



SA Health (Health Care Act)

Human Resources Manual



Government
of South Australia

SA Health

4-1-7 MANAGING UNSATISFACTORY PERFORMANCE, DISCIPLINE AND TERMINATION

The policy and procedures outlined in this Part represent sound management practice and when followed will ensure that alleged unsatisfactory performance or misconduct is appropriately dealt with and that employees are treated fairly and equitably in the process.

Effective performance management systems and practices should in most cases prevent the need to take disciplinary action for unsatisfactory performance and will greatly assist in preventing misconduct.

[Part 4-1-7-1, Natural Justice, Procedural Fairness and other fundamental considerations](#) defines the terms “natural justice” and “procedural fairness” and explains the importance of affording employees natural justice when managing alleged or suspected unsatisfactory performance or misconduct.

[Part 4-1-7-2, Managing Unsatisfactory Performance](#) defines the term “unsatisfactory performance” and explains the importance of performance management and provides guidance for the management of unsatisfactory performance.

[Part 4-1-7-3, Investigation](#) outlines the steps to be followed when investigating alleged misconduct. This section includes information on suspension of an employee from their duties pending investigation or processes.

[Part 4-1-7-4, Determining the Appropriate Disciplinary Action](#) assists managers in deciding on the appropriate disciplinary action or other response once misconduct has been proven, or unsatisfactory performance has been identified and documented.

[Part 4-1-7-5, Formal Disciplinary Action: Warnings](#) explains the concept and role of warnings as disciplinary sanctions.

[Part 4-1-7-6, Formal Disciplinary Action: Termination](#) sets out considerations when management is considering terminating an employee’s contract of employment, either with or without notice.

[Part 4-1-7-7, Other Types of Termination](#) explains how a contract of employment may end other than by management terminating the employment of an employee in an obvious fashion. i.e. constructive dismissal, frustration of contract and abandonment of employment.

Obligation to refer certain matters under the *Independent Commissioner Against Corruption Act 2012* and Directions and Guidelines issued under that Act

The Independent Commissioner Against Corruption has issued Directions and Guidelines under section 20 of the *Independent Commissioner Against Corruption Act 2012* (“ICAC Act”). Those Directions and Guidelines relate to obligations of a variety of

persons and entities to report matters to the Office of Public Integrity ("OPI"). All public sector employees should be aware of the Directions and Guidelines.

The Directions and Guidelines of the Commissioner impose obligations on inquiry agencies, public authorities and public officers - as listed in Schedule 1 to the ICAC Act (and set out in the Directions and Guidelines), to report certain matters to the OPI. Public Officers include public sector employees.

Section 11 of the Directions and Guidelines applies to Public Officers. A Public Officer:

- Must report to the OPI any matter they reasonably suspect involves corruption in public administration;
- Must report to the OPI any matter that they reasonably suspect involves serious or systemic misconduct in public administration unless the officer knows the matter has already been reported to an inquiry agency [as defined in the ICAC Act];
- Must report to the OPI any matter they reasonably suspect involves serious or systemic maladministration in public administration unless they know it has already been reported to an inquiry agency; and
- May report matters to the OPI they reasonably suspect of involving misconduct or maladministration in public administration notwithstanding they have reported the matter to an inquiry agency if they consider it appropriate.

The terms 'corruption', 'misconduct' and 'maladministration' are defined in the ICAC Act and those definitions are repeated in the Directions and Guidelines. The definition of 'misconduct' is essentially the same as that in the *Public Sector Act 2009*.

The Directions and Guidelines provide useful information as to what a reasonable suspicion is.

Section 5 of the ICAC Act contains comprehensive definitions of 'corruption in public administration', 'misconduct in public administration' and 'maladministration' in public administration'.

'Serious or systemic misconduct' is not defined in the ICAC Act or Directions and Guidelines. These terms should be given their common, ordinary meaning. The ICAC website provides information on what is meant by 'serious or systemic misconduct': <http://www.icac.sa.gov.au/content/information-public-authorities-and-public-officers>

It is notable that the terms 'serious or systemic' appear in section 3 of the ICAC Act. Section 3(2)(b) says that although the Commissioner can perform functions in relation to *any* case of misconduct, it is intended that his powers be exercised in relation to serious or systemic corruption and that he refer allegations of serious or systemic misconduct or maladministration to public sector agencies to investigate or otherwise deal with.

Note that serious penalties apply under section 22 of the ICAC Act for statements that are false or misleading in a material particular or complaints or reports made in the knowledge there are no grounds.

A person who makes a complaint or report to the OPI must be mindful of the confidentiality obligations imposed by the ICAC Act. In particular, all public sector

employees must acquaint themselves with the restrictions contained within section 56 of the Act. Information provided by the OPI or the ICAC to a public sector employee or an agency must be treated confidentially and in accordance with the obligations contained within section 54 of the Act.

Note that the Code of Ethics also obliges public sector employees to report to an appropriate authority, workplace behaviour that a reasonable person would suspect violates any law or represents corrupt conduct, mismanagement of public resources, is a danger to public health or safety or to the environment or amounts to misconduct.

Specialist Advice Available from Workforce Services, Corporate and System Support Services

Human Resources (HR) and Workplace Relations (WR) staff are available to provide advice to managers in relation to managing unsatisfactory performance and misconduct. HR and WR staff can access specialist advice as necessary. It is important to seek advice from Workforce Relations, Workforce Services where termination of the employment of an employee is likely or being considered.

Legislation and policies

Although this Part provides a comprehensive guide to managing disciplinary matters, managers must nevertheless make themselves aware of other information which impacts on the employment relationship. These may include State and Federal Acts, Awards, Enterprise Agreements, the Code of Ethics for Public Sector Employees, pursuant to the *Public Sector Act 2009 (SA) (PS Act)*, The Directions and Guidelines of the Commissioner, pursuant to the *Independent Commissioner Against Corruption Act 2012* and other industrial instruments. Relevant State and Federal Acts and Regulations include:

- *SA Health Care Act 2008*
- *SA Fair Work Act 1994*
- *SA Public Sector Act 2009*
- *SA Public Sector Regulations 2010*
- *SA Public Sector (Honesty and Accountability) Act 1995*
- *SA Work Health and Safety Act 2012*
- *SA Equal Opportunity Act 1984*
- *The Disability Discrimination Act 1992 (Cth)*
- *SA Workers Rehabilitation and Compensation Act 1986*
- *SA Independent Commissioner Against Corruption Act 2012*

Human Resources Manual Part 3 - Grievance Procedure

The procedures outlined in this Part do not impact on employees' rights in respect of [Part 3 – Grievances and Disputes](#).

4-1-7-1 NATURAL JUSTICE, PROCEDURAL FAIRNESS AND OTHER FUNDAMENTAL CONSIDERATIONS

In addition to having valid reasons for taking disciplinary action, an employer must also ensure that the principles of natural justice and procedural fairness are adhered to in processes leading up to a decision to either find an employee liable to disciplinary action and in relation to any intended sanction.

Even if there is a valid reason for disciplining an employee, if they are not afforded natural justice and/or procedural fairness, disciplinary outcomes may be successfully challenged either by way of Judicial Review in the Supreme Court of South Australia, by way of a Grievance as set out in Part 3 herein or in the case of termination of employment, before the unfair dismissal jurisdiction of the Industrial Relations Commission of South Australia pursuant to the *Fair Work Act 1994*.

The opportunity to be heard by an impartial decision maker is at the heart of the rules of natural justice. The rules of natural justice apply whenever the rights, property or legitimate expectations of an individual are affected by a decision.

The concept of 'procedural fairness' is synonymous with that of natural justice and basically requires that the processes leading to decisions are fair. This is particularly important where, as in the public sector, there are defined policies and processes for administrative decisions.

Decisions relating to the management of alleged unsatisfactory performance and misconduct, including the imposition of a sanction(s), clearly affect the rights or legitimate expectations of public sector employees and are clearly categorised as administrative decisions. It is to these administrative decisions that one must variously apply the rules of natural justice and procedural fairness.

There are three basic principles employers must follow/adhere to: these are commonly known as the hearing rule; the bias rule and the no evidence rule.

The **hearing rule** demands that a person whose interests may be adversely affected by a decision must be given an opportunity to be heard. This means the employee in disciplinary proceedings must be provided with as much detail as possible about the allegations against him/her and the factual basis for those allegations and be afforded the opportunity to respond. Where documentary evidence supports allegations (providing it is not subject to privilege or immunity - such as legal advice) anything that

the employer is relying upon must generally be provided to the employee in advance of a hearing.

Note that this aspect of natural justice can be satisfied in a number of ways. For example, if, for some reason, the employer is not able to question an employee¹, allegations may be put to the employee in writing and the employee given a reasonable opportunity to respond either orally or in writing.

The **bias rule** demands that the decision maker should be disinterested and/or unbiased in the matter to be decided. Justice should not only be done but be seen to be done. If fair minded people would reasonably apprehend/suspect the decision maker has prejudged the matter, the rule is breached (often referred to as 'a reasonable apprehension of bias').

The application of the bias rule is most easily established when the person who is in the position of accuser also is the decision maker or participates in the investigation/decision or gives advice throughout the course of the matter. This is not a hard and fast rule and will depend to a large extent on the circumstances of a matter.

The **no evidence rule** means, in essence, that the decision that is eventually made must be based on logically probative evidence (proven on the balance of probabilities - that is, the alleged behaviour is more likely to have occurred than not).

It is also important that in making decisions, administrative decision makers:

- take into account relevant considerations;
- do not take into account irrelevant considerations;
- act for a proper purpose; and
- ensure that the decision is not unreasonable in the sense that no reasonable decision maker could have reached such a decision.

An administrative decision maker is under a dual duty; to **take account of relevant considerations and not take into account irrelevant ones**. What is relevant or irrelevant will depend on the instrument (legislation or policy) conferring the power on the decision maker. It is impossible to be precise and attempt to list all possible relevant and irrelevant considerations² however decision makers can be guided by the legislative context considered governing the employment relationship. Matters relevant to employment will usually be relevant, such as the nature and seriousness of the alleged behaviour under examination; the procedure adopted by the employer in investigating and inquiring into allegations; the evidence gathered in an investigation; the employee's responses to the allegations. Matters such as the employee's marital status and political beliefs would not only be irrelevant considerations but if considered would amount to discrimination under relevant legislation.

¹ for example, the employee claims to be too ill to participate in an interview.

² furthermore the fact that an irrelevant consideration was taken into account will not always sustain a challenge to the decision on Judicial Review if that consideration was one of a number of other relevant considerations.

An administrative decision maker may not exercise their power unreasonably. Courts may interfere with an administrative decision if it was so unreasonable that no reasonable decision maker could have come to it in the circumstances. Proving unreasonableness is a difficult burden.

Other fundamental considerations include:

- Conduct, performance and behaviour are in essence one and the same in the workplace setting. In other words, the concept of unsatisfactory performance is an extremely broad one and is not constrained to a simple assessment of whether an employee is or is not capable of performing the duties of their role satisfactorily, but is based on an assessment of the totality of their conduct or relating to their role as a public sector employee.
- In cases where there is staff behaviour involves unacceptable absenteeism, managers should familiarise themselves with the SA Health [Attendance Management Guidelines](#)
- Managers should avoid narrow thinking when managing unsatisfactory performance/misconduct. For example, some conduct that might amount to misconduct and render an employee liable to disciplinary action, is most effectively dealt with by way of a performance management process. This is so for minor misconduct that is part of a course of conduct – for example consistent lateness for work. Ultimately, discipline might eventuate if the employee's performance does not improve.
- Certain unsatisfactory behaviour will clearly amount to serious and wilful misconduct and must be dealt with by way of disciplinary processes. Examples include conduct such as theft, fraud or violence in the workplace. Refer to [Part 4-1-7-6-1](#).
- The provisions of Part 2 of the PS Act and the Code of Ethics for Public Sector Employees mean that there is a significant likelihood that improper conduct outside of the workplace will have a connection to an employee's employment as a public sector employee, and thus render them liable to disciplinary action.
- There is no obligation to inform an employee that an investigation into their alleged behaviour is underway unless the investigation is at the stage where allegations are to be put to the employee or a decision has been made to subject them to a disciplinary process. Neither legislation nor the principles of natural justice require any form of preliminary notice or notice of investigation and in the vast majority of cases it is advisable not to issue such notice.
- Persons participating in an investigation should not act as the decision maker in relation to any eventual allegations arising from the investigation.
- Workplace policies and procedures must be clearly communicated to employees and periodically re-emphasised.
- The management of alleged unsatisfactory performance or misconduct must be initiated in a timely manner. If such action is unreasonably delayed it may

be argued that management has accepted or condoned the unsatisfactory performance or conduct.

- It is crucial that accurate and detailed records are kept by management. Records must be maintained in accordance with the *State Records Act 1997* and the destruction schedules issued pursuant to that Act.

A copy of the General Disposal Schedule No. 30 which applies to general administrative records created and maintained by State Government Agencies of South Australia can be obtained from the [State Records of South Australia website](#).

4-1-7-2 MANAGING UNSATISFACTORY PERFORMANCE

In addition to keeping in mind that unsatisfactory performance is a wide concept, it must be borne in mind that unsatisfactory performance may not be the fault of the employee. Illness or injury, for example, can, and often does cause unsatisfactory performance.

The management of unsatisfactory performance should therefore be undertaken in a constructive and supportive manner with a focus on assisting employees to improve their performance to a satisfactory level wherever possible.

Formal disciplinary action in relation to unsatisfactory performance must only be taken when all other remedial options have been unsuccessful or are not appropriate in the circumstances.

Employees should have a clear understanding of what constitutes appropriate/satisfactory performance. Where possible, clear instruction on expected outcomes should be specified through clearly articulated goals, objectives and expected standards, recorded in writing.

Causes of unsatisfactory performance

Unsatisfactory performance may not be wilful and can be caused by a number of work and non-work related factors including:

- interpersonal conflict with other staff;
- personal problems outside the workplace;
- poor communication and/or understanding of expected work outcomes;
- lack of knowledge and/or training;
- illness or injury; or
- substance abuse, e.g. alcohol or other drugs.

4-1-7-2-2 Disciplinary Sanctions for Unsatisfactory Performance

In circumstances where an employee's unsatisfactory performance is not resolved by appropriate support, performance management processes or, where relevant, informal counselling, management may conclude that the employee is liable to disciplinary action and that a formal sanction is warranted/appropriate.



It is essential that management is able to demonstrate that the employee has been made aware of the manner in which their performance is unsatisfactory and provided with reasonable opportunity (and where relevant, support) to rectify their performance to an acceptable standard. It is also vital that management is able to demonstrate that the employee has been afforded natural justice and procedural fairness. Refer to Part 4-1-7-1.

[Refer to Part 4-1-7-4 as to the possible disciplinary sanctions that may be imposed.](#)

4-1-7-3 INVESTIGATION OF POSSIBLE MISCONDUCT

A thorough investigation must be undertaken into alleged or possible misconduct in a timely manner in order to establish the facts.

As soon as an incident comes to notice, management must take action to ascertain whether a policy or instruction may have been breached, the seriousness of the alleged breach and the employee involved. At this stage it must be determined whether further investigation is necessary.

Where further investigation is necessary, managers need to decide if expert assistance is required to conduct such investigation, i.e. with the assistance of the local human resource team and/or the Government Investigations Unit or a private investigator.

Management can require that employees who witness alleged misconduct cooperate by providing a statement of their observations and that they otherwise assist (for example in proceedings in the Industrial Relations Commission of South Australia).

[For further information, refer to Appendix 4-1-7-3: Management Guideline 2 - Investigations](#)

4-1-7-3-1 Suspension with pay

Management may consider suspending an employee from duty with pay in circumstances where there are suspicions or allegation(s) of serious misconduct against the employee. In addition to allegations of serious misconduct, other relevant considerations to suspending an employee from duty with pay include:

- where there is a risk that the employee will destroy evidence or collude with other employees;
- any risk to the health, safety and welfare of employees; and
- the reputation of the health service, Department and Government.

Management should always consider if it is viable for employees to perform alternate duties and/or the same duties from another location, including from home, as an alternate to suspension.

[For further information, refer to Appendix 4-1-7-3-1: Management Guideline 2.1 – Suspension with Pay](#)

4-1-7-3-2 Decision

The relevant burden of proof for allegations of misconduct (or other forms of unsatisfactory performance) is the balance of probabilities. This means that the

decision-maker (Chief Executive Officer or delegate) must be persuaded that an alleged event(s) is more likely to have occurred than not. If a decision-maker concludes that an allegation(s) is/are proven, the employee is liable to disciplinary action and a disciplinary sanction may be imposed.

Before a disciplinary sanction is imposed, the decision-maker must notify the employee that they:

- (a) have concluded they are liable to disciplinary action;
- (b) advise them of the disciplinary sanction they propose to impose in light of their findings;
- (c) invite them to make a submission as to the intended sanction; and
- (d) objectively consider any submissions made by or on behalf of the employee.

4-1-7-4 DETERMINING THE APPROPRIATE DISCIPLINARY SANCTION

Where misconduct has/have been proven, or unsatisfactory performance (following performance management processes and informal counselling) has been identified and documented, the appropriate disciplinary sanction can be determined.

Prohibited grounds for disciplinary action

Current legislation states that disciplinary action, including termination, must not be taken on the following grounds:

- temporary absence from work because of illness or injury;
- union membership or participation in union activities outside working hours or during working hours with the employer's consent;
- non-membership of a union;
- seeking office, acting or having acted as an employee representative;
- filing a complaint or participating in proceedings against the employer involving an alleged violation of laws or regulations;
- race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin; or
- absence from work during maternity or other parental leave.

Relevant Considerations

In addition to the seriousness of the particular misconduct or unsatisfactory performance, factors relevant in determining the appropriate disciplinary sanction include:

- the duration of the employee's service and record of service including any previous incidents of proven misconduct or unsatisfactory performance and the outcome;

- how other employees have been treated in similar circumstances – keeping in mind that each matter is judged according to its individual facts;
- whether the employee has been made aware of the relevant policy/instruction breached, including relevant training, qualifications, and/or professional obligations;
- the employee's personal circumstances; and
- any mitigating circumstances.

[For further information, refer to Appendix 4-1-7-4: Management Guideline 3 – Determining Appropriate Disciplinary Sanction](#)

4-1-7-5 FORMAL DISCIPLINARY SANCTION: WARNINGS

4-1-7-5-1 Warnings

An employee may be formally warned for proven misconduct or unsatisfactory performance.

A formal warning differs from a managerial caution, which is not a form of disciplinary sanction. The imposition of a caution or counselling may be a legitimate managerial response, for example, in circumstances of minor misconduct or unsatisfactory performance where despite an employee being technically liable to disciplinary action, a manager believes the circumstances warrant an exercise of their discretion not to officially sanction the employee but that they would respond appropriately to a caution/counselling.

A warning:

- is a sanction short of termination of employment;
- sanctions the employee, and operates as an individual deterrent to them and a general deterrent to other employees;
- will be relevant in future in the event the employee commits further misconduct or unsatisfactory performance.

There are two types of formal warning:

1. separate/single warning (that may be one of a series of warnings); and
2. final warning.

[For further information, refer to Appendix 4-1-7-5-1: Management Guideline 4 - Formal Disciplinary Actions: Warnings](#)

4-1-7-6 FORMAL DISCIPLINARY ACTION: TERMINATION

Termination of employment is the most severe form of disciplinary sanction available to an employer. It is imposed in circumstances where by way of their misconduct or unsatisfactory performance, an employee has displayed an intent to no longer be bound by the terms and conditions of their contract of employment, and only following a process whereby the employee is afforded natural justice and procedural fairness. Formal assistance and advice **must** be sought from the local human resources team

when the circumstances are such that termination of employment is a possible outcome or management is considering terminating an employee's employment. The delegation to terminate lies with the CEO of the Health Network/SAAS.

Termination of employment may be with or without notice. Termination without notice is sometimes referred to as summary or instant termination.

For further information, refer to Appendix 4-1-7-6: Management Guideline 5: Formal Disciplinary Action: Termination.

Also refer to Appendix 4-1-7-6-2: Management Guideline 5a - Formal Disciplinary Action: Meetings with/Interviews of Employees

4-1-7-6-1 Criminal offences

An employee is required to notify the Chief Executive Officer (or delegate) at the first available opportunity if they are charged with a criminal offence.

An employee who does not so notify the Chief Executive Officer (or delegate) may be subject to disciplinary action.

Interaction between Disciplinary Action and Criminal Proceedings

Disciplinary and criminal proceedings may be related by the same set of facts but are separate and distinct processes. Disciplinary proceedings must be undertaken irrespective of the status or outcome of any criminal proceedings. For example, it may be appropriate to terminate an employee's contract of employment even though criminal charges regarding incident are withdrawn or they are eventually acquitted of such charges.

Imprisonment/Remanded in Custody

If an employee is sentenced to a term of imprisonment in custody, reference can be made to [Part 4-1-13](#) and [Part 4-1-7-7-3](#).

4-1-7-7 OTHER CIRCUMSTANCES WHERE AN EMPLOYEE'S EMPLOYMENT IS TERMINATED

4-1-7-7-1 Constructive dismissal (forced resignation)

Constructive dismissal occurs when an employee appears to have resigned their employment but in the circumstances was given no reasonable alternative but to do so.

In these circumstances, the employment actually ends at the initiative of the employer and an employee can challenge their dismissal in the Unfair Dismissal jurisdiction of the Industrial Relations Commission of South Australia.

Management must not act in a manner that it effectively gives an employee no option but to resign their employment.

4-1-7-7-2 Frustration of contract

An employment contract is frustrated when fulfilment of the contract becomes impossible because of a significant change in circumstances that was not contemplated at the time the contract was entered. The change in circumstances is such that it makes performance of the contract impossible. Management must make all reasonable efforts to afford an employee natural justice and procedural fairness before declaring that their contract of employment has ended due to frustration. Specialist assistance must be sought from the local human resources team in situations where it is possible that an employee's contract may be ended due to frustration.

4-1-7-7-3 Abandonment of employment

Abandonment of employment is termination of a contract of employment at the initiative of the employee and occurs when an employee has been absent from the workplace without a reasonable excuse, and/or without approval and in the circumstances indicate that they have abandoned their employment. Management must make all reasonable efforts to afford an employee natural justice and procedural fairness before declaring that their employment has ended through abandonment.

4-1-7-7-4 Resignation

Resignation of employment is a unilateral act by an employee to terminate their employment. Management does not 'accept' a resignation – there is no bargain being made – instead, management acknowledges the communication of the resignation. Management may accept a shorter notice period than is required in legislation or industrial instrument.

Management should seek advice from the local human resources team in circumstances where an employee resigns or purports to resign in what might be described as 'unusual circumstances'. For example, in the 'heat of the moment' whilst, i.e. being spoken to by management in respect of suspected or alleged misconduct or unsatisfactory performance; or when it is known or reasonably obvious to management that the employee is suffering from an illness or disability that might affect their judgement.

[For further information, refer to Appendix 4-1-7-7: Management Guideline 6: Other types of termination.](#)

APPENDIX 4-1-7-3: MANAGEMENT GUIDELINE 2 - INVESTIGATIONS

Preliminary considerations

In circumstances where allegations of misconduct or unsatisfactory performance have been made against an employee(s) or where management suspects such conduct, it must determine if a full investigation is required. This will usually be obvious by the nature and seriousness of the allegations/suspensions as well as the possible consequences if they are proven.

An investigation is intended to establish the facts, in circumstances of alleged or suspected misconduct or unsatisfactory performance, in a timely manner.

Records of interview or notes of observations should be made either at the time of the alleged misconduct or immediately after. Where notes relate to conversations they should be recorded in dialogue form using, as much as is reasonably possible, the actual language used.

Where further investigation is necessary, management needs to decide if expert assistance is required to conduct investigations, i.e. with the assistance of human resources or an External Investigator (any costs to be borne by the relevant operational unit). Workforce Relations may decide that the matter should be referred to the Crown Solicitor's Office, for it to engage the Government Investigations Unit. It needs also to consider if it is obliged to refer the matter to another relevant authority (see 'Notification to other bodies' below).

During an investigation, normal management processes should continue, such as communication, consultation, performance management. For example, when an employee is subject to formal performance management processes and an allegation of misconduct is made against them, the performance management processes should typically be continued, depending of course whether this is appropriate in the circumstances.

When investigating an employee, it is necessary to check whether they are employed at another SA Health site or even another public sector agency, so that relevant work history can be taken into account (e.g. previous warnings) and so the employee can be made aware that any suspension with pay will have application across the public sector, and that any disciplinary action will apply to them as an employee *per se* and be relevant to such other public sector employment.

Notifying Employee of Investigation

Before it has been established that a full investigation is necessary, there is no obligation to inform an employee that an investigation into their alleged behaviour is underway. However, the employer may write to the employee advising them of the allegations/suspicion and that an investigation is in process.

At this point, it is necessary to determine whether suspension of the employee from duty with pay is warranted (refer Manager's Guidelines 2.1).

Written notification must include the following details:

- An investigation into the alleged misconduct or unsatisfactory performance will take place;
- A summary of the suspected/alleged conduct that is being investigated and any relevant legislation, instrument, policy, direction or instruction that may have been contravened;
- The name of the contact person;
- Advice that the employee has the right to be accompanied by a support person at any stage of the process (including an interpreter if necessary) and be assisted by a representative in respect of submissions in response to allegations and intended managerial or disciplinary responses (sanction(s));
- That the employee will be provided with detail of allegations and evidence in support of them and afforded a reasonable opportunity to respond before any decision is taken in respect of their employment; and
- Where suspension with pay is warranted, detail of this and any managerial directions appropriate in the circumstances.

Advice should be sought from Workforce Relations when an investigation is underway and new allegations or suspected misconduct by an employee comes to light.

Notification to other bodies

The Code of Ethics for the South Australian Public Sector obliges all public sector employees to notify a relevant authority in circumstances of workplace behaviour that a reasonable

person would suspect violates any law or represents corrupt conduct, mismanagement of public resources, is a danger to public health or safety or to the environment or amounts to misconduct. Thus, it may be necessary to notify one or more external bodies in relation to alleged or suspected misconduct by an employee:

- The South Australia Police for matters relating to suspected criminal activity – on advice from human resources;
- Australian Health Practitioner Regulation Authority for matters [related to the conduct, health and performance of a registered health practitioner](#) – refer to Sections 140 – 147 of the *Health Practitioner Regulation National Law* [and the AHPRA website for details http://www.ahpra.gov.au/Notifications-and-Outcomes.aspx](#). Such notifications are normally made by the relevant professional lead and Human Resources informed accordingly. It is also strongly

recommended that the appropriate Director/General Manager/CEO be briefed on notifications to AHPRA;

- Child Abuse Report Line (Families SA) 13 1478. Where a person suspects on reasonable grounds that a child has been or is being abused or neglected and this suspicion is formed in the course of the person's work then they have a responsibility to notify the Child Abuse Report Line as soon as practicable after he/she forms that suspicion. Refer Child Protection Act Part 4 Notification and Investigation for further information.
- Aged Care Complaints Investigation Scheme for matters relating to abuse of the elderly - within 24 hours of the allegation being made in accordance with S63-1AA(2 to 9) Aged Care Act 1997.

When making notifications to external bodies, regard should be had for the confidentiality of patient information, as relevant.

The timing and detail of the notification to external bodies should be the subject of advice from Human Resources, Workforce Relations and other professional advice as appropriate.

For matters relating to financial irregularity, Internal Audit will normally be advised by Workforce Relations.

Information Gathering

An investigator(s) must strive to ensure that all relevant information relating to alleged or suspected misconduct or unsatisfactory performance is gathered in a timely way.

Where necessary and relevant to an investigation, management may seize or order the return of government equipment/assets. Employees have no propriety in government assets.

If information technology equipment is relevant to an investigation, the equipment should be secured as soon as possible however data should not be accessed prior to the receipt of specialist advice.

Where interviewing is not necessary

Interviewing of either witnesses or employees who are suspected of or the subject of allegations of misconduct is not mandatory and is merely a means to collect evidence and one measure of affording employees procedural fairness.

It is often not necessary to resort to interview, i.e. where evidence of alleged misconduct is strong and/or the circumstances are not particularly complex. In such situations, management can conduct the process via correspondence only.

Records of interview or statements from witnesses, including complainants

Witnesses and complainants must be informed that; they are not entitled to opt not to be involved or assist; that any evidence they provide in support of alleged or suspected misconduct of another employee may be made available to that employee; that their identity will not be kept anonymous unless the information they provide is or they reasonably believe it to be public interest information under the *Public Interest Disclosure Act (2018)* Specialist advice should be obtained where it is possible that a witness attracts or is claiming the protection of this Act. Witnesses and complainants must also be informed that the information they provide must be kept otherwise confidential.

Potential witnesses should be interviewed or statements from them facilitated as soon as possible after the event. Statements are to be signed and dated by the witness. Copies of records of interview should be provided to witnesses and they should normally be asked to check the record for accuracy, however it is not necessary for them to approve the content for the information to be relied upon.

Information provided in the statement should answer at least the following questions:

What is the incident that took place? What was said and by whom? (include the actual words spoken or as near as possible)

When did the incident occur or come to the witness' attention? This should include the time, date, month and year of the incident.

Where did the incident occur, and where were any objects/people relevant to the incident located?

Who was involved in the incident or in the vicinity? Include their names, role titles and any other relevant information.

How did the incident occur?

Records of interview or witness statements may be produced in a court or tribunal as evidence, thus accuracy is critical.

Further interviews with witnesses

In some instances where further clarification is required (e.g. when there are conflicting stories), an investigator may need to interview or re-interview the witnesses.

The investigator should try to refrain from using leading questions when conducting any interview.

Investigation interview with employee who is the subject of allegations or suspicions of misconduct

The main purpose of an investigatory interview is to put detail of allegations of misconduct to the relevant employee as well as evidence in support of such allegations and to afford them an opportunity to respond to such allegations.

Management may direct employees to attend an investigation interview, however employees may not be directed to answer questions. In other words, employees have a right against self-incrimination even in disciplinary matters. Depending on the circumstances, an adverse inference may be taken from an employee's silence however.

Consideration should be given to whether a management representative other than the interviewer should be present during interviews.

When an interview is conducted by an external investigator, a request by the employee to have a management representative present should be favourably considered to ensure, as necessary, that issues of organisational context are understood by the investigator.

Record of interview

It is recommended that the interview be recorded on audio tape and transcribed, otherwise detailed notes must be taken. Either party to the interview may make an audio tape recording and it is not necessary to have the agreement of the other party. Any recording must be done openly as covert recording may amount to a criminal offence.

The employee (and, if appropriate, their support person) must be provided with a copy of the notes/transcript as soon as possible following the interview and asked to check them for accuracy. It is not necessary that the employee agree with the transcript.

Beginning an interview

Explain what will happen in the interview

The interview begins with an explanation of the role of those present at the interview. The employee must be told of the reason for the interview including at that time, a brief overview of the suspected/alleged conduct. He or she must be informed that it is an opportunity for them to respond to the allegations. The employee must be informed that the matter will be dealt with thoroughly and the interview will take as long as is necessary, and that an adjournment may be requested at any time by either party throughout the interview. Also, further interview or interviews may be necessary.

Explain the decision-making process

The employee must be advised that the decision as to whether the allegations are proven on the balance of probabilities will only be made following careful consideration of all the information and evidence, and that any responses by the employee during the interview or otherwise will be considered including that claims made be thoroughly

investigated as necessary. The employee is advised that if the allegations are found to be proven on the balance of probabilities, all relevant considerations, including their work record and any other mitigating circumstances will be taken into account in determining whether to consider a disciplinary sanction and if so, as to the appropriate sanction.

The employee is reminded of the range of disciplinary action that may be taken in the event of proven misconduct. They should be ensured that no sanction will be imposed without the employee having been notified of any proposed/intended sanction and afforded the opportunity to respond prior to any being imposed.

Support person

Employees who are the subject of allegations of misconduct or who are suspected of having committed misconduct are permitted to be accompanied by a support person during interviews or meetings relating to the allegations.

A support person can be an appropriate person who themselves is not implicated in or potentially witness to the conduct under investigation: i.e. a union representative, friend, relative or work colleague. If the employee's nominated support person is not available to attend within a reasonable period of time, the manager may allocate a support person. Employees are naturally entitled to decline to be accompanied by a support person.

The employee and their support person should be advised that management is seeking responses from the employee and that generally speaking, the support person is not able to respond to the allegations on behalf of the employee. Management/interviewers should not be dogmatic in this respect. The support person may be able to assist the employee, for example, by clarifying issues so that the employee can respond, summarising discussion, advising and explaining issues to the employee. They may ask for interviews to be adjourned in order to do so.

Management support/witness or note taker

Management or the interviewer should identify any person present as a management representative or, where the proceedings are not being recorded on audio tape recording, any person taking notes on management's behalf. The employee or their support person is entitled to record the process, including by taking notes.

Summarise the events to date

Management or the interviewer should provide the employee with a brief history of the matter to date, including the alleged or suspected conduct, the investigation procedure, and any relevant correspondence from either party.

The interview

The interviewer must, in as detailed a manner as possible, inform the employee of any allegations and the evidence in support of them. This includes detail of witness evidence, taking care that the identity of any person protected by the *Whistleblowers Protection Act* is not divulged.

Interviewers should, where necessary, ask questions in clarification of responses by employees.

Management is not entitled to direct employees to answer questions unless they have been personally delegated the powers of the Commissioner for Public Sector Employment under section 18 of the *Public Sector Act 2009*. The interview is to give the employee the opportunity to respond. They may choose not to respond and, for example, may prefer to make written submissions at a later time.

Where necessary, the interviewer should confirm his/her understanding of the employee's response(s) to the allegations (without expressing any views or purporting conclusions).

Ending the interview

When all relevant aspects of the matter have been discussed thoroughly the employee should be advised that management is sufficiently informed to report to the Chief Executive Officer (or delegate), **or** that further investigation and consideration of the issue is required. The employee should be assured that proper consideration will be given to all of the information collected throughout the investigation.

There should be no indication of any final decision(s) at this stage.

New evidence may be revealed during or following the investigation interview which could affect the decision as to whether the allegation is proven. New evidence must be investigated by management at the earliest opportunity. In such circumstances it may be necessary to arrange a further interview with the employee to ensure that he or she is informed of the impact the new evidence may have on the investigation. In any case, the manager must ensure that the employee is aware of any new evidence, and has had the opportunity to respond to it.

APPENDIX 4-1-7-3-1: MANAGEMENT GUIDELINE 2.1 – SUSPENSION WITH PAY

When an employee is suspended from duty, they should also be issued with appropriate managerial directions, for example:

- not to attend the workplace(s);
- not to contact certain employees (either during or out of working hours);
- to return property of the Crown; and/or
- to remain contactable during working hours.

Employees should be reminded of their right to utilise the Employee Assistance Program.

Suspension is not a disciplinary sanction but sometimes an appropriate response pending investigation and or consideration of allegations or suspicions of misconduct.

Suspension of an employee from duty should only be resorted to in limited circumstances when relevant considerations dictate that it is not appropriate for the employee to remain in the workplace pending either investigation and or disciplinary processes arising. Relevant considerations include:

- the seriousness of the alleged or suspected misconduct and apparent strength of the evidence in support of it;
- the health, safety and welfare of the employee who is the subject of the allegations or other employees or persons in the workplace;
- the propensity for the employee to interfere with evidence or investigatory processes if they remain in the workplace; and/or
- any risk to the reputation of the Chief Executive, Department, public sector, Minister and/or Government by the employee's continued presence in the workplace.

Management should consider whether assigning or transferring the employee to alternative duties for an interim period is possible/appropriate as an alternative to suspension from duty.

During periods where an employee is suspended from duty, they are to be paid their base salary/wage (not including penalties and allowances such as shift and nurse in-charge allowance: but including allowances such as Managerial Allowances and Nurses Additional Qualifications Allowance).

An employee should be advised that they are suspended from duty orally and in writing, along with any relevant managerial directions. However, before an employee is suspended, they should first be afforded procedural fairness by being put on notice as to the intent to suspend and reasons therefore and given the opportunity to respond.

This is not an onerous process and the requirement may be satisfied orally; i.e. during a meeting whereby the Chief Executive or Delegate puts the employee on notice as



the intent to suspend them from duty and why, and affords them an opportunity to submit why they should not do so. A break should be taken where the decision-maker considers the matter, including any submissions made by the employee, before making a final decision and advising the employee accordingly.

Notes must be taken at any meeting with an employee where suspension from duty is discussed.

Note that it is not open to management to suspend employees employed under the *Health Care Act 2008* without pay.

When suspending an employee from duty, it is necessary to check whether they are employed at another SA Health site or other public sector agency so that management ensures that the processes is effective to suspend them from all public sector work and managerial directions are adequate.

APPENDIX 4-1-7-4: MANAGEMENT GUIDELINE 3 – DETERMINING APPROPRIATE DISCIPLINARY SANCTION

Decision as to whether allegation proven on the balance of probabilities

The relevant burden of proof for allegations of misconduct (or other forms of unsatisfactory performance) is the balance of probabilities. This means that the decision-maker (Chief Executive/Delegate) must be persuaded that an alleged event(s) is more likely to have occurred than not. Generally speaking, the more serious the allegations and potential consequences should they be proved, the more the decision-maker should be convinced that the relevant conduct occurred, as alleged.

Before making a decision, the decision-maker must not only ensure that the matter has been adequately investigated but that the employee has been afforded procedural fairness.

Decision as to appropriate disciplinary action

If a decision-maker concludes that allegations of misconduct against an employee are proven on the balance of probabilities, the employee is thereby liable to disciplinary action and a disciplinary sanction may be imposed, that is, they are liable to the imposition of a warning or termination of their employment.

Relevant Considerations

In addition to the seriousness of the particular misconduct or unsatisfactory performance, factors relevant in determining the appropriate disciplinary sanction include:

- the inherent seriousness of the proven conduct;
- whether the employee has cooperated with investigations; admitted the allegations at the earliest available opportunity and demonstrated genuine contrition;
- the duration of the employee's service and record of service including any previous incidents of proven misconduct or unsatisfactory performance and the outcome;
- how other employees have been treated in similar circumstances – keeping in mind that each matter is judged according to its individual facts and circumstances;
- whether the employee has been made aware of the relevant policy/instruction breached, including relevant training, qualifications, and/or professional obligations;



- the employee's personal circumstances; and
- any other relevant mitigating circumstances.

Before a disciplinary sanction is imposed, the decision-maker must notify the employee in correspondence that they have found the allegations against them proven; that they are liable to disciplinary action and as to the sanction the decision-maker intends to impose/is or is considering. The employee is to be afforded a reasonable opportunity to make a written submission in respect to this.

If the circumstances are such that termination of employment is a possible consequence including if the decision-maker is considering this option, advice should be sought from Workforce Relations.

APPENDIX 4-1-7-5-1: MANAGEMENT GUIDELINE 4 - FORMAL DISCIPLINARY ACTIONS: WARNINGS**Separate/single warning**

Examples of situations where there would be good cause to issue a separate/single written warning for proven misconduct or unsatisfactory performance include:

- unsatisfactory performance continues despite performance management processes and the employee has not previously committed like misconduct or performed unsatisfactorily; or
- the employee has not responded to a managerial caution/counselling in respect of previous misconduct or unsatisfactory performance; or
- the particular misconduct or unsatisfactory performance is of such seriousness as to warrant the imposition of a warning, taking into account all relevant considerations.

In some circumstances, a separate/single warning may be imposed as part of a series of warnings imposed upon an employee. Circumstances where a series of warnings may be appropriate include:

- Subsequent/repeated unsatisfactory performance or misconduct following a period of satisfactory performance; and
- subsequent unsatisfactory performance or misconduct which is of a fundamentally different nature/type than unsatisfactory performance or misconduct for which the employee has previously been disciplined.

Each situation must be managed according to its individual facts and circumstances and managers should seek specialist advice from human resources.

Final warning

Examples of situations where good cause to issue a final written warning include where:

- unsatisfactory performance of a like nature continues following the imposition of a separate/single or series of written warning(s);
- a further and/or similar instance of misconduct has occurred following the imposition of a separate/single or series of written warning(s); or
- the unsatisfactory performance or misconduct is sufficiently serious to justify the imposition of a final written warning, taking into account all relevant considerations.

APPENDIX 4-1-7-6: MANAGEMENT GUIDELINE 5: FORMAL DISCIPLINARY ACTION: TERMINATION**Termination with notice**

Termination of an employee's employment with notice may be appropriate when - taking into consideration all relevant considerations - a final written warning has been previously imposed upon an employee and either there is repeated misconduct, or the employee's performance continues to be unsatisfactory or the unsatisfactory performance or misconduct is so serious it is a fundamental breach of the contract of employment such that the employee indicates they are no longer bound by the terms and conditions of the employment contract but summary (instant) termination is not appropriate. Management may cease the employee's employment immediately and make payment in lieu of notice.

The *Fair Work Act 1994* prescribes the minimum period of notice required. The periods are as follows:

| Employee's period of continuous service with the employer | Period of notice |
|--|-------------------------|
| Not more than 1 year | At least 1 week |
| More than 1 year but not more than 3 years | At least 2 weeks |
| More than 3 years but not more than 5 years | At least 3 weeks |
| More than 5 years | At least 4 weeks |

The period of notice is increased by one week if the employee is over 45 years old and has completed at least 2 years continuous service with the employer. The *Fair Work Act 1994* prescribes matters or events that are to be disregarded in ascertaining whether an employee's period of service is continuous. The period of notice will be greater than prescribed above if otherwise prescribed in an award.

Termination without notice (summary (instant) dismissal)

The employment of an employee may be 'instantly' terminated for serious and wilful misconduct, and as a consequence foregoes the period of notice (or payment in lieu).

Summary dismissal may be justified when - taking into account all relevant considerations - an employee's misconduct is serious and wilful in nature and clearly displays that the employee no longer considers themselves bound by the terms and conditions of their employment contract. It is behaviour that goes to the very heart of the employee's obligations under the contract.

Behaviour which may justify instant dismissal

Decisions of industrial tribunals provide a useful guide in determining when instant dismissal for serious misconduct is justified. Examples of serious misconduct that have been held to have justified summary termination are listed below. These are

examples only and each case must be considered according to its particular facts and circumstances.

- fighting at work;
- assault of another person whether during or outside of working hours;
- threatening behaviour towards other employees whether during or outside of working hours;
- contravention or failure to comply with lawful and reasonable directions;
- theft of property of the Crown or another employee or person, whether committed during working hours or not;
- other criminality whether committed during working hours or not;
- disclosure of personal information, relating to any patient, obtained in the course of employment other than when the employee is required to divulge that information by law or is authorised to do so by his or her employer;
- failure to observe Work Health and Safety requirements;
- conduct of an obscene nature including but not limited to accessing or promulgating pornographic images using property of the Crown, whether during or outside of working hours;
- sexual harassment, whether during or outside working hours; and/or
- serious dishonesty or other misconduct falling short of criminality - whether committed during working hours or not.

APPENDIX 4-1-7-6-2: MANAGEMENT GUIDELINE 5A - FORMAL DISCIPLINARY ACTION: MEETINGS WITH/INTERVIEWS OF EMPLOYEES**Preparing for a meeting/interview**

Where:

- management desires to meet with an employee to advise them of allegations/suspicions of misconduct by them, including with respect to suspension of employment;
- management desires to interview an employee suspected of misconduct so as to put allegations to them and provide them an opportunity to respond; or
- a decision-maker has found allegations of misconduct against an employee proven or that they have performed unsatisfactorily; that it is appropriate to impose a disciplinary sanction; and that it is appropriate to advise the person of their decision in person (recorded in writing); -

The employee must be given reasonable notice to allow time to arrange to be accompanied by a support person.

Assistance/advice from Workforce Relations should be sought as necessary.

Management should consider whether, in the circumstances, it is appropriate for another representative of management to be present with the manager (or external investigator) conducting the relevant meeting.

Disciplinary interviews – and if necessary other meetings – should be recorded on audio tape and if not, detailed notes must be taken including detail of the date, time and location, who was present, and what was said by whom.

The employee (and, where appropriate, their support person) must be provided with a copy of transcripts of recordings or notes as soon as possible following the meeting and given the opportunity to highlight purported errors. It is not necessary that the employee agrees with the record of meeting.

Prior to a meeting/interview

Prior to a meeting/interview, the employee must be told:

- in summary form, the purpose of the meeting/interview;
- the time, date and location;
- that the employee may be accompanied by a support person;
- who else will be in attendance;
- where it is an interview, that the employee will be provided with detail of allegations and evidence in support of them and provided with a reasonable opportunity to respond or advised as to any intended disciplinary sanction and be given an opportunity to make submissions in respect of same; and
- if, in due course, either a finding that the employee has committed misconduct or performed unsatisfactorily or that a sanction is being imposed, that written documentation relevant to the matter will be retained on the employee's personal

file and retained in accordance with the *State Records Act 1997* and destruction schedules issued under that Act and otherwise dealt with in accordance with the Cabinet Information Privacy Principles.

A meeting/interview

The meeting/interview proceeds as follows:

- the manager or interviewer outlines the purpose of the meeting/interview and the identity and roles of those present;
- for interview, an overview/summary of the allegations is initially provided and then detail of such allegations and evidence in support of them;
- where an investigation has been undertaken, a summary of the misconduct, the investigation and its findings is provided , or an account of the employee's Unsatisfactory Performance .;
- the intended disciplinary sanction is outlined and the employee provided with an opportunity to make a submission in relation to this, either at the time or later in writing (note that this is often done by correspondence however);
- where the employee has been afforded an opportunity to make a submission in respect of an intended sanction, they are advised of the decision-maker's decision in this respect (note that this is often done by correspondence however);
- if necessary, the meeting or interview will be adjourned;
- where appropriate, the employee is advised of the importance of maintaining confidentiality but advised that information will be dealt with in accordance with the Cabinet Information Privacy Principles, including the provision to other parties (including agencies) as appropriate; and
- Where appropriate, management reiterate the required standards of conduct/performance to the employee and the possible consequences of future misconduct or unsatisfactory performance; and
- if applicable, a date(s) is set for a meeting(s) during which the employee's performance will be further reviewed (or the employee advised that a further meeting(s) will be scheduled for this purpose).

Following a meeting/interview

- Following a meeting or interview, the employee (and, where appropriate, their support person) must be provided with a copy of the transcript or notes and given the opportunity to highlight any purported errors. It is not necessary that the employee agrees with the record;
- where appropriate, the decision-maker's finding on fact is provided to the employee either in correspondence or in a further meeting and, where a disciplinary sanction is proposed, they are provided with an opportunity to make written submissions in respect of that;
- where appropriate, a disciplinary sanction is imposed either by way of correspondence or at a further meeting (supported by correspondence);
- where appropriate, training, education, counselling etc is arranged; and
- management continues to manage the employee appropriately, including by addressing any future misconduct or unsatisfactory performance in a timely manner.

Where the meeting is for the purpose of advising an employee their employment is being terminated they are informed of the following, which is recorded on correspondence to be provided to them at the time:

- the reason(s) termination of employment is considered the appropriate response to the relevant misconduct or unsatisfactory performance, advising that all relevant considerations have been taken into account, including mitigating factors;
- the effective date the employment is to be terminated;
- that the employee is to return or facilitate the return of any property of the Crown in their possession; and
- that the value of accrued entitlements to long service and recreation leave and, where appropriate, in lieu of any period of notice, will be paid into their nominated financial institution in the near future.

Where the meeting is for the purpose of imposing upon an employee a written warning, they are advised of the following, which is recorded on correspondence to be provided to them at the time:

- the reason(s) a warning is considered as the appropriate response to the relevant misconduct or unsatisfactory performance, advising that all relevant considerations have been taken into account, including mitigating factors;
- information as to acceptable standards of behaviour, and the consequences for further misconduct/continued Unsatisfactory Performance ; and
- that a copy of the written warning will be placed and retained on the employee's personal file, and that it will be relevant to any future proven misconduct or unsatisfactory performance.

Where the meeting is in respect of proven misconduct or unsatisfactory performance where the decision-maker has exercised their discretion not to impose a disciplinary sanction but to deal with the matter managerially through a managerial caution or counselling, the employee is advised of the following, which is to be recorded in a letter to be handed to them at the time:

- that the findings of fact mean that the employee is liable to disciplinary action;
- the reason(s) for the exercise of discretion to deal with the matter managerially;
- expected standards of conduct and the possible consequences of future misconduct or unsatisfactory performance; and
- that a copy of the letter is to be retained on their personal file and may be relevant to future misconduct or unsatisfactory performance.

APPENDIX 4-1-7-7: MANAGEMENT GUIDELINE 6: OTHER TYPES OF TERMINATION

Frustration of Contract

Illness, injury or incapacity

The most common way a contract of employment is ended by frustration is prolonged, indefinite absence from the workplace due to non-work related illness, injury or incapacity of an employee. If there is a reasonable likelihood that the employee will be able to return to work in a fit state to perform all of the inherent requirements of their role within a reasonable period, there must be consideration of whether it is appropriate to provide the employee with leave without pay or to consider the contract of employment ended by frustration. What is considered a reasonable period depends on the particular circumstances and relevant considerations.

If it seems unlikely that the employee will be able to return to work and frustration of contract is a possible outcome, advice must be sought from Workforce Relations to see if an independent medical examination is an appropriate option in order to determine whether the employee is able to fulfil his or her contract of employment within a reasonable time frame. Workforce Relations can provide advice on appropriate information to be sought from a medical practitioner for an independent medical examination and appropriate courses of action once a medical report has been provided, including further clarification from the medical practitioner.

Loss of an essential qualification

Employees in a number of occupational groups are required to be registered with a board or other authority in order to lawfully perform the duties of their role. Such a requirement is in addition to any other qualification considered essential for a role.

If, for example, an employee's professional registration is cancelled, suspended or not renewed, the employee is no longer able to meet an essential term of the contract of employment.

In instances where there is merely a failure to renew professional registration by the required date, the employee should be given an opportunity to renew the registration. The employee should be treated as being on leave without pay until such time as he or she is able to demonstrate that their registration has been renewed. The employee may be allowed to utilise [annual leave](#) in circumstances considered appropriate by the employer.

If an employee does not renew their professional registration after a reasonable opportunity has been given – it is likely their contract will have ended by way of frustration. When this is possible, advice from Workforce Relations should be sought. If the employee took an unreasonable time to renew professional registration and frustration of contract was not asserted, they may be liable to disciplinary action on the basis of misconduct.

Should an employee's professional registration be cancelled or suspended, almost inevitably, their contract of employment will be considered as having been ended due to frustration.

A contract of employment may similarly be ended by frustration by the loss of other essential qualifications by an employee, such as a licence to drive a motor vehicle.

Imprisonment

If an employee is sentenced to a term of imprisonment or remanded in custody, the matter must be referred to Workforce Relations for advice. A contract of employment is almost inevitably ended by frustration in such circumstances.

Abandonment of Employment

If an employee has been absent without authority for more than 10 working days, the employer must take all reasonable steps to put them on notice that unless they report for duty or provide a satisfactory reason for their absence within a reasonable time, they may be regarded as having terminated their employment by way of abandonment.

Where management is considering treating a contract of employment as having come to an end by way of abandonment by the employee, it is important that the employee not be permitted to return to work should they appear at the workplace unexpectedly. They should be directed to remain absent until the question of their employment status is resolved.

In some circumstances, even where management is not entitled to determine that an employee has abandoned their employment or being so entitled does not do so, the employee may still be liable to disciplinary action on the basis of misconduct *vis-à-vis* an unauthorised absence from the workplace.

Resignation

Resignation of employment is a unilateral act by an employee to terminate their employment. Management does not 'accept' a resignation instead, management acknowledges the communication of the resignation. Management may accept a shorter notice period than is required in legislation or industrial instrument or pay an employee for the period of notice in lieu.

4-1-8 SOUTH AUSTRALIA PUBLIC SECTOR ACT 2009 AND THE CODE OF ETHICS

The *Public Sector Act 2009* (PS Act) and the *Public Sector (Honesty and Accountability) Act 1995* form the foundation for Public Sector Employment in South Australia and provide a modern, flexible employment framework. Agencies and employees across the whole of the public sector are governed by a comprehensive set of principles with greater emphasis on 'one government'.

A copy of these Acts can be obtained from the [Office for the Public Sector website](#).

4-1-8-1 APPLICABILITY OF THE PUBLIC SECTOR ACT 2009 TO HEALTH CARE ACT EMPLOYEES

All Parts of the PS Act (except Parts 6, 7, Schedule 2 and 3) apply to employees who are employed pursuant to the *Health Care Act 2008*.

However, from 1 July 2016, Part 7 (as modified by the Public Sector Act Regulations 2010) of the PS Act *will* apply to employees who are employed pursuant to the *Health Care Act 2008* and the [South Australian Modern Public Sector Enterprise Agreement: Salaried 2017](#).

4-1-8-2 CODE OF ETHICS FOR THE SOUTH AUSTRALIAN PUBLIC SECTOR

The [Code of Ethics](#) for the South Australian Public Sector is the code of conduct for the purposes of the PS Act. The code embodies and builds upon the principles of the PS Act and seeks to advance the objects of the PS Act in the pursuit of good government in South Australia.

The *Code of Ethics* seeks to:

- Guide and support public sector employees in all of their professional activities;
- Strengthen public confidence in the public sector;
- Earn respect from citizens, government and employees for the public sector as an institution which is critical to good government in South Australia, and
- Set out standards of professional conduct expected of every public sector employee

Further information and a copy of the *Code of Ethics* can be obtained from the [Office for the Public Sector website](#)

4-1-10 PUBLIC INTEREST DISCLOSURE ACT (PROTECTION FOR WHISTLEBLOWERS)

SA Health supports the Government's commitment to ensuring the public sector is free from corruption, the misuse and waste of public resources and poor administration practices.

SA Health has nominated the following persons as Responsible Officers to receive disclosures of public interest information:

- The Chief Executive, SA Health;
- The Director Workforce Services, Corporate and System Support Services;
- The Group Director Risk and Assurance Services;
- The Chief Executive Officers of Local Health Networks and the SA Ambulance Service; and the Group Executive Director Statewide Clinical Support Services;
- The Directors of Workforce (or equivalent positions) of the Local Health Networks; the SA Ambulance Service; and Statewide Clinical Support Services.

The Public Interest Disclosure Act and relevant information for all South Australian Public Service employees can be found [here](#). The Independent Commissioner Against Corruption has also established [Guidelines](#) to assist with the interpretation and implementation of the Public Interest Disclosure Act. Information on how the Act is relevant to SA Health employees can be found [here](#).