Investigation Report

Sched 2.2 (a)(ii) FOI Act 2016

Community Services Directorate

Case Reference: 2016/76

Prepared by: Drazen Persic
A/g Senior Investigator
Professional Standards Unit

23 March 2017
Dear Ms Murray

Investigation Report regarding allegations of possible misconduct by

Background

Sched 2.2 (a)(ii) FOI Act 2016, Sched 2.2 (a)(xii) FOI Act 2016, Sched 2.2 (a)(xv), Sched 2.2 (a)(vi) FOI Act 2016
Summary of Evidence

The following facts are drawn from information contained in signed statements and documents, obtained from relevant parties.

Background

Bimberi Youth Justice Centre is a detention facility for Young People aged between 10 and 21 years who are remanded in custody or sentenced to a period of detention by the ACT Children’s or Supreme Courts. Bimberi contains four units being the Namadgi Unit, Majura Unit, Bendora Unit and Coree...
Conclusion

On the basis of the information provided, there is sufficient evidence to conclude, on the balance of probabilities Sched 2.2 (a)(ii) FOI Act 2016

This finding is based on an analysis by the investigator of the relevant evidence obtained. It is not a determination that misconduct has or has not occurred, which is a decision for you, as the delegate, to make.

In determining whether this behaviour constitutes misconduct (as defined in clause H6.5 of the ACT Public Sector Support Services Enterprise Agreement 2013 – 2017), you may wish to consider whether failed in his obligations under Section 9 of the Public Sector Management Act 1994, in particular:

A public servant must:

  c) when acting in connection with the public servant’s jobs
  (iv) treat all people with courtesy and sensitivity to their rights and aspirations

Summary of Evidence

The following facts are drawn from information contained in signed statements and documents, obtained from relevant parties.
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     (iv) treat all people with courtesy and sensitivity to their rights and aspirations
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In determining whether this behaviour constitutes misconduct (as defined in clause H6.5 of the ACT Public Sector Support Services Enterprise Agreement 2013 – 2017), you may wish to consider whether he failed in his obligations under Section 9 of the Public Sector Management Act 1994, in particular:

A public servant must:

  c) when acting in connection with the public servant’s jobs
     (iv) treat all people with courtesy and sensitivity to their rights and aspirations
Other considerations

Sched 2.2 (a)(ii) FOI Act 2016

Recommendations

It is recommended that, as the delegate, you:

a) review this report, along with the accompanying evidence, to determine on the balance of probabilities whether misconduct has occurred;

b) if misconduct is found, determine an appropriate sanction in accordance with the ACT Public Sector Support Services Enterprise Agreement 2013 – 2017; and

c) notify of the outcome.

Drazen Persic
A/g Senior Investigator
Professional Standards Unit
23 March 2017

Clare Brookes
Investigations Manager
Professional Standards Unit
23 March 2017
Attachments to report:

2. Notification of Misconduct Investigation, dated 1 December 2016
3. Workplace Investigation Request, dated 9 December 2016
4. Signed statement, YP1, dated 12 January 2017 with the File Note
5. Record of interview with YP2, dated 5 December 2016
7. Signed statement, Sched 2.2 (a)(ii) FOI Act 2016
8. Signed statement, Sched 2.2 (a)(ii) FOI Act 2016
10. Signed statement, Sched 2.2 (a)(ii) FOI Act 2016
11. Synced audio and CCTV footage of the corridor – USB Drive
12. CCTV of the Recreation Room – USB Drive
16. Control room duty log for 24 November 2016
17. Practice guideline: Observations
18. Letter to re final allegations and opportunity to respond, dated 7 February 2017
19. Excerpts from witness statements and incident report sent to on 13 February 2017
20. Written submission and personal references provided by during the interview
21. Responded interview transcript, dated 14 February 2017
22. Signed receipt of the transcript and written submission, dated 3 March 2017
23. Review of the CCTV and audio transcript – excel sheet
24. Photograph Sched 2.2 (a)(vi) FOI Act 2016
25. Photograph Sched 2.2 (a)(vi) FOI Act 2016
26. Photograph Sched 2.2 (a)(vi) FOI Act 2016
27. Photograph Sched 2.2 (a)(vi) FOI Act 2016
ATTACHMENT 1
RECOMMENDATIONS

I recommend in accordance with Section H2 of the Enterprise Agreement that this matter be investigated.

Paula Mitchell
Operations Manager

25th November 2016

Attachments:
- Copy of CCTV footage
- Audio recording
- Photos of the view from the observation room
- Copy of Observation log entries for 24/11/2016
- Incident file
- Staff note from A/
- Staff note from
- Staff note from

Workforce Management

Noted.

Report/Assessment forwarded
Monday 28th November

Dear

Notification of Misconduct Allegations and Immediate Suspension

I am writing to inform you of allegations of misconduct by you.

In accordance with Clause H7 (Dealing With Allegations of Misconduct) of the ACT Public Sector Support Services Enterprise Agreement 2013-2017 (the Enterprise Agreement) I have considered the information I currently have before me in relation to the allegations.

I have determined that this matter is serious enough to warrant a formal investigation under the terms of Section H of the Enterprise Agreement (a copy of Section H of the Enterprise Agreement and all clauses in that section is provided at Attachment A).
Investigation of Allegations

Clause H6.2 of the Enterprise Agreement states with respect to the application of the procedures set out in Section H of the Enterprise Agreement for managing misconduct or alleged misconduct, that:

In applying these procedures to... an eligible casual employee...the head of service may determine that procedures and practices throughout clauses H6 to H10 apply on an appropriate and proportionate basis according to the circumstances of the case.

An investigator will therefore undertake an independent investigation into the allegations noted above in accordance with Clause H9 of the Enterprise Agreement, subject to any modification, if appropriate, in accordance with Clause H6.2, and will provide me with a written report in respect of their findings.

Section H requires the application of the principles of natural justice and procedural fairness to action taken under that Section and as part of the investigation process you will be afforded an opportunity to respond to the allegations.

You are entitled to have a support person present during any interview but should note that your chosen support person must not be someone who has any involvement in the matters under investigation.

The investigator will write to you separately and provide you with any further details of the allegations and make interview arrangements with you in due course. You are required to be contactable during business hours for the purposes of this investigation and must be available to attend work and participate in the disciplinary process as directed within 48 hours of the direction being given unless you are on authorised leave.
Misconduct

Should the allegations be proven on the balance of probabilities, this may constitute misconduct. Misconduct is defined in Clause H6.5 of the Enterprise Agreement to consist of any of the following:

- the employee fails to meet their obligations set out in Section 9 of the Public Sector Management Act 1994 (PSM Act) (see Attachment B) (including bullying and harassment); and

- the employee’s conduct brings, or is likely to bring, the Directorate or ACT Public Service into disrepute.

Serious Misconduct

Clause H6.6 of the Enterprise Agreement provides a description of serious misconduct as being conduct that is so serious that it may be inconsistent with the continuation of the employee’s employment with the Territory, and including but not being limited to the kinds of serious misconduct defined within the Fair Work Regulations.

Regulation 1.07 in the Fair Work Regulations 2009 lists the following behaviours as ‘serious misconduct’:

- Wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;

- Conduct that causes serious and imminent risk to the reputation, viability or profitability of the employer’s business.

- The employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee’s contract of employment.

Admission

Clause H7.4 of the Enterprise Agreement states no investigation is necessary where the employee fully admits to the alleged misconduct and agrees that there is no need for an investigation. In such cases, the head of service (or the relevant delegate) may determine the appropriate discipline action in accordance with Clause H10 of the Enterprise Agreement.
Disciplinary Action

Should it be determined that you have acted in a manner that falls within the definition of misconduct, one or more of the following disciplinary actions may be taken under the terms of Clause H10.1 of the Enterprise Agreement:

a) a written warning and admonishment;
b) a financial penalty which can:
   i. reduce the employee’s incremental level,
   ii. defer the employee’s incremental advancement,
   iii. impose a fine on the employee,
   iv. fully or partially reimburse the employer for damage wilfully incurred to property or equipment;
c) transfer the employee temporarily or permanently to another position at level or to a lower classification level;
d) remove any monetary benefit derived through an existing Attraction and Retention Incentive (or existing SEA); and
e) termination of employment.

This suspension will apply under the terms of Clause H8 of the Enterprise Agreement (refer Attachment A) and will commence immediately on the date appearing on this letter.

In accordance with Clause H8.4 of the Enterprise Agreement I am providing you with the opportunity to respond to my decision to suspend you without pay. Any response you wish to provide should be provided to me in writing, setting out the reasons why you should not be suspended without pay. Please provide any response to me by close of business seven working days from the date of this letter.

In accordance with Clause H8.10 of the Enterprise Agreement your suspension from duty without pay will be subject to review and you will be informed if it is to be altered. I draw your attention specifically to Clauses H8.8-H8.11 at Attachment A in regard to suspension without pay.

While suspended you are directed not to return to your normal workplace, or any other Directorate workplace unless given permission to do so by myself or Mr Craig Rose, A/g Manager Employee Relations. To maintain the integrity of the investigation, you are directed not to discuss the above allegations, with any employee, client or former client of the Directorate without first speaking to me or Mr Rose. A failure to comply with this direction may result in further disciplinary action, up to and including the termination of your employment.
EAP

The Employee Assistance Program is available to provide confidential and professional counselling to you and members of your family throughout this process. You may access this service by phoning Converge International on 1800 337 068.

If you have any queries, please contact Craig Rose by email craig.rose@act.gov.au or by telephone 6207 1210.

Yours sincerely

Christine Murray
Director People Management
Delegate of the Director-General

December 2016
Section H - Workplace Values and Behaviours

II.1 INTRODUCTION

H1.1 Except where otherwise noted, this Section applies to officers, temporary employees engaged for over six months and “eligible casual employees” as defined within the dictionary. The Section does not apply to “casual employees” as defined within the dictionary, or employees on probation unless expressly stated.

H1.2 Managers/supervisors and employees have a common interest in ensuring that workplace behaviours are consistent with, and apply the values and general principles set out in section 9 of the PSM Act 1994 and the ACT Public Service Code of Conduct and Signature Behaviours. This involves the development of an ethical and safe workplace in which managers/supervisors and employees act responsibly and are accountable for their actions and decisions.

H1.3 The following provisions of Section H contain procedures for managing workplace behaviours that do not meet expected standards, including the management of cases of unsatisfactory work performance and misconduct.

H1.4 These procedures for managing workplace behaviours and values must be applied in accordance with the principles of natural justice and procedural fairness, and in a manner that promotes the values and general principles of the ACTPS set out in section 9 of the PSM Act 1994.

H1.5 Any misconduct, underperformance, internal review or appeal process under the previous enterprise agreement that is not completed as at the date of commencement of this enterprise agreement will be completed under the previous enterprise agreement. Any right of appeal from that process will also be set out in the previous enterprise agreement.

II.2 PRELIMINARY ASSESSMENT

H2.1 In cases where an allegation of inappropriate behaviour is made, the manager/supervisor will initiate a preliminary assessment process to determine whether further action is required. The manager/supervisor may inform and/or seek the assistance of an appropriate Human Resources Manager.

H2.2 Following this process if the manager/supervisor determines that the allegations:

a) require no further action, then no further action needs to be taken;

b) can be resolved through counselling, other remedial action, or assistance to the employee then the manager/supervisor will implement such action;

c) are better resolved through Internal Review procedures set out in this Agreement or appropriate external mechanisms the manager/supervisor will refer the matter accordingly;
Attachment A: Section H of the ACT Public Sector Support Services Enterprise Agreement 2013-2017

d) relate to underperformance processes the manager/supervisor will commence
an underperformance process where this is warranted;

e) require investigation the manager/supervisor will recommend to the head of
service that the matter be investigated;

f) may be vexatious or knowingly false, the manager/supervisor will consider
whether further action needs to be taken in relation to the person who made the
allegations.

H2.3 The manager/supervisor will inform the employee where a preliminary assessment
process is commenced under subclause H2.1 if it is appropriate to do so.

H2.4 In performing the preliminary assessment the head of service may authorise access
to ACTPS information and communication technology (ICT) records including
email, computer, work phone records, or building access logs if, in the opinion of the
head of service, access is necessary to determine whether further action is necessary.

H3 COUNSELLING

H3.1 Counselling may happen outside of the misconduct and underperformance
processes. All parties have an obligation to participate in counselling in good faith.

H3.2 In cases where counselling is considered to be appropriate, the employee will be
invited to have a support person, who may be the employee’s union or other
employee representative, present at the counselling and will allow reasonable
opportunity for this to be arranged.

H3.3 The manager/supervisor or the head of service will create a formal record of the
counselling which will include details about the ways in which the employee’s
conduct needs to change or improve and the time frames within which these changes
or improvements must occur.

H3.4 The record of the counselling will be provided to the employee and the employee
given an opportunity to correct any inaccuracies and provide comments before
signing the record. The employee’s signature is taken as representing their full
agreement that the record accurately reflects the discussion. If the employee elects
not to sign the record, then details of the offer and any reasons given for refusal will
be clearly noted.

H3.5 Where the manager/supervisor or the head of service considers that the employee’s
conduct has not improved following counselling, an underperformance or
misconduct process may be undertaken.
H.4 UNDERPERFORMANCE

H4.1 Under this clause, procedures are established for managing underperformance by an employee.

H4.2 This clause applies to all employees, except casual employees. In applying these procedures to officers on probation, temporary employees engaged for over six months, or eligible casual employees, the head of service may determine that procedures and practices throughout clause H4 may be applied on an appropriate and proportionate basis according to the circumstances of the case, and in accordance with the principles of procedural fairness and natural justice.

H4.3 The objectives of these procedures are to:

a) provide advice and support to an employee whose performance is below the standard required; and

b) to provide a fair, prompt and transparent framework for action to be taken where an employee continues to perform below expected standard.

H4.4 Consistent with good management practice, concerns about underperformance should be raised by the manager/supervisor with the employee at the time that the concerns arise. The manager/supervisor should offer advice and support to the employee to overcome these concerns. The manager/supervisor should inform the employee that the following procedures might be invoked if the underperformance continues.

H4.5 In order to ensure that these procedures operate in a fair and transparent manner, the manager/supervisor will be responsible for documenting all relevant discussions. The employee must be given the opportunity to comment on any records before signing them.

H4.6 All parties have an obligation to participate in underperformance processes in good faith.

Step One: Action Plan

H4.7 Where a manager/supervisor assesses that an employee’s work performance continues to be below expected standards after having previously discussed concerns with the employee in line with subclause H4.4, the manager/supervisor will inform the employee in writing of this assessment and the reasons for it. The employee will be invited by the manager/supervisor to provide written comments on this assessment, including any reasons that in the employee’s view may have contributed to their recent work performance.

H4.8 After taking into account the comments from the employee, the manager/supervisor must prepare an action plan in consultation with the employee.
Attachment A: Section H of the ACT Public Sector Support Services Enterprise Agreement 2013-2017

H4.9 The manager/supervisor will invite the employee to have a support person, who may be the employee’s union or other employee representative, present at discussions to develop the action plan and will allow reasonable opportunity for this to be arranged.

H4.10 The action plan will:

a) identify the expected standards of work required of the employee on an ongoing basis;

b) identify and/or develop any learning and development strategies that the employee should undertake;

c) outline the potential underperformance actions that may be taken if the employee does not meet the expected standards;

d) specify the action plan period, which should not normally be less than one month and should not exceed six months to allow the employee sufficient opportunity to achieve the required standard; and

e) specify the assessment criteria to be measured within the action plan period.

H4.11 Any current performance agreement will be suspended during the period of the action plan. Any incremental advancement action for the employee will be suspended during the action plan period.

Step Two: Regular Assessment

H4.12 During the action plan period, the manager/supervisor will make regular written assessments (desirably every fortnight) of the employee’s work performance under the action plan. The employee will be given an opportunity to provide written comments on these assessments.

H4.13 If the manager/supervisor considers that further assessment time is needed the manager/supervisor may extend the action plan period. However, the extended assessment time must not result in the action plan exceeding six months duration. The manager/supervisor will inform the employee in writing of the decision to extend the assessment time and the duration of the action plan.

Step Three: Final Assessment / Report

H4.14 If at the end of the action plan period, the manager/supervisor assesses the work performance of the employee as satisfactory, no further action will be taken under these procedures at that time. The manager/supervisor will inform the employee in writing of this decision.

H4.15 If at the end of the action plan period, the manager/supervisor assesses the work performance of the employee as not satisfactory, the manager/supervisor will provide a report including the assessment and reasons for the assessment to the head of service.
Step Four: Underperformance Action

H4.16 The head of service will advise the employee in writing:
   a) of the assessment and reasons for the manager’s/supervisor’s assessment;
   b) of the underperformance action/s (subclause H4.17) proposed to be taken and the reasons for proposing this action;
   c) of the employee’s right to respond in writing to the proposed action within a period of not more than seven calendar days.

H4.17 At any time after seven calendar days from the date the head of service advised the employee under subclause H4.16, and after considering any response from the employee, the head of service may decide to take one or more of the following underperformance actions:
   a) transfer the employee to other duties (at or below current pay);
   b) defer the employee’s increment;
   c) reduce the employee’s incremental point;
   d) temporarily or permanently reduce the employee’s classification and pay;
   e) remove any monetary benefit derived through an existing Attraction and Retention Incentive (or existing SEA);
   f) terminate the employee’s employment.

H4.18 The head of service will inform the employee in writing of the decision made under subclause H4.17, the reasons for the decision and the appeal mechanisms available under this Agreement.

H4.19 At any time in these procedures, the employee may elect to be retired on the grounds of inefficiency.

H.5 APPEAL RIGHTS

H5.1 The employee has the right under Section J to appeal any underperformance action taken under subclause H4.17, except action to terminate the employee’s employment.

H5.2 The employee may have an entitlement to bring an action under the FW Act in respect of any termination of employment under this Agreement. This will be the sole right of review of such an action.
H.6 MISCONDUCT & DISCIPLINE

Objectives and Application

H6.1 This clause establishes procedures for managing misconduct or alleged misconduct by an employee.

H6.2 In applying these procedures to officers on probation, an eligible casual employee or a temporary employee who has been engaged for over six months, the head of service may determine that procedures and practices throughout clauses H6 to H10 apply on an appropriate and proportionate basis according to the circumstances of the case.

H6.3 The objective of these procedures is to encourage the practical and expeditious resolution of misconduct issues in the workplace.

H6.4 All parties have an obligation to participate in misconduct processes in good faith.

What is Misconduct

H6.5 For the purposes of this Section, misconduct includes any of the following:

a) the employee fails to meet the obligations set out in section 9 of the PSM Act 1994 (this includes bullying and harassment or discrimination);

b) the employee engages in conduct that has brought, or is likely to bring, the Directorate or ACTPS into disrepute;

c) a period of unauthorised absence and the employee does not offer a satisfactory reason on return to work;

d) the employee is convicted of a criminal offence or where a court finds that an employee has committed an offence but a conviction is not recorded, taking into account the circumstances and seriousness of the offence, the duties of the employee and the interests of the ACTPS and/or of the Directorate;

e) the employee fails to notify the head of service of criminal charges in accordance with clause H11; or

f) the employee makes a vexatious or knowingly false allegation against another employee.
**What is Serious Misconduct**

**H6.6** Serious misconduct means conduct that is so serious that it may be inconsistent with the continuation of the employee’s employment with the Territory. Serious misconduct includes but is not limited to the kinds of serious misconduct defined within the Fair Work Regulations.

**H.7 DEALING WITH ALLEGATIONS OF MISCONDUCT**

**H7.1** If, after receiving a recommendation from the manager/supervisor under paragraph H2.2(e), the head of service is of the opinion that the alleged misconduct cannot be resolved without recourse to investigation, the head of service will:

a) inform the appropriate Human Resources Manager that an investigation is to take place;

b) with the assistance of the appropriate Human Resource Manager make arrangements for an appropriately trained or experienced person (the investigating officer) to investigate the alleged misconduct in accordance with clause H9; and

c) inform the employee in writing of the alleged misconduct and that the matter is to be investigated.

**H7.2** Depending on the nature of the alleged misconduct the head of service may immediately transfer the employee to other duties, re-allocate duties away from the employee or suspend the employee with pay in accordance with clause H8. Where serious misconduct is alleged the head of service may suspend an employee without pay.

**H7.3** Notwithstanding the provisions of this section, the employment of an employee may be summarily terminated without notice for serious and wilful misconduct.

**H7.4** No investigation may be necessary where the employee fully admits to the alleged misconduct and the employee agrees that there is no need for an investigation. In such cases, the head of service may determine the appropriate disciplinary action/sanction in accordance with clause H10. The head of service must ensure that they have sufficient information concerning the nature and full circumstances of the misconduct; any mitigating factors, and details of the employee’s prior service record and performance to enable a fair and reasonable determination under clause H10 to be made.
H.8 SUSPENSION, REASSIGNMENT OR TRANSFER

H8.1 This clause applies to all employees including eligible casual employees and employees on probation.

H8.2 Subject to these procedures, the head of service may suspend with or without pay, reassign or transfer an employee where the head of service is satisfied that it is in the public interest, the interests of the ACTPS or the interests of the Directorate to do so while the alleged misconduct is investigated.

H8.3 The procedures applying under sub-clauses H8.4, H8.5 and H8.10 will also apply in circumstances where an employee has been reassigned or transferred with pay to other duties following an allegation of misconduct.

H8.4 The head of service will not normally suspend, reassign or transfer an employee without first informing the employee of the reasons for the proposed suspension, reassignment or transfer and giving the employee the opportunity to be heard. However the head of service may suspend an employee first and then give the employee the reasons for the suspension and an opportunity to be heard, where, in the head of service’s opinion, this is appropriate in the circumstances.

H8.5 Whilst suspended with pay an employee will be paid:

a) the employee’s ordinary hourly rate of pay and any higher duties allowances that would have been paid to the employee for the period they would otherwise have been on duty; and

b) overtime (but not overtime meal allowance) and shift penalty payments where there is a regular and consistent pattern of extra duty or shift work being performed over the previous six months which would have been expected to continue but for the suspension from duty; and

c) any other allowance or payment (including under a Attraction and Retention Incentive entered into in accordance with Annex B to this Agreement) of a regular or on-going nature that is not conditional on performance of duties.

H8.6 Where a decision is made to suspend an employee with pay no appeal or review of that decision is available.

H8.7 An employee who is suspended must be available to attend work and participate in the disciplinary process as directed within 48 hours of the direction being given unless they are on authorised leave.

H8.8 Suspension without pay is usually only appropriate where serious misconduct is alleged or where the employee is charged with a criminal offence that would in the opinion of the head of service be incompatible with the continuation of the employee’s employment.
H8.9 Whilst suspended without pay:

a) the suspension will not be for more than thirty calendar days, unless exceptional circumstances apply;

b) the employee may apply to the head of service for permission to seek alternate employment outside the ACTPS for the period of the suspension or until the permission is revoked;

c) in cases of demonstrated hardship, the employee may access accrued long service leave and/or annual leave;

d) the employee may apply to the head of service for the suspension to be with pay on the grounds of demonstrated hardship.

H8.10 The suspension without pay should be reviewed every thirty calendar days unless the head of service considers that, in the circumstances, a longer period is appropriate.

H8.11 An employee suspended without pay and who is later acquitted of the criminal offence, or found not to have been guilty of the misconduct:

a) is entitled to be repaid the amount by which the employee's pay was reduced; and

b) is entitled to be credited with any period of long service or annual leave that was taken.

H8.12 Where an employee is suspended and later found guilty of a criminal offence (whether or not a conviction is recorded), or is found guilty of misconduct and is dismissed because of the offence or misconduct, a period of suspension under this clause does not count as service for any purpose, unless the head of service determines otherwise.

H.9 INVESTIGATIONS

H9.1 The role of the investigating officer is to establish the facts of the allegations and to provide a report of those facts to the head of service.

H9.2 The investigating officer will:

a) inform the employee in writing of the particulars of the alleged misconduct, and details concerning the investigative process; and

b) give the employee a reasonable opportunity to respond to allegations, in writing and/or at a scheduled interview, before making a finding of fact; and

c) provide the employee with at least twenty four hours written notice prior to conducting an interview, and advise the employee if the interview is to be recorded electronically; and
d) advise the employee that the employee may have a second person present during the interview, who may be the employee’s union representative or other individual acting as support person and will allow reasonable opportunity for this to be arranged; and

e) as soon as practicable take any further steps considered necessary to establish the facts of the allegations; and

f) provide a record of the interview to the employee to correct any inaccuracies in the record and to provide any further response in relation to the allegations before signing the record. If the employee elects not to sign the record, then details of the offer will be noted; and

g) provide a written report to the head of service setting out the investigating officer’s findings of fact.

H9.3 The investigating officer’s findings of fact will be made on the balance of probabilities.

H9.4 The head of service may authorise access to ACTPS information and communication technology (ICT) records including email, computer, work phone records, or building access logs if, in the opinion of the head of service, the investigating officer requires access in order to establish the facts of the allegations.

H9.5 After considering the report from the investigating officer, the head of service will make a determination on the balance of probabilities as to whether misconduct has occurred.

H9.6 If the head of service determines that the misconduct has not occurred, the head of service will notify the employee of this finding and advise that no sanctions will be imposed.

H.10 DISCIPLINARY ACTION AND SANCTIONS

H10.1 In circumstances where the head of service, following an investigation or full admission by the employee, determines that misconduct has occurred, and the head of service considers disciplinary action is appropriate, one or more of the following sanctions may be taken in relation to the employee:

a) a written warning and admonishment;

b) a financial penalty which can:

   i. reduce the employee’s incremental level,
   ii. defer the employee’s incremental advancement,
   iii. impose a fine on the employee,
   iv. fully or partially reimburse the employer for damage wilfully incurred to property or equipment;

c) transfer the employee temporarily or permanently to another position at level or to a lower classification level;
d) remove any monetary benefit derived through an existing Attraction and Retention Incentive (or existing SEA);

e) termination of employment.

H10.2 In relation to paragraph H10.1(c), if an employee’s classification is reduced as a result of disciplinary action, service before the demotion is not counted towards an increment for any higher duties the employee performs after demotion.

H10.3 Sanctions imposed under these procedures must be proportionate to the degree of misconduct concerned. In determining the appropriate sanction, the following factors must be considered:

a) the nature and seriousness of the misconduct;

b) the degree of relevance to the employee’s duties or to the reputation of the Directorate or the ACTPS;

c) the circumstances of the misconduct;

d) any mitigating factors, including any full admission of guilt; and

e) the previous employment history and the general conduct of the employee.

H10.4 Before taking disciplinary action, the head of service will advise the employee in writing of:

a) the decision that misconduct has been found to have occurred; and

b) the reasons for arriving at this decision; and

c) the sanction proposed; and

d) the period during which the employee has to respond to the proposed disciplinary action (which must be a minimum of fourteen calendar days).

H10.5 After considering the employee’s response to the proposed action, or if the employee has not responded at any time after the period outlined in paragraph H10.4 (d) has lapsed, the head of service may take disciplinary action. The head of service will inform the employee in writing of:

a) the final decision regarding disciplinary action to be taken; and

b) the date of effect and/or, if relevant, the cessation of the action; and

c) the appeal mechanisms that are available under this Agreement.
H.11 CRIMINAL CHARGES

H11.1 An employee must advise the head of service in writing of any criminal charges laid against the employee in circumstances where a reasonable person would believe that the interests of the Directorate or of the ACTPS may be adversely affected, taking into account:

a) the circumstances and seriousness of the alleged criminal offence; and
b) the employee’s obligations under section 9 of the PSM Act; and
c) the effective management of the employee’s work area; and
d) the integrity and good reputation of the ACTPS and the Directorate; and
e) the relevance of the offence to the employee's duties.

H11.2 Where criminal charges are laid against an employee and the interests of the Directorate or of the ACTPS may be adversely affected, the head of service may suspend the employee in accordance with the suspension arrangements under clause H8.

H11.3 If an employee is convicted of a criminal offence the employee will provide a written statement regarding the circumstances of the offence to the head of service within seven calendar days of the conviction or the finding.

H11.4 Where an employee is convicted of a criminal offence and the conviction or finding has adversely affected the interests of the Directorate or the ACTPS, the head of service may impose a sanction for misconduct against the employee in accordance with clause H10.

H.12 RIGHT OF APPEAL

H12.1 An employee has the right under Section J to appeal against any decision to take disciplinary action or to apply a sanction under subclause H10.1, or against any decision taken under clause H8 to suspend the employee without pay, or to transfer the employee at reduced pay, except action to terminate the employee's employment.

H12.2 An employee may have an entitlement to bring an action under the FW Act in respect of any decision under this Section to terminate the employee's employment. This will be the sole right of review of such a decision.

H12.3 The appeal procedures under Section H apply to the exclusion of the rights of appeal and review under the PSM Act 1994 and the internal review procedures contained in Section I of this Agreement.
Section 9 Public sector conduct

(1) A public servant must
   
   (a) take all reasonable steps to avoid a conflict of interest; and
   
   (b) declare or manage a conflict of interest that cannot reasonably be avoided; and
   
   (c) when acting in connection with the public servant’s job
       (i) comply with laws applying in the Territory; and
       
       (ii) comply with any lawful and reasonable direction given by a person with the
            authority to give the direction; and
       
       (iii) if dealing with a member of the public make all reasonable efforts to help the
              person to understand the person’s entitlements, and any requirement the person
              is obliged to meet, under a territory law; and
       
       (iv) treat all people with courtesy and sensitivity to their rights and aspirations; and
   
   (d) do the public servant’s job with reasonable care and diligence, impartiality and
       honesty.
   
(2) A public servant must not

   (a) behave in a way that
       (i) is inconsistent with the public sector values; or
       
       (ii) undermines the integrity and reputation of the service; or
   
   (b) take improper advantage of the public servant’s job or information gained through the
       public servant’s job; or
   
   (c) improperly use a Territory resource, including information, accessed through the
       public servant’s job; or
   
   (d) without lawful authority
       (i) disclose confidential information gained through the public servant’s job; or

       Note: The , s 153 (1) makes it an offence for a public servant to disclose information that it is the public servant’s duty not to disclose.

       (ii) make a comment that reasonably appears to be an official comment; or
   
   (e) when acting in connection with the public servant’s job—bully, harass or intimidate
       anyone; or
   
   (f) when doing the public servant’s job apply improper influence, favouritism or
       patronage.
(3) For a misconduct procedure, failing to act in a way that is consistent with subsection (1) or (2) may be misconduct.

Note  A misconduct procedure means a procedure set out in an industrial instrument or prescribed by regulation (see dict, def misconduct procedure).

Dictionary - misconduct procedure, in relation to a public servant, means—
(a) if an industrial instrument covers the public servant and includes procedures for misconduct—the misconduct procedures in the industrial instrument; or
(b) in any other case—a prescribed procedure.

(4) A public servant (a discloser) must tell the following person about any maladministration or corrupt or fraudulent conduct by a public servant or a public sector member of which the discloser becomes aware:

(a) the head of service;

(b) if the alleged maladministration or corrupt or fraudulent conduct is by the head of service—
   (i) the director-general of the administrative unit in which the public servant is employed; or
   (ii) if the head of service is the director-general of the administrative unit in which the public servant is employed—another director-general.

(5) This section does not—

(a) affect the operation of any other Act; or

(b) create or affect any other legal right.
ATTACHMENT 3
Professional Standards Unit
Investigation Request

This form must be completed in full and signed by the Referral Delegate to authorise an investigation. An Investigation Delegate should be nominated by the Directorate. However, the Public Sector Standards Commissioner may choose to appoint an alternative delegate where he/she considers it to be appropriate.

Scan and email the completed form and all associated documents to the Professional Standards Unit via ProfessionalStandardsUnit@act.gov.au.

<table>
<thead>
<tr>
<th>Work area</th>
</tr>
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<tbody>
<tr>
<td>Directorate: Community Services</td>
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<tr>
<td>Division: Child &amp; Youth Protection Services</td>
</tr>
</tbody>
</table>

| Respondent |

| Enterprise Agreement: ACT Public Sector Support Services Enterprise Agreement 2013-2017 |
| Respondent notified of investigation | Date of letter: 1 December 2016 |

| Potential misconduct |

| Date of incident: 24 November 2016 | Location of incident: Bimberi Youth Justice Centre |

| Complainant(s) (leave blank if not applicable, or attach a separate list of additional complainants) |

| Name See background section | Classification: |
| Title: | Employment Status: Other |
| Email: | Phone: |

| Written complaint or application attached | Date of complaint: |

September 2016
<table>
<thead>
<tr>
<th>Name:</th>
<th>Classification:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title:</td>
<td>Employment Status: Temporary</td>
</tr>
<tr>
<td>Email:</td>
<td>Phone:</td>
</tr>
<tr>
<td>Written complaint or application attached</td>
<td>Date of complaint:</td>
</tr>
</tbody>
</table>

**Background** — overview of incident/workplace issue, any action taken and what the preliminary allegation(s) are (Attach a separate sheet if necessary)

Sched 2.2 (a)(ii) FOI Act 2016, Sched 2.2 (a)(xii) FOI Act 2016
Professional Standards Unit | Investigation Request

<table>
<thead>
<tr>
<th>Terms of Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Conduct an investigation, in accordance with the relevant Enterprise Agreement, into the allegation(s) of misconduct notified to the Respondent.</td>
</tr>
<tr>
<td>2. Provide a written report, including findings of fact in relation to the allegation(s), to the Investigation Delegate.</td>
</tr>
<tr>
<td>3. Any additional allegations of misconduct against the Respondent, or any other ACTPS employee, identified during this process should be referred to the employee’s Directorate for a determination on how to proceed.</td>
</tr>
<tr>
<td>4. <em>(Any additional instructions)</em></td>
</tr>
</tbody>
</table>
# Professional Standards Unit | Investigation Request

## Referral Delegate

<table>
<thead>
<tr>
<th>Delegate signature:</th>
<th>Date: 09/12/16</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name: Craig Rose</td>
<td>Title: acting Manager Employee Relations</td>
</tr>
<tr>
<td>Email: <a href="mailto:craig.rose@act.gov.au">craig.rose@act.gov.au</a></td>
<td>Phone: 620 71210</td>
</tr>
</tbody>
</table>

## Investigation Delegate nominated

<table>
<thead>
<tr>
<th>Name: Christine Murray</th>
<th>Title: Director People Management</th>
</tr>
</thead>
<tbody>
<tr>
<td>Email: <a href="mailto:christine.murray@act.gov.au">christine.murray@act.gov.au</a></td>
<td>Phone: 620 50413</td>
</tr>
</tbody>
</table>

**Who should the investigator contact to arrange an Induction meeting (e.g. Executive Assistant / Delegate)?**

<table>
<thead>
<tr>
<th>Name: Chikee Bejar</th>
<th>Phone: 620 58947</th>
</tr>
</thead>
</table>

## HR Contact

<table>
<thead>
<tr>
<th>Name: Phillip Rocks</th>
<th>Title: Senior Employee Relations Advisor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Email: <a href="mailto:phillip.rocks@act.gov.au">phillip.rocks@act.gov.au</a></td>
<td>Phone: 620 50448</td>
</tr>
</tbody>
</table>
Sched 2.2 (a)(ii) FOI Act 2016

DIRECTION

On 25th November 2016 I was tasked by Senior Manager Greg Corben to conduct a preliminary assessment into allegations of misconduct made against

Sched 2.2 (a)(ii) FOI Act 2016
RECOMMENDATIONS

I recommend in accordance with Section H2 of the Enterprise Agreement that this matter be investigated Sched 2.2 (a)(ii) FOI Act 2016
Sched 2.2 (a)(ii) FOI Act 2016

Paula Mitchell
Operations Manager

25th November 2016

Attachments:
- Copy of CCTV footage
- Audio recording
- Photos of the view from the observation room
- Copy of Observation log entries for 24/11/2016
- Incident file
- Staff note from
- Staff note from
- Staff note from

Noted.
Workforce Management notified 24 November 2016.
Report/Assessment forwarded Monday 28th November.

Dear

Notification of Misconduct Allegations and Immediate Suspension

I am writing to inform you of allegations of misconduct by you.

In accordance with Clause H7 (Dealing With Allegations of Misconduct) of the *ACT Public Sector Support Services Enterprise Agreement 2013-2017* (the Enterprise Agreement) I have considered the information I currently have before me in relation to the allegations.

I have determined that this matter is serious enough to warrant a formal investigation under the terms of Section H of the Enterprise Agreement (a copy of Section H of the Enterprise Agreement and all clauses in that section is provided at Attachment A).

I am also writing to inform you of my decision to suspend you from duty effective immediately, in accordance with Clause H8 of the Enterprise Agreement, while the allegations of misconduct are investigated.

Allegations of Misconduct

The allegations of misconduct are:

* **Sched 2.2 (a)(ii) FOI Act 2016**
Clause H6.2 of the Enterprise Agreement states with respect to the application of the procedures set out in Section H of the Enterprise Agreement for managing misconduct or alleged misconduct, that:

In applying these procedures to... an eligible casual employee... the head of service may determine that procedures and practices throughout clauses H6 to H10 apply on an appropriate and proportionate basis according to the circumstances of the case.

An investigator will therefore undertake an independent investigation into the allegations noted above in accordance with Clause H9 of the Enterprise Agreement, subject to any modification, if appropriate, in accordance with Clause H6.2, and will provide me with a written report in respect of their findings.

Section H requires the application of the principles of natural justice and procedural fairness to action taken under that Section and as part of the investigation process you will be afforded an opportunity to respond to the allegations.

You are entitled to have a support person present during any interview but should note that your chosen support person must not be someone who has any involvement in the matters under investigation.

The investigator will write to you separately and provide you with any further details of the allegations and make interview arrangements with you in due course. You are required to be contactable during business hours for the purposes of this investigation and must be available to attend work and participate in the disciplinary process as directed within 48 hours of the direction being given unless you are on authorised leave.
Misconduct

Should the allegations be proven on the balance of probabilities, this may constitute misconduct. Misconduct is defined in Clause H6.5 of the Enterprise Agreement to consist of any of the following:

- the employee fails to meet their obligations set out in Section 9 of the Public Sector Management Act 1994 (PSM Act) (see Attachment B) (including bullying and harassment); and

- the employee’s conduct brings, or is likely to bring, the Directorate or ACT Public Service into disrepute.

Serious Misconduct

Clause H6.6 of the Enterprise Agreement provides a description of serious misconduct as being conduct that is so serious that it may be inconsistent with the continuation of the employee’s employment with the Territory, and including but not being limited to the kinds of serious misconduct defined within the Fair Work Regulations.

Regulation 1.07 in the Fair Work Regulations 2009 lists the following behaviours as ‘serious misconduct’:

- Wilful or deliberate behaviour by an employee that is inconsistent with the continuation of the contract of employment;

- Conduct that causes serious and imminent risk to the reputation, viability or profitability of the employer’s business.

- The employee refusing to carry out a lawful and reasonable instruction that is consistent with the employee’s contract of employment.

Admission

Clause H7.4 of the Enterprise Agreement states no investigation is necessary where the employee fully admits to the alleged misconduct and agrees that there is no need for an investigation. In such cases, the head of service (or the relevant delegate) may determine the appropriate discipline action in accordance with Clause H10 of the Enterprise Agreement.
Disciplinary Action

Should it be determined that you have acted in a manner that falls within the definition of misconduct, one or more of the following disciplinary actions may be taken under the terms of Clause H10.1 of the Enterprise Agreement:

a) a written warning and admonishment;
b) a financial penalty which can:
   i. reduce the employee’s incremental level,
   ii. defer the employee’s incremental advancement,
   iii. impose a fine on the employee,
   iv. fully or partially reimburse the employer for damage wilfully incurred to property or equipment;
c) transfer the employee temporarily or permanently to another position at level or to a lower classification level;
d) remove any monetary benefit derived through an existing Attraction and Retention Incentive (or existing SEA); and
e) termination of employment.

Notification of Suspension

I am of the opinion that it is in the interests of the Directorate, the ACTPS and the public, that you be suspended from duty w Sched 2.2 (a)(ii) FOI Act 2016

This suspension will apply under the terms of Clause H8 of the Enterprise Agreement (refer Attachment A) and will commence immediately on the date appearing on this letter.

In accordance with Clause H8.4 of the Enterprise Agreement I am providing you with the opportunity to respond to my decision to suspend you without pay. Any response you wish to provide should be provided to me in writing, setting out the reasons why you should not be suspended without pay. Please provide any response to me by close of business seven working days from the date of this letter.

In accordance with Clause H8.10 of the Enterprise Agreement your suspension from duty without pay will be subject to review and you will be informed if it is to be altered. I draw your attention specifically to Clauses H8.8-H8.11 at Attachment A in regard to suspension.

Sched 2.2 (a)(ii) FOI Act 2016

While suspended you are directed not to return to your normal workplace, or any other Directorate workplace unless given permission to do so by myself or Mr Craig Rose, A/g Manager Employee Relations. To maintain the integrity of the investigation, you are directed not to discuss the above allegations, with any employee, client or former client of the Directorate without first speaking to me or Mr Rose. A failure to comply with this direction may result in further disciplinary action, up to and including the termination of your employment.
EAP

The Employee Assistance Program is available to provide confidential and professional counselling to you and members of your family throughout this process. You may access this service by phoning Converge International on 1800 337 068.

If you have any queries, please contact Craig Rose by email craig.rose@act.gov.au or by telephone 6207 1210

Yours sincerely,

Christine Murray
Director People Management
Delegate of the Director-General

| December 2016
Section H - Workplace Values and Behaviours

H.1 INTRODUCTION

H1.1 Except where otherwise noted, this Section applies to officers, temporary employees engaged for over six months and "eligible casual employees" as defined within the dictionary. The Section does not apply to "casual employees" as defined within the dictionary, or employees on probation unless expressly stated.

H1.2 Managers/supervisors and employees have a common interest in ensuring that workplace behaviours are consistent with, and apply the values and general principles set out in section 9 of the PSM Act 1994 and the ACT Public Service Code of Conduct and Signature Behaviours. This involves the development of an ethical and safe workplace in which managers/supervisors and employees act responsibly and are accountable for their actions and decisions.

H1.3 The following provisions of Section H contain procedures for managing workplace behaviours that do not meet expected standards, including the management of cases of unsatisfactory work performance and misconduct.

H1.4 These procedures for managing workplace behaviours and values must be applied in accordance with the principles of natural justice and procedural fairness, and in a manner that promotes the values and general principles of the ACTPS set out in section 9 of the PSM Act 1994.

H1.5 Any misconduct, underperformance, internal review or appeal process under the previous enterprise agreement that is not completed as at the date of commencement of this enterprise agreement will be completed under the previous enterprise agreement. Any right of appeal from that process will also be set out in the previous enterprise agreement.

H.2 PRELIMINARY ASSESSMENT

H2.1 In cases where an allegation of inappropriate behaviour is made, the manager/supervisor will initiate a preliminary assessment process to determine whether further action is required. The manager/supervisor may inform and/or seek the assistance of an appropriate Human Resources Manager.

H2.2 Following this process if the manager/supervisor determines that the allegations:

a) require no further action, then no further action needs to be taken;

b) can be resolved through counselling, other remedial action, or assistance to the employee then the manager/supervisor will implement such action;

c) are better resolved through Internal Review procedures set out in this Agreement or appropriate external mechanisms the manager/supervisor will refer the matter accordingly;
H2.3 The manager/supervisor will inform the employee where a preliminary assessment process is commenced under subclause H2.1 if it is appropriate to do so.

H2.4 In performing the preliminary assessment the head of service may authorise access to ACTPS information and communication technology (ICT) records including email, computer, work phone records, or building access logs if, in the opinion of the head of service, access is necessary to determine whether further action is necessary.

**H.3 COUNSELLING**

H3.1 Counselling may happen outside of the misconduct and underperformance processes. All parties have an obligation to participate in counselling in good faith.

H3.2 In cases where counselling is considered to be appropriate, the employee will be invited to have a support person, who may be the employee’s union or other employee representative, present at the counselling and will allow reasonable opportunity for this to be arranged.

H3.3 The manager/supervisor or the head of service will create a formal record of the counselling which will include details about the ways in which the employee’s conduct needs to change or improve and the time frames within which these changes or improvements must occur.

H3.4 The record of the counselling will be provided to the employee and the employee given an opportunity to correct any inaccuracies and provide comments before signing the record. The employee’s signature is taken as representing their full agreement that the record accurately reflects the discussion. If the employee elects not to sign the record, then details of the offer and any reasons given for refusal will be clearly noted.

H3.5 Where the manager/supervisor or the head of service considers that the employee’s conduct has not improved following counselling, an underperformance or misconduct process may be undertaken.
**H.4 UNDERPERFORMANCE**

H4.1 Under this clause, procedures are established for managing underperformance by an employee.

H4.2 This clause applies to all employees, except casual employees. In applying these procedures to officers on probation, temporary employees engaged for over six months, or eligible casual employees, the head of service may determine that procedures and practices throughout clause H4 may be applied on an appropriate and proportionate basis according to the circumstances of the case, and in accordance with the principles of procedural fairness and natural justice.

H4.3 The objectives of these procedures are to:

a) provide advice and support to an employee whose performance is below the standard required; and

b) to provide a fair, prompt and transparent framework for action to be taken where an employee continues to perform below expected standard.

H4.4 Consistent with good management practice, concerns about underperformance should be raised by the manager/supervisor with the employee at the time that the concerns arise. The manager/supervisor should offer advice and support to the employee to overcome these concerns. The manager/supervisor should inform the employee that the following procedures might be invoked if the underperformance continues.

H4.5 In order to ensure that these procedures operate in a fair and transparent manner, the manager/supervisor will be responsible for documenting all relevant discussions. The employee must be given the opportunity to comment on any records before signing them.

H4.6 All parties have an obligation to participate in underperformance processes in good faith.

**Step One: Action Plan**

H4.7 Where a manager/supervisor assesses that an employee’s work performance continues to be below expected standards after having previously discussed concerns with the employee in line with subclause H4.4, the manager/supervisor will inform the employee in writing of this assessment and the reasons for it. The employee will be invited by the manager/supervisor to provide written comments on this assessment, including any reasons that in the employee’s view may have contributed to their recent work performance.

H4.8 After taking into account the comments from the employee, the manager/supervisor must prepare an action plan in consultation with the employee.
Attachment A: Section H of the ACT Public Sector Support Services Enterprise Agreement 2013-2017

H4.9 The manager/supervisor will invite the employee to have a support person, who may be the employee’s union or other employee representative, present at discussions to develop the action plan and will allow reasonable opportunity for this to be arranged.

H4.10 The action plan will:

a) identify the expected standards of work required of the employee on an ongoing basis;

b) identify and/or develop any learning and development strategies that the employee should undertake;

c) outline the potential underperformance actions that may be taken if the employee does not meet the expected standards;

d) specify the action plan period, which should not normally be less than one month and should not exceed six months to allow the employee sufficient opportunity to achieve the required standard; and

e) specify the assessment criteria to be measured within the action plan period.

H4.11 Any current performance agreement will be suspended during the period of the action plan. Any incremental advancement action for the employee will be suspended during the action plan period.

Step Two: Regular Assessment

H4.12 During the action plan period, the manager/supervisor will make regular written assessments (desirably every fortnight) of the employee’s work performance under the action plan. The employee will be given an opportunity to provide written comments on these assessments.

H4.13 If the manager/supervisor considers that further assessment time is needed the manager/supervisor may extend the action plan period. However, the extended assessment time must not result in the action plan exceeding six months duration. The manager/supervisor will inform the employee in writing of the decision to extend the assessment time and the duration of the action plan.

Step Three: Final Assessment / Report

H4.14 If at the end of the action plan period, the manager/supervisor assesses the work performance of the employee as satisfactory, no further action will be taken under these procedures at that time. The manager/supervisor will inform the employee in writing of this decision.

H4.15 If at the end of the action plan period, the manager/supervisor assesses the work performance of the employee as not satisfactory, the manager/supervisor will provide a report including the assessment and reasons for the assessment to the head of service.
**Step Four: Underperformance Action**

H4.16 The head of service will advise the employee in writing:

a) of the assessment and reasons for the manager's/supervisor's assessment;

b) of the underperformance action/s (subclause H4.17) proposed to be taken and the reasons for proposing this action;

c) of the employee's right to respond in writing to the proposed action within a period of not more than seven calendar days.

H4.17 At any time after seven calendar days from the date the head of service advised the employee under subclause H4.16, and after considering any response from the employee, the head of service may decide to take one or more of the following underperformance actions:

a) transfer the employee to other duties (at or below current pay);

b) defer the employee's increment;

c) reduce the employee's incremental point;

d) temporarily or permanently reduce the employee's classification and pay;

e) remove any monetary benefit derived through an existing Attraction and Retention Incentive (or existing SEA);

f) terminate the employee's employment.

H4.18 The head of service will inform the employee in writing of the decision made under subclause H4.17, the reasons for the decision and the appeal mechanisms available under this Agreement.

H4.19 At any time in these procedures, the employee may elect to be retired on the grounds of inefficiency.

**H.5 APPEAL RIGHTS**

H5.1 The employee has the right under Section J to appeal any underperformance action taken under subclause H4.17, except action to terminate the employee's employment.

H5.2 The employee may have an entitlement to bring an action under the FW Act in respect of any termination of employment under this Agreement. This will be the sole right of review of such an action.
H.6 MISCONDUCT & DISCIPLINE

Objectives and Application

H6.1 This clause establishes procedures for managing misconduct or alleged misconduct by an employee.

H6.2 In applying these procedures to officers on probation, an eligible casual employee or a temporary employee who has been engaged for over six months, the head of service may determine that procedures and practices throughout clauses H6 to H10 apply on an appropriate and proportionate basis according to the circumstances of the case.

H6.3 The objective of these procedures is to encourage the practical and expeditious resolution of misconduct issues in the workplace.

H6.4 All parties have an obligation to participate in misconduct processes in good faith.

What is Misconduct

H6.5 For the purposes of this Section, misconduct includes any of the following:

a) the employee fails to meet the obligations set out in section 9 of the PSM Act 1994 (this includes bullying and harassment or discrimination);

b) the employee engages in conduct that has brought, or is likely to bring, the Directorate or ACTPS into disrepute;

c) a period of unauthorised absence and the employee does not offer a satisfactory reason on return to work;

d) the employee is convicted of a criminal offence or where a court finds that an employee has committed an offence but a conviction is not recorded, taking into account the circumstances and seriousness of the offence, the duties of the employee and the interests of the ACTPS and/or of the Directorate;

e) the employee fails to notify the head of service of criminal charges in accordance with clause H11; or

f) the employee makes a vexatious or knowingly false allegation against another employee.
**What is Serious Misconduct**

H6.6 Serious misconduct means conduct that is so serious that it may be inconsistent with the continuation of the employee's employment with the Territory. Serious misconduct includes but is not limited to the kinds of serious misconduct defined within the Fair Work Regulations.

**H.7 DEALING WITH ALLEGATIONS OF MISCONDUCT**

H7.1 If, after receiving a recommendation from the manager/supervisor under paragraph H2.2(e), the head of service is of the opinion that the alleged misconduct cannot be resolved without recourse to investigation, the head of service will:

a) inform the appropriate Human Resources Manager that an investigation is to take place;

b) with the assistance of the appropriate Human Resource Manager make arrangements for an appropriately trained or experienced person (the investigating officer) to investigate the alleged misconduct in accordance with clause H9; and

c) inform the employee in writing of the alleged misconduct and that the matter is to be investigated.

H7.2 Depending on the nature of the alleged misconduct the head of service may immediately transfer the employee to other duties, re-allocate duties away from the employee or suspend the employee with pay in accordance with clause H8. Where serious misconduct is alleged the head of service may suspend an employee without pay.

H7.3 Notwithstanding the provisions of this section, the employment of an employee may be summarily terminated without notice for serious and wilful misconduct.

H7.4 No investigation may be necessary where the employee fully admits to the alleged misconduct and the employee agrees that there is no need for an investigation. In such cases, the head of service may determine the appropriate disciplinary action/sanction in accordance with clause H10. The head of service must ensure that they have sufficient information concerning the nature and full circumstances of the misconduct, any mitigating factors, and details of the employee's prior service record and performance to enable a fair and reasonable determination under clause H10 to be made.
H.8 SUSPENSION, REASSIGNMENT OR TRANSFER

H8.1 This clause applies to all employees including eligible casual employees and employees on probation.

H8.2 Subject to these procedures, the head of service may suspend with or without pay, reassign or transfer an employee where the head of service is satisfied that it is in the public interest, the interests of the ACTPS or the interests of the Directorate to do so while the alleged misconduct is investigated.

H8.3 The procedures applying under sub-clauses H8.4, H8.5 and H8.10 will also apply in circumstances where an employee has been reassigned or transferred with pay to other duties following an allegation of misconduct.

H8.4 The head of service will not normally suspend, reassign or transfer an employee without first informing the employee of the reasons for the proposed suspension, reassignment or transfer and giving the employee the opportunity to be heard. However the head of service may suspend an employee first and then give the employee the reasons for the suspension and an opportunity to be heard, where, in the head of service’s opinion, this is appropriate in the circumstances.

H8.5 Whilst suspended with pay an employee will be paid:

a) the employee’s ordinary hourly rate of pay and any higher duties allowances that would have been paid to the employee for the period they would otherwise have been on duty; and

b) overtime (but not overtime meal allowance) and shift penalty payments where there is a regular and consistent pattern of extra duty or shift work being performed over the previous six months which would have been expected to continue but for the suspension from duty; and

c) any other allowance or payment (including under a Attraction and Retention Incentive entered into in accordance with Annex B to this Agreement) of a regular or on-going nature that is not conditional on performance of duties.

H8.6 Where a decision is made to suspend an employee with pay no appeal or review of that decision is available.

H8.7 An employee who is suspended must be available to attend work and participate in the disciplinary process as directed within 48 hours of the direction being given unless they are on authorised leave.

H8.8 Suspension without pay is usually only appropriate where serious misconduct is alleged or where the employee is charged with a criminal offence that would in the opinion of the head of service be incompatible with the continuation of the employee’s employment.
H8.9 Whilst suspended without pay:

a) the suspension will not be for more than thirty calendar days, unless exceptional circumstances apply;

b) the employee may apply to the head of service for permission to seek alternate employment outside the ACTPS for the period of the suspension or until the permission is revoked;

c) in cases of demonstrated hardship, the employee may access accrued long service leave and/or annual leave;

d) the employee may apply to the head of service for the suspension to be with pay on the grounds of demonstrated hardship.

H8.10 The suspension without pay should be reviewed every thirty calendar days unless the head of service considers that, in the circumstances, a longer period is appropriate.

H8.11 An employee suspended without pay and who is later acquitted of the criminal offence, or found not to have been guilty of the misconduct:

a) is entitled to be repaid the amount by which the employee's pay was reduced; and

b) is entitled to be credited with any period of long service or annual leave that was taken.

H8.12. Where an employee is suspended and later found guilty of a criminal offence (whether or not a conviction is recorded), or is found guilty of misconduct and is dismissed because of the offence or misconduct, a period of suspension under this clause does not count as service for any purpose, unless the head of service determines otherwise.

H.9 INVESTIGATIONS

H9.1 The role of the investigating officer is to establish the facts of the allegations and to provide a report of those facts to the head of service.

H9.2 The investigating officer will:

a) inform the employee in writing of the particulars of the alleged misconduct, and details concerning the investigative process; and

b) give the employee a reasonable opportunity to respond to allegations, in writing and/or at a scheduled interview, before making a finding of fact; and

c) provide the employee with at least twenty four hours written notice prior to conducting an interview, and advise the employee if the interview is to be recorded electronically; and
Attachment A: Section H of the ACT Public Sector Support Services Enterprise Agreement 2013-2017

d) advise the employee that the employee may have a second person present during the interview, who may be the employee’s union representative or other individual acting as support person and will allow reasonable opportunity for this to be arranged; and

e) as soon as practicable take any further steps considered necessary to establish the facts of the allegations; and

f) provide a record of the interview to the employee to correct any inaccuracies in the record and to provide any further response in relation to the allegations before signing the record. If the employee elects not to sign the record, then details of the offer will be noted; and

g) provide a written report to the head of service setting out the investigating officer’s findings of fact.

H9.3 The investigating officer’s findings of fact will be made on the balance of probabilities.

H9.4 The head of service may authorise access to ACTPS information and communication technology (ICT) records including email, computer, work phone records, or building access logs if, in the opinion of the head of service, the investigating officer requires access in order to establish the facts of the allegations.

H9.5 After considering the report from the investigating officer, the head of service will make a determination on the balance of probabilities as to whether misconduct has occurred.

H9.6 If the head of service determines that the misconduct has not occurred, the head of service will notify the employee of this finding and advise that no sanctions will be imposed.

H.10 DISCIPLINARY ACTION AND SANCTIONS

H10.1 In circumstances where the head of service, following an investigation or full admission by the employee, determines that misconduct has occurred, and the head of service considers disciplinary action is appropriate, one or more of the following sanctions may be taken in relation to the employee:

a) a written warning and admonishment;

b) a financial penalty which can:

   i. reduce the employee’s incremental level,
   ii. defer the employee’s incremental advancement,
   iii. impose a fine on the employee,
   iv. fully or partially reimburse the employer for damage wilfully incurred to property or equipment;

c) transfer the employee temporarily or permanently to another position at level or to a lower classification level;
d) remove any monetary benefit derived through an existing Attraction and Retention Incentive (or existing SEA);

e) termination of employment.

H10.2 In relation to paragraph H10.1(c), if an employee’s classification is reduced as a result of disciplinary action, service before the demotion is not counted towards an increment for any higher duties the employee performs after demotion.

H10.3 Sanctions imposed under these procedures must be proportionate to the degree of misconduct concerned. In determining the appropriate sanction, the following factors must be considered:

a) the nature and seriousness of the misconduct;

b) the degree of relevance to the employee’s duties or to the reputation of the Directorate or the ACTPS;

c) the circumstances of the misconduct;

d) any mitigating factors, including any full admission of guilt; and

e) the previous employment history and the general conduct of the employee.

H10.4 Before taking disciplinary action, the head of service will advise the employee in writing of:

a) the decision that misconduct has been found to have occurred; and

b) the reasons for arriving at this decision; and

c) the sanction proposed; and

d) the period during which the employee has to respond to the proposed disciplinary action (which must be a minimum of fourteen calendar days).

H10.5 After considering the employee’s response to the proposed action, or if the employee has not responded at any time after the period outlined in paragraph H10.4 (d) has lapsed, the head of service may take disciplinary action. The head of service will inform the employee in writing of:

a) the final decision regarding disciplinary action to be taken; and

b) the date of effect and/or, if relevant, the cessation of the action; and

c) the appeal mechanisms that are available under this Agreement.
Attachment A: Section H of the ACT Public Sector Support Services Enterprise Agreement 2013-2017

H.11 CRIMINAL CHARGES

H11.1 An employee must advise the head of service in writing of any criminal charges laid against the employee in circumstances where a reasonable person would believe that the interests of the Directorate or of the ACTPS may be adversely affected, taking into account:

a) the circumstances and seriousness of the alleged criminal offence; and

b) the employee's obligations under section 9 of the PSM Act; and

c) the effective management of the employee's work area; and

d) the integrity and good reputation of the ACTPS and the Directorate; and

e) the relevance of the offence to the employee's duties.

H11.2 Where criminal charges are laid against an employee and the interests of the Directorate or of the ACTPS may be adversely affected, the head of service may suspend the employee in accordance with the suspension arrangements under clause H8.

H11.3 If an employee is convicted of a criminal offence the employee will provide a written statement regarding the circumstances of the offence to the head of service within seven calendar days of the conviction or the finding.

H11.4 Where an employee is convicted of a criminal offence and the conviction or finding has adversely affected the interests of the Directorate or the ACTPS, the head of service may impose a sanction for misconduct against the employee in accordance with clause H10.

H.12 RIGHT OF APPEAL

H12.1 An employee has the right under Section J to appeal against any decision to take disciplinary action or to apply a sanction under subclause H10.1, or against any decision taken under clause H8 to suspend the employee without pay, or to transfer the employee at reduced pay, except action to terminate the employee's employment.

H12.2 An employee may have an entitlement to bring an action under the FW Act in respect of any decision under this Section to terminate the employee's employment. This will be the sole right of review of such a decision.

H12.3 The appeal procedures under Section H apply to the exclusion of the rights of appeal and review under the PSM Act 1994 and the internal review procedures contained in Section I of this Agreement.
Attachment B: Section 9 of the *Public Sector Management Act 1994*

**Public Sector Management Act 1994**

**Section 9  Public sector conduct**

(1) A public servant must

(a) take all reasonable steps to avoid a conflict of interest; and

(b) declare or manage a conflict of interest that cannot reasonably be avoided; and

(c) when acting in connection with the public servant’s job

(i) comply with laws applying in the Territory; and

(ii) comply with any lawful and reasonable direction given by a person with the authority to give the direction; and

(iii) if dealing with a member of the public make all reasonable efforts to help the person to understand the person’s entitlements, and any requirement the person is obliged to meet, under a territory law; and

(iv) treat all people with courtesy and sensitivity to their rights and aspirations; and

(d) do the public servant’s job with reasonable care and diligence, impartiality and honesty.

(2) A public servant must not

(a) behave in a way that—

(i) is inconsistent with the public sector values; or

(ii) undermines the integrity and reputation of the service; or

(b) take improper advantage of the public servant’s job or information gained through the public servant’s job; or

(c) improperly use a Territory resource, including information, accessed through the public servant’s job; or

(d) without lawful authority

(i) disclose confidential information gained through the public servant’s job; or

Note The s 153 (1) makes it an offence for a public servant to disclose information that it is the public servant’s duty not to disclose.

(ii) make a comment that reasonably appears to be an official comment; or

(e) when acting in connection with the public servant’s job bully, harass or intimidate anyone; or

(f) when doing the public servant’s job apply improper influence, favouritism or patronage.
Attachment B: Section 9 of the *Public Sector Management Act 1994*

(3) For a misconduct procedure, failing to act in a way that is consistent with subsection (1) or (2) may be misconduct.

*Note* A misconduct procedure means a procedure set out in an industrial instrument or prescribed by regulation (see dict, def misconduct procedure).

Dictionary - misconduct procedure, in relation to a public servant, means—
(a) if an industrial instrument covers the public servant and includes procedures for misconduct—the misconduct procedures in the industrial instrument; or
(b) in any other case a prescribed procedure.

(4) A public servant (a disclosing) must tell the following person about any maladministration or corrupt or fraudulent conduct by a public servant or a public sector member of which the disclosing becomes aware:

(a) the head of service;

(b) if the alleged maladministration or corrupt or fraudulent conduct is by the head of service—
   (i) the director-general of the administrative unit in which the public servant is employed; or
   (ii) if the head of service is the director-general of the administrative unit in which the public servant is employed—another director-general.

(5) This section does not—

(a) affect the operation of any other Act; or

(b) create or affect any other legal right.
Johnson, Moira

From: Rose, Craig
Sent: Wednesday, 7 December 2016 10:57 AM
To: Rocks, Phillip
Subject: FW: Sched 2.2 (a)(iii) FOI Act 2016 - Bimberi suspension
Attachments: Letter to Christine Murray.docx
Importance: High

Regards

Craig Rose
a/g Manager Employee Relations
People Management | Community Services Directorate | ACT Government
PH: 02 6207 1210 | Fax: 02 6207 1536
Ground Floor, 11 Moore Street, Canberra | GPO Box 158, Canberra, ACT 2601 | www.act.gov.au

IMPORTANT NOTICE
The information contained in this email and any attachments is for the intended recipient only. It may contain material of a confidential nature relating to the operations of the Community Services Directorate, or its clients, contractors or stakeholders. Information of this nature may be subject to the provisions of the Information Privacy Act 2014, Public Sector Management Act 1994, Health Records (Privacy and Access) Act 1997, Children and Young People Act 2008, Housing Assistance Act 1987 and/or the Crimes Act 1900. Any person who inappropriately discloses this information may be subject to disciplinary/criminal proceedings under any of these Acts. If you have received this email in error, please notify the sender and then delete this transmission and any attachments.

From: Rose, Craig
Sent: Wednesday, 7 December 2016 10:11 AM
To: Rose, Craig
Subject: Sched 2.2 (a)(xii) FOI Act 2016 - Bimberi suspension
Importance: High

Hello Craig,

Please find attached the letter to send to Christine Murray.

Look forward to receiving a response at the earliest.

Regards,
ATTACHMENT 7.1
Government
Community Services

Bimberi Youth Justice Centre

Incident report cover sheet

Incident report # 16/17-028
Staff member A. Lawas
Date of incident 24/11/16

Reports raised
- Incident report
- Witness report
- Persons involved report
- Young person’s statement
- Unit Manager report

Signature

<table>
<thead>
<tr>
<th>Report authority</th>
<th>Date actioned</th>
<th>Signature</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operations Manager</td>
<td>25/11/16</td>
<td></td>
</tr>
<tr>
<td>Senior Manager</td>
<td>28/11/16</td>
<td></td>
</tr>
<tr>
<td>Director report</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Report checked/ files</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Category 1 reportable incidents
(the recording of the category of the incident must be completed by the Unit Manager)

- Death in-custody
- Attempted suicide
- Serious injury
- Serious health complaint
- Escape
- Serious assault
- Major breach to institution security
- Natural/man-made disaster
- Serious misconduct by staff member

Note: All Category 1 incidents must be immediately notified to the Director.
Category 2 incidents require notification to the Director following the completion of the full report within 5 working days wherever possible.

Category 2 reportable incidents
(the recording of the category of the incident must be completed by the Unit Manager)

- Assault
- Fight
- Threats against youth detention officers or any other person
- Contagious disease
- Minor breach of security
- Significant disturbance to the good order of a detention place
- Incidents involving contraband (including weapons, tools of escape, and illicit drugs)
- Motor vehicle accident
- Incident involving visitor/s to the Centre
- Possession of a prohibited thing at a detention place by a youth detention officer or staff
- Attempted escape
- Self-harm
- Any other event which in the opinion of the Manager should be reported.

What operational responses took place to control the incident?

<table>
<thead>
<tr>
<th>Response</th>
<th>Referrals</th>
</tr>
</thead>
<tbody>
<tr>
<td>Use of force</td>
<td>AFP · Job no#</td>
</tr>
<tr>
<td>Attend hospital</td>
<td>FMHS</td>
</tr>
<tr>
<td>Behaviour management plan</td>
<td>YJCM/CPS</td>
</tr>
<tr>
<td>Special Management Direction</td>
<td>Family/significant other</td>
</tr>
<tr>
<td>Segregation Direction</td>
<td>Health – date of referral:</td>
</tr>
<tr>
<td>Direction for a body search</td>
<td>✓ Referral to supervisor for counseling</td>
</tr>
<tr>
<td>Total lockdown</td>
<td>✓ Refer for investigation through Shared Services</td>
</tr>
<tr>
<td>Evacuation</td>
<td></td>
</tr>
</tbody>
</table>
### Incident Report

**Incident Details**

Incident reports are the responsibility of staff and are to be fully completed before staff complete their shift, unless otherwise approved by the Unit Manager. Staff should use objective language. Reports are to contain direct evidence of what occurred in the incident (e.g., I saw, I heard, I smelled, he/she said, I said). Reports should not contain assumptions or opinions. Reports must be factual and may be used in Court as direct evidence of fact.

<table>
<thead>
<tr>
<th>Date of Incident</th>
<th>Time of Incident (if appropriate: start and end time of the incident)</th>
</tr>
</thead>
<tbody>
<tr>
<td>24/11/2016</td>
<td>18:55</td>
</tr>
</tbody>
</table>

**Location of Incident**

Namadgi Wing 3

---

**What led up to the incident?**

Action reported to UM onsite at 19:10 and follow by On-call manager @ 20:30

**What action was taken?**

None

---

**Witnesses to the Incident**

<table>
<thead>
<tr>
<th>First name:</th>
<th>Surname:</th>
<th>Position:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Date printed:** 25 November 2016

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**Sched 2.2 (a)(ii) FOI Act 2016**

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**Sched 2.2 (b)(i) FOI Act 2016**

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**Sched 2.2 (a)(xii) FOI Act 2016**
<table>
<thead>
<tr>
<th>Question</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Was physical intervention required? (Including use of instruments of restraint)</td>
<td>N/A</td>
</tr>
<tr>
<td>Was the safe room used?</td>
<td>No</td>
</tr>
<tr>
<td>Was there any injury to person/s?</td>
<td>No</td>
</tr>
<tr>
<td>Was medical assistance requested?</td>
<td>N/A</td>
</tr>
<tr>
<td>Was the AFP contacted? If no, was the Coroner contacted? (for a death in custody)</td>
<td>Yes</td>
</tr>
<tr>
<td>For a death in custody was the Body Receipt Register completed?</td>
<td>No</td>
</tr>
<tr>
<td>Was the Director notified of the incident (as soon as practicable)?</td>
<td>Date: 24/11/2016  Time: 9:07 pm</td>
</tr>
<tr>
<td>Has an ACT Insurance Authority accident/incident form been completed?</td>
<td>No</td>
</tr>
<tr>
<td>Was person/s with parental responsibility notified?</td>
<td>Date: 25/11/16  Time: 9:07 pm</td>
</tr>
<tr>
<td>Were relevant audio and video reports of the incident downloaded?</td>
<td>Audio: No  Video: No</td>
</tr>
<tr>
<td>Report completed by:</td>
<td>Name: Alaiva’a Lauvao  Signature:</td>
</tr>
<tr>
<td>Role in incident</td>
<td>Supervisor  Date: 24/11/2016</td>
</tr>
</tbody>
</table>

Additional record-keeping:
- [ ] Search/Use of Force Record #
- [ ] Register of Segregation Direction #
- [ ] ACTIA report form #

Attachments:
- [ ] Witness report # of reports:
- [ ] Unit Manager's report
- [ ] Senior Manager's report
- [ ] Person/s involved report # of reports:
- [ ] Operation Manager's report
- [ ] Attending medical practitioner's report

Approved: Name: Position: Date:
**BIMBERI YOUTH JUSTICE CENTRE**

**Staff Note**

<table>
<thead>
<tr>
<th>Particulars</th>
<th>Legislation:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date</td>
<td>C&amp;YP Act 2008</td>
</tr>
<tr>
<td>Time</td>
<td>X Code of Conduct</td>
</tr>
<tr>
<td>Location</td>
<td>HR Act 2004</td>
</tr>
<tr>
<td>Supervisee/s</td>
<td>PSM Act 1994</td>
</tr>
<tr>
<td>Supervisor/s</td>
<td>CSD EA 2014-2017</td>
</tr>
<tr>
<td>Other Present</td>
<td>Other (name)</td>
</tr>
</tbody>
</table>

24/11/2016 18:55 pm Namadgi wing 3 YDO T/L Alaivaa Lauvao Control Operator

Sched 2.2 (a)(ii) FOI Act 2016, Sched 2.2 (b)(i) FOI Act 2016, Sched 2.2 (a)(xii) FOI Act 2016

Follow up Actions
Action been reporting to the UM Latukefu and On call Manager Dean Horne.

Supervisor Signed: __________ Date: / /
Supervisee Signed: ______________ Date: / /
### Bimber Youth Justice Centre - INCIDENT DEBRIEF

<table>
<thead>
<tr>
<th>Incident: Allegation</th>
<th>Category:</th>
<th>Date: 25.11.2016</th>
</tr>
</thead>
</table>

**Comments**

A preliminary assessment has been completed and no further shifts will be offered to the alleged perpetrator until an investigation outcome has been announced.

Sched 2.2 (a)(ii) FOI Act 2016, Sched 2.2 (a)(xii) FOI Act 2016
ATTACHMENT 11

CCTV & Audio (Corridor Sched 2.2 (a)(ii) FOI Act 2016, Sched 2.2 (a)(vi) FOI Act 2016 on 24/11/16

Please refer to USB Drive
ATTACHMENT 12

CCTV (Recreation Room)

Please refer to USB Drive
<table>
<thead>
<tr>
<th>Report Type:</th>
<th>Activity Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operator:</td>
<td>Home, Dean</td>
</tr>
<tr>
<td>Site Name:</td>
<td>ACT Youth Detention Centre</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Reporting Period:</th>
<th>24/11/2016 6:00:00 AM to 24/11/2016 8:30:00 PM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Priorities Reported:</td>
<td>All Priorities</td>
</tr>
<tr>
<td>Events Reported:</td>
<td>All Events</td>
</tr>
<tr>
<td>Cardholders Selected:</td>
<td>All Cardholders</td>
</tr>
<tr>
<td>Sources Selected:</td>
<td>Selected Sources</td>
</tr>
</tbody>
</table>

Sched 2.2 (a)(vi) FOI Act 2016
ATTACHMENT 18
Sched 2.2 (a)(ii) FOI Act 2016

Dear,

OPPORTUNITY TO RESPOND TO ALLEGATIONS

On 1 December 2016, you were advised by Ms Christine Murray, Director People Management, of allegations made against you of possible misconduct in the workplace and that the matter would be investigated. The matter was then referred to the Professional Standards Unit, Chief Minister, Treasury and Economic Development (CMTEDD) for an independent investigation.

The preliminary allegations you were informed of were:

As a result of the investigation conducted by the Professional Standards Unit, I am now writing to you to inform you of the full particulars of the allegations and give you an opportunity to respond to the allegations.
If any of the above allegations are proven, they may constitute misconduct if it is determined that the behaviour is a breach of the general obligations of public employees, as set out in Section 9 of the Public Sector Management Act 1994 (attached) and/or has brought, or is likely to bring, the Directorate or the ACT Public Service into disrepute.

Section H of the ACT Public Sector Support Services Enterprise Agreement 2013 – 2017 (attached), states that the following disciplinary actions may be taken where misconduct is found to have occurred:

a) a written warning and admonishment;
b) a financial penalty which can:
   i. reduce the employee’s incremental level,
   ii. defer the employee’s incremental advancement,
   iii. impose a fine on the employee,
   iv. fully or partially reimburse the employer for damage wilfully incurred to property or equipment;
c) transfer the employee temporarily or permanently to another position at level or to a lower classification level;
d) remove any monetary benefit derived through an existing Attraction and Retention Incentive (or existing SEA);
e) termination of employment.

At this point no judgement has been made as to the substance of the allegations made.

I am writing to provide you an opportunity to respond to the allegations at a formal record of interview:

The interview will be conducted in accordance with the Enterprise Agreement. It will be recorded and you will receive a copy of the recording and the transcript of the interview. You
may elect to have a support person, who is unrelated to this investigation, accompany you to the interview.

If you elect not to attend this interview, you must inform me by email at drazen.persic@act.gov.au by 12 noon on 13 February 2017. Alternatively, you may wish to provide a detailed written statement of your own within a negotiated timeframe. If no response is received within the timeframe provided, a report will be prepared and the matter will be determined by the delegate on the information available.

You are reminded that you have been directed not to discuss the above allegations with any Community Services Directorate employee other than those approved by the delegate. A failure to comply with this direction may result in further allegations of misconduct.

Should you require support in relation to this matter, the Employee Assistance Program (EAP) provides employees and their family members with confidential and professional counselling and related services to assist in resolving work related or personal issues. If you wish to utilise these services please contact Converge International on 1800 337 068.

If you have any queries regarding this matter, please do not hesitate to contact me on 6205 4801.

Yours sincerely

Drazen Persic  
A/g Senior Investigator  
Professional Standards Unit  
Chief Minister, Treasury and Economic Development Directorate  

7 February 2017
Public Sector Management Act 1994

9 Public sector conduct

(1) A public servant must—

(a) take all reasonable steps to avoid a conflict of interest; and
(b) declare or manage a conflict of interest that cannot reasonably be avoided; and
(c) when acting in connection with the public servant’s job—
   (i) comply with laws applying in the Territory; and
   (ii) comply with any lawful and reasonable direction given by a person with the authority to give the direction; and
   (iii) if dealing with a member of the public—make all reasonable efforts to help the person to understand the person’s entitlements, and any requirement the person is obliged to meet, under a territory law; and
   (iv) treat all people with courtesy and sensitivity to their rights and aspirations; and
(d) do the public servant’s job with reasonable care and diligence, impartiality and honesty.

(2) A public servant must not—

(a) behave in a way that—
   (i) is inconsistent with the public sector values; or
   (ii) undermines the integrity and reputation of the service; or
(b) take improper advantage of the public servant’s job or information gained through the public servant’s job; or
(c) improperly use a Territory resource, including information, accessed through the public servant’s job; or
(d) without lawful authority—
   (i) disclose confidential information gained through the public servant’s job; or
   Note The Crimes Act 1900, s 153 (1) makes it an offence for a public servant to disclose information that it is the public servant’s duty not to disclose.
   (ii) make a comment that reasonably appears to be an official comment; or
(e) when acting in connection with the public servant’s job—bully, harass or intimidate anyone; or
(f) when doing the public servant’s job—apply improper influence, favouritism or patronage.

(3) For a misconduct procedure, failing to act in a way that is consistent with subsection (1) or (2) may be misconduct.

Note A misconduct procedure means a procedure set out in an industrial instrument or prescribed by regulation (see dict, def misconduct procedure).
(4) A public servant (a *discloser*) must tell the following person about any maladministration or corrupt or fraudulent conduct by a public servant or a public sector member of which the discloser becomes aware:

(a) the head of service;
(b) if the alleged maladministration or corrupt or fraudulent conduct is by the head of service—
   (i) the director-general of the administrative unit in which the public servant is employed; or
   (ii) if the head of service is the director-general of the administrative unit in which the public servant is employed—another director-general.

(5) This section does not—

(a) affect the operation of any other Act; or
(b) create or affect any other legal right.

7 **Meaning of public sector values**

(1) The *public sector values* are—
(a) respect; and
(b) integrity; and
(c) collaboration; and
(d) innovation.

(2) The public sector values must be—
(a) demonstrated by a public servant when acting in connection with the public servant’s job; and
(b) applied in a way that is appropriate to the public servant’s job; and
(c) used to inform and evaluate the operation of the service.
Section H - Workplace Values and Behaviours

H.1 INTRODUCTION

H1.1 Except where otherwise noted, this Section applies to officers, temporary employees engaged for over six months and “eligible casual employees” as defined within the dictionary. The Section does not apply to “casual employees” as defined within the dictionary, or employees on probation unless expressly stated.

H1.2 Managers/supervisors and employees have a common interest in ensuring that workplace behaviours are consistent with, and apply the values and general principles set out in section 9 of the PSM Act 1994 and the ACT Public Service Code of Conduct and Signature Behaviours. This involves the development of an ethical and safe workplace in which managers/supervisors and employees act responsibly and are accountable for their actions and decisions.

H1.3 The following provisions of Section H contain procedures for managing workplace behaviours that do not meet expected standards, including the management of cases of unsatisfactory work performance and misconduct.

H1.4 These procedures for managing workplace behaviours and values must be applied in accordance with the principles of natural justice and procedural fairness, and in a manner that promotes the values and general principles of the ACTPS set out in section 9 of the PSM Act 1994.

H1.5 Any misconduct, underperformance, internal review or appeal process under the previous enterprise agreement that is not completed as at the date of commencement of this enterprise agreement will be completed under the previous enterprise agreement. Any right of appeal from that process will also be set out in the previous enterprise agreement.

H.2 PRELIMINARY ASSESSMENT

H2.1 In cases where an allegation of inappropriate behaviour is made, the manager/supervisor will initiate a preliminary assessment process to determine whether further action is required. The manager/supervisor may inform and/or seek the assistance of an appropriate Human Resources Manager.

H2.2 Following this process if the manager/supervisor determines that the allegations:

a) require no further action, then no further action needs to be taken;

b) can be resolved through counselling, other remedial action, or assistance to the employee then the manager/supervisor will implement such action;

c) are better resolved through Internal Review procedures set out in this Agreement or appropriate external mechanisms the manager/supervisor will refer the matter accordingly;

d) relate to underperformance processes the manager/supervisor will commence an underperformance process where this is warranted;

e) require investigation the manager/supervisor will recommend to the head of service that the matter be investigated;

f) may be vexatious or knowingly false, the manager/supervisor will consider whether further action needs to be taken in relation to the person who made the allegations.
Section H – Workplace Values and Behaviours

H2.3 The manager/supervisor will inform the employee where a preliminary assessment process is commenced under subclause H2.1 if it is appropriate to do so.

H2.4 In performing the preliminary assessment the head of service may authorise access to ACTPS information and communication technology (ICT) records including email, computer, work phone records, or building access logs if, in the opinion of the head of service, access is necessary to determine whether further action is necessary.

H3. COUNSELLING

H3.1 Counselling may happen outside of the misconduct and underperformance processes. All parties have an obligation to participate in counselling in good faith.

H3.2 In cases where counselling is considered to be appropriate, the employee will be invited to have a support person, who may be the employee’s union or other employee representative, present at the counselling and will allow reasonable opportunity for this to be arranged.

H3.3 The manager/supervisor or the head of service will create a formal record of the counselling which will include details about the ways in which the employee’s conduct needs to change or improve and the time frames within which these changes or improvements must occur.

H3.4 The record of the counselling will be provided to the employee and the employee given an opportunity to correct any inaccuracies and provide comments before signing the record. The employee's signature is taken as representing their full agreement that the record accurately reflects the discussion. If the employee elects not to sign the record, then details of the offer and any reasons given for refusal will be clearly noted.

H3.5 Where the manager/supervisor or the head of service considers that the employee's conduct has not improved following counselling, an underperformance or misconduct process may be undertaken.

H4. UNDERPERFORMANCE

H4.1 Under this clause, procedures are established for managing underperformance by an employee.

H4.2 This clause applies to all employees, except casual employees. In applying these procedures to officers on probation, temporary employees engaged for over six months, or eligible casual employees, the head of service may determine that procedures and practices throughout clause H4 may be applied on an appropriate and proportionate basis according to the circumstances of the case, and in accordance with the principles of procedural fairness and natural justice.

H4.3 The objectives of these procedures are to:

a) provide advice and support to an employee whose performance is below the standard required; and

b) to provide a fair, prompt and transparent framework for action to be taken where an employee continues to perform below expected standard.
Section H – Workplace Values and Behaviours

H4.4 Consistent with good management practice, concerns about underperformance should be raised by the manager/supervisor with the employee at the time that the concerns arise. The manager/supervisor should offer advice and support to the employee to overcome these concerns. The manager/supervisor should inform the employee that the following procedures might be invoked if the underperformance continues.

H4.5 In order to ensure that these procedures operate in a fair and transparent manner, the manager/supervisor will be responsible for documenting all relevant discussions. The employee must be given the opportunity to comment on any records before signing them.

H4.6 All parties have an obligation to participate in underperformance processes in good faith.

Step One: Action Plan

H4.7 Where a manager/supervisor assesses that an employee’s work performance continues to be below expected standards after having previously discussed concerns with the employee in line with subclause H4.4, the manager/supervisor will inform the employee in writing of this assessment and the reasons for it. The employee will be invited by the manager/supervisor to provide written comments on this assessment, including any reasons that in the employee’s view may have contributed to their recent work performance.

H4.8 After taking into account the comments from the employee, the manager/supervisor must prepare an action plan in consultation with the employee.

H4.9 The manager/supervisor will invite the employee to have a support person, who may be the employee’s union or other employee representative, present at discussions to develop the action plan and will allow reasonable opportunity for this to be arranged.

H4.10 The action plan will:

a) identify the expected standards of work required of the employee on an on-going basis;

b) identify and/or develop any learning and development strategies that the employee should undertake;

c) outline the potential underperformance actions that may be taken if the employee does not meet the expected standards;

d) specify the action plan period, which should not normally be less than one month and should not exceed six months to allow the employee sufficient opportunity to achieve the required standard; and

e) specify the assessment criteria to be measured within the action plan period.

H4.11 Any current performance agreement will be suspended during the period of the action plan. Any incremental advancement action for the employee will be suspended during the action plan period.
**Section H – Workplace Values and Behaviours**

**Step Two: Regular Assessment**

**H4.12** During the action plan period, the manager/supervisor will make regular written assessments (desirably every fortnight) of the employee’s work performance under the action plan. The employee will be given an opportunity to provide written comments on these assessments.

**H4.13** If the manager/supervisor considers that further assessment time is needed the manager/supervisor may extend the action plan period. However, the extended assessment time must not result in the action plan exceeding six months duration. The manager/supervisor will inform the employee in writing of the decision to extend the assessment time and the duration of the action plan.

**Step Three: Final Assessment / Report**

**H4.14** If at the end of the action plan period, the manager/supervisor assesses the work performance of the employee as satisfactory, no further action will be taken under these procedures at that time. The manager/supervisor will inform the employee in writing of this decision.

**H4.15** If at the end of the action plan period, the manager/supervisor assesses the work performance of the employee as not satisfactory, the manager/supervisor will provide a report including the assessment and reasons for the assessment to the head of service.

**Step Four: Underperformance Action**

**H4.16** The head of service will advise the employee in writing:

a) of the assessment and reasons for the manager’s/supervisor’s assessment;

b) of the underperformance action/s (subclause H4.17) proposed to be taken and the reasons for proposing this action;

c) of the employee’s right to respond in writing to the proposed action within a period of not more than seven calendar days.

**H4.17** At any time after seven calendar days from the date the head of service advised the employee under subclause H4.16, and after considering any response from the employee, the head of service may decide to take one or more of the following underperformance actions:

a) transfer the employee to other duties (at or below current pay);

b) defer the employee’s increment;

c) reduce the employee’s incremental point;

d) temporarily or permanently reduce the employee’s classification and pay;

e) remove any monetary benefit derived through an existing Attraction and Retention Incentive (or existing SEA);

f) terminate the employee’s employment.

**H4.18** The head of service will inform the employee in writing of the decision made under subclause H4.17, the reasons for the decision and the appeal mechanisms available under this Agreement.

**H4.19** At any time in these procedures, the employee may elect to be retired on the grounds of inefficiency.
Section H – Workplace Values and Behaviours

H.5 APPEAL RIGHTS

H5.1 The employee has the right under Section J to appeal any underperformance action taken under subclause H4.17, except action to terminate the employee’s employment.

H5.2 The employee may have an entitlement to bring an action under the FW Act in respect of any termination of employment under this Agreement. This will be the sole right of review of such an action.

H.6 MISCONDUCT & DISCIPLINE

Objectives and Application

H6.1 This clause establishes procedures for managing misconduct or alleged misconduct by an employee.

H6.2 In applying these procedures to officers on probation, an eligible casual employee or a temporary employee who has been engaged for over six months, the head of service may determine that procedures and practices throughout clauses H6 to H10 apply on an appropriate and proportionate basis according to the circumstances of the case.

H6.3 The objective of these procedures is to encourage the practical and expeditious resolution of misconduct issues in the workplace.

H6.4 All parties have an obligation to participate in misconduct processes in good faith.

What is Misconduct

H6.5 For the purposes of this Section, misconduct includes any of the following:

a) the employee fails to meet the obligations set out in section 9 of the PSM Act 1994 (this includes bullying and harassment or discrimination);

b) the employee engages in conduct that has brought, or is likely to bring, the Directorate or ACTPS into disrepute;

c) a period of unauthorised absence and the employee does not offer a satisfactory reason on return to work;

d) the employee is convicted of a criminal offence or where a court finds that an employee has committed an offence but a conviction is not recorded, taking into account the circumstances and seriousness of the offence, the duties of the employee and the interests of the ACTPS and/or of the Directorate;

e) the employee fails to notify the head of service of criminal charges in accordance with clause H11; or

f) the employee makes a vexatious or knowingly false allegation against another employee.

What is Serious Misconduct

H6.6 Serious misconduct means conduct that is so serious that it may be inconsistent with the continuation of the employee’s employment with the Territory. Serious misconduct includes but is not limited to the kinds of serious misconduct defined within the Fair Work Regulations.
Section H – Workplace Values and Behaviours

H.7 DEALING WITH ALLEGATIONS OF MISCONDUCT

H7.1 If, after receiving a recommendation from the manager/supervisor under paragraph H2.2(e), the head of service is of the opinion that the alleged misconduct cannot be resolved without recourse to investigation, the head of service will:

a) inform the appropriate Human Resources Manager that an investigation is to take place;

b) with the assistance of the appropriate Human Resource Manager make arrangements for an appropriately trained or experienced person (the investigating officer) to investigate the alleged misconduct in accordance with clause H9; and

c) inform the employee in writing of the alleged misconduct and that the matter is to be investigated.

H7.2 Depending on the nature of the alleged misconduct the head of service may immediately transfer the employee to other duties, re-allocate duties away from the employee or suspend the employee with pay in accordance with clause H8. Where serious misconduct is alleged the head of service may suspend an employee without pay.

H7.3 Notwithstanding the provisions of this section, the employment of an employee may be summarily terminated without notice for serious and wilful misconduct.

H7.4 No investigation may be necessary where the employee fully admits to the alleged misconduct and the employee agrees that there is no need for an investigation. In such cases, the head of service may determine the appropriate disciplinary action/sanction in accordance with clause H10. The head of service must ensure that they have sufficient information concerning the nature and full circumstances of the misconduct, any mitigating factors, and details of the employee’s prior service record and performance to enable a fair and reasonable determination under clause H10 to be made.

H.8 SUSPENSION, REASSIGNMENT OR TRANSFER

H8.1 This clause applies to all employees including eligible casual employees and employees on probation.

H8.2 Subject to these procedures, the head of service may suspend with or without pay, reassign or transfer an employee where the head of service is satisfied that it is in the public interest, the interests of the ACTPS or the interests of the Directorate to do so while the alleged misconduct is investigated.

H8.3 The procedures applying under sub-clauses H8.4, H8.5 and H8.10 will also apply in circumstances where an employee has been reassigned or transferred with pay to other duties following an allegation of misconduct.

H8.4 The head of service will not normally suspend, reassign or transfer an employee without first informing the employee of the reasons for the proposed suspension, reassignment or transfer and giving the employee the opportunity to be heard. However the head of service may suspend an employee first and then give the employee the reasons for the suspension and an opportunity to be heard, where, in the head of service’s opinion, this is appropriate in the circumstances.
Section H – Workplace Values and Behaviours

H8.5 Whilst suspended with pay an employee will be paid:

a) the employee’s ordinary hourly rate of pay and any higher duties allowances that would have been paid to the employee for the period they would otherwise have been on duty; and

b) overtime (but not overtime meal allowance) and shift penalty payments where there is a regular and consistent pattern of extra duty or shift work being performed over the previous six months which would have been expected to continue but for the suspension from duty; and

c) any other allowance or payment (including under a Attraction and Retention Incentive entered into in accordance with Annex B to this Agreement) of a regular or on-going nature that is not conditional on performance of duties.

H8.6 Where a decision is made to suspend an employee with pay no appeal or review of that decision is available.

H8.7 An employee who is suspended must be available to attend work and participate in the disciplinary process as directed within 48 hours of the direction being given unless they are on authorised leave.

H8.8 Suspension without pay is usually only appropriate where serious misconduct is alleged or where the employee is charged with a criminal offence that would in the opinion of the head of service be incompatible with the continuation of the employee’s employment.

H8.9 Whilst suspended without pay:

a) the suspension will not be for more than thirty calendar days, unless exceptional circumstances apply;

b) the employee may apply to the head of service for permission to seek alternate employment outside the ACTPS for the period of the suspension or until the permission is revoked;

c) in cases of demonstrated hardship, the employee may access accrued long service leave and/or annual leave;

d) the employee may apply to the head of service for the suspension to be with pay on the grounds of demonstrated hardship.

H8.10 The suspension without pay should be reviewed every thirty calendar days unless the head of service considers that, in the circumstances, a longer period is appropriate.

H8.11 An employee suspended without pay and who is later acquitted of the criminal offence, or found not to have been guilty of the misconduct:

a) is entitled to be repaid the amount by which the employee’s pay was reduced; and

b) is entitled to be credited with any period of long service or annual leave that was taken.
Section H – Workplace Values and Behaviours

H8.12 Where an employee is suspended and later found guilty of a criminal offence (whether or not a conviction is recorded), or is found guilty of misconduct and is dismissed because of the offence or misconduct, a period of suspension under this clause does not count as service for any purpose, unless the head of service determines otherwise.

H.9 INVESTIGATIONS

H9.1 The role of the investigating officer is to establish the facts of the allegations and to provide a report of those facts to the head of service.

H9.2 The investigating officer will:

a) inform the employee in writing of the particulars of the alleged misconduct, and details concerning the investigative process; and

b) give the employee a reasonable opportunity to respond to allegations, in writing and/or at a scheduled interview, before making a finding of fact; and

c) provide the employee with at least twenty four hours written notice prior to conducting an interview, and advise the employee if the interview is to be recorded electronically; and

d) advise the employee that the employee may have a second person present during the interview, who may be the employee’s union representative or other individual acting as support person and will allow reasonable opportunity for this to be arranged; and

e) as soon as practicable take any further steps considered necessary to establish the facts of the allegations; and

f) provide a record of the interview to the employee to correct any inaccuracies in the record and to provide any further response in relation to the allegations before signing the record. If the employee elects not to sign the record, then details of the offer will be noted; and

g) provide a written report to the head of service setting out the investigating officer’s findings of fact.

H9.3 The investigating officer’s findings of fact will be made on the balance of probabilities.

H9.4 The head of service may authorise access to ACTPS information and communication technology (ICT) records including email, computer, work phone records, or building access logs if, in the opinion of the head of service, the investigating officer requires access in order to establish the facts of the allegations.

H9.5 After considering the report from the investigating officer, the head of service will make a determination on the balance of probabilities as to whether misconduct has occurred.

H9.6 If the head of service determines that the misconduct has not occurred, the head of service will notify the employee of this finding and advise that no sanctions will be imposed.
H.10 DISCIPLINARY ACTION AND SANCTIONS

H10.1 In circumstances where the head of service, following an investigation or full admission by the employee, determines that misconduct has occurred, and the head of service considers disciplinary action is appropriate, one or more of the following sanctions may be taken in relation to the employee:

a) a written warning and admonishment;

b) a financial penalty which can:
   i. reduce the employee’s incremental level,
   ii. defer the employee’s incremental advancement,
   iii. impose a fine on the employee,
   iv. fully or partially reimburse the employer for damage wilfully incurred to property or equipment;

c) transfer the employee temporarily or permanently to another position at level or to a lower classification level;

d) remove any monetary benefit derived through an existing Attraction and Retention Incentive (or existing SEA);

e) termination of employment.

H10.2 In relation to paragraph H10.1(c), if an employee’s classification is reduced as a result of disciplinary action, service before the demotion is not counted towards an increment for any higher duties the employee performs after demotion.

H10.3 Sanctions imposed under these procedures must be proportionate to the degree of misconduct concerned. In determining the appropriate sanction, the following factors must be considered:

a) the nature and seriousness of the misconduct;

b) the degree of relevance to the employee’s duties or to the reputation of the Directorate or the ACTPS;

c) the circumstances of the misconduct;

d) any mitigating factors, including any full admission of guilt; and

e) the previous employment history and the general conduct of the employee.
Section H – Workplace Values and Behaviours

H10.4 Before taking disciplinary action, the head of service will advise the employee in writing of:

a) the decision that misconduct has been found to have occurred; and

b) the reasons for arriving at this decision; and

c) the sanction proposed; and

d) the period during which the employee has to respond to the proposed disciplinary action (which must be a minimum of fourteen calendar days).

H10.5 After considering the employee’s response to the proposed action, or if the employee has not responded at any time after the period outlined in paragraph H10.4 (d) has lapsed, the head of service may take disciplinary action. The head of service will inform the employee in writing of:

a) the final decision regarding disciplinary action to be taken; and

b) the date of effect and/or, if relevant, the cessation of the action; and

c) the appeal mechanisms that are available under this Agreement.

H.11 CRIMINAL CHARGES

H11.1 An employee must advise the head of service in writing of any criminal charges laid against the employee in circumstances where a reasonable person would believe that the interests of the Directorate or of the ACTPS may be adversely affected, taking into account:

a) the circumstances and seriousness of the alleged criminal offence; and

b) the employee’s obligations under section 9 of the PSM Act; and

c) the effective management of the employee’s work area; and

d) the integrity and good reputation of the ACTPS and the Directorate; and

e) the relevance of the offence to the employee’s duties.

H11.2 Where criminal charges are laid against an employee and the interests of the Directorate or of the ACTPS may be adversely affected, the head of service may suspend the employee in accordance with the suspension arrangements under clause H8.

H11.3 If an employee is convicted of a criminal offence the employee will provide a written statement regarding the circumstances of the offence to the head of service within seven calendar days of the conviction or the finding.

H11.4 Where an employee is convicted of a criminal offence and the conviction or finding has adversely affected the interests of the Directorate or the ACTPS, the head of service may impose a sanction for misconduct against the employee in accordance with clause H10.
Section H – Workplace Values and Behaviours

**H.12 RIGHT OF APPEAL**

**H12.1** An employee has the right under Section J to appeal against any decision to take disciplinary action or to apply a sanction under subclause H10.1, or against any decision taken under clause H8 to suspend the employee without pay, or to transfer the employee at reduced pay, except action to terminate the employee’s employment.

**H12.2** An employee may have an entitlement to bring an action under the FW Act in respect of any decision under this Section to terminate the employee’s employment. This will be the sole right of review of such a decision.

**H12.3** The appeal procedures under Section H apply to the exclusion of the rights of appeal and review under the PSM Act 1994 and the internal review procedures contained in Section I of this Agreement.
ACT Government Shared Services

Chief Minister Economic Development Directorate

Professional Standards Unit

INTERVIEWERS: MR DRAZEN PERSIC
                   MS MOIRA JOHNSON

SUPPORT PERSON:

INTERVIEWEE:

CONDUCTED AT: LEVEL 5
               CANBERRA NARA CENTRE
               1 CONSTITUTION AVENUE
               CANBERRA ACT 2601

DATE:

TRANSCRIBED BUT NOT RECORDED BY DTI
Dear Outcome of Investigation

On 1 December 2016, Director People Management, Ms Christine Murray wrote to you advising you that an investigation would be conducted in accordance with the misconduct and discipline provisions in Section H, Workplace Values and Behaviours, of the ACT Public Sector Support Services Enterprise Agreement 2013-2017 (the Enterprise Agreement).

It was also explained within that letter it is was in the public interest, the interests of the ACT Public Service and the interests of the Community Services Directorate that you be suspended from duty.

Decision about alleged misconduct

I am writing to inform you, in accordance with Clause H9.5 of the Enterprise Agreement, that I have received and considered the investigator’s report. I have found that you did undertake more observations than required by Bimberi’s Practice Guideline: Observations.

Notwithstanding this, I have determined, that the proven allegations don’t meet the threshold of misconduct as defined in clause H6.5 of the Enterprise Agreement. On this basis, no sanctions will be imposed against you.

Accordingly this matter is now closed with no findings of misconduct made against you.

I am sure you understand it is important that such matters are taken seriously when raised but I appreciate that this has not been an easy process for you. I thank you for your participation and cooperation in this process and note the expectation that all parties will interact professionally as required to do so when you return to duty.

Please contact Ms Kathryn Elton, Deputy Senior Manager Bimberi Youth Justice Centre within 24 hours of receiving this letter to make the appropriate arrangements for your return to work.
Record keeping

The records relating to the allegations of misconduct and investigation into those allegations are “territory records” under the Territory Records Act 2002 (Territory Records Act). Accordingly, the management of these records, including their disposal, must be done in accordance with the requirements of that Act, and in particular in accordance with an approved records management program.

Employee Assistance Program

I will mention in closing that the Employee Assistance Program is available to provide confidential and professional counselling to you and members of your family. You may access this service by phoning Converge International on 1800 687 327.

If you require clarification or additional information about anything in this letter, please contact Mr Craig Rose, Manager Employee Relations on 6207 1210.

Yours sincerely

Bernadette Mitcherson
Deputy Director-General
Delegate of the Head of Service

April 2017
9 General obligations of public employees

A public employee shall, in performing his or her duties:

(a) exercise reasonable care and skill;

(b) act impartially;

(c) act with probity;

(d) treat members of the public and other public employees with courtesy and sensitivity to their rights, duties and aspirations;

(e) in dealing with members of the public, make all reasonable efforts to assist them to understand their entitlements under the territory laws and to understand any requirements that they are obliged to satisfy under those laws;

(f) not harass a member of the public or another public employee, whether sexually or otherwise;

(g) not unlawfully coerce a member of the public or another public employee;

(h) comply with this Act, the management standards and all other territory laws;

(i) comply with any lawful and reasonable direction given by a person having authority to give the direction;

(j) if the employee has an interest, pecuniary or otherwise, that could conflict, or appear to conflict, with the proper performance of his or her duties—
   (i) disclose the interest to his or her supervisor; and
   (ii) take reasonable action to avoid the conflict;
   as soon as possible after the relevant facts come to the employee’s notice;

(k) not take, or seek to take, improper advantage of his or her position in order to obtain a benefit for the employee or any other person;

(l) not take, or seek to take, improper advantage, for the benefit of the employee or any other person, of any information acquired, or any document to which the employee has access, as a consequence of his or her employment;

(m) not disclose, without lawful authority—
   (i) any information acquired by him or her as a consequence of his or her employment; or
   (ii) any information acquired by him or her from any document to which he or she has access as a consequence of his or her employment;

(n) not make a comment that he or she is not authorised to make where the comment may be expected to be taken to be an official comment;

(o) not make improper use of the property of the Territory;

(p) avoid waste and extravagance in the use of the property of the Territory;

(q) report to an appropriate authority—
   (i) any corrupt or fraudulent conduct in the public sector that comes to his or her attention; or
   (ii) any possible maladministration in the public sector that he or she has reason to suspect.
9A Misconduct

The misconduct procedures that apply to a public employee are—

(a) if an industrial instrument applies to the employee and includes procedures for misconduct—the misconduct procedures in the industrial instrument; or

(b) in any other case—the prescribed misconduct procedures.