



# Guide for Appeal Panels

## Head of Service

Appeals about Misconduct and Disciplinary Action

Appeals about suspension without pay (Misconduct)

Appeals about Under-Performance

Appeals about Employee Eligibility for Benefits Relating to  
Voluntary Redundancy

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## Introduction

This guide is intended as a resource for members of appeal panels ('panels') and outlines the roles and responsibilities of panel members in conducting an appeal in the ACTPS.

Panel members should familiarise themselves with the contents of this guide and ensure that they are well informed about their role, responsibilities and the process for appeals.

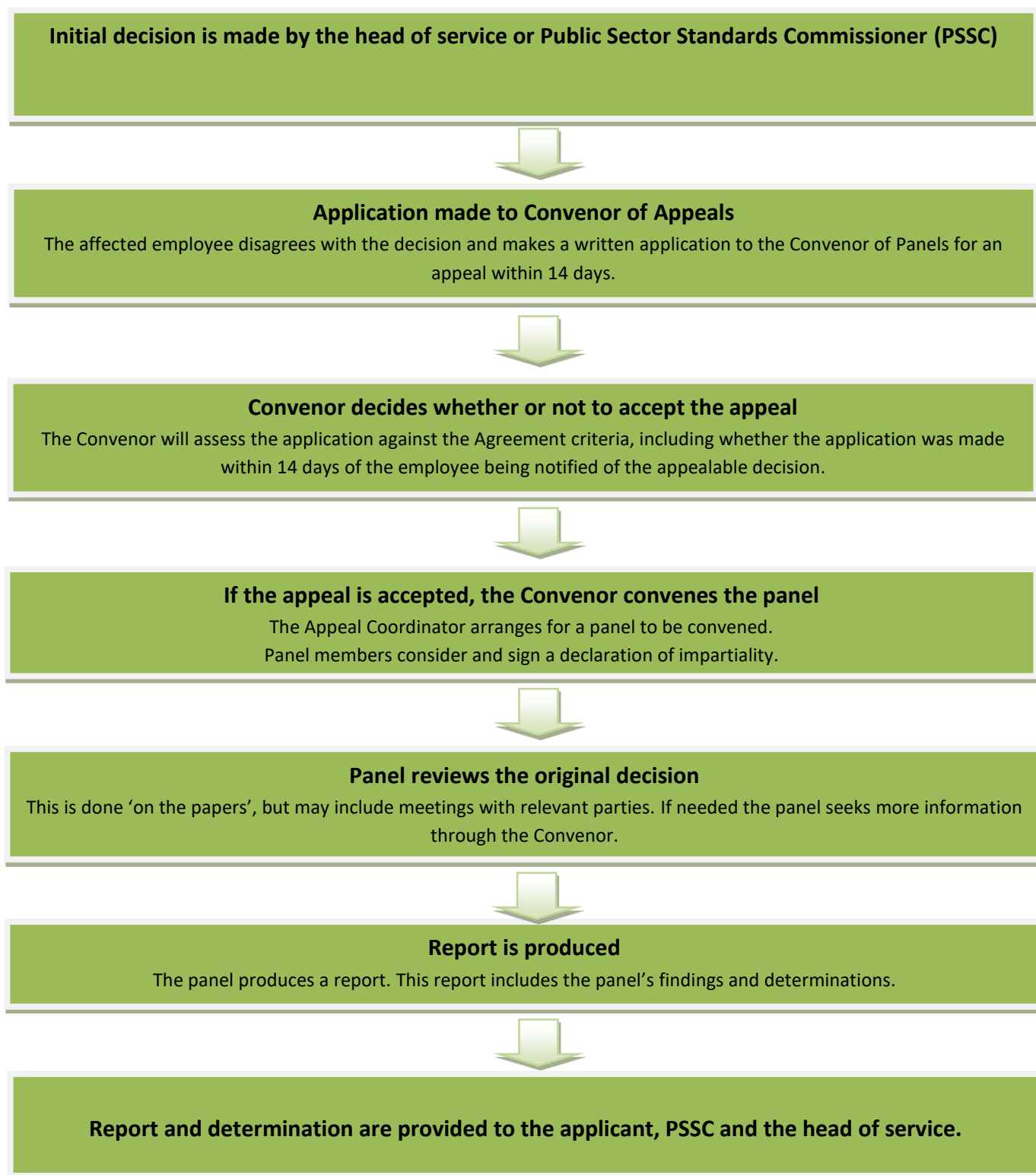
This guide provides information on:

- what an appeal is in the context of the ACTPS;
- the general principles that panel members should be familiar with and must apply;
- the establishment and composition of a panel;
- the different types of appeals and how to conduct them;
- reporting procedures; and
- links and other materials.

This guide does not displace relevant provisions of ACTPS enterprise agreements and other applicable laws. ACTPS staff and panel members are encouraged to read this document in conjunction with relevant legislation and industrial instruments referenced throughout the guide.

If necessary, further advice can be obtained from the ACT Government Solicitor through the Convenor of Panels ("the Convenor") as outlined in the Appeal Chairperson's Letter of Engagement.

## Part 1 - Appeals Process Outline



## Part 2 - Appeals in the ACTPS

### What are they?

Appeals in the ACTPS are procedural reviews 'on the papers' to determine whether:

- it was open to the PSSC or the head of service (or delegate) to take the action or decision that they did;
- the principles of procedural fairness and natural justice were complied with in taking the original action or decision; and
- the decision of the PSSC or the head of service (or delegate) was appropriate in all of the circumstances.

Panel members must familiarise themselves with these provisions before the panel process commences.

### What can be appealed?

Enterprise agreements set out an appeal mechanism for an employee where the employee is not satisfied with the outcome of decisions described in the following:

- decisions to suspend the employee without pay under clause H8 (Suspension, Reassignment or Transfer) of the relevant ACT Public Sector Enterprise Agreement;
- decisions relating to findings of misconduct under clause H10 of the relevant ACT Public Sector Enterprise Agreement, provided that such an appeal can only be made after a decision about disciplinary action under clause H11 has been made;
- decisions to take disciplinary action under clause H11 of the relevant ACT Public Sector Enterprise Agreement, except a decision to terminate the employee's employment;
- decisions to take underperformance action under subclause H4.17 (Underperformance Action), except a decision to terminate the employee's employment;
- decisions taken in relation to an employee's eligibility for benefits under clause L6 of the relevant Enterprise Agreement and the amount of such benefits, the amount payable by way of income maintenance under clause L10, and the giving of a notice of involuntary redundancy or notice of reduction in classification under clause L9.

It is important to note that any misconduct, underperformance or appeal process that has not been completed as at the date of commencement of any new enterprise agreement will be completed under the previous enterprise agreement. Any right of appeal from that process will also be conducted under the previous enterprise agreement.

### Dismissing an appeal in certain circumstances

The panel has the power not to investigate an application, or if it has commenced investigating the application, not to proceed further, if, in the panel's opinion:

- the application is frivolous, vexatious or not made in good faith;
- the employee may apply to another person or authority about the application and it would be more appropriate for it to deal with the action; or
- an investigation or further investigation of the application is not warranted.

In such an event, the panel should complete a report for the Convenor, outlining the reasons for dismissal.

## Who conducts them?

Appeals are conducted by a three-person panel, convened by the Convenor of Appeals

The composition of panels is prescribed within relevant ACT Public Sector Enterprise Agreements as:

- a person from a list, held by the head of service, of suitably skilled and trained employer representatives;
- a person from a list, held by the head of service, of suitably skilled and trained employee representatives nominated by the unions; and
- a chairperson chosen from a list, held by the PSSC, of approved panel chairs.

The Convenor may only be a member of the panel with the agreement of the appellant. If agreed, the Head of Service must also be satisfied that there are procedures in place to ensure a clear delineation between the two roles of the Convenor.

A person is not eligible to be a member of a panel if that person was involved in the decision or the process that is the subject of the application.

Before proceedings commence, nominated panel members must complete a Declaration of Impartiality to declare they have no conflict of interest in the matter before the panel. The signed Declaration must be provided to the Convenor.

The Declaration of Impartiality form is included in this Guide at **Attachment A**.

**Note:** prospective panel members should consider whether they are able to bring an unbiased and independent mind to proceedings before they accept a role on the Panel. If there are grounds for reasonable suspicion of bias, prejudice, or conflict of interest, or if they are in doubt, a panel member must decline the nomination.

## Context and scope

Appeals are not an opportunity to re-prosecute a matter from start to finish, and it is not intended the panel seeks to re-investigate the matter. The appeal is to be conducted on the papers that were before the original decision maker.

This does not preclude the panel from meeting with the employee who has made the application for appeal (“the appellant”) or other relevant parties, but the panel should not seek to obtain the same information which was gathered in previous stages, or new evidence. All relevant information and evidence that was considered by the decision maker in the making of the original decision or in taking the original action is already provided to the panel in full.

However, where the panel is satisfied that a fundamental piece of evidence was not considered in the original process then the panel can request that the Convenor refer the matter back to the head of service and/or the PSSC for further investigation.

# Part 3 - Roles and Responsibilities

## Key Expectations of Panel Members

The key expectations of panel members in conducting an appeal process are that members:

- act in good faith and as a cooperative member of the panel;
- are impartial;
- advise if there is a change in their circumstances, i.e. if an identified or possible perceived conflict of interest arises which would create a real or perceived conflict of interest;

- participate in panel proceedings to ensure they operate efficiently and as quickly as practicable whilst taking into account fair and proper consideration of the issues;
- are open with their deliberations, even if that means their views dissent with the views of the other panel members; and
- have due regard to the principles of natural justice and procedural fairness.

When participating in a panel, members should be mindful of the:

- stresses on parties to an appeal;
- time requirements and the time that needs to be allocated to the matter;
- desirability of informality;
- need to balance a timely process with a thorough process.

The panel should not institute any process that may operate directly or indirectly to discriminate against relevant parties to the appeal.

Panel proceedings are to be conducted in private. However, panel members should be aware that the confidentiality of documents produced in the course of the appeal may be subject to the *Freedom of Information Act 1989*. As such, panel members should avoid giving applicants guarantees of confidentiality.

All panel members must act in all panel proceedings with fairness, equity and impartiality and independent of other interests, including those from the body that has nominated them, for example, the employer or union. If a member feels pressure from any body or person they should declare it, in writing, to the Chairperson or Convenor.

## Role of the Convenor of Appeals

The Convenor of Appeals is an ACTPS office holder appointed by the Head of Service to be responsible for the appeals process. The Convenor is the person to whom applications for appeals need to be made and the Convenor makes the first assessment of whether or not an application meets the required minimum criteria for an appeal. The Convenor's impartiality ensures a fair and transparent process.

The Convenor is independent from the panel and is not involved in the panel deliberations. The Convenor ensures that appeals are managed appropriately and in accordance with the Enterprise Agreements.

## Role of the Appeals Coordinator

The Convenor is assisted in their role by the Appeals Coordinator ("the Coordinator"). The Coordinator is generally the first point of contact for the panel and will assist the panel in conducting the appeal. The Coordinator will ensure that the panel has all the relevant information needed and can assist with:

- answering questions on process and procedures; and
- organising facilities to enable panel procedures to be conducted.

## Role of Delegates

A delegate is someone who has the delegated (by the PSSC or the Head of Service or Director General of a Directorate) authority to make a decision or take an action.

In the context of an appeal, decision made under delegation may include a decision on suspension, findings of misconduct as well as a decision on sanctions.

## Role of Panel Chairperson

Every panel will have a chairperson chair the panel. The chairperson is chosen from a list held by the PSSC and will work with the other panel members to conduct the appeal in an efficient and effective way. The chairperson is



responsible for coordinating and leading the process, but all panel members have an equal say on the issues and share the responsibility of conducting the appeal between them. The chairperson will ensure that the report is written, taking into account the contribution of all panel members and providing them with a draft of the report before finalising it and sending it to the delegate and the applicant.

## Protection of Panel Members

Where a panel member is an employee of the ACTPS engaged under the PSM Act, the Territory indemnifies the member for acts or omissions made while involved in panel proceedings, provided the member was acting in good faith and within the powers conferred by the position at the time of the act or omission. This indemnity covers public liability, professional indemnity and directors' and officers' risks, where they act in good faith.

This Territory indemnity does not extend to a person nominated by the unions, nor representatives of independent providers, unless they are employed in the ACTPS (i.e. engaged under the PSM Act). Panel members not engaged under the PSM Act should ensure they are covered by appropriate insurance, including professional indemnity insurance.

## Part 4 - General Principles

There are several principles of justice, fairness, etc. that underpin decision making, appeals, investigations and the like. Some of them are regulated through legislation such as the Privacy Act, while others, such as procedural fairness and natural justice are derived from common law and broader legal concepts.

All material that is provided to the panel needs to be treated with the appropriate amount of confidentiality and the privacy of those involved needs to be assured.

### *General Principles include:*

- *Procedural Fairness*
- *Natural Justice*
- *Confidentiality*
- *Impartiality*
- *Timeliness*

It is important that panel members understand the fundamental underpinnings of these principles. Procedural fairness needs to be applied in the appeal process but is also one of the considerations in whether or not the original decision was correctly made.

Members of panels are required to sign and return declarations of impartiality. The reason for this is that a fundamental cornerstone of appeals is a 'fair hearing' which can only be assured if it is conducted without bias.

## Procedural Fairness

The principle of procedural fairness, sometimes used interchangeably with the term 'natural justice', applies to any decision that can directly affect the rights, interests or expectations of an individual. For the purposes of this guide the term 'procedural fairness' will be used but should be taken to include 'natural justice' as appropriate.

Procedural fairness gives an individual the right to expect that any decisions made about them are made by an unbiased decision maker and are based on open, fair and reasoned decision-making processes. Procedural fairness also requires that individuals are afforded a reasonable opportunity to respond to any decisions that may affect their interests.

Procedural fairness requires a decision maker to invite, listen to, and take into account an employee's point of view in relation to any matter that adversely affects them. Any decision affecting an employee that has been made without

affording that individual procedural fairness is liable to be challenged. The question of whether procedural fairness was afforded to the appellant (and where relevant, other parties) must be considered having regard to all of the relevant circumstances.

The courts have interpreted the principle of procedural fairness to extend from the initiation of a matter right through to its implementation, not just to the reporting stage or once a decision is made.

### 3 Rules of Procedural Fairness

- The hearing rule
- The rule against bias
- The “evidence” rule

The duty to accord procedural fairness consists of three key rules:

- **the hearing rule**, which requires a decision-maker to afford a person who may be adversely affected by a decision, an opportunity to present his or her case;
- **the rule against bias**, which requires a decision-maker not to have an interest in the matter to be decided and not to appear to bring a prejudiced mind to the matter; and
- **the "evidence" rule**, which requires a decision to be based upon logically probative evidence.

The rules of procedural fairness require:

- an inquiry into the matters in dispute;
- a hearing appropriate to the circumstances;
- a lack of bias; and
- evidence to support any decision made.

In broad terms, procedural fairness requires a decision-maker to:

- inform people against whose interests a decision may be made of the allegations against them or grounds for adverse comment in respect of them;
- provide those people with a reasonable opportunity to put their case forward;
- hear all parties to a matter and consider submissions;
- make reasonable inquiries or investigations before making a decision;
- ensure that no person decides a case in which they have a direct interest;
- act fairly and without bias, and
- conduct the investigation without undue delay.

Any decision affecting an individual must afford that individual procedural fairness.

**Note:** *The above does not represent a comprehensive list of factors that need to be considered to ensure a fair hearing. It is intended to be indicative of the kinds of procedural fairness considerations to bear in mind when conducting an appeal.*

*Individuals should exercise their own judgement and common sense in applying procedural fairness to each case.*

## Impartiality

Unbiased participation can be seen as a second aspect of procedural fairness. Prior to agreeing to participate as a member of a panel, consideration should be given to whether an unbiased and independent mind can be brought to the proceedings.

A Declaration of Impartiality must be signed prior to receiving the substantive appeal documentation. If any actual or potential conflict of interest exists at any stage of the process or if you have any doubt about your impartiality, you should disqualify yourself as a panel member.

Alternatively, and at a minimum, you need to discuss any concerns with the Coordinator (on behalf of the Convenor).

There are often issues where members will know, or be aware of, one or more persons involved in the matter (e.g. current or past association with a witness). This does not automatically prevent the person from participating in the appeal. Each instance of potential conflict should be discussed with the Coordinator, having regard to the relevant circumstances.

**Note:** *for employees engaged under the PSM Act 1994, declaration of conflicts of interest is a statutory responsibility. The Code of Ethics at section 9 of the PSM Act requires, among other ethical duties, the declaration of any conflicts of interest that arise in relation to their duties. This includes conflicts relating to reviews and appeals, not only at their inception but also those that arise while the review or appeal is in progress. Contractors are also obliged to declare conflicts as if they were an employee engaged under the PSM Act.*

## Confidentiality

Inevitably, issues being dealt with in the course of appeals will concern sensitive matters. While the confidentiality of personal information is paramount to the integrity of any appeals process, the documents produced in the course of an investigation may be subject to the *Freedom of Information Act 1989*. The appeal panel will inform the appellant about the application of the *Freedom of Information Act 1989* and why guarantees of confidentiality cannot be given.

A key element of maintaining confidentiality is ensuring that all documents, recordings and other items relating to review or appeal proceedings are kept in a physically safe environment. Agencies and panel members should also be familiar with and adhere to the *Privacy Act 1988 (Cth)* and the *Information Privacy Act 2014 (ACT)*, and ensure that all records associated with an appeal are maintained in accordance with the *Territory Records Act 2002*.

Any materials, information and documentation received by a panel member can only be used for the purposes of the appeal and may not be reproduced or disseminated without authorisation.

All physical materials provided to or created by the panel pertaining to the issue of the process of appeal is to be returned to the Territory at the cessation of the appeal.

## Timeliness

There is an expectation that panel members be available for panel meetings and allot time between meetings to consider and read the documentation.

It is important that all appeals are conducted in a timely manner. Often the circumstances surrounding a process that leads to an appeal are stressful for the appellant and a protracted process is potentially damaging. This is especially the case in misconduct appeals.

Thus, when considering participating on a panel it is imperative that consideration be given to any planned absences in the period in which the appeal is estimated to be undertaken. An assessment should be made as to whether other commitments will allow sufficient time to participate on the panel.

## Part 5 - Conducting an appeal

### Determining the Methodology

The methodology that is appropriate for an appeal varies depending on the type of appeal. However, common to all appeals is that, upon commencement of an appeal, the panel typically needs to determine the best approach to deal with a matter. The panel may proceed to deal with the matter on the basis of the initial documentary evidence alone and should not seek to collect the same or new information. However, in some circumstances it may be necessary to meet with the appellant and/or the original decision maker. These meetings should not be used to re-interview the individuals about the original facts of the matter, but rather be used to enable the panel to, for example, seek clarification of particular matters, in order to form a complete view of the basis for the appeal.

In each case, an assessment about the information at hand and what subsequent steps may be needed in relation to the conduct of appeal will be formed.

If it becomes apparent to the panel that a fundamental piece of evidence was not considered in the original process, for example where a key witness was not interviewed, the panel may request that the Convenor refer the matter back to the head of service and/or the PSSC for further investigation.

### Assessing the facts

It should be noted that the complex rules about the admissibility of evidence that apply in a court of law do not apply to appeals in the ACTPS. Information should be assessed as to its relevance and reliability. The fundamental principle to be aware of is that all evidence must be relevant to the facts or matters in issue.

The Directorate will provide the Convenor with all relevant information and evidence that was before the original decision maker. The Convenor will then distribute the evidence to the panel.

Each panel member should consider the appeal documentation carefully. Such documents may contain witness statements. In considering the credibility of the available evidence, regard should be had to a range of matters including the relationship of the witness, if any, to the appellant, and any inconsistencies either in statements provided by that individual or that appear in other witness statements.

**Note:** *If uncertainty exists about the nature or reliability of certain evidence, or there are concerns about the manner in which the evidence was obtained, it is strongly recommended that formal advice be requested from the ACT Government Solicitor, through the Convenor.*

### Meeting with the appellant or delegate

The panel may decide that it would be beneficial to meet with the appellant or original decision maker (delegate) to seek clarification of certain aspects of the documentation.

If a panel wishes to meet with the appellant, the appellant must be invited to have a support person present at any meeting held. The Appellant must be allowed a reasonable opportunity for this to be arranged.

A support person is considered to be a person who provides emotional and moral support to the respondent during proceedings. A support person can be a colleague, a friend, family member, union representative or legal representative.

The support person may take notes during the meeting and request a break in the event they wish to have a discussion with the appellant. The support person must, remain respectful of the process at all times and not act in a manner that is disruptive or counterproductive.

If a meeting is held with the appellant and/or the original decision maker, it is recommended that the following issues are considered:

- Set objectives and an agenda for the meeting.
- Consider the timing of the meeting. Privacy is a major psychological factor which contributes to the success of the meeting, and the environment should be free from distraction.
- The need for an interpreter or other special arrangements should be determined in advance.

## Part 6 - Conducting different appeals

### Appeals about Misconduct and Disciplinary Action

When dealing with appeals relating to misconduct and disciplinary action taken under the Misconduct and Discipline provisions within ACTPS enterprise agreements, the panel will need to consider the findings of the original decision maker; whether the penalty is proportionate to the alleged misconduct; and whether there are any mitigating factors.

In determining if the disciplinary action was/is appropriate, consideration must be given to all of the factors set out in the ACTPS enterprise agreement/s, namely:

- whether the principles of procedural fairness were complied with in taking the original action or decision
- the nature and seriousness of the misconduct;
- the degree of relevance to the employee's duties or to the reputation of the agency;
- the circumstances of the misconduct;
- any mitigating factors; and
- the previous employment history and the general conduct of the employee.

The panel will be provided with all the information that was available to the original decision maker including:

- the investigation report and related evidence and materials;
- the appeal application, which includes reasons for why the appeal is sought;
- relevant Sections of the Enterprise Agreement and the Public Sector Management Act as appropriate; and
- other relevant documents.

As a general rule, the panel should first review all the material and determine whether or not it would be appropriate and/or necessary to meet with the appellant.

The panel may also choose to meet with the original decision maker to gain a better understanding of why the decision was made. This may be particularly relevant where the reasoning behind the proposed sanction is not clear.

The panel then forms its views on whether it was open to the decision maker to make the decision that they made, or take the action that was taken; whether the principles of procedural fairness were complied with; and whether the decision was appropriate having regard to all of the circumstances. The reasons for the panel's decision need to be clearly articulated in the report and should include a determination. The report template attached to this guide gives further guidance to how a report may be structured and how reasons may be articulated.

## Appeals about suspension without pay (Misconduct)

Appeals about suspension without pay need to be conducted as quickly as possible in light of the hardship caused to the employee.

When considering appeals of a decision to suspend an employee without pay, the panel should, at a minimum, consider the following:

- Was the suspension put in place and/or reviewed in accordance with the relevant Enterprise Agreement provisions?
- Was procedural fairness afforded to the employee? In particular:
  - Was the employee given an opportunity to respond before the action was taken to suspend the employee without pay?
  - If not, did reasonable grounds exist for taking this action without first affording the employee an opportunity to respond? (e.g. there was an imminent serious threat to the safety of other employees or a real possibility that the employee may have destroyed or tampered with evidence if suspension had been delayed)
  - Was the employee subsequently afforded an opportunity to respond to the decision to suspend without pay?

Other relevant considerations include:

- Was the alleged misconduct of a kind that if proven, would constitute serious misconduct or otherwise justify the decision to suspend without pay?
- Was suspension with pay or temporary transfer to alternative duties more appropriate in the circumstances?

Suspension while an investigation is proceeding should not be used as a sanction in itself.

## Appeals about Under-Performance

When dealing with appeals in relation to the Managing Under-Performance, the panel will need to consider whether the sanction reflects the level of under-performance. The panel should, at a minimum, consider the following factors:

- Were the relevant underperformance provisions of the Enterprise Agreement followed?
- Was the employee afforded procedural fairness?
- Has a genuine attempt been made to rectify the areas of under-performance?
- The seriousness and degree of under-performance.
- The circumstances of the under-performance.
- Whether there is previous history of that same/similar under-performance.
- The employee's length and record of service.
- The employee's personal circumstances.
- The nature of employment and the employee's duties.
- Whether there is ongoing risk to the public, clients or work colleagues.
- Any injury, loss or damage resulting from the under-performance.

## Appeals about Employee Eligibility for Benefits Relating to Voluntary Redundancy

When dealing with appeals in relation to the Redeployment and Redundancy provisions, at a minimum, the panel should consider the following:

- An employee's eligibility to benefits in relation to voluntary redundancy and the amount of such benefits. Appeals in this area may involve, but are not limited to, the length of the notice period (whether 4 weeks or 5 weeks), the number of years of continuous service, and calculations in relation to the inclusion of other allowances.
- The amount payable to an employee by way of income maintenance. Appeals in this area may involve, but are not limited to, the maintenance of income at the rate received while performing higher duties.

## Part 7 - Reporting

### Reporting Procedures for appeals

The panel report is an important document which provides the basis for the head of service's (delegate or PCCS) action in response to the panel's determinations. As such, it is important that proper care is taken in producing a report that is thorough and detailed.

The report should contain clear determinations of actions for the head of service and detailed reasons for those determinations.

If a panel member does not agree with part or all of the report and determinations, the panel member can request to have their dissenting views incorporated at relevant points of the report or produce a dissenting report.

The head of service, after considering the report from the panel, including any dissenting reports, will take the necessary actions to give effect to the determinations in the report and inform the appellant in writing, within fourteen calendar days of receiving the report.

In circumstances where the panel has determined that the original action be varied in the case of discipline and under-performance appeals, the panel should have regard to the available actions under enterprise agreements when framing its determinations.

The panel must provide a copy of the report to the applicant at the same time that it is provided to the PSSC and head of service (or delegate).

## Part 8 – Further Information and Frequently Asked Questions (FAQ's)

Any issues that arise during the course of an appeal should be discussed with the Convenor of Appeals via the Appeals Coordinator, who provides assistance to facilitating the work of Appeal Panels and administrative support on behalf of the Convenor.

**Phone:** (02) 6207 8317  
**Email:** ACTPS\_Appeals@act.gov.au  
**Postal Address:** GPO Box 158, CANBERRA ACT 2601  
**Physical Address:** Canberra Nara Centre, 1 Constitution Ave, Canberra ACT 2601

**Q. What is the role of the Appeals Coordinator?**

A. The role of the Appeals Coordinator is to provide support to the appeals process and facilitate the work of panels and to provide assistance on behalf of the Convenor of Appeals.

**Q. How long will the appeal process take?**

A. The timeliness of the appeals process is dependent on a number of factors including:

- the availability and scheduling of panel members;
- the complexity and volume of the matters in question;
- the nature of any issues that arise during the process that need to be addressed, which may require making enquiries to other parties (such as a request for legal advice);
- whether a panel member dissents from the other panel members; and
- whether a panel member removes themselves from the appeals process.

**Q. How will panel members receive the appeal paperwork?**

A. The Appeals Coordinator will send panel members electronic copies of the appeal papers in the first instance, and subsequently, at the first panel meeting, present the hardcopy papers.

**Q. When will the panel convene?**

A. The chairperson convenes the panel as necessary and by agreement with other panel members. Generally, the panel will convene the first time after the papers have been reviewed by the panel members. It is the responsibility of the panel members to ensure they set aside the time to review the papers, so when the panel convenes, all panel members are across the subject material.

**Q. Is the panel able to request further information?**

A. If it becomes apparent to the panel that a fundamental piece of evidence was not considered in the original process, it can request the Convenor refers the matter back to the head of service and/or the PSSC for further investigation. The panel cannot reinvestigate the matter.

**Q. What do I do if Legal Advice is required?**

A. The chairperson will facilitate the panel's request to the Appeals Coordinator (on behalf of the Convenor) to seek legal advice in relation to potential legal issues. The chairperson will need to be specific about what the panel's request is and the legal issues that require advice.

**Q. What happens if there is a change of a panel member's circumstances or availability?**

A. In the first instance this should be discussed with the chairperson and/or the Appeals Coordinator to assess if the changed circumstances can be accommodated.

**Q. What happens if a panel member does not agree with the other panel members' views?**

A. It is important for the panel to have an open discussion. If, after that, there is still no agreement, the dissenting view may be recorded by:

- incorporation of the dissenting views into the report; or
- preparing an individual dissenting report, in which case this will be submitted to the Delegate attached to the final report.

**Q. When do I return my appeal papers?**

A. All members are required to return their appeal papers to the Appeals Coordinator at the Canberra Nara Centre, 1 Constitution Avenue Canberra, at their earliest possible convenience. There is the requirement all



panel members must delete the electronic papers and return hardcopy papers at completion of the appeals process.

**Q. What is happening with filling the job whilst the appeal process is underway?**

A. Persons selected for temporary transfer will commence in the role; persons selected for promotion will not be promoted (though may commence higher duties in the role), pending the outcome of this appeal process.

**Further Information:**

**Commonwealth Legislation:** <http://www.comlaw.gov.au>

**Fair Work Act 2009 (Cth):** <https://www.legislation.gov.au/Details/C2014C00031>

**ACT Legislation:** [www.legislation.act.gov.au](http://www.legislation.act.gov.au)

**Human Rights Act 2004:** <http://www.legislation.act.gov.au/a/2004-5/default.asp>

**Public Sector Management Standards 2016:** <http://www.legislation.act.gov.au/di/2016-251/default.asp>

**Public Sector Management Act 1994:** <http://www.legislation.act.gov.au/a/1994-37/current/pdf/1994-37.pdf>

**Territory Records Act 2002:** <http://www.legislation.act.gov.au/a/2002-18/default.asp>

**Information Privacy Act 2014:** <http://www.legislation.act.gov.au/a/2014-24/default.asp>

**Enterprise Agreements:** <http://www.jobs.act.gov.au/about-the-actps/agreements>

## Appendix 1 - PANEL DECLARATION OF IMPARTIALITY

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The purpose of this document is to facilitate proper, fair and efficient operation of Panels constituted under the Appeal Mechanism of ACTPS Agency Agreements. The Workforce Capability and Governance Division of CMTEDD requires all persons nominated as members of Panels to make this declaration. If any member feels that they are unable to comply with this requirement, they should discuss the matter with the Appeals Coordinator and their nominating body to determine whether or not, in all of the circumstances, they should decline nomination to the Panel.

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I,.....(full name)

of .....(work/ other address)

a member of the Panel in the matter of

.....

.....

### DECLARE:

1. I do not have and have not had a relationship with a party before the Panel of a kind that may cause a reasonable person to suspect that I may be biased, including:
  - a family relationship;
  - a close personal relationship;
  - a relationship involving personal hostility; or a
  - business or employment relationship.
2. I do not have or have not had any other personal or professional involvement in the matter to be considered by the Panel (e.g. pecuniary or non pecuniary interest in the matter – such as acting as a party's adviser in the matter).
3. I understand that, while acting as a member of the Panel, I am not subject to direction by, nor should I act on instructions from, any person, body or authority other than legal directions (e.g. from a court of law).

4. I will conduct my duties as a member of the Panel in accordance with the identified Appeal Agency Agreement with fairness, equity and impartiality independent of any interests of the body which nominated me.
5. I will contribute to the identification of the key issues of the appeal and participate in the analysis and assessment of those issues based on my own opinions on the merits and the information before the Panel.
6. After making this declaration, should a relationship, involvement or interest of a kind described in this declaration develop, and there are grounds for reasonable suspicion of bias or prejudice on my part, I will disqualify myself from considering the appeal.
7. I will ensure that the free and frank discussion of views of the Panel in deliberating the evidence and matters before the Panel remain strictly confidential.
8. I acknowledge that the written recommendation is confidential and (subject to the Stream Enterprise Agreement) is only made available to the applicant and Head of Service and/or Commissioner (as relevant).
9. I acknowledge that if I fail to comply with the requirements of this declaration, I may not be nominated for future Panel proceedings.

Signature.....

Date.....