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# **ALTERNATE DISPUTE RESOLUTION PROCEDURES FOR POLICE MISCONDUCT INFORMATION**

**Professional Standards Command**

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## Summary

Informal resolution is an alternate dispute resolution (**ADR**) process which is suitable for managing some misconduct information matters which meet Part 8A of the *Police Act 1990*. It is a simple process which can easily be conducted by an independent senior officer.

Legislation allows for the use of ADR. Additionally, extensive consultation was undertaken with external agencies regarding these procedures. The NSW Police Force recommends the use of informal resolution for minor misconduct information matters under certain circumstances.

Informal resolution has many benefits. Complainants often just want to be heard. Informal resolution gives them an opportunity to discuss their concerns with a senior police officer. As a result, they can gain a better understanding of police and procedures. This process encourages informal resolution managers to change a complainant's negative experience into a positive one, restoring their faith in the NSW Police Force.

Subject officers can also benefit. They can decide to have a minor misconduct information matter declined and finalised, with no further formal action taken against them. Informal resolution allows for a reduction in time and resources spent on conducting inquiries into minor misconduct information in all workplaces.

The *Alternate Dispute Resolution Procedures for Police Misconduct Information* will assist commanders / managers and informal resolution managers to understand when this process can appropriately be used and how to implement it to resolve minor misconduct information matters.

The Professional Standards Command (**PSC**) can be contacted if further advice or support is required.

## Document Control Sheet

### Document Properties

Title	Alternate Dispute Resolution Procedures for Police Misconduct Information
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### Modification History

Version #	Version creation date	Author / Position	Summary of changes
3	February 2016	Professional Standards Command	<ul style="list-style-type: none"> <li>Apply protective marking</li> <li>Removal of reference to Dispute Handling Guidelines</li> <li>Changes to <i>Police Regulation 2008</i> to reflect update to <i>Police Regulation 2015</i></li> </ul>
4	July 2017	Professional Standards Command	<ul style="list-style-type: none"> <li>Implementation of <i>Law Enforcement Conduct Commission Act 2016</i>, changes to the <i>Police Act 1990</i> and the <i>Police Regulation 2015</i></li> </ul>
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7	June 2022	Professional Standards Command	<ul style="list-style-type: none"> <li>Change title of document to Alternate Dispute Resolution Procedures for Police Misconduct Information</li> <li>Change Complaint Handling Guidelines to Misconduct Management Framework</li> <li>Include with reference to IAPro - Misconduct Matters Information System</li> <li>Change C@ts.i to IAPro</li> <li>Replace 'complaint' with 'misconduct information' except where legislation is quoted</li> <li>Replace 'issue' with 'allegation' when referencing misconduct</li> <li>Update flowchart</li> <li>Change sworn member to police officer</li> <li>Minor technical updates</li> </ul>
8	February 2024	Professional Standards Command	<ul style="list-style-type: none"> <li>Document transferred to new corporate template</li> <li>Amendment to language from employee to NSW Police Force Member</li> </ul>

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## 1. Purpose

The purpose of this document is to provide direction and guidance to understand the Alternate Dispute Resolution Procedures for Police Misconduct Information, and how it can be implemented to resolve minor misconduct information matters.

## 2. Scope

**IMPORTANT** - These guidelines only apply to police officers, including those who are suspended, or on any type of leave.

Informal resolution is one resolution option available for use by commanders /managers. They must give their approval and appoint an informal resolution manager to conduct the process. The complainant and the subject officer must also be willing to participate before proceeding. Informal resolution is not appropriate for all minor misconduct information allegations or subject officers. Not all complainants or subject officers will agree to participate.

## 3. Roles & responsibilities

Please refer to sections 7, 8, 9 and 10 for clearly defined roles, responsibilities, and processes

## 4. Relevant legislation

The use of ADR procedures in misconduct information management is allowed under section 135(4) of the Police Act 1990 (Police Act) which states:

*... a person conducting an investigation may attempt to resolve a misconduct matter (being a complaint) by means of alternative dispute management procedures.*

If a successful informal resolution is conducted the investigation of misconduct information can be declined under section 132(a) and/or 132(e) of the Act which states:

*“(a) action has been, is being or will be taken to remedy the subject matter of the complaint without the need for an investigation or...”*

*“(e) there is or was available to the complainant an alternative and satisfactory means of redress in relation to the relevant conduct...”*

Section 211D of the Police Act provides protection against the use of any statements made during alternative dispute management procedures, which states:

*“(1) This section applies to any statement that is made in good faith by a police officer in the course of alternative dispute management procedures conducted in connection with a complaint concerning that officer’s conduct...”*

*“(3) A statement to which this section applies:*

*is not admissible in any civil or criminal proceeding against the police officer if the proceedings relate to the conduct in connection with which the statement was made, and (b) may not be used as the basis of taking reviewable or non-reviewable action (within the meaning of section 173) against the police officer.”*

## 5. Relationships with other policies

The following NSW Police Force document may also be useful:

- [Misconduct Management Framework](#)

## 6. Informal resolution

Generally, ADR involves an independent third party assisting in the exchange of information between disagreeing parties. This may be conducted over the telephone, by email or in writing. It is not necessary for both parties to meet face to face.

Informal resolution is the only ADR process appropriate to use when attempting to locally resolve minor written misconduct information matters involving police officers.

Minor misconduct information allegations do not require more formal ADR processes such as mediation or conciliation. These types of techniques generally require accreditation and are more commonly used where matters are complex and long standing.

If you have a complex matter where you think more formal ADR processes may be useful you must seek further advice.

## 7. Informal resolution manager

In the context of police misconduct information, as the commander has the authority to delegate a misconduct information matter to the most appropriate officer to resolve, the third party is appointed by the commander / manager and referred to as the informal resolution manager.

A Professional Standards Duty Officer (**PSDO**) or equivalent typically triages misconduct information and is generally the most appropriate officer to conduct the informal resolution. However, it can be allocated to another inspector if, for example, a conflict of interest is identified between the PSDO and either party. If an inspector is not readily available, a senior sergeant may be delegated the responsibility by the commander / manager.

It is considered that inspectors or equivalent (or relieving at that rank) have gained the necessary skills throughout their career to successfully resolve minor misconduct information matters through informal resolution. This process does not require trained negotiators or mediators.

It is important the complainant feels their concern has been brought to the attention of someone in a senior position.

The role of the informal resolution manager is to fairly and equitably conduct the informal resolution process and inform the commander / manager when it is finalised.

## 8. Principles of informal resolution

### 8.1 Timely resolution

Minor written misconduct information matters should be dealt with as quickly as possible to maximise the chances of resolution and minimise any potential negative impacts on the complainant and subject officer. It is recommended the entire process take no longer than seven days. If it appears it will take longer consider other forms of managing the misconduct information.

### 8.2 Confidentiality

Confidentiality is paramount to the success of the informal resolution process. It protects the complainant and subject officer and encourages participation.

The informal resolution manager must ensure confidentiality is maintained. They will make the boundaries of confidentiality and privacy clear to all involved. Information must be restricted to those directly involved or who otherwise have a requirement to know.

Parties involved in an informal resolution must treat all information revealed in the process as confidential except for information:

- the parties have agreed may be disclosed
- the informal resolution manager informs both parties at the outset they will not be protected, eg. disclosure of new information about the subject officer's conduct may result in an obligatory section [211F of the Police Act 1990](#) report.

There should be no briefings or discussions about what was discussed during the process with any other person; however, the commander / manager will need to be informed when it is finalised.

### 8.3 Fairness

It is essential there are no conflicts of interests as it jeopardises the integrity of the process.

If a conflict of interests exists, whether actual, potential or perceived it must be declared. The informal resolution manager should be withdrawn; unless the commander / manager is satisfied the conflict will not prejudice the fairness of the procedure. Nonetheless, even in this circumstance the conflict should be disclosed to all involved.

## 9. Misconduct information management

All misconduct information must be handled in accordance with legislation and the [Misconduct Management Framework](#).

### 9.1 Misconduct information assessment

The triage officer (PSDO or equivalent) will determine if it is a Part 8A misconduct information allegation and ensure it is recorded on IAPro (the NSW Police Force Misconduct Matters Information System<sup>1</sup>).

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<sup>1</sup> Refer section 128 of the *Police Act 1990* and clause 56 *Police Regulation 2015*

## Triage

The triage officer can recommend to decline<sup>2</sup> the misconduct information and resolve the matter through informal resolution after considering the following questions.

### ***Is the conduct complained about minor in nature?***

While not exhaustive, informal resolution is most suitable for the following allegations:

- poor or inadequate customer service
- failure to update victims
- unprofessional conduct (eg. discourtesy, rudeness or inappropriate language).

Misconduct information allegations which are more serious than these would not be appropriate for informal resolution as they relate to more significant conduct or performance issues.

### ***Is the subject officer's misconduct history deemed suitable?***

Sufficient inquiries should be made on IAPro and other local holdings (such as *my performance*) to determine the appropriateness of using informal resolution. If the subject officer has had sustained or adverse findings for similar allegations, they should not automatically be precluded from the opportunity for informal resolution to be used. A thorough assessment should be undertaken to determine whether its use would deal with the allegation appropriately, including managing the officer in an ongoing capacity.

If the subject officer has already had three matters dealt with by informal resolution within 12 months, it is recommended another form of misconduct information management be considered. As the commander / manager has the delegated authority to manage misconduct information it is their decision to approve the process or not.

### ***Has the commander / manager approved use of informal resolution?***

If the triage officer has determined that a misconduct information allegation may be suitable for informal resolution, approval must be sought from commander / manager prior to proceeding. In some commands the commander / manager may delegate this authority to the PSDO / triage officer or senior sergeant in some workplaces (such as specialist areas).

Where the misconduct information is from an internal police complainant (**IPC**), the commander / manager must consider - both party's suitability to undertake the process, staff welfare issues, long term consequences and the future working relationship of staff. Informal resolution would be a better option when the parties work separately than when they work within the same location.

The commander / manager should also consider whether the informal resolution will address the identified allegations appropriately, including the ongoing performance and / or conduct issues of the subject officer.

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<sup>2</sup> If the complaint can be declined for any other reason based on available holdings then it should be under the relevant part of s132 of the *Police Act 1990*



At this time the commander / manager is also responsible for allocating an informal resolution manager.

## 9.2 Conducting an informal resolution

The following steps are recommended; however, this is provided as a guide only. Variation may be necessary depending on circumstances.

### Step 1 – Contact the complainant

Speaking with the complainant is important to determine the nature of the misconduct information and assessing the expectations of the complainant. This communication is pivotal to determine whether the misconduct information allegation is appropriate for informal resolution.

#### ***Is the complainant's expectation reasonable and can it be achieved through informal resolution?***

Informal resolution is appropriate when the complainant is seeking:

- an apology and / or explanation by the subject officer or on behalf of NSW Police Force (there is no requirement to provide either, however, it may be appropriate)
- the officer be spoken to and / or to ensure the conduct does not re-occur
- command improvements
- better communication.

Informal resolution is **not** appropriate when the complainant is seeking non-reviewable / reviewable action, dismissal or compensation.

#### ***Does the complainant agree to identity disclosure?***

It is important the complainant be made aware their identity will be disclosed during informal resolution<sup>3</sup>. The complainant must agree to this disclosure, if they do not agree consider other forms of misconduct information management.

#### ***Does the complainant agree to participate?***

Confirm the complainant is willing to have their misconduct information dealt with by informal resolution.

If they do, obtain their signature on the Informal Resolution Process Form ([P1135](#)) (scanned signatures or emails are acceptable in place of a signature from complainants). Inform the complainant the subject officer will be spoken with regarding the matter.

### Step 2 – Speak with the subject officer

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<sup>3</sup> s169A(b) Police Act 1990

***Does the subject officer agree to participate?***

The subject officer must also agree to participate. Subject officers should be informed their participation may result in the matter being 'declined', under s132(1)(a) and / or s132(1)(e) of the Police Act 1990 rather than a 'sustained' or 'unsustained' finding through another form of misconduct information management.

The informal resolution manager should meet with the subject officer and discuss the possibility of informally resolving the misconduct information matter. If the subject officer agrees, they sign the Informal Resolution Process Form ([P1135](#)) and the informal resolution manager obtains their version of events. Any records taken must be kept confidential and must not be uploaded onto IAPro.

If the subject officer chooses not to participate, consider other forms of misconduct information management.

**Step 3 – Update the complainant**

To finalise the process the informal resolution manager must contact the complainant and inform them of their conversation with the subject officer. This may (or may not) result in an explanation and / or an apology from the NSW Police Force or subject officer.

**IMPORTANT: If at any time the commander / manager, complainant or subject officer do not agree to the informal resolution proceeding or it appears that more serious conduct has occurred, the informal resolution process must be stopped and other forms of misconduct information management need to be considered.**

**9.3 Successful informal resolution**

Informal resolution is deemed successful when the complainant and subject officer have signed the Informal Resolution Process Form ([P1135](#)) (available on the PSC Intranet under Forms) and the complainant has been updated. It is irrelevant if the parties were satisfied with the actual outcome.

If either party refuse to sign the form then the informal resolution process has not been entered into and other forms of misconduct information management need to be considered.

**9.4 Informal resolution process form**

The [P1135](#) form is a record the complainant and subject officer agreed to the process, and it was conducted and finalised. The form does not contain any other details about the misconduct information, process or outcome. If the complainant has been spoken to over the telephone, by email or for any other reason a signature could not be obtained, electronic / scanned signatures or emails are acceptable (from the complainant only).

Any issue raised in respect to the outcome of the process that could be considered misconduct information can be declined unless new allegations are identified, as the matter has already been dealt with under sections 132(1)(a) and / or 132(1)(e) of the *Police Act 1990*.

## 10. Administration

In accordance with the [Misconduct Management Framework](#), when misconduct information is received it must be recorded on IAPro (the Misconduct Matters Information System) and the misconduct information document uploaded.

Following an informal resolution, the Triage Form will be completed by the triage officer / informal resolution manager and signed by the commander / manager.

Upload the Triage Form and signed Informal Resolution Process Form ([P1135](#)) onto IAPro. When completing the record on IAPro, decline the matter and select 'ADR – Informal resolution successful' as the finding. The action should be 'No Action – Matter Declined'.

Continue the process to close the matter on IAPro.

## Endnote References

Nil

### Appendix 1 – Informal resolution flowchart Informal Resolution Process

