

**2. Is the conduct serious enough, if proven, for disciplinary action to be considered by a decision maker per Section 187(1) of the Public Service Act 2008?**

**S187(1) Grounds for discipline**

[The most common grounds are bolded for easy reference]

- (a) performed the employee's duties carelessly, incompetently or inefficiently; or
  - (b) been guilty of **misconduct**; [see definition below] or
  - (c) been absent from duty without approved leave and without reasonable excuse; or
  - (d) **contravened, without reasonable excuse, a direction given** to the employee as a public service employee by a responsible person; or
  - (e) used, without reasonable excuse, a substance to an extent that has adversely affected the competent performance of the employee's duties; or
  - (ea) contravened, without reasonable excuse, a requirement of the chief executive under section 179A(1) in relation to the employee's appointment, secondment or employment by, in response to the requirement—
    - (i) failing to disclose a serious disciplinary action;
    - (ii) giving false or misleading information; or
  - (f) contravened, without reasonable excuse—
    - (i) a **provision of this Act**; or
    - (ii) a standard of conduct applying to the employee under an approved **code of conduct** under the *Public Sector Ethics Act 1994*; or
    - (ii) a standard of conduct, if any, applying to the employee under an approved standard of practice under the *Public Sector Ethics Act 1994*.
- (4) In this section—  
**misconduct** means—
- (a) inappropriate or improper conduct in an official capacity; or
  - (b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public service.

Please note that the Code of conduct at 3.1 binds staff to adherence with whole of government directives, policies and standards and employing agency policies, organisational values and documents, so a breach of these is grounds for discipline as a breach of the Code of Conduct.

*For example:*

*W-O-G IT Policy and Standards*

*JAG Workplace Policy*

*Operational Policies and Procedures specific to the environment.*

**Potential Breach(s) of Section 187(1) of the Public Service Act 2008?**

**YES**

**Indicate likely breach(s) here:**

If proven the conduct would be a breach of:

Section 1.5 of the Code - Demonstrate a high standard of workplace behaviour and personal conduct.

Section 1 of the JAG Workplace Policy – Showing respect for the dignity, rights and views of others.

Section 4 of the JAG Workplace Policy – zero tolerance for any form of aggressive, threatening, violent or abusive behaviour towards clients, employees or members of the public

**3. Does the conduct have the characteristics of Corrupt Conduct under the Crime and Corruption Act 2001?**

If referred from CCC as suspected corrupt conduct insert the CCC reference CO- ( ).  
[Go to Section 5 – Assessment of evidence – proposed approach].

Mark the applicable boxes below in order to make the assessment.

s.14 defines that conduct includes:

- (a) neglect, failure and inaction; and
- (b) conspiracy to engage in conduct; and
- (c) attempt to engage in conduct.

s.15(1) Corrupt conduct - conduct of a person regardless of whether the person holds or held an appointment, that

- (a) adversely affects (or could) directly or indirectly, the performance of functions or the exercise of powers of
  - (i) a unit of public administration (UPA); or
  - (ii) a person holding an appointment; **AND**

**Please specify** Indirectly impacts on the victim's ability to perform the functions of their office/role by exposing them to unjustified criticism by other managers and staff.

- (b) results (or could) directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that:
  - (i) is not honest or is not impartial; or
  - (ii) involves a breach of trust ... either knowingly or recklessly; or
  - (iii) involves misuse of information or materials; **AND**

**Please specify:** Is not impartial in that the subject officer treated the victim in a manner that incited other staff to harass, and make unjustified criticism of them.

- (c) is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person;  **AND**

**Please specify:** For the purpose of causing a detriment to the victim by intimidating them and exposing them to criticism and harassment by other managers and staff.

- (d) would if proved be:
  - (i) a criminal offence; or
  - (ii) a disciplinary breach providing reasonable grounds for terminating the person's services if they were a holder of an appointment.

**Please specify the offence or disciplinary breach.** The alleged conduct if proven while amounting to a disciplinary breach is unlikely to result in the termination of the subject officer

**NB: (a), (b) (c) and (d) must all be satisfied to amount to Corrupt Conduct.**

**Would the conduct if proven amount to corrupt conduct? NO**

**If you answered NO go to Section 4. If you answered YES, select and mark the appropriate level as specified below.**

**Level 1** – corrupt conduct by DG, executive or similar; abuse of office, extortion; secret commissions; administration of justice (pervert, fabricate, conspire etc); supply / traffic dangerous drugs; maladministration >\$20K; use of force causing serious injury; sexual assault in custody; reprisal; imminent risk of abuse or neglect of detainee, officer with significant complaints history; media attention.

Immediate referral to CCC via Form CO4

**Level 2** - repeated behaviour of similar nature; fraud / misappropriation >\$5K; a substantial injury; senior officer or supervisor failure to report corrupt conduct; potential systemic concerns

Referral via s.40 schedule

**Level 3** – Other matters not included above

No referral – subject to audit.

If the conduct, if proven, has been assessed at section 3 as not amounting to corrupt conduct, assess the complaint against the **Conduct and Performance Excellence (CaPE)** criteria below.

<b>4. Is the conduct a Conduct and Performance Excellence (CaPE) matter?</b>	
<b>Conduct</b>	<b>Potential Action</b>
<p><b>Category One</b> matters involve:</p> <ul style="list-style-type: none"> <li>inappropriate interpersonal conduct with colleagues, clients or other stakeholders</li> <li>inappropriate behaviour relating to minor management matters</li> <li>performance requiring improvement.</li> </ul>	<p><b>NO</b></p> <p><u>ESU advice</u></p> <p><b>No role for ESU beyond advice</b></p>
<p>If you answered YES explain why:</p>	
<p><b>Category Two</b> matters involve:</p> <ul style="list-style-type: none"> <li>ongoing or repeated inappropriate conduct with colleagues, clients and other stakeholders</li> <li>minor misconduct: conduct / behaviour that is inconsistent with conduct standards expected of a public sector employee (such as the Code of Conduct), but that is not wilful or malicious</li> <li>careless / negligent performance of duties (rather than unsatisfactory performance due to lack of skill).</li> </ul>	<p><b>NO</b></p> <p><u>ESU advice</u></p> <p><b>OR</b></p>
<p>If you answered YES explain why:</p>	
<p><b>Category Three</b> matters involve:</p> <ul style="list-style-type: none"> <li>serious misconduct: conduct / behaviour that is inconsistent with conduct or professional standards / practices expected of a public sector employee (such as the Code of Conduct), and that is wilful, reckless or malicious</li> <li>conduct that, if proven, will warrant the commencement of a discipline process,</li> <li>conduct that, if proven, reasonably raises the possibility of termination of employment</li> <li>conduct that is a breach of criminal law</li> <li>serious neglect of performance of duties</li> </ul>	<p><b>YES</b></p> <p><u>Investigation</u></p>
<p>If you answered YES explain why:</p> <p>Serious inappropriate workplace behaviour that is inconsistent with standards expected under the Code of Conduct. Conduct that, if proven, would warrant the commencement of a disciplinary process.</p>	

## 5. Assessment of evidence – proposed approach

Mark the applicable boxes below in order to demonstrate what evidence is being considered to make the assessment.

### Primary evidence:

- A complaint by the victim? .....
- A complaint by a witness? .....
- Clearly identified particulars (subject officer identity, date, time and location)? .....
- Identified eyewitnesses or corroborating witness reports? .....
- CCTV footage (usually available within 30 days)? .....
- Medical evidence (for alleged excessive use of force/assault)? .....
- Audit Report? .....
- Other: (specify) .....

### Secondary evidence:

- Hearsay evidence? .....
- Anonymous letter, report or phone call etc.? .....
- Other: (specify) .....

Consider the immediately available evidence and the seriousness of the alleged conduct in terms of potential consequences for the organisation and the individual. What is a proportionate response and why – summarise your assessment below.

*There is sufficient detail regarding the officer involved, identified witnesses, the date, time and repeated behaviour. to support an investigation into the matters. The allegation identifies that the reported behaviours are having a serious impact on those identified and the operation of the work unit and support the requirement for an investigation.*

## 6. Is the allegation a Public Interest Disclosure (PID)?

Mark the box if the condition is met.

### Disclosure by any person:

- substantial and specific danger to a person with a ‘**disability**’
- substantial and specific danger to the **environment**
- Reprisal** taken against anybody as a result of a PID

### Disclosure by Public Officer:

- Corrupt Conduct**
- Maladministration**
- substantial **misuse of public resources**
- substantial and specific danger to **public health or safety**
- substantial and specific danger to **environment**

Is this a Public Interest Disclosure?

**YES**

If yes, conduct an immediate **risk assessment** (see PID Risk Assessment procedure)

**PID Risk Assessment Outcome** (Mark any that apply):

(Consult HR&G)

- Additional security
- Discloser declined support / protection
- Monitoring / management of staff who may engage in reprisal
- Protection of identity or existence of discloser
- Provision of tailored support for discloser
- Suspension of staff who may engage in reprisal
- Transfer of discloser
- Transfer of staff who may engage in reprisal
- Other (specify)
- Specific support provided? (comment):

Has the PID Register been updated?

YES

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**7. Matter to be handled by:**

- Ethical Standards Unit                       Management action
  - Corrective Services Investigation Unit (CSIU)                       Industrial & Employee Relations
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**8. Other referrals**

- Queensland Police Service (for criminal matters)
  - Internal Audit (material loss)
  - Right to Information and Privacy Unit (privacy breach)
  - HR&G for medical issue requiring rehabilitation liaison
  - Ombudsman (PID database)
  - Management action – immediate systemic issue
  - Crown Law – legal opinion required
  - Other (specify)
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**9. Recommended action (ESU Complaint Management) Mark any that apply.**

- Secure documents
- Preliminary enquiries (outline details of any preliminary enquires undertaken)
- Return to Division for internal investigation
- ESU investigation
- External investigation
- Other (specify)

**INFORMATION PRIVACY CLAUSES**

**1. INFORMATION PRIVACY**

**1.1 Compliance with Privacy Principles**

- (a) The Contractor must comply with parts 1 and 3 of chapter 2 of the IPA in relation to the discharge of its obligations under this Contract as if the Contractor was the Department.
- (b) The Contractor acknowledges that the Contractor is a Bound Contracted Service Provider.
- (c) The requirement to comply under clause 1.1(a) continues to apply to the Contractor in relation to Personal Information it continues to hold after termination or expiry of this Contract despite that termination or expiry.

**1.2 Information about enforcement and complaints**

- (a) The Contractor must keep the Department informed about any:
  - (i) enforcement of the Contractor's obligations under the IPA in connection with this Contract, including enforcement through Compliance Notices given to the Contractor; and
  - (ii) privacy complaints in connection with the Contractor's discharge of its obligations under this Contract, including any Privacy Complaints to which the Contractor is a respondent.
- (b) The Contractor must give the Department copies of any correspondence, notices, complaints, orders and any other documents connected with the matters referred to in clause 1.2(a) within 3 Business Days of the Contractor's receipt of any of those documents.
- (c) The Contractor must take any steps reasonably required by the Department in connection with the matters referred to in clause 1.2(a), including steps to comply with any Compliance Notice.

**1.3 Review and audit by the Information Commissioner**

- (a) The Contractor acknowledges that the Information Commissioner's functions under the IPA include conducting reviews into Personal Information handling practices of Bound Contracted Service Providers and conducting compliance audits to assess Bound Contracted Service Providers' compliance with the Privacy Principles.
- (b) The Contractor must allow the Information Commissioner access at all times to premises and information systems where Personal Information is held to enable the Information Commissioner to examine:

- (i) any Document under the Control of the Contractor containing the Personal Information;
  - (ii) any Document of the Contractor connected with the Contractor's Personal Information handling practices; and
  - (iii) any other information required by the Information Commissioner in connection with the performance of the Information Commissioner's functions under the IPA.
- (c) The Contractor must comply with guidelines issued by the Information Commissioner in connection with the IPA, including guidelines under section 135(1)(c) of the IPA.
- (d) The Contractor must keep the Department informed about actions of the Information Commissioner in connection with the Contract which the Contractor becomes aware of, including:
- (i) review by the Information Commissioner into Personal Information handling practices of the Contractor;
  - (ii) advice provided by the Information Commissioner to the Contractor; and
  - (iii) compliance audits undertaken by the Information Commissioner to assess the Contractor's compliance with the Privacy Principles.
- (e) The Contractor must give the Department copies of any correspondence connected with the matters referred to in clause 1.3(d) within 3 Business Days of the Contractor's receipt of that correspondence.

#### **1.4 Use and disclosure and transfer outside of Australia**

The Contractor must not:

- (a) use Personal Information other than for the purposes for this Contract;
- (b) disclose Personal Information without the written agreement of the Department, unless required by law; or
- (c) transfer any Personal Information outside of Australia unless:
  - (i) the transfer is permitted under section 33 of the IPA; and
  - (ii) the Contractor has obtained the written approval of the Department to the transfer.

#### **1.5 Notification of disclosure required by law**

The Contractor must immediately notify the Department if it becomes aware that disclosure of Personal Information is, or may be, required or authorised by law.

## **1.6 Contractor's employees**

The Contractor must ensure that:

- (a) access to Personal Information is restricted to those employees who require access in order to perform their duties; and
- (b) its employees are legally bound not to access, use or disclose Personal Information other than in the performance of their duties.

## **1.7 Approval of collection notice under IPP 2**

- (a) Before asking an individual for Personal Information about the individual or any information of a type that would include Personal Information about the individual, the Contractor must submit to the Department for approval the steps the Contractor proposes to take to comply with IPP 2(3).
- (b) The Department must notify the Contractor within 10 Business Days after the Department's receipt of the request under clause 1.7(a) that the Department:
  - (i) approves the steps;
  - (ii) approves the steps subject to amendments set out in the notice; or
  - (iii) requires alternative steps.
- (c) The Contractor must take the steps approved by the Department under clause 1.7(b)(i), the steps as amended in accordance with the notice under clause 1.7(b)(ii) or the alternative steps required under clause 1.7(b)(iii).

## **1.8 Notice of information held by Contractor under IPP 5**

- (a) The Contractor must submit to the Department for approval the steps proposed to be taken by the Contractor to comply with IPP 5(1) before taking any of those steps.
- (b) The Department must notify the Contractor within 10 Business Days after the Department's receipt of the request under clause 1.8(a) that the Department:
  - (i) approves the steps;
  - (ii) approves the steps subject to amendments set out in the notice; or
  - (iii) requires alternative steps.
- (c) The Contractor must take the steps approved by the Department under clause 1.8(b)(i), the steps as amended in accordance with the notice under clause 1.8(b)(ii) or the alternative steps required under clause 1.8(b)(iii).



## **1.9 Access and amendment requests to the Contractor under IPPs 6 and 7**

- (a) Within 5 Business Days after receiving an individual's request for access to or amendment of a Document containing the individual's Personal Information the Contractor must give the Department:
  - (i) a copy of the request; and
  - (ii) a copy of the Document.
- (b) The Department must notify the Contractor within 20 Business Days after the Department's receipt of the information under 1.9(a) that the Department requires the Contractor to do any one or more of the following:
  - (i) provide the copy of the Document to the individual;
  - (ii) amend or notate the Document in the way specified by the Department;
  - (iii) inform the individual that the application has been referred to the Department and that the Department will process the application;
  - (iv) inform the individual that the application should be made in the approved form to the Department under the IPA; or
  - (v) take other reasonable steps specified by the Department in relation to the application.
- (c) The Contractor must comply with the notice under 1.9(b) by the date specified in the notice or, if no date is specified, within 5 Business Days after the date of the notice.

## **1.10 Access and amendment applications and complaints to the Agency**

For or in connection with:

- (a) an individual's application to the Department for access to, or amendment of, a Document containing the individual's Personal Information, whether the application is made under the IPA or otherwise; or
- (b) privacy complaints made to the Department, including any Privacy Complaints to which the Department is a respondent,

the Contractor must, within 5 Business Days of the Department's request:

- (c) give the Department a Document specified by the Department;
- (d) amend or notate a Document specified by the Department;
- (e) provide information to the Department concerning the Contractor's discharge of its obligations under this clause 1; or
- (f) take other reasonable steps required by the Department.

### 1.11 Request for other privacy and security measures

The Contractor must comply with any such other privacy and security measures as the Department reasonably advises the Contractor in writing.

### 1.12 Subcontracts

- (a) Any subcontracts entered into by the Contractor must require the subcontractor to comply with obligations the same as those imposed on the Contractor under this clause 1 except that:
  - (i) the references to 'Department' in the clause are replaced with references to the Contractor;
  - (ii) the periods of Business Days for calculating the dates for the Contractor's obligations specified in the clause are reduced by 1 Business Day; and
  - (iii) the obligations imposed on the subcontractor must not include the acknowledgement in clause 1.1(b).
- (b) For the avoidance of doubt:
  - (i) this clause does not affect the requirements in this Contract for the Contractor to obtain the Department's consent to subcontracting; and
  - (ii) any subcontracting does not relieve the Contractor from any of its obligations under this clause.

### 1.13 Notification of breach of privacy obligations

The Contractor must immediately notify the Department on becoming aware of any breach of this clause 1.

### 1.14 Indemnity

- (a) In this clause:
  - 'Claim' means any claim, action, proceeding, demand, liability, obligation, costs, loss, damages and expenses;
  - 'Department' includes its officers, employees and agents; and
  - 'Contractor' includes its employees, agents and subcontractors.
- (b) The Contractor indemnifies and keeps the Department indemnified against any claim which may be brought or made on or incurred by the Department arising from:
  - (i) any breach by the Contractor of this clause; or
  - (ii) any unlawful or negligent Act or omission of the Contractor in the performance or attempted performance of its obligations under this clause.

### 1.15 Survival



This clause will survive termination or expiry of this Contract.

### 1.16 Definitions

In this clause:

**'Bound Contracted Service Provider'** has a meaning given in the IPA;

**'Compliance Notices'** has a meaning given in the IPA;

**'Control'** has the meaning given in the IPA;

**'Document'** has the meaning given in the IPA;

**'Health Department'** has the meaning given in the IPA;

**'Information Commissioner'** has the meaning given in the IPA;

**'IPA'** means the *Information Privacy Act 2009*;

**'Personal Information'** has the meaning given in the IPA and, where the context requires, means Personal Information in connection with this Contract; and

**'Privacy Compliant'** has a meaning given in the IPA; and

**'Privacy Principles'** has the meaning given in the IPA.