



**New South Wales
Police Force**

Guidelines for Managing Administrative Employee Misconduct

Professional Standards Command

Guidelines for Managing Administrative Employee Misconduct

The NSW Police Force (NSWPF) requires the highest standards of conduct and behaviour from all employees, both in and out of the workplace. All NSWPF employees are expected to comply with the *NSWPF Code of Conduct and Ethics*, *Statement of Values* and the *NSWPF Respectful Workplace Behaviours Guidelines*.

Essential Summary

This document outlines the process to manage allegations of misconduct against administrative employees of the NSWPF in accordance with the *Government Sector Employment Act 2013 (GSE Act)* and the *Government Sector Employment (NSW Police Force) Rules 2017 (GSE (NSWPF) Rules)*.

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1. Scope

These guidelines apply to all employees of the NSW Police Force who are not police officers. The misconduct process as it relates to ongoing and temporary administrative employees will be managed by the Administrative Officer Conduct Unit (AOCU).

The procedures outlined in this document will be implemented by the Delegate when considering whether an administrative employee may have engaged in misconduct which goes beyond unsatisfactory performance or minor misconduct.

Complaints about police officers are to be dealt with in accordance with the *NSWPF Complaint Handling Guidelines*.

2. Definitions relevant to these procedures

Administrative employee – is a member of the NSWPF other than a police officer.

Commander/manager - the senior person (sworn or unsworn) in charge of a business unit or command.

Delegate - the person/s to whom the Commissioner has delegated his/her powers and responsibilities to manage administrative employee misconduct under the *GSE Act*, 2013.¹ For the purpose of these guidelines the Delegate primarily means the *Commander, Investigations, PSC*.

Disciplinary action - action that may be taken by the Delegate pursuant to the *GSE Act* if a finding of misconduct has been made.

Findings - the conclusions reached by the investigator outlined in the Investigation Report which details whether an administrative employee has engaged in misconduct or alternatively, that misconduct has not occurred.

GSE Act - the *Government Sector Employment Act* 2013, as amended from time to time.

GSE (NSWPF) Rules - the *Government Sector Employment (NSW Police Force) Rules* 2017 and any other *Rules* made by the Public Service Commissioner under the *GSE Act* that apply to the NSWPF.

Investigator - the person appointed to conduct an investigation into an allegation of administrative employee misconduct.

Investigation report - the report provided to the Delegate by the investigator which summarises the evidence, findings and recommendations concerning an allegation/s of misconduct.

LECC - Law Enforcement Conduct Commission.

¹ Refer HR instruments of Delegation.

Misconduct - defined in the *GSE Act* and includes, but is not limited to the following:

- (a) a contravention of the *GSE Act* or an instrument made under the Act,
- (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,
- (c) taking any action against another employee of NSWPF that is substantially in reprisal for a disclosure made by that employee of the alleged misconduct of the employee taking that action,
- (d) a conviction or finding of guilt for a serious offence.

The subject matter of any misconduct by an employee may relate to an incident or conduct that happened while the employee was not on duty or before his or her employment.

Minor misconduct which does not warrant the commencement of a misconduct process may be dealt with by way of Remedial action at the local level. However, where a number of minor misconduct instances are considered together the circumstances may warrant commencement of a misconduct process.

Misconduct process - the process required to be undertaken when an allegation of misconduct is made pursuant to Part 6 of the *GSE (NSWPF) Rules*.

Public Interest Disclosure - a disclosure satisfying the applicable requirements of Part 2 of the *Public Interest Disclosures Act 1994*. The object of this Act 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.

Relevant Employee - the administrative employee alleged to have engaged in misconduct.

Remedial action - non-disciplinary action which may be imposed by the Delegate upon a finding of misconduct (eg but not limited to, formal counselling, warning, training, development and mentoring).

Serious offence - an offence punishable by imprisonment for 12 months or more. (*The prison term refers to the maximum potential penalty available, not the punishment actually imposed by the Court*).

Standard of Proof - The standard of proof to which the Investigator and Delegate must be satisfied in determining whether or not an administrative employee has engaged in misconduct (which, in departmental investigations is the civil standard: namely, on the balance of probabilities, having regard to the seriousness of the conduct).

Support Person - a person nominated by the *relevant employee* who is not an actual or potential witness to the alleged misconduct and whose role is to provide support and welfare assistance to the *relevant employee*.

3. Legislation relevant to the Misconduct Process

The NSWPF *Guidelines for Managing Administrative Employee Misconduct* are based on the following legislation:

- *Government Sector Employment Act 2013*, Part 5, section 69,
- *Government Sector Employment (NSW Police Force) Rules 2017*, Part 4 Rule 32 and Part 6, Rules, 44 - 47,
- *Police Act 1990*, Part 6A, section 81E and 81F, Part 8A, Division 1, section 121, and Division 4, sections 130 and 131, Part 12, section 211F,
- *Law Enforcement Conduct Commission Act 2016*, Part 2, Division 2, sections 9 - 16, Part 5, Division 1, section 33, Division 3, section 42 and Part 7, section 99.

4. Delegation of functions, notification and role of the Administrative Officer Conduct Unit (AOCU)

4.1 Delegation

The Commissioner of Police has delegated the functions under section 69 of the *GSE Act* to various Delegates², including the NSWPF Deputy Commissioners however, the principal delegate for dealing with alleged misconduct by ongoing and temporary employees is the **Commander, Investigations, Professional Standards Command (the Delegate)**.

While commanders, managers and supervisors have a responsibility to manage the day to day conduct of employees, they do not have the necessary delegation to determine whether a misconduct process should proceed against an administrative employee. Nor do they have the authority to implement any of the Disciplinary actions discussed below. Any attempt to implement disciplinary action without appropriate delegated authority will be invalid.

4.2 Notification

Allegations of misconduct about an administrative employee which are not of a minor nature (which may be dealt with by way of remedial action at the local level; or, if the conduct is of a minor nature but the commander/manager forms the view that the matter is not suitable to be dealt with by way of remedial action at the local level) and which may result in disciplinary action being taken **must** be referred to the Manager, AOCU for the information and consideration of the Delegate, either electronically to #PSCADMINCONDUCT or by internal / external mail to the Professional Standards Command, Level 6, 2 Dawn Fraser Avenue Sydney Olympic Park NSW 2127.

If in doubt about whether a matter should be referred, please contact the Manager AOCU. All potential workplace equity matters **must** to be referred to the Workplace

² Refer HR instruments of Delegation.

Relations and Equity Unit for information and advice on the appropriate course of action.

The AOCU will upon receipt of the referral/documentation (where appropriate) create/upload all relevant information onto the corporate misconduct matters information system (IAPro).

4.3 Role of the Administrative Officer Conduct Unit (AOCU)

The AOCU is a small team of police and administrative employees within the Professional Standards Command, managed by an Inspector who reports directly to the Delegate. The AOCU provides advice and support to the Delegate in the performance of his/her function, and also provides advice to managers, supervisors and commanders state wide, concerning the misconduct process to be followed in respect of administrative employees under their command.

The AOCU administers the misconduct process from the time a Delegate makes a decision to commence such a process until a final decision is made, and the *relevant employee* and his/her commander/manager are informed of the outcome and disciplinary action taken (if any).

5. General Considerations

5.1 Procedural Fairness

Procedural fairness is a common law duty imposed on decision makers to act fairly and impartially in making decisions which affect a person's rights and interests.

A fundamental rule of procedural fairness is that a person be advised of the allegations against them and have an opportunity to respond to those allegations. The requirement to afford a *relevant employee* procedural fairness during the misconduct process is also reflected in the *GSE Act* and *GSE (NSWPF) Rules*.

5.2 Conflicts of Interest

A person involved in the assessment, investigation, misconduct process or decision-making process concerning an allegation of misconduct against an administrative employee must declare any actual, perceived or potential conflicts of interest arising from that involvement and manage those conflicts as soon as they are identified, in accordance with the NSWPF *Conflicts of Interest Policy* and *Procedures for Managing Conflicts of Interest*.

5.3 Confidentiality

Confidential information obtained during the misconduct process or investigation shall not be disclosed, except for the purposes of the misconduct process, investigation or any action arising from the investigation.

All witnesses, including the *relevant employee*, should be directed not to discuss the matter with any person other than the investigator, their commander/manager/supervisor, their legal/union representatives, a nominated support person and *Employee Assistance Program* personnel. Contravention of such a direction may constitute misconduct.

NSWPF employees involved in the misconduct process should be reminded of their responsibility to maintain confidentiality before, during and after the misconduct process.

6. How are allegations of misconduct dealt with?

If an allegation of misconduct is received by the AOCU an assessment is conducted and a recommendation made to the Delegate to do one of the following:

- (1) take no further action (on the basis the allegation is vexatious or trivial; the incident or conduct alleged does not amount to misconduct; there is likely to be difficulty in establishing the facts of the matter; or the relevant command has already taken appropriate action to satisfactorily address the issue); (*refer point 6.1*)
- (2) return the matter to the *relevant employee's* command to deal with at the local level through implementation of appropriate Remedial action (on the basis that the conduct alleged, even if proven following an investigation and Misconduct process would not warrant Disciplinary action); (*refer point 6.2*)
- (3) write to the *relevant employee* on a preliminary basis outlining the allegation and inviting a response from the employee prior to determining what action, if any to take; (*refer point 6.3*)
- (4) commence an investigation into the alleged misconduct; (*refer point 6.4*), or
- (5) commence a criminal investigation into the alleged misconduct; (*refer point 8*).

The Delegate will then advise the AOCU how the matter is to proceed and the AOCU will facilitate the commencement of the process as instructed.

6.1 Take no further action

No action will be taken against an administrative employee if the Delegate is of the opinion the allegation is vexatious or trivial, the incident or conduct alleged does not amount to misconduct or there is likely to be difficulty in establishing the facts of the matter.

6.2 Dealt with at a local level

Where the Delegate is of the opinion the *relevant employee* may have engaged in misconduct, but such misconduct would not warrant disciplinary action, the Delegate will refer the matter to the *relevant employee's* commander/manager to be dealt with by way of remedial action at the local level.

The referring command will be advised of the Delegate's decision and will be responsible for informing the complainant and the *relevant employee* of the outcome.

6.3 Preliminary enquiries letter served on the relevant employee inviting a response

If the misconduct alleged is more serious, but the factual scope appears to be fairly narrow, the Delegate may elect to commence the Misconduct process by writing to the *relevant employee* outlining the allegation and inviting a response.

If a *relevant employee* is sent an allegation letter inviting a response, the letter will advise that the *relevant employee* is under no obligation to provide a response but failing to do so may result in the Delegate proceeding to deal with the matter on the material available or with an investigation into whether the employee engaged in the misconduct alleged.

A *relevant employee* will be given up to 14 days from the date of service of this letter to provide a response if they wish to reply.

If the *relevant employee* provides a response, the Delegate may decide to continue the misconduct process or take no further action.³ Either way, the Delegate will inform the *relevant employee* and their commander/manager of this decision in writing.

There is no obligation on the Delegate to write to the *relevant employee* and seek their preliminary response to any allegation of misconduct prior to commencing the misconduct process. This is not a mandatory step in the process.

6.4 Commence an investigation into the alleged misconduct

If an allegation of misconduct is received by the AOCU in regards to an administrative employee, and the misconduct process is instigated by the Delegate, the Delegate will write to the *relevant employee* and his/her commander/manager, explaining that an allegation/s of misconduct has been received and an investigation into the allegation/s is to be undertaken.

Relevant employee notified

The Delegate will write to the *relevant employee* at the commencement of the Misconduct process, advising them of the nature of the allegation and that an investigation is to be conducted. There may be occasions, however, where notification is delayed, for example, so as to prevent the *relevant employee* potentially interfering with evidence or attempting to influence witnesses.

The notification letter will contain sufficient particulars to allow the *relevant employee* to know the nature of the alleged misconduct but does not require precise particularity. Further and better particulars may be provided to an employee prior to, or during any subsequent interview conducted with the investigator, directed memorandum or show cause notice, where necessary.

³ Part 6 GSE (NSWPF) Rules 2017

The letter will also advise the *relevant employee* who has been appointed to conduct the investigation and the range of disciplinary action that may be taken against them in the event the employee is found to have engaged in misconduct. The notification letter should also contain a direction to not destroy or tamper with any evidence that may be material to the investigation and contain a direction not to speak with any person that the *relevant employee* considers may be involved in the investigation as a complainant or witness about the alleged misconduct, and to not harass or victimise any such person.

Investigator(s) appointed

The Delegate may appoint any person (internal or external to NSWPF) considered suitable to conduct the investigation and to furnish an investigation report.

The investigator/s should understand the investigation process, have no direct involvement with the matter under investigation, be objective and not prejudge the matter.

Extensions to prepare for interview

Where a *relevant employee* or witness requests an extension of time to prepare for the interview, the investigator may agree to a reasonable extension. A new time and date can be negotiated, having regard to the overall circumstances of the case and the need for procedural fairness. Such an extension should be documented in writing, outlining the reason for the extension and a copy forwarded to the AOCU. Any such extension that is granted must not jeopardise the timeliness of the investigation.

Direction to attend interview and answer questions

As part of the investigation, the *relevant employee* may be required to attend an interview or answer questions contained in a directed memorandum. If necessary, they can be directed to attend such an interview, and can be directed to answer questions (subject to a claim of privilege against self-incrimination).

If the *relevant employee* claims the privilege against self-incrimination, it must be claimed in response to individual questions (it cannot be a blanket refusal to answer any questions). Refusal to answer a question(s) cannot lead to an inference that the *relevant employee's* answer to the question, had it been provided, would have tended to incriminate them. That does not, however, prevent an investigator from concluding, based on all other evidence compiled, that the alleged misconduct occurred or not.

Similarly, NSWPF employees who are prospective witnesses are required to attend for interview and may also be directed to provide statements, attend interviews and answer questions if necessary (subject to a claim of privilege against self-incrimination as above). Witnesses should be given **three days** written notice prior to such interview being conducted.

Obtaining statements and interviewing *relevant employees* and witnesses

While the rules of evidence do not apply, and there is no need for statements to contain a jurat or be overly formal, statements should be signed and dated, cogent

and contain sufficient detail to enable the Delegate to understand the *relevant employee* and witnesses evidence in a chronological and ordered fashion.

Prior to conducting any misconduct interview, the *relevant employee* will be:

- advised in writing, at least **seven days** prior to interview informing them of the time, date and location of the interview, who will be present, the proposed method of recording and the particulars of the allegation(s) to be canvassed during the interview
- advised he/she can elect to have a support person present for the interview
- provided with copies of any documentation or other materials intended to be canvassed/produced during the interview unless there are sound reasons for not doing so
- advised that complainant details will not be divulged, nor will the identities of certain witnesses who have elected to keep their identity confidential; and
- advised that a copy of the record of interview/transcript will be provided to them.

Interviews (including interviews with witnesses) may be recorded with the consent of the interviewee, on a hand-held recording device, or E.R.I.S.P (without the video function being activated) or alternatively, the interviewee can elect to participate in a typed record of interview.

Typewritten interviews should be signed by the *relevant employee/witness*, support person, and the interviewer, verifying the accuracy of the document, and a copy provided to the interviewee. If the *relevant employee* refuses to sign the document, it should still be signed by all other persons present, with a notation that the *relevant employee/witness* was afforded the opportunity to sign but refused to do so.

In some cases, for example, where a *relevant employee* is not in the workplace, it may be more appropriate to request they respond to written questions in the form of a memorandum.

Clarifying questions

In addition to the *relevant employee* being given an opportunity to respond to each of the allegation/s during the interview the investigator should ask clarifying, but not leading questions where appropriate, to ensure that a complete brief of evidence is compiled and any inconsistencies between the evidence of the *relevant employee* and witnesses is tested.

Failing to address material issues with the *relevant employee* or a witness during an interview, is likely to result in the Delegate requiring the investigator to put further questions to the *relevant employee/witness* at a later date. This may result in unnecessary delays.

Timeliness

The conduct of an investigation may vary depending on the individual facts and circumstances of the case, the complexity of the issues and the availability of witnesses and documentary evidence.

While no statutory time frames exist in which to complete an investigation, the investigation should be completed in a timely and efficient manner. Any delays in the process must be appropriately recorded and communicated to the AOCU who will inform the Delegate. Extensions may be granted by the Delegate where appropriate and will be communicated to all concerned.

Concluding the investigation where appropriate

The absence or unavailability of a *relevant employee* or witness does not necessarily preclude the investigation continuing or concluding. If the *relevant employee* fails to attend an interview without good reason, or is otherwise unable to attend due to injury, illness or any other reason, the Delegate should be informed. The Delegate may, having regard to the circumstances of the case, elect to finalise the matter without obtaining the *relevant employee's* response, or postpone the conclusion of the investigation for a period of time.

However, neither investigations nor the misconduct process should be delayed indefinitely. The Delegate will communicate his/her decision on this point to the investigator who may be requested to conclude the investigation and prepare the investigation report without the benefit of the *relevant employee's* response.

The Delegate may then proceed to make a determination on the material available.

(Investigators' template documents and template investigator's report are available on the AOCU Intranet site).

Investigation Report to the Delegate

The investigation report which is prepared by the appointed investigator/s should outline the results of the investigation, including whether or not the allegation/s are proven to the investigator's satisfaction, based on the relevant standard of proof, and contain all material gathered during the process.

The report shall:

- detail the allegation/s involving the *relevant employee*
- outline the investigation process followed and the steps taken to collect evidence and information
- establish a clear chronology of events
- in relation to each allegation, set out the investigator's view on the relevant facts as to whether the allegation is **sustainable** or **not sustainable** referring to material relied upon to form that view
- if appropriate, set out the investigator's view on whether or not the investigation uncovered any evidence of systemic or operational matters that should be addressed
- include all relevant attachments such as correspondence with the *relevant employee*, witness statements, confidentiality statements and disclosure of identity consent forms; and
- be signed by the investigator/s.

The investigation report is to be forwarded to the Manager, AOCU for the information of the Delegate.

The investigation report is confidential. The Delegate is not obliged to provide a copy of the investigation report to the *relevant employee*, complainant or the employee's commander, manager or supervisor.

7. Findings made - relevant employee informed, and if sustainable, relevant employee advised of most serious action under consideration

Once the investigation is completed, the Delegate is to inform the *relevant employee* of his/her findings i.e. whether the allegation/s have been proven or not.

If the Delegate is of the opinion the *relevant employee* has engaged in misconduct, the Delegate is to inform the *relevant employee* of that finding and if she/he is considering imposing disciplinary action as a result of that finding, the disciplinary action the Delegate is considering.

The *relevant employee* will be given up to **14 days** to respond to the proposed Disciplinary action and may seek to have a meeting with the Delegate (available only for proposed action greater than reprimand or warning) before a final decision is made. The 14 day period can be extended by the Delegate at their discretion, if a written request for such an extension is received within that period.

If the *relevant employee* wishes to have a meeting with the Delegate, the request should be made within **five days** of receipt of the written notice. If a meeting with the Delegate is arranged, the *relevant employee* may bring a support person of their choosing to such a meeting.

Following receipt of the *relevant employee's* response to the proposed disciplinary action, the meeting, or the 14 day period expires without response the Delegate will proceed to make a decision to:

- (a) impose the proposed disciplinary action foreshadowed in the Delegate's initial determination letter, or
- (b) impose disciplinary action that is a lesser sanction than that which was foreshadowed in the Delegate's initial determination letter, or
- (c) discontinue the misconduct process and refer the matter back to the *relevant employee's* commander/manager to undertake appropriate remedial action at the local level, or
- (d) monitor the conduct of the *relevant employee* over a specified period notified to the employee, or
- (e) take no further action.

If the Delegate proceeds with option (d) above, and if during the specified period is satisfied the *relevant employee* has engaged in misconduct of the same or similar kind as the previous misconduct, the Delegate may take action under s69(4) of the

GSE Act in respect of the employee without giving them the opportunity to make submissions in relation to the action proposed.

If the Delegate is satisfied the *relevant employee* has engaged in misconduct but does not consider it appropriate to impose disciplinary action, the Delegate can proceed immediately to subparagraph (c) or (e) above (as appropriate). The *relevant employee*, his/her commander/manager and the complainant will still be notified in regard to the action to be taken (if any).

Imposing Disciplinary action (either as initially proposed or a lesser alternative)

In deciding the appropriate and commensurate disciplinary action the Delegate may take against the *relevant employee*; the Delegate will have regard to:

- the need to maintain appropriate standards of conduct in the NSWPF and the NSW government sector
- protecting and enhancing the integrity and reputation of the NSWPF and the NSW government sector; and
- ensuring the public interest is protected.

In addition, the Delegate should consider:

- the facts of the case
- the response of the *relevant employee*
- the seriousness of the misconduct
- the impact of the misconduct on the NSWPF, the *relevant employee*, other people and other organisations
- risks to the NSWPF, including reputational risks
- whether the misconduct occurred on or off duty
- whether the misconduct is related to the *relevant employee's* duties
- the employment history of the *relevant employee*, including whether he/she has previously engaged in misconduct and what action was taken and also any complimentary remarks and/or awards
- the skills, experience and previous performance of the employee
- any mitigating or extenuating circumstances (if known)
- relevant NSWPF policies and/or guidelines, and
- what effect the proposed action may have on the *relevant employee*.

The Delegate will not adopt an approach that particular conduct will attract the same Disciplinary action in each case but will determine each case on its individual merits.

The Delegate will write to the *relevant employee* and his/her commander/manager notifying them of the final decision and take all necessary steps to give effect to the decision. The Delegate will also make arrangements for the complainant to be notified of the outcome.

If a sustainable finding of misconduct is made and Disciplinary action imposed, a copy of the final decision letter to the *relevant employee* will be placed on their personnel file.

8. Criminal investigation

When an administrative employee is suspected of having committed a criminal offence the relevant command should consider whether a criminal investigation is warranted having regard to the nature and seriousness of the alleged offence, solvability, victim and community needs and expectations⁴ and the *Director of Public Prosecution Guidelines* (DPP Guidelines).

If the decision is made to investigate the allegation criminally, it should be done in the usual manner and the *relevant employee* treated the same as any member of the public suspected of having committed the same crime.

If the command is capable of conducting the investigation and it is considered appropriate to commence a criminal prosecution against the administrative employee (having regard to the *DPP Guidelines*) then the investigation should proceed accordingly.

A commander/manager may seek assistance from PSC in conducting a criminal investigation in circumstances where the matter/s are complex, or the command lacks the capacity or skills to do so.

If a criminal prosecution is commenced against a NSWPF administrative employee a SITREP **must** be submitted and the AOCU advised at the first opportunity. The SITREP should contain a recommendation regarding suspension. The Delegate will then consider the nature and seriousness of the offence, the available evidence and whether the *relevant employee* should be suspended from duty with or without pay⁵. commanders/managers do not have the delegated authority of the Commissioner to suspend administrative employees from their duties, so it is essential that the AOCU be contacted at the earliest opportunity.

The Delegate will then write to the *relevant employee* and his/her commander/manager advising whether a misconduct process will commence while the criminal charges are before the court, or if the misconduct process will be delayed until the criminal prosecution is finalised.

An administrative employee who is charged with, or is convicted of a serious offence, is required to immediately report that fact in writing to the Commissioner (via chain of command), and provide a copy to the Delegate, PSC.⁶

⁴ Police Handbook, Chapter 'I', Investigation Priorities

⁵ NSW Premiers Memorandum No.94-35, suspension of Public Employees from duty, 7 October 1994, and associated Guidelines, section 70 of the *GSE Act*.

⁶ Clause 32 *GSE (NSWPF) Rules 2017*

If a decision is made by the Delegate to await the conclusion of a criminal prosecution and the *relevant employee* is ultimately convicted or found guilty of a serious offence⁷ the Delegate may rely upon the fact of conviction or finding of guilt to find the *relevant employee* has engaged in misconduct, without the need to make any further inquiries.

The Delegate upon being made aware of the finding of guilt or conviction may write to the *relevant employee*, informing them of the finding that they have engaged in misconduct and informing the *relevant employee* of the disciplinary action that the Delegate proposes to take as a result of the finding of misconduct. The Delegate will provide the *relevant employee* with an opportunity to respond to the proposed disciplinary action before a final decision is made.

If a decision is made to await the outcome of a criminal prosecution and the *relevant employee* is found not guilty of the offence(s) charged, that finding does not preclude the Delegate from dealing with matter through the misconduct process.

Similarly, the Delegate may initiate the misconduct process where no criminal prosecution is commenced, or a prosecution is discontinued.

9. Interim Risk Management Strategies

Depending on the nature of an allegation, it may be necessary for the *relevant employee's* commander/manager to implement a strategy or strategies to manage risks posed by the *relevant employee's* alleged behaviour to protect the NSWPF, themselves, other persons or the integrity of the misconduct process.

Strategies may be as simple as removing the *relevant employee's* various systems accesses (eg COPS / internet), increasing supervision, conducting regular COPS, RMS, email & internet audits etc, assigning the *relevant employee* (temporarily) to a different role or work location and providing restricted duties. Suspension from duty, with or without pay, while the allegations of misconduct are dealt with (refer to point 9.2) can only be imposed by the Delegate. Risk management decisions should be made on a case by case basis. A risk assessment must be conducted by the commander/manager.

9.1 Suspension or assigning the relevant employee to alternate duties/location

The Commissioner of Police has delegated his/her functions in respect of suspension of administrative employees to the Delegate.

An administrative employee may be suspended in accordance with the Premier's Memorandum but will generally **only be suspended in cases involving allegations of serious misconduct or where there is a potential risk to health and safety**. The Delegate may serve the *relevant employee* with an allegation of misconduct and notice of suspension before any formal investigation commences if the Delegate considers it appropriate having regard to the circumstances of the matter.

⁷ Punishable by life imprisonment or a term of imprisonment for 12 months or more, and including an offence committed outside NSW that would be an offence so punishable had it been committed inside NSW (s.69 GSE Act)

In cases where an administrative employee is charged with a serious criminal offence, suspension with or without pay may be warranted as soon as the allegation becomes known and may remain in place pending the outcome of the criminal matter, or the Misconduct process.

Suspension from duty may be necessary to protect the NSWPF, the *relevant employee*, other employees, customers, the community or the integrity of the Misconduct process. Generally, an employee will be suspended with pay, but can in exceptional circumstances be suspended from duty without pay (for instance, where the employee has been remanded in custody or is facing very serious criminal charges).

Prior to suspension, consideration should be given to whether the *relevant employee* can perform alternate duties or duties at another location while the criminal or misconduct process is underway.

All decisions concerning suspension will be reviewed at least every 30 days by the Delegate. The *relevant employee's* command is responsible for monitoring the welfare of the employee while suspended. Any change in circumstances concerning the *relevant employee*, is to be reported at the first available opportunity to the Manager, AOCU for the information and consideration of the Delegate.

9.2 Secondary employment while suspended

A *relevant employee's* commander/manager **must** undertake an immediate review of any authorised secondary employment pertaining to such an employee who is suspended from duty with or without pay (refer to NSWPF *Secondary Employment Policy*, FAQ – Q5).

If a *relevant employee* suspended from duty submits an application to commence secondary employment, the application would be considered extraordinary in terms of the *Secondary Employment Policy* and must be considered by the Region Commander or equivalent (refer to NSWPF *Secondary Employment Policy*, FAQ – Q6).

The *relevant employee's* commander/manager **must** advise the AOCU of the status of secondary employment of a *relevant employee* suspended from duty.

10. Appeals

Section 84 of the *Industrial Relations Act 1996* allows an employee who has been dismissed, and who claims the dismissal is harsh, unjust or unreasonable, to apply to the NSW Industrial Relations Commission for the claim to be dealt with. Such application must be made no later than 21 days after the dismissal of the employee⁸.

Sections 97 and 98 of the *Industrial Relations Act 1996* provide that a public-sector employee may appeal against a decision to:

⁸ s. 85 *Industrial Relations Act 1996*

- *defer, for a period in excess of six months, the payment of an increment*
- *reduce the rank, classification, position, grade or pay of the employee*
- *impose a fine or forfeit pay*
- *annul the appointment of an employee appointed on probation*
- *suspend the employee as a punishment where the employee is held to be guilty of misconduct or contravention of any law or any rule or direction of the employer*
- *dismiss the employee*
- *direct or require the employee to resign.*

Notice of a disciplinary appeal **must** be lodged within 28 days after the *relevant employee* is notified of the decision against which the appeal is to be made.⁹

11. Resignation during the misconduct process

Only the Commissioner of Police or the Commissioner's Delegate can accept the resignation of an administrative employee subject of an investigation for serious criminal activity or serious misconduct.¹⁰

12. Annulment of appointment of administrative employee on probation where commencement of a misconduct process is pending

The Commissioner of Police has delegated authority to the Assistant Commissioner Professional Standards Command and the Commander, Investigations, Professional Standards Command to annul the employment of an administrative employee on probation in circumstances where the commencement of a Misconduct process is pending.¹¹

13. Oversight

The *Law Enforcement Conduct Commission* oversees the management of misconduct allegations concerning administrative employees of the NSWPF and may take over the conduct of, or commence in its own right, investigations into alleged misconduct by such employees.

⁹ s.100B *Industrial Relations Act 1996*

¹⁰ *NSW Police Force Resignation and Retirement Procedures, 2015* page 8

¹¹ Refer HR instruments of Delegation.

14. Commander/Manager responsibilities

14.1 Criminal allegation process

- Determine whether to investigate allegations criminally or refer to AOCU for consideration of Misconduct process (P1027 form).
- Conduct the criminal investigation at the local level or forward request for assistance to AOCU, PSC.
- Determine whether to lay criminal charges (refer to *DPP Prosecution Guidelines*) SITREP to AOCU. (If no charges are laid then refer to AOCU for consideration of Delegate – departmental).
- Make application to the Delegate for the suspension of the *relevant employee* from his/her duties if considered appropriate.
- Monitor the prosecution process.
- Status notifications to AOCU about court outcomes via SITREP.
- Referral to AOCU at conclusion of court process via SITREP.
- Notify the AOCU when an administrative employee has been charged with having committed, or is convicted of a serious offence if not already reported by charging police.
- Maintain confidentiality.
- Attend to *relevant employee's* welfare along with any other affected employees.
- Ensure the *relevant employee's* personnel file is updated with the outcomes of any criminal conviction/s.

14.2 Misconduct Process

- Commanders/managers are responsible for the local management of minor misconduct dealt with by way of Remedial action in consultation with the AOCU.
- Possible misconduct identified at local level – refer to AOCU for consideration of Delegate. (P1027 form). Equity matters refer to Workplace Relations & Equity Unit for consideration.
- Make application to the Delegate for the suspension of the *relevant employee* from his/her duties if considered appropriate.
- Assist investigator/s appointed by the Delegate to conduct the investigation.
- Inform the AOCU of any additional matters/information.
- Hand deliver letters/documents forwarded from the Delegate to the relevant employee. Forward the 'Notice of Service' document to AOCU upon service of documents on the *relevant employee*.
- Implement Remedial action as per Delegate's instructions and provide notification to AOCU regarding the outcome.

- If the Delegate assigns the *relevant employee* to another role the commander/manager has responsibilities as outlined in the *NSWPF Disciplinary Transfer Procedures for Administrative Employees*.
- Maintain confidentiality and the integrity of information regarding the identity of internal complainant/s.
- Attend to *relevant employee's* welfare along with any other affected employees.
- Ensure the *relevant employee's* 'eP' personnel file is updated with the outcomes of any sustainable misconduct matters.
- Ensure the *relevant employee* and complainant are informed of the outcomes as requested by the Delegate.

14.3 Interim Risk Management

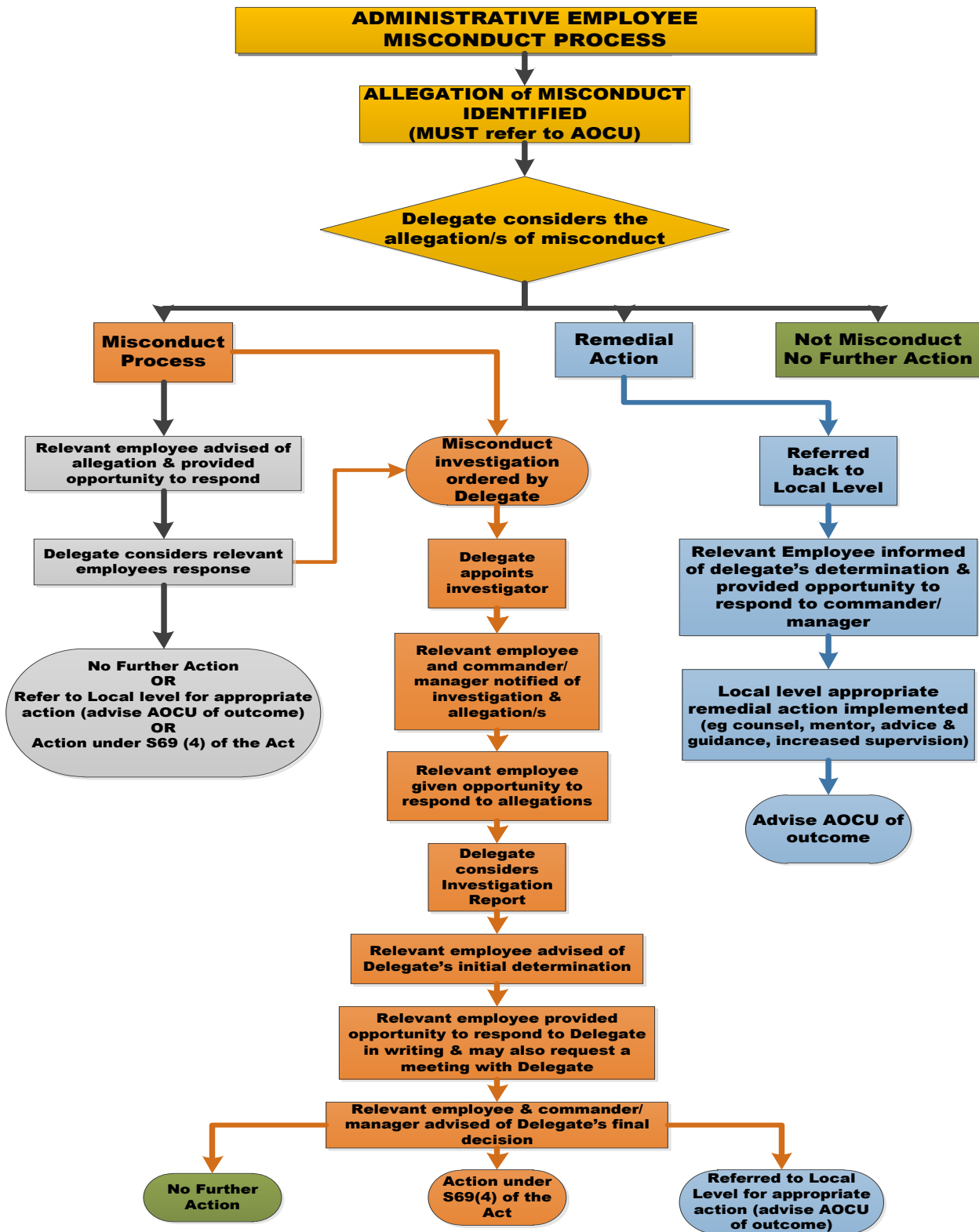
- The commander/manager is responsible for conducting a risk assessment and implementing interim risk management strategies in circumstances where the *relevant employee* is performing duties in the workplace whilst either criminal or misconduct processes are on foot (AOCU to be informed of any interim risk management strategies implemented).

14.4 Secondary Employment

- Conduct an immediate review of any authorised secondary employment pertaining to a *relevant employee* suspended from duty with or without pay.
- Inform the AOCU of the status of secondary employment of a *relevant employee* suspended from duty.
- Responsibilities as outlined in *NSWPF Secondary Employment Policy and Procedures*.

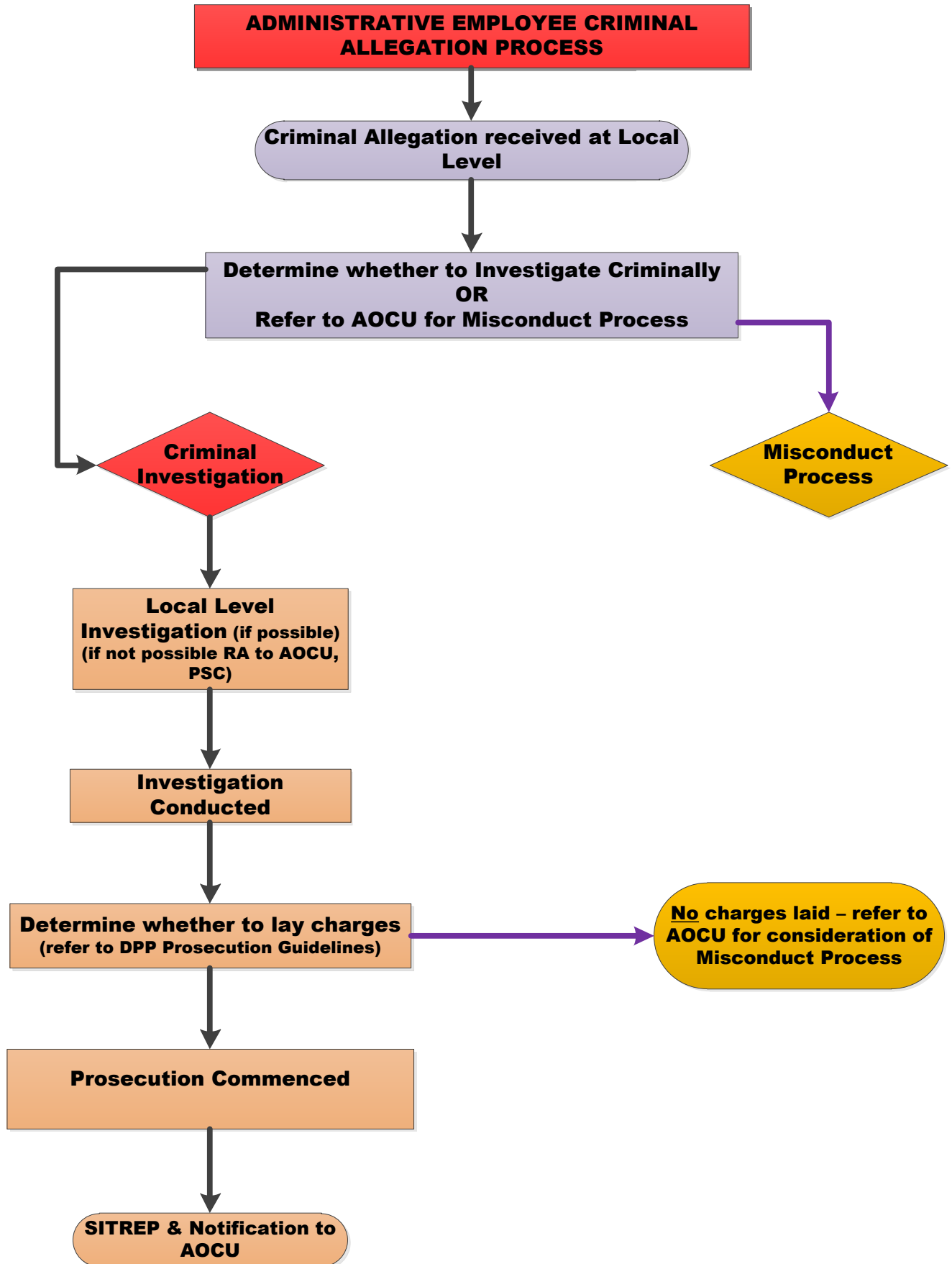
Appendix 1

Administrative Employee Misconduct Process Flow Chart



Appendix 2

Administrative Employee Criminal Allegation Process Flow Chart



Appendix 3

Memorandum 94-35

Memorandum 94-35

Premier of New South Wales
Australia

MEMORANDUM NO. 94-35
(Memorandum to all Ministers)

SUSPENSION OF PUBLIC EMPLOYEES FROM DUTY

This memorandum amends the previous guidelines on suspension of public employees from duty and supersedes Memorandum 94-21.

Following implementation of the previous guidelines, it is apparent that some operational difficulties have been experienced by agencies. Accordingly the policy has been amended.

Under the revised guidelines attached, Chief Executives may suspend an employee without pay before criminal or disciplinary charges have been finalised, in exceptional circumstances.

Agencies should continue to give priority to the option of placing employees facing criminal charges or disciplinary proceedings on alternative duties, or duties at another location. The Chief Executive, where they believe it is necessary, may suspend the employee from duty with pay. In all suspension cases the decision should be reviewed at least every 30 days.

The Premier's Department will monitor the implementation of these guidelines in agencies. Could you please advise Chief Executives in your portfolio of these revised arrangements.

Signed – 7 October 1994

John Fahey Premier