a similar nature. *(specify)*²

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from *(relevant union)*.

Should you have any enquiries please contact (officer) on *(phone no)*.

Yours sincerely

¹ The member of staff must be provided with a minimum 14 days to provide a submission if this is the chosen remedial action.

² A comprehensive list is not included. Other actions **may** include, but is not limited to, mentoring, supervision or referral to appropriate policies.

10.2 Direction to alternative duties (Sample letter 2)

To
(member of Staff's name and address)

Dear

I wish to advise you that allegation(s) about your conduct has (have) been referred to

(relevant area of DET e.g. Audit, TAFE Commission, Employee Performance and Conduct Directorate (EPAC))

OR

are currently being investigated by *(relevant area of DET e.g. Audit, TAFE Commission, Employee Performance and Conduct Directorate (EPAC), etc)* in accordance with the Guidelines for the Management of Conduct and Performance -NSW TAFE Commission Staff

The information received relates to alleged *(state the conduct that may be the subject of investigation)*.

Ms / r (officer), (title) from *(section)* is investigating the matter and can be contacted on *(XXXXXXXX)* to answer any questions about the investigation process.

You do not have to make any comment about this matter unless you wish to do so.

However, in the circumstances, and following consultation with your *(Manager/Supervisor/Institute Director – as appropriate)*, I now direct you to undertake non-teaching alternative duties at *(location)*, as prescribed by, and under the supervision of *(name, title)*. You should report to *(name)* on *(location)* on *(start date)*. You will remain on alternative duties pending the outcome of the investigation or until further notice.

With respect to private or secondary employment with the Department (including TAFE Commission or the Office of the Board of Studies, any previous approvals are void and you must apply to me for approval before commencing or continuing such work.

You will be advised of the specific allegations and given an opportunity to respond orally or in writing to them as soon as possible.

I have asked your (*Manager/Supervisor/Institute Director – as appropriate*) to give you this letter, respond to any questions you have and also explain what support is available to you.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Please do not hesitate to contact Ms / r (*officer, title, phone*) if you have any questions.

Yours sincerely

(*name*)

(*date*)

10.3 Suspension from duty with or without pay (Sample letter 3)

To:
(Member of Staff's name and address)

Dear

I am advised that you (*describe the circumstances under which suspension without pay applies*).

You would appreciate that these are very serious matters, and I have given careful consideration to the circumstances.

In accordance with Premier's Memorandum 94-35, I hereby suspend you from duty effective from the date of this letter.

This suspension shall be *with/without* pay and shall remain in place until such time as this matter is resolved. The decision to suspend you will be reviewed every 30 days.

Until further notice you are directed not to seek casual or temporary employment or work in a voluntary capacity in any Departmental facility including TAFE Commission or the Board of Studies. You are further directed not to visit any Departmental facility without seeking approval in writing from me.

Recognising that the receipt of this letter can be difficult for you, I remind you of the sources of support that are available to you:

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Should you wish to discuss this matter, please contact (*Name, title, phone*).

Yours sincerely

(*name*)
(*date*)

10.4 Letter of Allegation proceeding to investigation (Sample letter 4)

To
(*Member of Staff's name and address*)

Dear

I am writing to advise you that allegation(s) about your conduct *is / are* being investigated in accordance with the Guidelines for the Management of Conduct and Performance- NSW TAFE Commission Staff by

(*relevant area of DET e.g. Audit, Employee Performance and Conduct Directorate (EPAC), TAFE Commission*)

The allegation (s) is/are as follows:

1. on at while in response to you (*specify the details of the allegations as known at the time*).

I have requested (*name of the investigator*) to undertake an investigation into the allegation and prepare an investigation report on these matters. You will be given an opportunity to respond to the allegation(s). (*Name of investigator*) will contact you separately to make arrangements.

If the investigation sustains an allegation of misconduct, disciplinary or remedial action may be taken against you. Possible disciplinary action may be taken.

I have asked your (*Manager/Supervisor/Principal – as appropriate*) to give you this letter, respond to any questions you have and also explain what support is available to you.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Please do not hesitate to contact (*investigating officer, name title, phone*) who is available to provide advice about the process.

Yours sincerely
(*name*)(*date*)

10.5 Letter of allegation providing opportunity to respond (Sample letter 5)

To
(*Member of Staff's name and address*)

Dear

I have been asked by (*name and title of decision maker*), to investigate and prepare an Investigation Report into allegation(s) that you may have engaged in misconduct.

The allegation(s) is/are:

1. on at while in response to you (*specify the details of the allegations as known at the time*).

This matter is being investigated in accordance with the Guidelines for the Management of Conduct and Performance-NSW TAFE Commission Staff. These guidelines require you to be given an opportunity to respond to the allegation, and I would like to interview you as part of my investigation.

A copy of the *Guidelines for the Management of Conduct and Performance-NSW TAFE Commission Staff* can be accessed from the Department's *Our Policies* website.

Should you agree to be interviewed you will be provided with the opportunity to respond to questions asked in relation to the allegation/incident/s or make comments on these matters. You will be provided with at least 24 hours notice prior to interview.

You may wish to bring a support person to the interview. The role of the support person is as a witness or adviser. This person/s may not operate as a legal advocate and may not cross examine me.

The interview will be sound recorded (*if other method, specify which method*) and a copy of the record of interview statement or a tape will be provided to you.

If you would prefer to provide your response in writing, you may do so within fourteen (14) days of the date of this letter. A submission may also be made on your behalf by your union. If you have any enquiries in relation to this matter, please contact me on (*number*).

Should you require an extension of time to respond, I will consider any reasonable request.

Please note that if you or your union do not respond within 14 days, or indicate that you do not wish to respond, it will be deemed that you deny the allegation.

Should you agree to be interviewed please advise me if you have any special requirements such as access requirements or a signing or language interpreter.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008(www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Please note that any response you provide may be considered should the allegation proceed to be dealt with as a disciplinary matter.

Yours sincerely

(*name*)

(*date*)

10.6 Matter finalised no evidence or insufficient evidence (Sample letter 6)

To
(*Member of Staff's name and address*)

Dear

I am writing to advise you that the investigation by (*relevant area of DET e.g. Audit, Employee Performance and Conduct Directorate (EPAC), TAFE Commission etc³*) has been finalised.

All the information obtained, including your response has been carefully considered.

I have determined that there is no evidence that the alleged misconduct occurred. I have decided to dismiss the allegation.

OR

I have determined that, while an incident occurred, there is insufficient evidence to support that the allegations amounted to misconduct. No further action will be taken in relation to this matter.

(*I have requested your Principal/Supervisor to advise you of this outcome and for appropriate follow-up, which may include providing you with advice and support⁴*)

The materials in relation to this matter including the investigation report will not be placed on your personnel file.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Should you have any enquiries please contact (*officer*) on (*XXXXXXXXXX*).

Yours sincerely

³ This letter may require tailoring to meet requirements of external agencies e.g. NSWOO require particular actions in relation to categories of finalisation of child protection matters.

⁴ This paragraph may be required for follow up action by a principal or supervisor as required by the individual matter.

10.7 Investigation finalised, misconduct proven, no action to be taken (Sample letter 7)

To
(Member of Staff's name and address)

Dear

I am writing to advise you that the investigation by (*relevant area of DET e.g. Audit, Employee Performance and Conduct Directorate (EPAC), TAFE Commission etc⁵*) has been finalised.

All the information obtained, including your response has been carefully considered.

I am of the opinion you have engaged in misconduct as follows:

Specify the details of the misconduct that the decision maker is of the opinion the officer engaged in. These should be consistent with the allegation(s) first put to the officer.

I have decided to take no further action in regard to the above misconduct.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Should you have any enquiries please contact (officer) on (XXXXXXX)

Yours sincerely

(name)
(date)

⁵ This letter may require tailoring to meet requirements of external agencies e.g. NSWOO require particular actions in relation to categories of finalisation of child protection matters.

10.8 Investigation finalised, misconduct proven, remedial action (Sample letter 7A)

To
(Member of Staff's name and address)

Dear

I am writing to advise you that the investigation by (*relevant area of DET e.g. Audit, Employee Performance and Conduct Directorate (EPAC), TAFE etc⁶*) has been finalised.

All the information obtained, *including your response (OR submission OR the report provided by you)* has been carefully considered.

I am of the opinion you have engaged in misconduct as follows:

Specify the details of the misconduct that the delegated officer/decision maker is of the opinion the officer engaged in. These should be consistent with the allegations first put to the officer.

I have decided to take remedial action.

The remedial action I propose is (*select from the options below – may be more than one*):

- counselling
- training and development
- monitoring your conduct or performance
- implementing a plan addressing unsatisfactory performance
- the issuing of a warning to you that certain conduct is unacceptable or that your performance is not satisfactory
- transferring you to another position (*specify the position*). This does not involve a reduction of salary or demotion to a lower position.

(NB. If this option is chosen, the member of staff is to be given an opportunity to provide a submission regarding the transfer. The following wording is to be used:

Prior to me making such a decision, you have the opportunity to show cause, via written submission, why such remedial action should not be taken. Any submission you wish to make should reach my office within fourteen (14) days of the date of this letter. Should your response not be provided within this time I shall proceed to make a decision in the absence of any further information you may wish to provide.)

⁶ This letter may require tailoring to meet requirements of external agencies e.g. NSWOO require particular actions in relation to categories of finalisation of child protection matters.

- any other action of a similar nature. *(specify)*⁷

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from *(relevant union)*.

Should you have any enquiries please contact (officer) on (XXXXXXX)

Yours sincerely

(name) (decision maker)
(date)

⁷ A comprehensive list is not included. Other actions **may** include, but is not limited to, mentoring, supervision or referral to appropriate policies.

10.9 Investigation finalised, misconduct found – considering disciplinary action (Sample letter 8)

To
(Member of Staff's name and address)

Dear

You are aware that allegation(s) made about your conduct have been investigated in accordance with the Guidelines for the Management of Conduct and Performance- NSW TAFE Commission Staff by (*the Employee Performance and Conduct Directorate (EPAC), Audit, TAFE Commission etc.*) .

The investigation into the allegation you may have engaged in misconduct has now been completed.

I have considered the Investigation Report. A full copy including attachments is provided to you with this letter (*see Procedural Guidelines for guidance on information not to be disclosed*). I am of the opinion that you have engaged in misconduct as follows:

Specify the details of misconduct that the Decision Maker is of the opinion the member of staff has engaged in - would be no more than details outlined in previous letter of allegation, although could be less

I am now considering taking disciplinary action.

There are four (4) possible disciplinary actions ranging from a caution or reprimand to dismissal. These are:

- A caution or reprimand;
- Reduction of the officer's salary or demotion to a lower position;
- Directing the officer to resign, or be allowed to resign within a specified period;
- Dismissal

In relation to this matter the severest disciplinary action I am contemplating imposing/recommending is:

Need to advise severest penalty being considered for the particular matter. In particular the member of staff should be advised if dismissal, a direction to resign or annulment in the case of an officer on probation is being considered. If the choice is for a direction to resign, the officer should be advised of the consequences of not resigning within the time allowed – that is dismissal

You have 14 days from the receipt of this letter to make a submission and to provide any additional information which you consider should be taken into account in relation to the proposed disciplinary action being considered before I make a final decision. A submission may also be made on your behalf by your union.

Your submission may address such matters as my opinion that you have engaged in misconduct, the Investigation Report, or any extenuating and mitigating circumstances.

Before making a final decision on the appropriate disciplinary action, I will consider the following:

1. The Investigation Report
2. Your submission if made
3. The protection of children
4. The objectives of the Guidelines for the Management of Conduct and Performance which are:
 - (a) to maintain appropriate standards of conduct and work-related performance for members of staff,
 - (b) to protect and enhance the integrity and reputation of the TAFE Commission and staff members,
 - (c) to ensure that the public interest is protected.

5. The following matters:

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

You also have an opportunity to have an interview with me (*the delegated officer or decision maker*), accompanied by a support person of your choice (can be a legal or union representative, but not acting as an advocate) before a final decision is made.

You may also nominate a person to speak on your behalf including a union representative but that person may not act as a legal advocate.

Should you wish to have an interview the request should be made within seven (7) days of receipt of this letter. Please contact who will make arrangements for this interview.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Should you have any enquiries please contact (*officer*) on (*XXXXXXXX*)

Yours sincerely

(*name*) (*decision maker/delegated officer*)
(*date*)

Note: *The decision maker/delegated officer has discretion to extend the period for response if the officer applies for additional time and provides reasonable grounds for seeking the extension.*

**10.10 Final letter – misconduct proven final decision
disciplinary action
(Sample letter9)**

To
(Member of Staff's name and address)

Dear

I refer to my letter of dated (XXXX) where I advised you I had formed the opinion you had engaged in misconduct and I was considering taking disciplinary action.

I have now considered the submissions and additional information provided by you and I have decided

to (take the following disciplinary action)
from.....(date).

OR

to recommend to (Decision Maker) that you will be dismissed

OR

to recommend to (Decision Maker) that you be directed to resign within 14 days. If you fail to submit your resignation by the date designated by (Decision Maker) you will be taken to be dismissed.

(NOTE: If the disciplinary action taken is NOT dismissal or direction to resign the following sentence is to be included:

A record of my decision will be attached to your personnel file).

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (relevant union).

Should you have any enquiries please contact (officer) on (XXXXXXX)

Yours sincerely

(name) (decision maker/delegated officer)
(date)

NOTICE OF SERVICE

On (date)

I served the decision of which the within is a duplicate upon the person to whom it is addressed by:

1. Of residence being (specify the full address)

OR

2. Sending by pre-paid post at the following place of employment / residence (specify the full address)

OR

3. Delivering to him/ her personally at the following place of employment (specify the full address)

(Signed) _____

(Date) _____

10.11 Letter advising possible disciplinary action following unsatisfactory performance (Sample letter 10)

To
(Member of Staff's name and address)

Dear

On (XXXX) your TAFE manager/supervisor, (XXXXXX), advised you that he/she has identified you as experiencing difficulties in meeting the required level of performance as a (TAFE staff member/) at (XXX XXX STAFE) college. Accordingly, Ms/r XXXX determined that it was appropriate to implement an improvement program in accordance with the

OR

Procedure for Managing Unsatisfactory Performance – Teachers and Institute Managers Employed by the NSW TAFE Commission

OR

[insert relevant procedures for dealing with TAFE staff members.]

The details of alleged unsatisfactory performance are that (*specify details of unsatisfactory performance*)

An improvement program was commenced on XXXXXXXXX. In his/her final report dated XXXXXXXX, M XXX identified that at the conclusion of the improvement program you did not meet the required level of performance.

As required by the procedures, M XXXX then referred the materials from the improvement program along with his/her report for Independent Review. The reviewer subsequently upheld the TAFE Manager's / Institute Director's recommendation.

The independent reviewers report and finding was referred to me on XXXXXXXXXZ.

I am of the opinion that your work performance is still unsatisfactory and I am currently considering whether to take disciplinary action or further remedial action (if applicable).

A copy of the following documentation is enclosed: -

- The material generated during the course of the improvement program which was provided to the independent reviewers.
- The Independent Review report and finding dated (XXXXXXX).
- *Any other relevant material (specify)*

You may also access a copy of the Guidelines from the Department's *Our Policies* website.

I will be contacting you shortly to provide you with an opportunity to make submissions to me should I be contemplating disciplinary action.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Yours sincerely

(name) (*decision maker*)

(date)

10.12 Found performance unsatisfactory – considering disciplinary action (Sample letter 11)

To
(Member of Staff's name and address)

Dear

I refer to my letter dated (XXXXXXX) where I advised that I had determined that your performance was still considered unsatisfactory following a formal improvement program.

I am considering imposing disciplinary action. As previously advised on..... there are a number of possible disciplinary actions that I can take including:

- A caution or reprimand;
- Reduction of your salary or demotion to a lower position;
- Directing you to resign, or to be allowed to resign within a specified period;
- Dismissal.

In relation to this matter the severest disciplinary action I would consider is:

Need to advise severest penalty being considered for the particular matter. In particular the officer should be advised if dismissal, a direction to resign or annulment in the case of an officer on probation is being considered. If the choice is for a direction to resign, the officer should be advised of the consequences of not resigning within the time allowed – that is dismissal

Before making a final decision on the appropriate action, I will consider the following:

The objectives of the Guidelines for the Management of Conduct and Performance -NSW TAFE Commission Staff which are:

- a. to maintain appropriate standards of conduct and work-related performance for members of staff,
- b. to protect and enhance the integrity and reputation of the TAFE Commission and staff members,
- c. to ensure that the public interest is protected.

The following matters:

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

You have 21 days from the receipt of this letter to make a submission and to provide any additional information which you consider should be taken into account in relation to the disciplinary action being considered before I make a final decision. I will also consider any submission made on your behalf from your union.

You also have an opportunity to have an interview with me, accompanied by a union or other representative (not in a legal advocacy role) before a final decision is made. Your representative may speak on your behalf at the interview but may not attempt to cross examine me.

Should you wish to have an interview the request should be made within seven (7) days of receipt of this letter. Please contact who will make arrangements for this interview.

Any submissions and/or additional information will be taken into consideration before a decision is made to implement the disciplinary action being considered.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from *(relevant union)*.

Should you have any enquiries please contact *(officer)* on *(XXXXXXX)*

Yours sincerely

(name) (decision maker)
(date)

Note: *The managing Director has discretion to extend the period for response if the officer applies for additional time and provides reasonable grounds for seeking the extension*

**10.13 Final decision disciplinary action to be taken re work performance
(Sample letter 12)**

To
(Member of Staff's name and address)

Dear

I refer to my letter of (date) where I advised you I had formed the opinion that your work performance was still unsatisfactory following completion of an improvement program and that I was considering imposing disciplinary action.

I have now considered the submissions and additional information provided by you and I have decided

to (take the following disciplinary action) with effect from.....(date)

OR

to recommend to (Decision Maker) that you will be dismissed

OR

to recommend to (Decision Maker) that you be directed to resign within 14 days. If you fail to submit your resignation by the date designated by (Decision Maker) you will be taken to be dismissed.

(NOTE: If the disciplinary action taken is NOT dismissal or direction to resign the following sentence is to be included:

A record of my decision will be attached to your personnel file).

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (relevant union).

Should you have any enquiries please contact (officer) on (XXXXXXX)

Yours sincerely

(name) (Decision Maker)
(date)

NOTICE OF SERVICE

On (date)

I served the decision of which the within is a duplicate upon the person to whom it is addressed by:

4. Of residence being (specify the full address)

OR

5. Sending by pre-paid post at the following place of employment / residence (specify the full address)

OR

6. Delivering to him/ her personally at the following place of employment (specify the full address)

(Signed) _____

(Date) _____

10.14 Unsatisfactory performance resulting in remedial action (Sample letter 13)

To
(Member of Staff's name and address)

Dear

I refer to my letter dated (XXXXXXX) where I advised you that I had determined that your performance was unsatisfactory following a formal improvement program.

All the information obtained, *including your response (OR submission OR the report provided by you)* has been carefully considered.

I have decided to take remedial action.

The remedial action I propose is (*select from the options below – may be more than one*):

- counselling
- training and development
- monitoring the officer's conduct or performance
- implementing a plan addressing unsatisfactory performance
- the issuing of a warning to the officer that certain conduct is unacceptable or that the officer's performance is not satisfactory
- transferring the officer to another position in the TAFE Commission that does not involve a reduction of salary or demotion to a lower position⁸, and
- any other action of a similar nature (specify)⁹.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Should you have any enquiries please contact (*officer*) on (XXXXXXX)

Yours sincerely

⁸ The member of staff must be provided with a minimum of 14 days to provide a submission if this is the chosen remedial action.

⁹ A comprehensive list is not included. Other actions **may** include, but is not limited to, mentoring, supervision or referral to appropriate policies.

**10.15 Matter finalised following conviction for a serious offence – no disciplinary action
(Sample letter 14)**

To
(Member of Staff's name and address)

Dear

I refer to your finding of guilt at (*court, location*) on (*date of conviction*).

All the information obtained relating to the offence as well as *your response (OR submission OR the report provided by you)* has been carefully considered.

I have determined that no further action will be taken in relation to this matter.

(*I have requested your Supervisor to advise you of this outcome and for appropriate follow-up, which may include providing you with advice and support¹⁰*)

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Should you have any enquiries please contact (*officer*) on (*XXXXXXXXXX*).

Yours sincerely

(*name*) (*decision maker*)
(*date*)

¹⁰ This paragraph may be required for follow up action by a supervisor as required by the individual matter.

10.16 Remedial action following conviction (Sample letter 15)

To
(Member of Staff's name and address)

Dear

I refer to your finding of guilt at (court, location) on (date of finding of guilt).

All the information obtained relating to the offence as well as your response (OR submission OR the report provided by you) has been carefully considered.

I have decided to take remedial action.
The remedial action I propose is (select from the options below – may be more than one):

- counselling
- training and development
- monitoring the member of staff's conduct or performance
- implementing a plan addressing unsatisfactory performance
- the issuing of a warning to the member of staff that certain conduct is unacceptable or that the member of staff's performance is not satisfactory
- transferring the member of staff to another position in the TAFE Commission that does not involve a reduction of salary or demotion to a lower position¹¹, and
- any other action of a similar nature (specify)¹².

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (relevant union).

Should you have any enquiries please contact (officer) on (XXXXXXX)

Yours sincerely

¹¹ The member of staff must be provided with a minimum of 14 days to provide a submission if this is the chosen remedial action.

¹² A comprehensive list is not included. Other actions **may** include, but is not limited to, mentoring, supervision or referral to appropriate policies.

10.17 Disciplinary action being considered following conviction (Sample letter 16)

To
(Member of Staff's name and address)

Dear

I refer to a finding of guilt against you at (court, location) on (date of finding of guilt).

All the information obtained relating to the offence as well as your response (OR submission OR the report provided by you) has been carefully considered.

I have carefully considered all the available information and I have formed the opinion that it is appropriate to proceed to disciplinary action.

There are a number of possible disciplinary actions that I can take including:

- a caution or reprimand;
- reduction of your salary or demotion to a lower position;
- directing you to resign, or to be allowed to resign within a specified period;
- dismissal.

In relation to this matter the severest penalty I would conceivably impose or recommend is:

Need to advise severest penalty being considered for the particular matter. In particular the officer should be advised if dismissal, a direction to resign or annulment in the case of an officer on probation is being considered. If the choice is for a direction to resign, the officer should be advised of the consequences of not resigning within the time allowed – that is dismissal

You have 14 days from the receipt of this letter to make a submission and to provide any additional information which you consider should be taken into account in relation to the disciplinary action being considered before I make a final decision. I would also consider any submission on your behalf from your union.

Should you require an extension of time to respond, I will consider any reasonable request.

Before making a final decision on the appropriate action, I will consider the following:

1. The details of the finding of guilt against you at (*court, location*) on (*date of finding of guilt*)
2. Your submission if made.

The objectives of the Guidelines for the Management of Conduct and Performance -NSW TAFE Commission Staff which are:

- a) to maintain appropriate standards of conduct and work-related performance for members of staff,
- b) to protect and enhance the integrity and reputation of the TAFE Commission and staff members,
- c) to ensure that the public interest is protected.

3. The following matters:

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

You also have an opportunity to have an interview with me, accompanied by a union or other representative (not in a legal advocacy role) before a final decision is made. Your representative may speak on your behalf at the interview but may not attempt to cross examine me.

Should you wish to have an interview the request should be made within seven (7) days of receipt of this letter. Please contactwho will make arrangements for this interview.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Should you have any enquiries please contact (officer) on (XXXXXXX)

Yours sincerely

Note: *The decision maker/delegated officer has discretion to extend the period for response if the member of staff applies for additional time and provides reasonable grounds for seeking the extension.*

**10.18 Timeframe letter to be sent after 18 weeks and then each 12 weeks
(Sample letter 17)**

PRIVATE AND CONFIDENTIAL

To
(Member of Staff's name and address)

Dear

As you are aware, I have been asked by (*name, title*), to investigate and prepare an Investigation Report into (*an*) allegation(s) that you may have engaged in misconduct.

You were previously advised that this matter is being dealt with in accordance with the *Guidelines for the Management of Conduct and Performance NSW TAFE Commission*.

I remind you that these Guidelines can be accessed at www.det.nsw.edu.au/policies/.

I wish to advise that the investigation of the allegation(s) is at the stage of....

It is anticipated that the investigation will be concluded in (number) weeks.

If appropriate:
To date, delay has occurred due to...

The completion of the matter may be delayed due to...
(*Examples of reasons may be complexity, exceptional circumstances (explain), external authority involvement, etc*)

If you would like assistance at any time during this process, advice and support is available from:

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Should you have any enquiries please contact (officer) on (XXXXXXX)

Yours sincerely

**10.19 Show cause letter to member of staff who has become a prohibited person
(Sample letter 18)**

To
(*Member of Staff's name and address*)

Dear

I have been advised that you were convicted at (location) Court on (*date*) of the following offences:

(*offence/s*)

As a result of that/those conviction/s you are now a prohibited person within the meaning of section 33B of the *Commission for Children and Young People Act 1998*.

Pursuant to section 33E of the *Commission for Children and Young People Act 1998* it is an offence for the NSW TAFE Commission to continue to employ you in child related employment. Similarly, pursuant to section 33C(c) of the *Commission for Children and Young People Act 1998* it is an offence for a prohibited person to remain in child related employment.

You are now provided with an opportunity to show cause as to why you should not be dismissed.

You have 14 days from the date of this letter to provide written submissions as to why you should not be dismissed. You may provide any additional information or documentation that you would like me to consider before I make my decision.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from (*relevant union*).

Should you have any enquiries please contact (*officer*) on (*XXXXXXXXXX*).

Yours sincerely

10.20 Matter finalised following a member of staff becoming a prohibited person.

(Sample letter 19)

To

(Member of Staff's name and address)

Dear

I refer to my previous letter dated () in which I provided you with an opportunity to show cause as to why you should not be dismissed.

I have been provided with your submissions dated *(insert date)*.

All the information obtained relating to the offence as well as *your response (OR submission OR the report provided by you)* has been carefully considered.

I have determined that you will be dismissed effective from the date of this letter.

If you would like assistance at any time during this process, advice and support is available from

- Confidential counselling services which are provided by the Employee Assistance Program Services. The service coordinators in your area are PPC, Toll free: 1300 361 008 (www.ppconline.info/au) and Davidson Trahaire Corpsych, Toll free: 1300 360 364 (www.davcorp.com.au).
- Welfare and other advice is also available from *(relevant union)*.

Should you have any enquiries please contact *(officer)* on *(XXXXXXXX)*.

Yours sincerely

(name) (decision maker)

(date)