

Australian Capital Territory

Human Rights Commission (Public Servant) Process 2024 (No 1)

Disallowable instrument DI2024–24

made under the

Human Rights Commission Act 2005, section 94D (Code of conduct breach by public servants)

1 Name of instrument

This instrument is the *Human Rights Commission (Public Servant) Process 2024 (No 1)*.

2 Commencement

This instrument commences on the day after it is notified.

3 Determination

The Executive determines the process set out in the schedule for code of conduct breaches for public servants.

Tara Cheyne MLA
Minister for Human Rights

Andrew Barr MLA
Chief Minister

16 February 2024

SCHEDULE

1 Sharing of Relevant Information

The commission must, in relation to any complaint, unless otherwise specified in a relationship protocol:

- (a) provide a copy of relevant information to the relevant information sharing entity; and
- (b) consult with the relevant information sharing entity of the person subject to the complaint in relation to the appropriate process for handling the complaint including:
 - (i) the process for undertaking any preliminary assessment of inappropriate behaviour or alleged misconduct by the manager or supervisor; and
 - (ii) any proposal of the commission to progress the complaint.

2 Limitation on issuing final orders

Unless otherwise agreed by the public sector standards commissioner, a final order must not be issued in relation to a complaint until the process for preliminary assessment and investigation (if any) of any alleged inappropriate behaviour or misconduct under the relevant enterprise agreement and the *Public Sector Management Act 1994* is complete.

3 No limitation on interim orders

- (1) This instrument is not intended to limit any power or function of the commission in relation to any interim order or public statement.
- (2) The commission may extend an interim order for the period of time required by the public sector standards commissioner to complete the consideration of the complaint.

4 Relationship protocol

- (1) The commission and the public sector standards commissioner may, by agreement, establish a relationship protocol to assist in:
 - (a) avoiding delay and unnecessary duplication of the statutory functions of each office holder; or
 - (b) efficiently managing the interaction of the statutory functions of each office holder.

5 Definitions

complaint a complaint under the Act, in relation to which:

- (a) section 94D of the Act applies;
- (b) the health services commissioner holds relevant information; and
- (c) the person subject to the complaint is employed as a public servant at the time of the relevant action.

complete, in relation to the preliminary assessment and any investigation of conduct the subject of a complaint pursuant to an enterprise agreement or the *Public Sector Management Act 1994*, includes:

- (a) where the conduct does not require further consideration or investigation by the relevant entity; and
- (b) an investigation that has been stayed or discontinued.

enterprise agreement means the enterprise agreement, approved by the Fair Work Commission under the *Fair Work Act 2009* (Cwlth), applicable to the relevant public servant.

relevant information means information in relation to a complaint which the commission:

- (a) may share with the relevant information sharing entity under section 94E of the Act; and
- (b) considers reasonably necessary to enable alleged inappropriate behaviour or misconduct to be considered under the enterprise agreement or the *Public Sector Management Act 1994* in relation to the public servant,

but does not include information which the commission reasonably believes is necessary to redact or withhold in order to protect the privacy of the complainant or another person who has provided information to the commission.

relevant information sharing entity means an information sharing entity set out in section 94E of the Act, or the delegate for that information sharing entity, who is currently responsible for the supervision or management of the relevant public servant, or the investigation or management of the complaint.

relationship protocol means the protocol agreed at clause 4 of the process.