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| Periodic review guide |
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| Discipline, suspension and workplace investigation periodic reviews |

On 1 March 2023, the *Public Service Act* *2008* was replaced with the *Public Sector Act 2022* (the Act). From 1 March 2023, the Discipline (Directive 14/20) was superseded by Discipline (Directive 05/23), and Suspension (Directive 16/20) was superseded by Suspension (Directive 06/23). From 10 June 2024, the Workplace investigations (Directive 17/20) was superseded by Workplace investigations (Directive 01/24). Periodic review requirements under these directives now apply to public sector entities, and the previous periodic review requirements have been updated.

### Review timeframes

The directives relating to discipline, suspension and workplace investigations require a chief executive to resolve work performance matters in a timely way. A discipline process, suspension and workplace investigation (excluding any corrupt conduct matter) may be extended at the following intervals.

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| **Periodic review timeframe** | **Who must conduct the review?** |
| **6 months from commencement of the process** | Independent decision maker in the entity |
| **12 months from commencement of the process** | Chief executive of the entity |
| **Every 6 months thereafter** | Chief executive of the entity |

### Process overview

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| **Type of process** | **Duration of process** |
| DisciplineA discipline process must not continue until the review is completed.  | Commences when the first notice to show cause is issued to subject employee. Finalised when a decision on disciplinary action is issued to the subject employee. |
| SuspensionA suspension should remain in place while the review is completed.  | Commences when the subject employee is notified in writing they are suspended from duty. Finalised when the suspension ends in any way such as return to duties, alternative duties, or termination of employment. |
| Workplace InvestigationA workplace investigation may continue while the review is being undertaken.  | Commences when the chief executive signs the workplace investigation terms of reference. Finalised when the chief executive receives the completed workplace investigation report.  |

Following review of the matter, the chief executive (or delegate) must consider the recommendations made by the reviewer and decide on whether the discipline process, suspension or workplace investigation should continue. The findings of the review must be communicated to the subject employee in writing.

**Review process**

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| **Type of process** | **Review considerations** |
| **Discipline** | The review must consider whether the discipline process complies with the Act and the procedural elements of the directive.  |
| **Suspension** | The review must consider whether the suspension should be cancelled or continued having regard to the considerations for suspension in the Act and the directive. |
| **Workplace investigation** | The review must consider whether the workplace investigation complies with the Act and the procedural elements of the directive, whether the investigation has been conducted in accordance with the terms of reference, and the reasons for any delay finalising the investigation.  |

The reviewer should consider the factors impacting completion of the workplace investigation or discipline process and consider making appropriate recommendations to assist with the timely finalisation of the matter.

Where an employee is subject to more than one process, a separate review for each process must be undertaken at the intervals set out earlier. Some workplace investigations or discipline processes may also involve suspension of the employee for the duration of the process. Workplace investigations or discipline processes that are not completed in a timely way may have consequences on the length of time an employee is suspended from the workplace, resulting in increased suspension costs, impacts to the employee and to the workplace.

### Review considerations

Some considerations are relevant to all discipline, suspension and workplace investigation reviews. The review guide must be read in conjunction with the Act, the relevant directive, and the principles of procedural fairness and human rights considerations outlined below.

Procedural Fairness

Procedural fairness applies to any decision that can impact the rights or interests of an individual. It requires that a fair and proper procedure be applied when deciding, so the decision is defensible and legally sound.

Procedural fairness is a right recognised and defined by law that involves two key elements:

1. the fair hearing rule - a person must be given sufficient information to know the case against them and be given the opportunity to respond
2. the rule against bias - a person is entitled to a decision that is made by a disinterested and unbiased decision maker.

### Fair hearing rule

The fair hearing rule is the principle that a decision maker must afford a person whose interests will be adversely affected by a decision the opportunity to present their case. This rule requires that a decision maker listen to and consider a person’s point of view on anything that may adversely affect them.

In a practical sense, this involves ensuring a person is provided with adequate notice and information relating to the case against them, given the opportunity to comment and the decision maker considering the information provided by the person in response.

Allegations arising from a workplace investigation or discipline process must be sufficiently clear and specific to allow the employee the opportunity to fairly respond. Employees must be provided with evidence relevant to the allegations. This rule also requires that the employee be given the opportunity to rebut or comment on any new material adverse to their case, including information gathered by a decision maker.

In undertaking a review, the reviewer must consider whether the subject employee has been afforded a fair hearing.

### Rule against bias

The rule against bias requires that decisions are made by an impartial decision maker without an interest in the matter who is free from actual or apparent bias. Bias can arise in a number of ways, including:

* being partial (favouring one person over another)
* being closed-minded (not listening to or taking into account what someone has to say)
* potentially gaining some personal advantage or avoiding a personal disadvantage based on the outcome of the investigation.

The reviewer must not only look for actual bias but must consider whether there is anything about a decision maker or their conduct that may give rise to the perception of bias.

Risks to actual or perceptions of bias that should be considered during the review include whether:

* a decision maker has a close personal or professional relationship with any party involved in a matter. Mere knowledge of a person or a previous working relationship may not ordinarily give rise to an actual or perceived bias, however decisions where there is a clear animosity or favouring of a particular version or party may, where there is no justifiable reason for this
* there is any predetermination of an outcome
* the decision maker would benefit from a particular outcome being achieved
* whether the decision maker was involved in the events under review.

### Human rights

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| Teardrop icon for Pull quote | Under the *Human Rights Act 2019* a decision maker has an obligation to act and make decisions in a way that is compatible with human rights, and when making a decision under the Directive, to give proper consideration to human rights |

When conducting a periodic review under the relevant directive, a reviewer should identify any decision points in the process to date and assess whether a decision maker has given proper consideration to human rights in making those decisions. For more information and resources relating to human rights, please refer to [human rights resources](https://www.forgov.qld.gov.au/human-rights-resources).

### Resources

* [Appendix 1](#_Appendix_1:_Template) – a template for periodic reviews under the Discipline (Directive 05/23).
* [Appendix 2](#_Appendix_2:_Template) – a template for periodic reviews under the Suspension (Directive 06/23).
* [Appendix 3](#_Appendix_3:_Template) – a template for periodic reviews under the Workplace Investigations (Directive 01/24)
* [*Public Sector Act 2022*](https://www.legislation.qld.gov.au/view/html/asmade/act-2022-034)
* *Human Rights Act 2019*
* [Discipline (Directive 05/23)](https://www.forgov.qld.gov.au/employment-policy-career-and-wellbeing/directives-policies-circulars-and-guidelines/discipline-directive-0523)
* [Suspension (Directive 06/23)](https://www.forgov.qld.gov.au/employment-policy-career-and-wellbeing/directives-policies-circulars-and-guidelines/suspension-directive-0623)
* [Workplace investigations (Directive 01/24)](https://www.forgov.qld.gov.au/pay-benefits-and-policy/directives-policies-circulars-and-guidelines/workplace-investigations-directive-0124/)

### Appendix 1: Template review guide – discipline

* This section of the guide should be read in conjunction with the directive and Chapter 3, Part 8 of the Act.
* When reviewing for compliance with a specific clause of the directive, information to consider may include briefing notes, written correspondence, and any other information provided to the reviewer from the decision maker. It may also require consideration of relevant instruments of delegation and any investigation documentation to date.
* Information considered during the review should be documented and evidence embedded in the Reviewer considerations column.

Possible review findings and recommendations:

* Where no issues are identified that the discipline process is continued.
* Where minor procedural issues are identified, (for example) an amended show cause letter may be issued correcting the errors. Examples of minor issues that may warrant an amended show cause letter include allegations not being correctly structured or sufficiently particularised, or application of inappropriate grounds for discipline relevant to the original allegations.
* Where significant issues are identified, a reviewer should consider whether to recommend the process is ceased. Alternative resolutions could include management action or the commencement of a Performance Improvement Plan. Examples of significant issues that may warrant the cessation of a process include where a discipline process for performance has not followed the steps set out in the Positive performance management directive, or where a matter is not sufficiently serious to warrant disciplinary action being taken.
* Once approved by the decision maker, the review findings must be communicated to the subject employee in writing. The review template below should not be provided to the subject employee as it may contain confidential information.

Note: An amended show cause letter forms part of the existing discipline process, and the timeframes for future mandatory timeframe reviews continue to be measured from the date the original show cause notice was issued to the employee.

### Discipline reviews

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| **Review details** |  |
| Employee details |  |
| Date discipline process commenced |  |
| Date periodic review due |  |
| Summary of matter and current status |  |
| Review completed by |  |
| Delegate for review |  |

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| **Key discipline components** | **Relevant clauses** – Discipline directive 05/23**Relevant sections** – *Public Sector Act 2022* | **Reviewer considerations** |
| Preliminary decision making |
| Evidence the entity has given proper consideration to whether to commence a discipline process including:* + - reasonable belief that a ground for discipline exists
		- the seriousness of the matter
		- whether it should be addressed through management action or positive performance management

Whether appropriate referrals to external bodies have been made where relevant.  | Clauses 7.1, 7.2, 7.3, 8.1, 8.2, 8.3Section 91 | Title and date of document that shows this and observation e.g., Briefing note dated xx shows that the decision maker considered these factors before commencing discipline process and why this was appropriate.  |
| **Discipline process** |
| Conflicts of interest (COI) considered, declared, and managed (if required) for those involved. | Clause 9.2 Section 89 | Title and date of document that shows this and observation e.g., document dated xx shows COIs were considered and declared, with no COI identified. |
| Discipline process relating to performance grounds (if applicable)Evidence that the directive relating to positive performance management has been followed prior to commencing discipline for performance reasons. | Clause 7.3Section 86 | Title and date of document that shows this and observation e.g., copy of a finalised performance improvement plan or outcome letter following performance improvement plan.  |
| Show cause notice for disciplinary finding includes written details of each allegation, particulars, the disciplinary ground, and all evidence relevant, including specific references to pages or paragraph numbers that hold the evidence.No more than two possible disciplinary grounds are included for the same allegation. Employee was provided with at least 14 days to respond.  | Clause 9.3Section 91 | Title and date of document that shows this and observation e.g., show cause letter dated xx and include how it addresses key requirements.  |
| Decision on grounds (disciplinary finding) incudes finding of fact on the balance of probabilities, evidence relied upon (including employee response) and whether discipline ground is established.Appeal rights are contained within the correspondence.  | Clause 9.4Section 91 | Title and date of document that shows this and observation e.g., decision on grounds letter dated xx and include how it addresses key requirements. Also note any written response from employee and how this was considered by the decision maker in arriving at a decision to substantiate allegations if relevant.  |
| Show cause notice for proposed disciplinary action includes written details of proposed action and evidence that the chief executive has considered why the proposed action is appropriate and proportionate.Notice does not include termination of employment as a possibility unless chief executive holds a reasonable belief this may be an outcome. Employee was provided with at least 7 days to respond to proposed disciplinary action. | Clause 9.5Sections 92–96, s98 | Title and date of document that shows this and observation e.g., show cause letter dated xx or briefing note dated xx and how it addresses key requirements.  |
| Decision on disciplinary action clearly states reason for decision (including consideration of information from employee) and appeal rights.  | Clause 9.6, 9.7 and 9.8Sections 92–96, s98–99 | Title and date of document that shows this and observation e.g., decision on disciplinary action letter dated xx and include how it addresses key requirements. Also note any written response from employee considered in this decision and how this was considered by the decision maker in arriving at a disciplinary action. |
| Evidence that procedural fairness has been provided to the employee. This includes a reasonable timeframe for the employee to respond, and the opportunity for support person.  | Clause 9.3, 9.5 and 10.1 | Include observation about evidence of procedural fairness including reasonable opportunity to respond and support person*.* |
| Periodic reviews have been conducted at appropriate timeframes and the outcomes communicated to the employee. | Clause 11 | Include observations about periodic reviews being conducted by the appropriate decision maker and communicated to subject employee. E.g., review dates, who was the decision maker and date outcome correspondence were sent to the employee.  |
| Evidence the disciplinary process is being conducted in timely way and reasons for delay are reasonable with plan in place to address going forward. | Clause 11.2 | Include rationale for why the delay has occurred and any plan to resolve this.  |
| Evidence that the decision maker has considered the *Human Rights Act 2019* (the HR Act) in their decision making, with proper consideration given to human rights.  | Clause 4.3 | E.g., Briefing note dated xx shows that the decision maker considered human rights under the HR Act when deciding to commence a discipline process.  |
| Evidence the decision maker has considered their obligation to promote cultural safety in discipline processes.  | Clause 6 | Include observation about evidence this was considered by decision maker, and any strategies implemented (if applicable).  |

### Conflicts of interest

In conducting this review:

[ ]  I have considered and identified any actual, perceived, or potential conflicts of interest relevant to my involvement, and have approved strategies to manage this in place OR

[ ]  I have no conflict of interest to declare relevant to conducting this review.

#### Recommendations to delegate:

(E.g., continue process, or otherwise, based on assessment of compliance and other relevant factors. Include any recommendations for progressing the matter to resolution in a timely way)

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| --- | --- |
| **Signed** |  |
| **Name** |  |
| **Position** |  |
| **Date** |  |

### Appendix 2: Template review guide – suspension

* This section of the guide should be read in conjunction with the directive and s101 of the Act.
* When reviewing for compliance with a specific clause of the Act or directive, information to consider may include briefing notes, written correspondence, and any other information provided to the reviewer from the decision maker. It may also require consideration of relevant instruments of delegation.
* The review must consider this information against the relevant circumstances of the work performance matter at the time the review is conducted, to recommend whether the suspension should continue or be cancelled.
* Information considered during the review should be documented and embedded in the Reviewer considerations column.

Possible review findings and recommendations:

* Where no issues are identified that the suspension continues.
* Where minor procedural issues are identified, an amended suspension letter may be issued correcting the errors. Examples of minor issues that may warrant an amended suspension letter include stating that the suspension will end by reference to events such at the end of the discipline process, rather than stating an actual end date or a period of weeks/months, or not including the effect that alternative employment may have on paid suspension, or not including human rights considerations in the suspension letter.
* Where significant issues are identified that raise concerns as to whether the suspension should continue, a reviewer should consider whether to recommend ceasing the suspension. This may occur in situations where proper consideration has not been given to alternatives to suspension, or the circumstances giving rise to the original suspension decision have changed and it is no longer clear whether suspension is appropriate. The decision maker should then revisit the reasons for suspension and consideration of alternatives.
* Once approved by the decision maker, the review findings must be communicated to the subject employee in writing. The review template below should not be provided to the subject employee as it may contain confidential information.

### Suspension review

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| --- | --- |
| **Review details** |  |
| Employee details |  |
| Date suspension commenced |  |
| Date periodic review due |  |
| Summary of matter and current status |  |
| Review completed by |  |
| Delegate for review |  |

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| **Key suspension components** | **Relevant clauses** – Suspension directive 06/23 **Relevant sections** – *Public Sector Act 2022* | **Reviewer considerations** |
| **Suspension process and considerations** |
| Evidence the decision maker held a reasonable belief that:* + - the employee is liable to discipline under a disciplinary law; or
		- the proper and efficient management of the entity might be prejudiced if the employee is not suspended.
 | Clause 7.1Section 101(1)(a) and s101(1)(b)  | E.g., Briefing note dated xx shows that the decision maker decided that either the employee is liable to discipline, or the proper and efficient and proper management of the entity might be prejudiced if the employee is not suspended. |
| Evidence the decision maker has considered all reasonable alternatives to suspension available to the employee. | Clause 7.3(a), 7.3(b)Section 101(3) | E.g., Briefing note dated xx shows that the decision maker considered all reasonable alternatives and why they were not suitable.  |
| Correspondence to the suspended employee includes: * + - the alternatives to suspension considered and why they were not suitable options
		- when the suspension starts and ends
		- the effect alternative employment will have on suspension payment
		- information on time limits for starting an appeal.
 | Clause 7.2, 7.3(c), 7.5Section 101(2) | E.g., Letter to employee dated xx shows that alternatives to suspension were considered including xx, and why they were not suitable (add details).Letter sets out suspension start and end dates. Letter notes the effect alternative employment will have on suspension payment. Letter notes information on time limits for starting an appeal.  |
| Evidence that the decision maker has considered the *Human Rights Act 2019* (HR Act) in their decision making, with proper consideration given to human rights of the employee. | Clause 4.3 | E.g., Briefing note dated xx shows that the decision maker considered human rights under the HR Act when deciding to suspend the employee. Also note any further decision points where human rights have been considered and documented.  |

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| **Unpaid suspensions only** |
| Evidence that prior to proposing to suspend the employee without remuneration, the decision maker considered the nature of the disciplinary matter and determined:* + - there are factors outside agency control preventing timely conclusion of the disciplinary process, or
		- it is otherwise fair and reasonable, considering the financial impact on the employee and the broader public interest of the employee remaining on paid suspension.
 | Clause 8.1, 8.2Section 101(4)(b) | E.g., Briefing note dated xx shows that:the decision maker considered the serious nature of the allegations against the employee, and the impacts of external factors such as court proceedings on the timely resolution of the matterOR why it was considered fair and reasonable, considering the financial impact on the employee and the broader public interest of the employee remaining on paid suspension. |
| Procedural fairness was provided to the employee:* + - suspension without pay considerations were put to the employee in a show cause process, and the employee was provided at least 7 days to respond
		- extension requests to the 7-day response timeframe were reasonably considered
		- employee’s response to the proposal to suspend without pay was considered prior to the decision being made
		- the employee is provided with written notice of the reasons for the decision
		- the employee was advised on time limits for starting an appeal of the decision
 | Clause 9 | E.g., Letter dated xx outlines the unpaid suspension considerations and provides the employee 7 days to respondANDLetter dated xx confirms decision to suspend without pay and weighs up employee response against factors considered by decision maker. Letter includes information on appeal rights.  |
| **Reviews of the suspension** |
| Periodic reviews have been conducted at appropriate timeframes and the outcomes communicated to the employee, including notice of the suspension if it is to continue.  | Clause 11 | Include observations about periodic reviews being conducted by the appropriate decision maker and communicated to subject employee – e.g., review dates, who was the decision maker and date outcome correspondence sent to the employee.  |
| Consideration of original circumstances of suspension against current circumstances to arrive at a recommendation regarding the continuation or cancellation of the suspension.  | Clause 11.5Section 101 | Provide statement of current circumstances and whether the circumstances giving rise to the suspension have/have not changed, whether the suspension remains appropriate and why alternatives are not appropriate – e.g., information relating to ongoing court date proceedings, or where the discipline process is currently at, consideration of alternatives. |
| Evidence the decision maker has considered their obligation to promote cultural safety in suspension processes.  | Clause 6 | Include observation about evidence that was considered by decision maker, and any strategies implemented (if applicable).  |

### Conflicts of interest

In conducting this review:

[ ]  I have considered and identified any actual, perceived, or potential conflicts of interest relevant to my involvement, and have approved strategies to manage this in place OR

[ ]  I have no conflict of interest to declare relevant to conducting this review.

#### Recommendations to delegate:

(e.g., suspension should be cancelled or continued, having regard to the considerations for suspension in s101 of the Act and the directive. Include any recommendations for progressing the matter to resolution in a timely way)

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| --- | --- |
| **Signed** |  |
| **Name** |  |
| **Position** |  |
| **Date** |  |

### Appendix 3: Template review guide – workplace investigations

* This section of the guide should be read in conjunction with chapter 3, part 8 (Work performance and conduct) of the Act, the directive, and the workplace investigations guidelines.
* When reviewing for compliance with a specific clause of the directive, information to consider may include briefing notes, written correspondence, the authorised investigation terms of reference, investigation interview transcripts and any other information provided to the reviewer from the decision maker. It may also require consideration of relevant instruments of delegation.
* Information considered during the review should be documented and evidence embedded in the Reviewer considerations column.

Possible review findings and recommendations:

* Where no issues are identified that the workplace investigation is continued.
* Where minor procedural issues are identified, action should be taken to correct the issues for the workplace investigation to continue. Examples of minor issues that may warrant action include poorly structured written allegations in the investigation terms of reference, no documentation of consideration of conflict of interests, periodic reviews that have not been completed, or any unnecessary delays to the investigation.
* Where significant issues are identified, a reviewer should consider whether to recommend the workplace investigation is restarted in a way that addresses the issues or is ceased. Alternative resolutions could include management action, dispute resolution or the commencement of a Performance Improvement Plan. Examples of significant issues that may warrant the cessation of a workplace investigation include where an investigation is outside the scope of the authorised investigation terms of reference, or where a matter is not sufficiently serious to warrant an investigation or could be resolved through avenues other than investigation.
* Once approved by the decision maker, the review findings must be communicated to the subject employee in writing. The review template below should not be provided to the subject employee as it may contain confidential information.

### Workplace investigation review

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| --- | --- |
| **Review details** |  |
| Employee details |  |
| Date workplace investigation commenced |  |
| Date periodic review due |  |
| Summary of matter and current status |  |
| Review completed by |  |
| Delegate for review |  |

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| --- | --- | --- |
| **Key workplace investigation components** | **Relevant clauses** – Workplace investigations directive 01/24  | **Reviewer considerations** |
| **Preliminary decision making** |
| Evidence the decision maker has given proper consideration to commencing an investigation including:* + - the seriousness of the alleged conduct
		- whether there is sufficient evidence already available
		- how procedural fairness requirements will be met
		- alternative options such as management enquiries, alternative dispute resolution or positive performance management strategies.
 | Clause 10.1  | E.g., Briefing note dated xx shows that the decision maker considered these factors when determining to commence the investigation and explain why this was considered appropriate.  |
| Evidence that appropriate consideration has been given to the engagement of an external investigator (if relevant).  | Clause 13 | E.g., Briefing note dated xx shows that the decision maker considered why it was not appropriate to conduct the investigation internally and explain this.  |
| If applicable, the Public Sector Commissioner have given approval to engage the external investigator, if the external investigator is not on the standing offer arrangement. | Clause 13.4 |  |
| **Conduct of the investigation** |
| Conflict if interests (COI) considered and declared for those involved.  | Clause 10.3 | E.g., Document dated xx shows that COI were considered and declared. Note any COI identified and management strategies (if relevant).  |
| Authorised investigation terms of reference (TOR) clearly outlines the terms and scope of the investigation. | Clauses 10.1 and 10.2 | E.g., TOR dated xx is signed by the delegate and clearly outlines the terms and scope of the investigation.  |
| * + - procedural fairness has been provided to the subject employee including being advised of the allegations against them and afforded a reasonable opportunity to respond
		- the direction to participate in the investigation was lawful and reasonable
		- the employee was provided advance notice of any interview and was provided an opportunity to seek industrial advice and representation, and to have a support person.
 | Clauses 10.4, 10.5, 10.6, 10.7, 11 and 12 | Include observations about evidence of these requirements being met or any issues identified. Note any documents providing evidence of this.  |
| Periodic reviews have been conducted at appropriate timeframes and the outcomes communicated to the employee. | Clause 14 | Include observations about periodic reviews being conducted by the appropriate decision maker and communicated to subject employee – e.g., review dates, who was the decision maker and date outcome correspondence sent to the employee. |
| Whether the investigation is being conducted in a timely way, the reason for the delay is considered reasonable and there is a plan in place to address this going forward.  | Clauses 14.2 and 14.5 | Include any observations that the investigation is being conducted in a timely way, the rationale for why the delay has occurred and the plan in place to finalise the investigation. Note any documents providing evidence of this.  |
| Whether the investigation has been conducted in accordance with the authorised investigation TOR. | Clause 14.5(b) | Include any observations about whether the scope of the investigation appears to have been contained to the TOR, or any concerns where the scope appears to be outside the TOR. Note any documents providing evidence of this.  |
| Evidence that the decision maker has considered the *Human Rights Act 2019* (the HR Act) in their decision making, with proper consideration given to human rights.  | Clause 5.7 | E.g., Briefing note dated xx shows that the decision maker considered human rights under the HR Act when deciding to commence an investigation.  |
| Evidence the decision maker has considered their obligation to promote cultural safety in workplace investigations.  | Clause 7 | Include observation about evidence this was considered by decision maker, and any strategies implemented (if applicable).  |

### Conflicts of interest

In conducting this review:

[ ]  I have considered and identified any actual, perceived, or potential conflicts of interest relevant to my involvement, and have approved strategies to manage this in place OR

[ ]  I have no conflict of interest to declare relevant to conducting this review.

#### Recommendations to delegate:

e.g., continue workplace investigation or otherwise, based on assessment of compliance and other relevant factors. Include any recommendations for progressing the matter to resolution in a timely way

|  |  |
| --- | --- |
| **Signed** |  |
| **Name** |  |
| **Position** |  |
| **Date** |  |