



ACT
Government

Chief Minister, Treasury and
Economic Development

Freedom of Information Publication Coversheet

The following information is provided pursuant to section 28 of the *Freedom of Information Act 2016*.

FOI Reference: CMTEDDFOI 2018-0014

| Information to be published | Status |
|---|----------------|
| 1. Access application | Published |
| 2. Decision notice | Published |
| 3. Documents and schedule | Published |
| 4. Additional information identified | No |
| 5. Fees | n/a |
| 6. Processing time (in working days) | 19 |
| 7. Decision made by Ombudsman | Not Applicable |
| 8. Additional information identified by Ombudsman | n/a |
| 9. Decision made by ACAT | Not Applicable |
| 10. Additional information identified by ACAT | n/a |

From: [REDACTED]
To: [CMTEDD FOI](#)
Subject: REVISED freedom of information request - CMTEDD sexual harassment complaints
Date: Wednesday, 24 January 2018 5:01:29 PM
Attachments: [image002.png](#)
[image003.png](#)

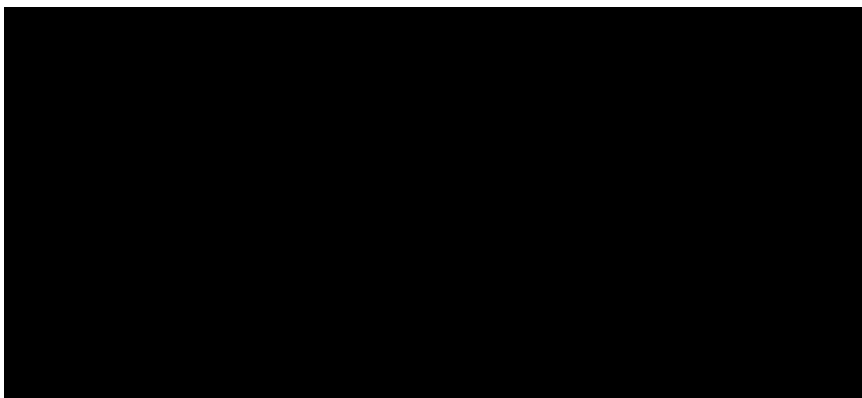
Good afternoon,

On Thursday January 11, I sent you a freedom of information request regarding documents created in the reporting, investigating and disciplinary action taken in relation to sexual harassment complaints made against senior executive service officials employed in the ACT [Chief Minister, Treasury and Economic Development Directorate](#).

On reflection, I would like to revise my request. I now seek all documents created in the reporting, investigating and/or disciplinary action taken in relation to sexual harassment complaints made against **any employee** of the ACT [Chief Minister, Treasury and Economic Development Directorate](#). I seek these documents created within the period beginning **January 1 2014** and ending January 11 2018.

Please also provide figures for the number of complaints relating to sexual harassment received by the directorate during that timeframe.

Regards,



-

Please consider the environment before printing this e-mail.

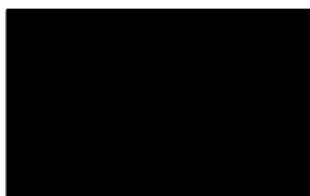
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ACT
Government

Chief Minister, Treasury and
Economic Development

Our ref: CMTEDDFOI 2018-0014



via email: 

Dear 

FREEDOM OF INFORMATION REQUEST

I refer to your application under section 30 of the *Freedom of Information Act 2016* (the Act), received by the Chief Minister, Treasury and Economic Development Directorate (CMTEDD) on 24 January 2018.

Specifically, you are seeking access to: "...all documents created in the reporting, investigating and/or disciplinary action taken in relation to sexual harassment complaints made against any employee of the ACT Chief Minister, Treasury and Economic Development Directorate created within the period beginning January 1 2014 and ending January 11 2018." In addition you sought "figures for the number of complaints relating to sexual harassment received by the directorate during that timeframe."

Authority

I am an authorised Information Officer appointed by the Director-General of CMTEDD under section 18 of the Act to deal with access applications made under Part 5 of the Act.

Timeframes

The Act requires a decision and response within 20 working days of the access application being received. The deadline for responding to your access application is 22 February 2018.

Decision on access

A search of CMTEDD records was completed within business areas which may hold documents relevant to your request. The search resulted in a total of 16 complaints relating to sexual harassment being received by the Directorate during the specified timeframe. Four of these complaints fall with the scope of your request as they involve CMTEDD employees with the remaining 12 cases being out of scope as they relate to employees of other directorates.

I have decided to fully exempt from release some documents and partially release the remainder as I consider them to be:

- contrary to the public interest information under schedule 1 of the Act; and
- information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act.

I have included as Attachment A to this letter the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

The documents to be released to you are provided as Attachment B to this letter.

In accordance with section 54(2) of the Act a statement of reasons outlining my decision is below.

Statement of Reasons

In reaching my access decision, I have taken the following into account:

- the Act;
- the content of the documents that fall within the scope of your request;
- the *Information Privacy Act 2014*.

Exemption claimed

My reasons for deciding not to grant access to the identified documents and components of documents are as follows:

Contrary to the public interest information under schedule 1 (section 1.14) of the Act (1) information the disclosure of which would, or could reasonably be expected to—
(a) prejudice the investigation of a contravention or possible contravention of the law in a particular case;

Complaint one is currently being dealt with by ACT Police and is expected to go before the ACT Supreme Court at a later date. The release of these documents could prejudice the ongoing investigation and or court proceedings. For this reason I have decided to exempt from release all documents relevant to this complaint.

Information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the Act

The Act has a presumption in favour of disclosure. As a decision maker I am required to decide where, on balance, public interests lies. As part of this process I must consider factors favouring disclosure and non-disclosure.

In *Hogan v Hinch* (2011) 243 CLR 506, [31] French CJ stated that when ‘used in a statute, the term [public interest] derives its content from “the subject matter and the scope and purpose” of the enactment in which it appears’. Section 17(1) of the Act sets out the test,

to be applied to determine whether disclosure of information would be contrary to the public interest. These factors are found in subsection 17(2) and schedule 2 of the Act.

Taking into consideration the information contained in the documents found to be within the scope of your request, I have identified that the following public interest factors are relevant to determine if release of the information contained within these documents is within the 'public interest'.

Factors favouring disclosure (Schedule 2 section 2.1)

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- (vi) *reveal or substantiate that an agency or public official has engaged in misconduct or negligent, improper or unlawful conduct or has acted maliciously or in bad faith;*

Factors favouring non-disclosure (Schedule 2 section 2.2)

(a) *disclosure of the information could reasonably be expected to do any of the following:*

- (ii) *prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004;*
- (xii) *prejudice an agency's ability to obtain confidential information;*
- (xv) *prejudice the management function of an agency or the conduct of industrial relations by an agency;*

When considering the documents and the factors in favour of disclosure, I consider that the documents identified contain information that could reveal that public officials engaged in misconduct. I consider the public interest in increasing transparency of the Directorate carries significant weight. However, this weight is to be balanced with the weight of factors favouring non-disclosure.

The information contained with the documents identified contains considerable personal information of the complainants and the employees alleged to have engaged in misconduct. Personal information is defined by the Act as "information or an opinion about an identified individual, or an individual who is reasonably identifiable (i) whether the information or opinion is true or not; and (ii) whether the information or opinion is recorded in a material form or not." I am satisfied that information regarding individual's identity is personal information. This includes individuals' names, contact information and work areas. The identified documents contain staff members' personal accounts of events, the date they occurred and their comments and opinions about other staff members. I am satisfied that the individuals involved could be identified from the content of these documents if released. I consider that disclosing such information would cause

significant intrusion into privacy of all individuals involved, particularly the complainants. The exact date of each document is also exempt from release for the same reason. Given the sensitive nature of the information, I have given significant weight to this factor.

The release of identified documents also contain information which could prejudice the Directorate's ability to obtain confidential information. Staff members should be able to freely raise sensitive concerns and seek advice from the Human Resources (HR) teams, particularly in the situation involving improper conduct. Witnesses to events should be able to give advice to the HR teams without any concerns. It is expected by all parties involved that this kind of information is treated in a confidential manner and should only be disclosed on a need-to-know basis. I consider that there is a strong public interest in the HR teams being able to consult with staff members and obtain frank and honest advice to allow them to fully address these matters. The release of information is likely to make staff reluctant to raise similar concerns or give advice in the future. Consequently, the release of this information could prejudice the ability of the HR business areas to receive sensitive concerns and address the issues effectively. For these reasons, I have attributed quite significant weight to both factors.

Having applied the test outlined in section 17 of the Act, I have decided to fully exempt from release the original complaints and records of interview, and partially release the investigation report, letters to employee, decision notices and email correspondence as the factors favouring non-disclosure outweigh the factor favouring disclosure. The fully exempt documents have not been included in the documents pack.

Noting the pro-disclosure intent of the Act, I am satisfied that redacting only the information that I believe is not in the public interest to release will ensure the intent of the Act is met and will provide you with access to the general information held by CMTEDD within the scope of your request.

Additional Information

- Complaint two has a record of interview and a draft decision letter. There is no copy of the final decision letter on record as the letter was signed by the delegate and provided to the employee as a hard copy. This complaint was about improper behaviour and was considered within scope due to the sexual harassment element.
- Complaint three consist of the original complaint raised during an interview between the complainant and the HR team. No further documents were created as the complainant did not wish to pursue formal action beyond notifying the HR team of the incident.
- Complaint four, an investigation was conducted by an external consultant. I have decided to exempt from release components of the investigation report, email and letters to employees that is not in the public interest to release. This includes

the summary of allegations, employee response to the allegations, opinion and advice contained in the report. Information relating to allegations other than sexual harassment has also be redacted as out of scope material.

Charges

Pursuant to *Freedom of Information (Fees) Determination 2017 (No 2)* processing charges are not applicable for this request because the total number of pages to be released to you is below the charging threshold of 50 pages.

Online publishing – Disclosure Log

In accordance with section 28 of the Act, CMTEDD maintains an online record of access applications in the form of a disclosure log. Your original access application, my decision and documents released to you in response to your access application will be published in the CMTEDD disclosure log no later than 8 March 2018. Your personal contact details will not be published.

The CMTEDD disclosure log is at <http://www.cmd.act.gov.au/functions/foi/disclosure-log>.

Ombudsman Review

My decision on your access request is a reviewable decision as identified in Schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that my decision is published in CMTEDD disclosure log, or a longer period allowed by the Ombudsman.

If you wish to request a review of my decision you may write to the Ombudsman at:

The ACT Ombudsman

GPO Box 442

CANBERRA ACT 2601

Via email: ombudsman@ombudsman.gov.au

ACT Civil and Administrative Tribunal (ACAT) Review

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACAT for review of the Ombudsman decision. Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal

Level 4, 1 Moore St

GPO Box 370

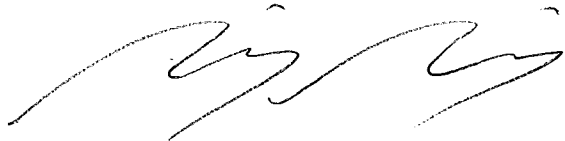
Canberra City ACT 2601

Telephone: (02) 6207 1740

<http://www.acat.act.gov.au/>

Should you have any queries in relation to your request please contact me by telephone on 6207 7754 or email CMTEDDFOI@act.gov.au

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Daniel Riley', written in a cursive style.

Daniel Riley
Information Officer
Information Access Team
Chief Minister, Treasury and Economic Development Directorate

21 February 2018

FREEDOM OF INFORMATION REQUEST SCHEDULE

Please be aware that under the *Freedom of Information Act 2016*, some of the information provided to you will be released to the public through the ACT Government's Open Access Scheme. Personal information or business affairs information will not be made available under this policy. If you think the content of your request would contain such information, please inform the contact officer immediately.

| NAME | WHAT ARE THE PARAMETERS OF THE REQUEST | File No |
|------------|---|----------------------|
| [REDACTED] | All documents created in the reporting, investigating and/or disciplinary action taken in relation to sexual harassment complaints made against any employee of CMTEDD between 1 Jan 2014 and 11 Jan 2018, and figures for the number of complaints relating to sexual harassment received by the directorate during the specified timeframe. | CMTEDDDFOI 2018-0014 |

| Ref No | No of Folios | Description | Date | Release Status | Reason for non- release or deferral | Published Online |
|----------------------|--------------|------------------------------------|------|----------------|-------------------------------------|------------------|
| <u>Complaint One</u> | | | | | | |
| n/a | n/a | Documents subject to investigation | 2016 | Exempt | Sch 1 s 1.14(1)(a) | No |
| <u>Complaint Two</u> | | | | | | |
| 1 | 1 | Record of Interview | 2014 | Exempt | Sch 2 s 2.2(a)(ii)(xii)(xv) | No |
| 2 | 2-3 | Decision letter - draft | 2014 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) | Yes |

| <u>Complaint Three</u> | | | | | | |
|------------------------|---------|--|---------|---------|---|-----|
| 3 | 4-11 | Handwritten interview notes - complaint | 2014 | Exempt | Sch 2 s 2.2(a)(ii)(xii)(xv) | No |
| 4 | 12-14 | Typed interview notes - complaint | 2014 | Exempt | Sch 2 s 2.2(a)(ii)(xii)(xv) | No |
| <u>Complaint Four</u> | | | | | | |
| 5 | 15 - 18 | Complaint | 2015 | Exempt | Sch 2 s 2.2(a)(ii)(xii)(xv) Out of scope | No |
| 6 | 19 | Record from complainant | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) Out of scope | Yes |
| 7 | 20 | Email - draft Notification letter | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) | Yes |
| 8 | 21 | Email - draft Notification letter | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) | Yes |
| 9 | 22-23 | Attachment 1 to previous email - Notice of disciplinary investigation – draft | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) | Yes |
| 10 | 24-35 | Attachment 2 to previous email - Section H of Enterprise Agreement and Section 9 of the <i>Public Sector Management Act 1994</i> | undated | Full | n/a | Yes |
| 11 | 36-37 | Notice of disciplinary investigation – signed | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) | Yes |
| 12 | 38-39 | Email - summary of discussion | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) Out of scope | Yes |
| 13 | 40-42 | Letter to employee | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) | Yes |
| 14 | 43 | Attachment A to the letter | undated | Exempt | Sch 2 s 2.2(a)(ii)(xii)(xv) Out of scope | No |
| 15 | 44 | Email – summary of discussion | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) | Yes |

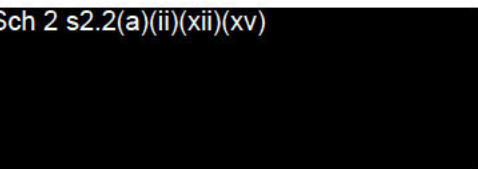
| | | | | | | |
|-------------------------|-------|-------------------------------|------|---------|---|-----|
| 16 | 45-46 | Email – summary of discussion | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) | Yes |
| 17 | 47-68 | Investigation report | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) Out of scope | Yes |
| 18 | 69-73 | Proposed decision - draft | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) Out of scope | Yes |
| 19 | 74-78 | Proposed decision - signed | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) Out of scope | Yes |
| 20 | 79-80 | Resignation email | 2015 | Partial | Sch 2 s 2.2(a)(ii)(xii)(xv) | Yes |
| Total No of Docs | | | | | | |
| 20 | | | | | | |



ACT
Government

Commerce and Works

Sch 2 s2.2(a)(ii)(xii)(xv)



Dear Sch 2 s2.2(a)
(ii)(xii)(xv)

I am writing in relation to complaints regarding allegations of improper conduct and behaviour against you, as initially discussed with you in a meeting Sch 2 s2.2(a)(ii)(xii)(xv) 2014.

I wish to advise that the complaint was initially referred to CWD Strategic HR in accordance with the provisions of the *ACT Public Service Treasury Enterprise Agreement 2011-2013*.

Sch 2 s2.2(a)(ii)(xii)(xv)



The Commerce and Works Directorate takes all allegations of inappropriate behaviour by staff seriously and accordingly, has made enquiries in relation to this matter with yourself, and other individuals who were involved in, and/or witnessed, this matter.

Following these discussions, and in consultation with Strategic HR, I wish to advise that you are to be reminded of the expected standards of workplace behaviour. This letter serves to advise you of your obligation to maintain an appropriate standard of behaviour in the workplace. You are therefore reminded that you must conduct yourself within the workplace at all times in accordance with the provisions of the *ACT Public Service Respect, Equity and Diversity (RED) Framework*. More specifically, I also draw your attention to *General Obligations of Public Employees*, as set out in the attached extract of the *Public Sector Management Act 1994 (Section 9)*.

To consolidate your awareness of these provisions, it is a requirement that you participate in future RED training, as offered via the ACTPS Training Calendar. I therefore request that you make the necessary arrangements to enrol in the next available program.

The Employee Assistance Program (EAP) is available to provide confidential and professional counselling to you and members of your family. You may access this service by phoning PPC Worldwide on 1300 361 008.

If you require clarification or additional information please contact me on x

Yours sincerely

XXXX

XXXXX

Sch 2 s2.2(a)(ii)

(iii)(iv)

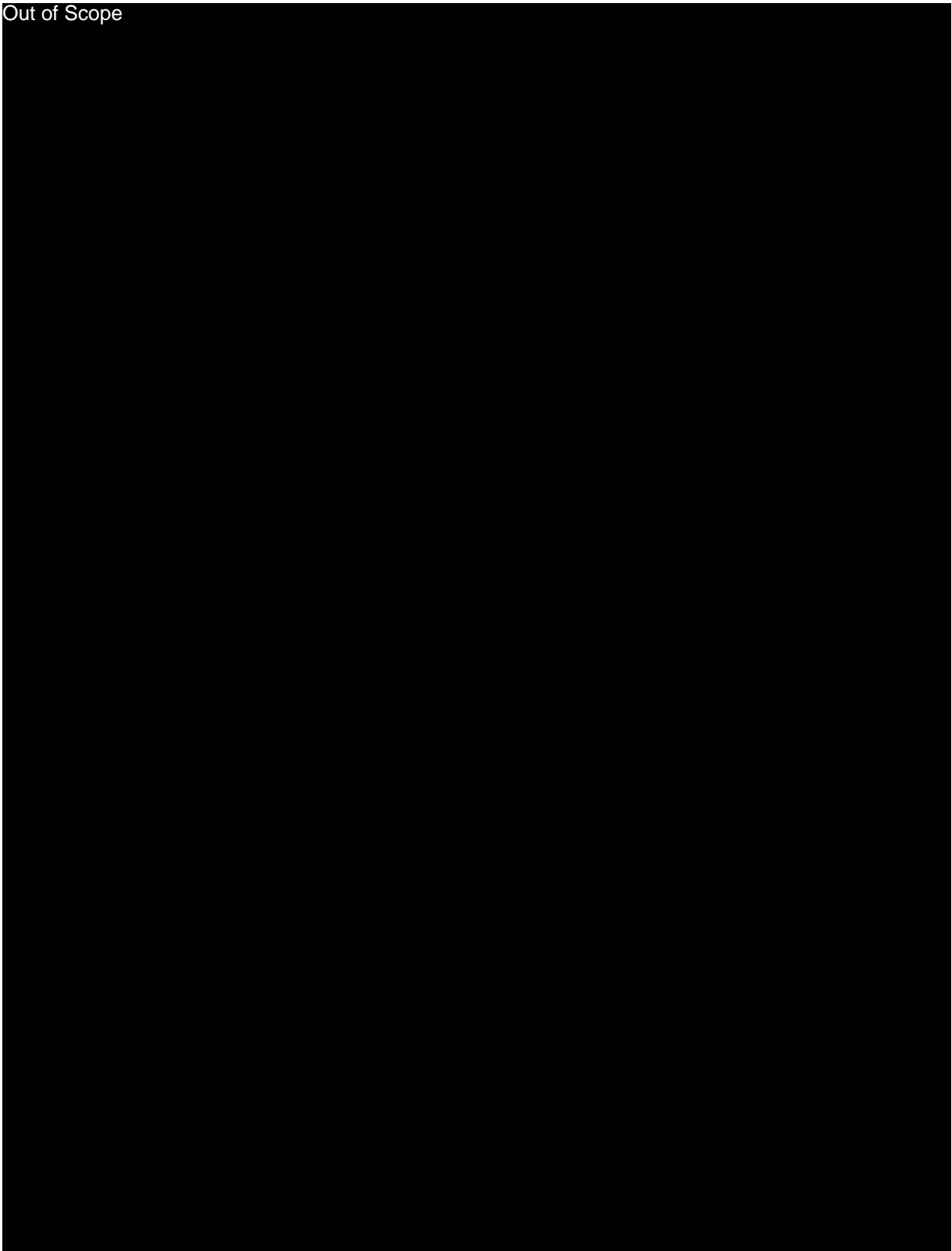
Commerce and Works Directorate

Sch 2

(iii)(iv)

2014

Out of Scope



Sch 2 2015

I disclose to Sch the incident that occurred on the Sch 2 2015 at the Sch 2 s2.2(a)(ii) . I receive email from Sch in response to my email on the Sch 2 2015.

From: Sch 2
To: Sch 2
Cc: Sch 2
Subject: Re: Sc notification letter
Date: Sch 2 2015 10:45:28 AM
Sensitivity: Confidential

Looks ok to me.

Sent from my iPad

> On Sch 2015, at 10:07 am, Sch 2 s2.2(a)(ii) wrote:
>
> Good morning
>
> Please find attached draft letter for Sch 2, for review, alteration as necessary (as noted in comment on letter) and signature.
>
> Happy to discuss.
>
> Regards
>
> Sch 2 s2.2(a) | A/g HR Manager
> Human Resources | Corporate Branch
> Chief Minister, Treasury and Economic Development Directorate | ACT Government
> Level 2, Canberra Nara Centre, Cnr Constitution Ave & London Crt, Canberra City | GPO Box 158 Canberra City 2601
> ; Web: www.act.gov.au <<http://www.act.gov.au>> | • Phone: Sch 2 | • Fax: Sch 2 | • Email: Sch 2 s2.2(a)(ii)
>
> <Sch 2 Notification of disc action.doc>
> <attachments.pdf>

From: Sch 2
To: Sch 2 s2.2(a)(ii)(xii)
Subject: Sc notification letter
Date: Sch 2 2015 10:07:00 AM
Attachments: Sch 2 [Notification of disc action.doc](#)
[attachments.pdf](#)
Importance: High
Sensitivity: Confidential

Good morning

Please find attached draft letter for Sch 2, for review, alteration as necessary (as noted in comment on letter) and signature.

Happy to discuss.

Regards

Sch 2 s2.2(a) | A/g HR Manager
Human Resources | Corporate Branch
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 2, Canberra Nara Centre, Cnr Constitution Ave & London Crt, Canberra City | GPO Box 158 Canberra City
2601
Web: www.act.gov.au | Phone: Sch 2 | Fax: Sch 2 | Email:
Sch 2 s2.2(a)(ii)



Sch 2 s2.2(a)(ii)(xii)
(xv)

Dear Sch 2

Notice of Disciplinary Investigation and Reassignment to Alternate Duties

Investigation

I am writing to you in accordance with clause H7.1 of the *ACT Public Sector Administration and Related Classifications Enterprise Agreement 2013-2017* (the Enterprise Agreement) to inform you that I have received information regarding alleged incidents that occurred following a workplace function on Sch 2 s2.2(a)(ii) 2015. As a result of this information I have decided that a formal independent investigation will be undertaken into the allegations under the terms of Section H9 of the Enterprise Agreement. A copy of the misconduct and discipline procedures from Section H of the Enterprise Agreement and a copy of Section 9 of the *Public Sector Management Act 1994* are attached for your information.

As set out further below I also propose to reassign you to alternative duties while the alleged misconduct is investigated.

An investigator will contact you in due course to provide further particulars of the allegations and to offer you an opportunity to respond. Sch 2 s2.2(a)(ii)(xii)(xv)

[Redacted text]

Reassignment to Alternate Duties

In accordance with clauses H7.2 and H8.2 of the Enterprise Agreement, I propose to reassign you to alternate duties while the alleged misconduct is investigated as I consider that it is in the interests of the ACTPS and of the Directorate to do so. Following receipt of this letter, you are directed to report to Sch 2 s2.2(a)(ii)(xii)(xv)

I invite you to respond to this proposal, outlining your views on the reassignment, by close of business on Sch 2 2015. Any response should be provided to me via email.

Direction

To maintain the integrity of the investigation and minimise disruption to the workplace, you are directed not to discuss the allegations or related matters with other staff of the directorate without first speaking to me or the appointed investigator. Breaching this direction may result in a further allegation of misconduct being made against you.

Commented Sch: Can this particular paragraph please be reviewed to ensure the facts are correct and accurately captured.

Staff in Confidence

The Employee Assistance Program (EAP) is available to provide confidential and professional counselling to you and members of your family throughout this process. You may access this service by phoning Converge International 1300 687 327.

If you require clarification or additional information in relation to this letter please contact Sch [redacted] acting HR Manager, CMTEDD HR on Sch 2 [redacted]

Yours sincerely

Sch 2 [redacted]
Delegate

Sch 2 s2.2(a)(ii)(xii) [redacted]

Sch [redacted] 2015

Section H - Workplace Values and Behaviours

H1 INTRODUCTION

- H1.1 Except where otherwise noted, this Section applies to officers, temporary employees engaged for over six months and “eligible casual employees” as defined within the dictionary. The Section does not apply to “casual employees” as defined within the dictionary, or employees on probation unless expressly stated.
- H1.2 Managers/supervisors and employees have a common interest in ensuring that workplace behaviours are consistent with, and apply the values and general principles set out in section 9 of the PSM Act 1994 and the ACT Public Service Code of Conduct and Signature Behaviours. This involves the development of an ethical and safe workplace in which managers/supervisors and employees act responsibly and are accountable for their actions and decisions.
- H1.3 The following provisions of Section H contain procedures for managing workplace behaviours that do not meet expected standards, including the management of cases of unsatisfactory work performance and misconduct.
- H1.4 These procedures for managing workplace behaviours and values must be applied in accordance with the principles of natural justice and procedural fairness, and in a manner that promotes the values and general principles of the ACTPS set out in section 9 of the PSM Act 1994.
- H1.5 Any misconduct, underperformance, internal review or appeal process under the previous enterprise agreement that is not completed as at the date of commencement of this enterprise agreement will be completed under the previous enterprise agreement. Any right of appeal from that process will also be set out in the previous enterprise agreement.

H2 PRELIMINARY ASSESSMENT

- H2.1 In cases where an allegation of inappropriate behaviour is made, the manager/supervisor will initiate a preliminary assessment process to determine whether further action is required. The manager/supervisor may inform and/or seek the assistance of an appropriate Human Resources Manager.
- H2.2 Following this process if the manager/supervisor determines that the allegations:
- a) require no further action, then no further action needs to be taken;
 - b) can be resolved through counselling, other remedial action, or assistance to the employee then the manager/supervisor will implement such action;
 - c) are better resolved through Internal Review procedures set out in this Agreement or appropriate external mechanisms the manager/supervisor will refer the matter accordingly;
 - d) relate to underperformance processes the manager/supervisor will commence an underperformance process where this is warranted;
 - e) require investigation the manager/supervisor will recommend to the head of service that the matter be investigated;
 - f) may be vexatious or knowingly false, the manager/supervisor will consider whether further action needs to be taken in relation to the person who made the allegations.

Section H – Workplace Values and Behaviours

- H2.3 The manager/supervisor will inform the employee where a preliminary assessment process is commenced under subclause H2.1 if it is appropriate to do so.
- H2.4 In performing the preliminary assessment the head of service may authorise access to ACTPS information and communication technology (ICT) records including email, computer, work phone records, or building access logs if, in the opinion of the head of service, access is necessary to determine whether further action is necessary.

H3 COUNSELLING

- H3.1 Counselling may happen outside of the misconduct and underperformance processes. All parties have an obligation to participate in counselling in good faith.
- H3.2 In cases where counselling is considered to be appropriate, the employee will be invited to have a support person, who may be the employee's union or other employee representative, present at the counselling and will allow reasonable opportunity for this to be arranged.
- H3.3 The manager/supervisor or the head of service will create a formal record of the counselling which will include details about the ways in which the employee's conduct needs to change or improve and the time frames within which these changes or improvements must occur.
- H3.4 The record of the counselling will be provided to the employee and the employee given an opportunity to correct any inaccuracies and provide comments before signing the record. The employee's signature is taken as representing their full agreement that the record accurately reflects the discussion. If the employee elects not to sign the record, then details of the offer and any reasons given for refusal will be clearly noted.
- H3.5 Where the manager/supervisor or the head of service considers that the employee's conduct has not improved following counselling, an underperformance or misconduct process may be undertaken.

H4 UNDERPERFORMANCE

- H4.1 Under this clause, procedures are established for managing underperformance by an employee.
- H4.2 This clause applies to all employees, except casual employees. In applying these procedures to officers on probation, temporary employees engaged for over six months, or eligible casual employees, the head of service may determine that procedures and practices throughout clause H4 may be applied on an appropriate and proportionate basis according to the circumstances of the case, and in accordance with the principles of procedural fairness and natural justice.
- H4.3 The objectives of these procedures are to:
- a) provide advice and support to an employee whose performance is below the standard required; and
 - b) to provide a fair, prompt and transparent framework for action to be taken where an employee continues to perform below expected standard.

Section H – Workplace Values and Behaviours

- H4.4 Consistent with good management practice, concerns about underperformance should be raised by the manager/supervisor with the employee at the time that the concerns arise. The manager/supervisor should offer advice and support to the employee to overcome these concerns. The manager/supervisor should inform the employee that the following procedures might be invoked if the underperformance continues.
- H4.5 In order to ensure that these procedures operate in a fair and transparent manner, the manager/supervisor will be responsible for documenting all relevant discussions. The employee must be given the opportunity to comment on any records before signing them.
- H4.6 All parties have an obligation to participate in underperformance processes in good faith.

Step One: Action Plan

- H4.7 Where a manager/supervisor assesses that an employee's work performance continues to be below expected standards after having previously discussed concerns with the employee in line with subclause H4.4, the manager/supervisor will inform the employee in writing of this assessment and the reasons for it. The employee will be invited by the manager/supervisor to provide written comments on this assessment, including any reasons that in the employee's view may have contributed to their recent work performance.
- H4.8 After taking into account the comments from the employee, the manager/supervisor must prepare an action plan in consultation with the employee.
- H4.9 The manager/supervisor will invite the employee to have a support person, who may be the employee's union or other employee representative, present at discussions to develop the action plan and will allow reasonable opportunity for this to be arranged.
- H4.10 The action plan will:
- a) identify the expected standards of work required of the employee on an on-going basis;
 - b) identify and/or develop any learning and development strategies that the employee should undertake;
 - c) outline the potential underperformance actions that may be taken if the employee does not meet the expected standards;
 - d) specify the action plan period, which should not normally be less than one month and should not exceed six months to allow the employee sufficient opportunity to achieve the required standard; and
 - e) specify the assessment criteria to be measured within the action plan period.
- H4.11 Any current performance agreement will be suspended during the period of the action plan. Any incremental advancement action for the employee will be suspended during the action plan period.

Section H – Workplace Values and Behaviours

Step Two: Regular Assessment

- H4.12 During the action plan period, the manager/supervisor will make regular written assessments (desirably every fortnight) of the employee's work performance under the action plan. The employee will be given an opportunity to provide written comments on these assessments.
- H4.13 If the manager/supervisor considers that further assessment time is needed the manager/supervisor may extend the action plan period. However, the extended assessment time must not result in the action plan exceeding six months duration. The manager/supervisor will inform the employee in writing of the decision to extend the assessment time and the duration of the action plan.

Step Three: Final Assessment / Report

- H4.14 If at the end of the action plan period, the manager/supervisor assesses the work performance of the employee as satisfactory, no further action will be taken under these procedures at that time. The manager/supervisor will inform the employee in writing of this decision.
- H4.15 If at the end of the action plan period, the manager/supervisor assesses the work performance of the employee as not satisfactory, the manager/supervisor will provide a report including the assessment and reasons for the assessment to the head of service.

Step Four: Underperformance Action

- H4.16 The head of service will advise the employee in writing:
- a) of the assessment and reasons for the manager's/supervisor's assessment;
 - b) of the underperformance action/s (subclause H4.17) proposed to be taken and the reasons for proposing this action;
 - c) of the employee's right to respond in writing to the proposed action within a period of not more than seven calendar days.
- H4.17 At any time after seven calendar days from the date the head of service advised the employee under subclause H4.16, and after considering any response from the employee, the head of service may decide to take one or more of the following underperformance actions:
- a) transfer the employee to other duties (at or below current pay);
 - b) defer the employee's increment;
 - c) reduce the employee's incremental point;
 - d) temporarily or permanently reduce the employee's classification and pay;
 - e) remove any monetary benefit derived through an existing Attraction and Retention Incentive (or existing SEA);
 - f) terminate the employee's employment.
- H4.18 The head of service will inform the employee in writing of the decision made under subclause H4.17, the reasons for the decision and the appeal mechanisms available under this Agreement.
- H4.19 At any time in these procedures, the employee may elect to be retired on the grounds of inefficiency.

H5 APPEAL RIGHTS

- H5.1 The employee has the right under Section J to appeal any underperformance action taken under subclause H4.17, except action to terminate the employee's employment.
- H5.2 The employee may have an entitlement to bring an action under the FW Act in respect of any termination of employment under this Agreement. This will be the sole right of review of such an action.

H6 MISCONDUCT & DISCIPLINE

Objectives and Application

- H6.1 This clause establishes procedures for managing misconduct or alleged misconduct by an employee.
- H6.2 In applying these procedures to officers on probation, an eligible casual employee or a temporary employee who has been engaged for over six months, the head of service may determine that procedures and practices throughout clauses H6 to H10 apply on an appropriate and proportionate basis according to the circumstances of the case.
- H6.3 The objective of these procedures is to encourage the practical and expeditious resolution of misconduct issues in the workplace.
- H6.4 All parties have an obligation to participate in misconduct processes in good faith.

What is Misconduct

- H6.5 For the purposes of this Section, misconduct includes any of the following:
- a) the employee fails to meet the obligations set out in section 9 of the PSM Act 1994 (this includes bullying and harassment or discrimination);
 - b) the employee engages in conduct that has brought, or is likely to bring, the Directorate or ACTPS into disrepute;
 - c) a period of unauthorised absence and the employee does not offer a satisfactory reason on return to work;
 - d) the employee is convicted of a criminal offence or where a court finds that an employee has committed an offence but a conviction is not recorded, taking into account the circumstances and seriousness of the offence, the duties of the employee and the interests of the ACTPS and/or of the Directorate;
 - e) the employee fails to notify the head of service of criminal charges in accordance with clause H11; or
 - f) the employee makes a vexatious or knowingly false allegation against another employee.

What is Serious Misconduct

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

H7 DEALING WITH ALLEGATIONS OF MISCONDUCT

- H7.1 If, after receiving a recommendation from the manager/supervisor under paragraph H2.2(e), the head of service is of the opinion that the alleged misconduct cannot be resolved without recourse to investigation, the head of service will:
- a) inform the appropriate Human Resources Manager that an investigation is to take place;
 - b) with the assistance of the appropriate Human Resource Manager make arrangements for an appropriately trained or experienced person (the investigating officer) to investigate the alleged misconduct in accordance with clause H9; and
 - c) inform the employee in writing of the alleged misconduct and that the matter is to be investigated.
- H7.2 Depending on the nature of the alleged misconduct the head of service may immediately transfer the employee to other duties, re-allocate duties away from the employee or suspend the employee with pay in accordance with clause H8. Where serious misconduct is alleged the head of service may suspend an employee without pay.
- H7.3 Notwithstanding the provisions of this section, the employment of an employee may be summarily terminated without notice for serious and wilful misconduct.
- H7.4 No investigation may be necessary where the employee fully admits to the alleged misconduct and the employee agrees that there is no need for an investigation. In such cases, the head of service may determine the appropriate disciplinary action/sanction in accordance with clause H10. The head of service must ensure that they have sufficient information concerning the nature and full circumstances of the misconduct, any mitigating factors, and details of the employee's prior service record and performance to enable a fair and reasonable determination under clause H10 to be made.

H8 SUSPENSION, REASSIGNMENT OR TRANSFER

- H8.1 This clause applies to all employees including eligible casual employees and employees on probation.
- H8.2 Subject to these procedures, the head of service may suspend with or without pay, reassign or transfer an employee where the head of service is satisfied that it is in the public interest, the interests of the ACTPS or the interests of the Directorate to do so while the alleged misconduct is investigated.
- H8.3 The procedures applying under sub-clauses H8.4, H8.5 and H8.10 will also apply in circumstances where an employee has been reassigned or transferred with pay to other duties following an allegation of misconduct.
- H8.4 The head of service will not normally suspend, reassign or transfer an employee without first informing the employee of the reasons for the proposed suspension, reassignment or transfer and giving the employee the opportunity to be heard. However the head of service may suspend an employee first and then give the employee the reasons for the suspension and an opportunity to be heard, where, in the head of service's opinion, this is appropriate in the circumstances.

Section H – Workplace Values and Behaviours

- H8.5 Whilst suspended with pay an employee will be paid:
- a) the employee's ordinary hourly rate of pay and any higher duties allowances that would have been paid to the employee for the period they would otherwise have been on duty; and
 - b) overtime (but not overtime meal allowance) and shift penalty payments where there is a regular and consistent pattern of extra duty or shift work being performed over the previous six months which would have been expected to continue but for the suspension from duty; and
 - c) any other allowance or payment (including under a Attraction and Retention Incentive entered into in accordance with Annex B to this Agreement) of a regular or on-going nature that is not conditional on performance of duties.
- H8.6 Where a decision is made to suspend an employee with pay no appeal or review of that decision is available.
- H8.7 An employee who is suspended must be available to attend work and participate in the disciplinary process as directed within 48 hours of the direction being given unless they are on authorised leave.
- H8.8 Suspension without pay is usually only appropriate where serious misconduct is alleged or where the employee is charged with a criminal offence that would in the opinion of the head of service be incompatible with the continuation of the employee's employment.
- H8.9 Whilst suspended without pay:
- a) the suspension will not be for more than thirty calendar days, unless exceptional circumstances apply;
 - b) the employee may apply to the head of service for permission to seek alternate employment outside the ACTPS for the period of the suspension or until the permission is revoked;
 - c) in cases of demonstrated hardship, the employee may access accrued long service leave and/or annual leave;
 - d) the employee may apply to the head of service for the suspension to be with pay on the grounds of demonstrated hardship.
- H8.10 The suspension without pay should be reviewed every thirty calendar days unless the head of service considers that, in the circumstances, a longer period is appropriate.
- H8.11 An employee suspended without pay and who is later acquitted of the criminal offence, or found not to have been guilty of the misconduct:
- a) is entitled to be repaid the amount by which the employee's pay was reduced; and
 - b) is entitled to be credited with any period of long service or annual leave that was taken.

Section H -- Workplace Values and Behaviours

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

H9 INVESTIGATIONS

- H9.1 The role of the investigating officer is to establish the facts of the allegations and to provide a report of those facts to the head of service.
- H9.2 The investigating officer will:
- a) inform the employee in writing of the particulars of the alleged misconduct, and details concerning the investigative process; and
 - b) give the employee a reasonable opportunity to respond to allegations, in writing and/or at a scheduled interview, before making a finding of fact; and
 - c) provide the employee with at least twenty four hours written notice prior to conducting an interview, and advise the employee if the interview is to be recorded electronically; and
 - d) advise the employee that the employee may have a second person present during the interview, who may be the employee's union representative or other individual acting as support person and will allow reasonable opportunity for this to be arranged; and
 - e) as soon as practicable take any further steps considered necessary to establish the facts of the allegations; and
 - f) provide a record of the interview to the employee to correct any inaccuracies in the record and to provide any further response in relation to the allegations before signing the record. If the employee elects not to sign the record, then details of the offer will be noted; and
 - g) provide a written report to the head of service setting out the investigating officer's findings of fact.
- H9.3 The investigating officer's findings of fact will be made on the balance of probabilities.
- H9.4 The head of service may authorise access to ACTPS information and communication technology (ICT) records including email, computer, work phone records, or building access logs if, in the opinion of the head of service, the investigating officer requires access in order to establish the facts of the allegations.
- H9.5 After considering the report from the investigating officer, the head of service will make a determination on the balance of probabilities as to whether misconduct has occurred.
- H9.6 If the head of service determines that the misconduct has not occurred, the head of service will notify the employee of this finding and advise that no sanctions will be imposed.

H10 DISCIPLINARY ACTION AND SANCTIONS

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

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

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

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

- a) the nature and seriousness of the misconduct;
- b) the degree of relevance to the employee's duties or to the reputation of the Directorate or the ACTPS;
- c) the circumstances of the misconduct;
- d) any mitigating factors, including any full admission of guilt; and
- e) the previous employment history and the general conduct of the employee.

Section H – Workplace Values and Behaviours

- H10.4 Before taking disciplinary action, the head of service will advise the employee in writing of:
- a) the decision that misconduct has been found to have occurred; and
 - b) the reasons for arriving at this decision; and
 - c) the sanction proposed; and
 - d) the period during which the employee has to respond to the proposed disciplinary action (which must be a minimum of fourteen calendar days).
- H10.5 After considering the employee's response to the proposed action, or if the employee has not responded at any time after the period outlined in paragraph H10.4 (d) has lapsed, the head of service may take disciplinary action. The head of service will inform the employee in writing of:
- a) the final decision regarding disciplinary action to be taken; and
 - b) the date of effect and/or, if relevant, the cessation of the action; and
 - c) the appeal mechanisms that are available under this Agreement.

H11 CRIMINAL CHARGES

- H11.1 An employee must advise the head of service in writing of any criminal charges laid against the employee in circumstances where a reasonable person would believe that the interests of the Directorate or of the ACTPS may be adversely affected, taking into account:
- a) the circumstances and seriousness of the alleged criminal offence; and
 - b) the employee's obligations under section 9 of the PSM Act; and
 - c) the effective management of the employee's work area; and
 - d) the integrity and good reputation of the ACTPS and the Directorate; and
 - e) the relevance of the offence to the employee's duties.
- H11.2 Where criminal charges are laid against an employee and the interests of the Directorate or of the ACTPS may be adversely affected, the head of service may suspend the employee in accordance with the suspension arrangements under clause H8.
- H11.3 If an employee is convicted of a criminal offence the employee will provide a written statement regarding the circumstances of the offence to the head of service within seven calendar days of the conviction or the finding.
- H11.4 Where an employee is convicted of a criminal offence and the conviction or finding has adversely affected the interests of the Directorate or the ACTPS, the head of service may impose a sanction for misconduct against the employee in accordance with clause H10.

H12 RIGHT OF APPEAL

- H12.1 An employee has the right under Section J to appeal against any decision to take disciplinary action or to apply a sanction under subclause H10.1, or against any decision taken under clause H8 to suspend the employee without pay, or to transfer the employee at reduced pay, except action to terminate the employee's employment.
- H12.2 An employee may have an entitlement to bring an action under the FW Act in respect of any decision under this Section to terminate the employee's employment. This will be the sole right of review of such a decision.
- H12.3 The appeal procedures under Section H apply to the exclusion of the rights of appeal and review under the PSM Act 1994 and the internal review procedures contained in Section I of this Agreement.

Public Sector Management Act 1994

Section 9 - General obligations of public employees

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

- (a) exercise reasonable care and skill;
- (b) act impartially;
- (c) act with probity;
- (d) treat members of the public and other public employees with courtesy and sensitivity to their rights, duties and aspirations;
- (e) in dealing with members of the public, make all reasonable efforts to assist them to understand their entitlements under the territory laws and to understand any requirements that they are obliged to satisfy under those laws;
- (f) not harass a member of the public or another public employee, whether sexually or otherwise;
- (g) not unlawfully coerce a member of the public or another public employee;
- (h) comply with this Act, the management standards and all other territory laws;
- (i) comply with any lawful and reasonable direction given by a person having authority to give the direction;
- (j) if the employee has an interest, pecuniary or otherwise, that could conflict, or appear to conflict, with the proper performance of his or her duties—
 - (i) disclose the interest to his or her supervisor; and
 - (ii) take reasonable action to avoid the conflict;as soon as possible after the relevant facts come to the employee's notice;
- (k) not take, or seek to take, improper advantage of his or her position in order to obtain a benefit for the employee or any other person;
- (l) not take, or seek to take, improper advantage, for the benefit of the employee or any other person, of any information acquired, or any document to which the employee has access, as a consequence of his or her employment;
- (m) not disclose, without lawful authority—
 - (i) any information acquired by him or her as a consequence of his or her employment; or
 - (ii) any information acquired by him or her from any document to which he or she has access as a consequence of his or her employment;
- (n) not make a comment that he or she is not authorised to make where the comment may be expected to be taken to be an official comment;
- (o) not make improper use of the property of the Territory;
- (p) avoid waste and extravagance in the use of the property of the Territory;
- (q) report to an appropriate authority—
 - (i) any corrupt or fraudulent conduct in the public sector that comes to his or her attention; or
 - (ii) any possible maladministration in the public sector that he or she has reason to suspect.



ACT
Government

Chief Minister, Treasury and
Economic Development

Sch 2 s2.2(a)(ii)(xii)(xv)

Dear Sch 2
s2.2(a)(ii)

Notice of Disciplinary Investigation and Reassignment to Alternate Duties

Investigation

I am writing to you in accordance with clause H7.1 of the *ACT Public Sector Administration and Related Classifications Enterprise Agreement 2013-2017* (the Enterprise Agreement) to inform you that I have received information regarding alleged incidents that occurred following a workplace function on Sch 2 s2.2(a)(ii)(xii)(xv) 2015. As a result of this information I have decided that a formal independent investigation will be undertaken into the allegations under the terms of Section H9 of the Enterprise Agreement. A copy of the misconduct and discipline procedures from Section H of the Enterprise Agreement and a copy of Section 9 of the *Public Sector Management Act 1994* are attached for your information.

As set out further below I also propose to reassign you to alternative duties while the alleged misconduct is investigated.

An investigator will contact you in due course to provide further particulars of the allegations and to offer you an opportunity to respond. Sch 2 s2.2(a)(ii)(xii)(xv)

Reassignment to Alternate Duties

In accordance with clauses H7.2 and H8.2 of the Enterprise Agreement, I propose to reassign you to alternate duties while the alleged misconduct is investigated as I consider that it is in the interests of the ACTPS and of the Directorate to do so. Following receipt of this letter, you are directed to report to Sch 2 s2.2(a)(ii)(xii)(xv)

I invite you to respond to this proposal, outlining your views on the reassignment, by close of business on Sch 2 s2.2(a)(ii) 2015. Any response should be provided to me via email.

Direction

To maintain the integrity of the investigation and minimise disruption to the workplace, you are directed not to discuss the allegations or related matters with other staff of the directorate without first speaking to me or the appointed investigator. Breaching this direction may result in a further allegation of misconduct being made against you.

Staff in Confidence

The Employee Assistance Program (EAP) is available to provide confidential and professional counselling to you and members of your family throughout this process. You may access this service by phoning Converge International 1300 687 327.

If you require clarification or additional information in relation to this letter please contact Sch 2
[redacted] acting HR Manager, CMTEDD HR on Sch 2
[redacted] s2.2(a)

Yours sincerely

Sch 2 s2.2(a)(ii)(xii)(xv)
[redacted]

Delegate
Sch 2 s2.2(a)(ii)(xii)(xv)
[redacted]

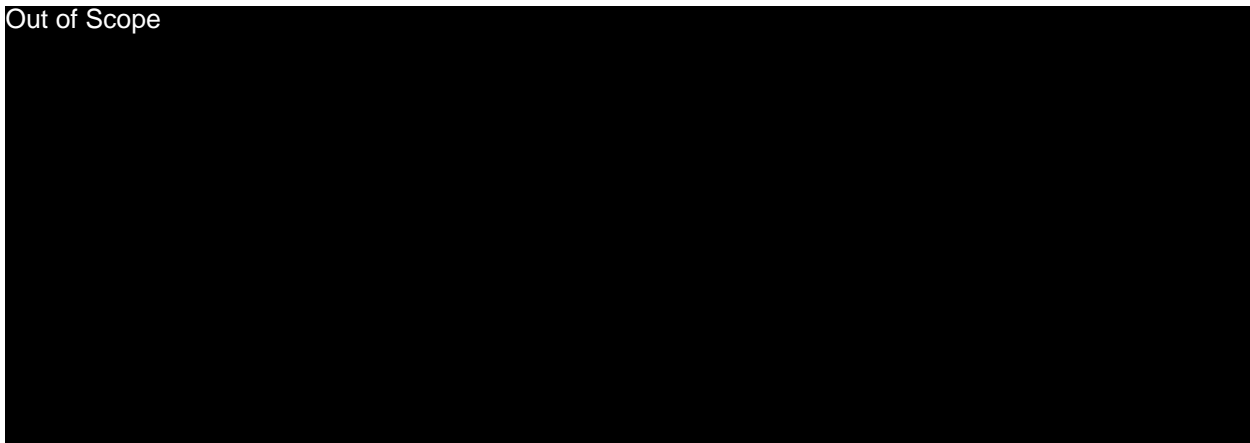
Sch 2
s2.2(a) 2015

From: Sch 2 s2.2(a)(ii)(xii)(xv)
Sent: Sch 2 s2.2(a)(ii) 2015 12:47 PM
To: Sch 2
Subject: RE: summary of our discussion
Attachments: Sch 2 s2.2(a)(ii).docx

Hi Sch 2

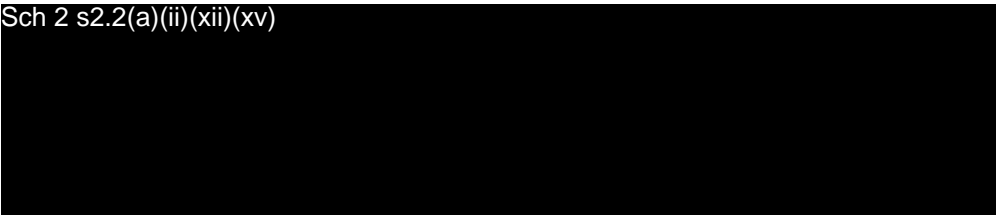
Thank you for drafting this so quickly. I only made some minor amendments.

Out of Scope



Thank you,

Sch 2 s2.2(a)(ii)(xii)(xv)



From: Sch 2 s2.2(a)(ii)
Sent: Sch 2 s2.2(a)(ii) 2015 12:27 PM
To: Sch 2 s2.2(a)(ii)
Subject: summary of our discussion

Hi Sch 2

Many thanks for your time yesterday.

As discussed here is a draft summary of what we discussed. Feel free to amend as you see fit then return it to me please.

Regards

Sch

Sch 2 s2.2(a)

Senior Consultant

HBA Consulting

PO Box 6262, O'Connor, ACT, 2602

Phone Sch 2 s2.2(a)(ii)

Email:

Website: HBA Consulting

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Sch 2 s2.2(a)(ii)
(by email)

Dear Sch 2

I am writing to you to advise that I have been engaged by Sch 2 s2.2(a)(ii) to investigate allegations of possible misconduct that have been made against you. I understand you have already been made broadly aware of the allegations and that a formal investigation was to be initiated.

Sch 2 s2.2(a)(ii)(xii)(xv)

More detailed information relating to the allegations is attached for your information.

My investigation will be conducted in accordance with the procedures set out in Section H7.1 of the *ACT Public Sector Administration and Related Classifications Enterprise Agreement 2013-2017* (the Enterprise Agreement).

Consistent with those procedures I am now inviting you to provide a written response to the allegations that have been made against you - alternatively you may wish to discuss the allegations with me. If you choose to provide a written statement it should be submitted to me within seven calendar days of receiving this notice. Should you require more time to prepare your response please contact me to discuss your request.

If you choose to discuss the allegations with me you may have a second person present for support during the discussion. If you are interviewed, a record of the interview will be provided to you, giving you the opportunity to correct any inaccuracies in the record and to provide any further response in relation to the allegations.

If you do not make a written and/or oral statement, you will not for that reason alone, be taken to have admitted to committing the suspected breaches.

Should the allegations be proven your behaviour may constitute misconduct as defined in the Enterprise Agreement and you may have breached the following sections of the *Public Sector Management Act 1994* (the PSM Act):

- s9(a) – a public employee shall exercise reasonable care and skill;
- s9(d) - treat members of the public and other employees with courtesy and sensitivity to their rights, duties and aspirations;
- s9(h) – a public employee shall comply with this Act, the management standards and other territory laws; and
- s9(i) - a public sector employee shall comply with any lawful and reasonable direction given by a person having the authority to give the direction.

Should a determination be made that you have breached Section 9 of the PSM Act a sanction may be imposed under section H10.1 of the Enterprise Agreement. The available sanctions are:

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

Please note that the confidentiality attached to investigations requires that the enclosed information is not discussed or disseminated to anyone outside of this process and that any comments you have by way of a response to the allegations should be made to me.

You should be aware that any information that you provide to me as part of the investigation process may be released in part or in its entirety to other people that I speak to in the course of my enquiry including people that may be identified by you in responding to the complaint.

Can you please advise whether you will be providing a written response to the allegations in the first instance. If you have any questions about this matter please

do not hesitate to contact me either by phone or by email. My contact details are provided below.

Yours sincerely

Sch 2 s2.2(a)(ii)

Senior Consultant

HBA Consulting

Mobile: Sch 2 s2.2(a)(ii)


Email:

Sch 2
s2.2(a) 2015

ATTACHMENT A

ALLEGATIONS AGAINST Sch 2 s2.2(a)(ii)(xii)

Sch 2 s2.2(a)(ii)(xii)(xv), Out of Scope



From: Sch 2 s2.2(a)(ii)(xii)(xv)
Sent: Sch 2 s2.2(a)(ii) 2015 8:47 AM
To: Sch 2
Subject: RE: Meeting Summary

Hi Sch,

Thank you for your prompt draft. This looks great – I don't have any amendments.

Thanks,

Sch

From: Sch 2 s2.2(a)(ii)
Sent: Sch 2 s2.2(a)(ii) 2015 5:01 PM
To: Sch 2
Subject: Meeting Summary

Hi Sch

Thanks for your time this morning. As discussed here is a summary of the issues we discussed. Please feel free to make any changes that you think appropriate and then return it to me.

Regards

Sch 2 s2.2(a)
Senior Consultant
HBA Consulting
PO Box 6262, O'Connor, ACT, 2602
Phone: Sch 2 s2.2(a)(ii)
Email:
Website: HBA Consulting

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From: Sch 2 s2.2(a)(ii)(xii)(xv)
Sent: Sch 2 s2.2(a)(ii)(xii) 2015 11:43 AM
To: Sch 2
Subject: RE: Sch 2
Attachments: Sch 2 s2.2(a)(ii)(xii)(xv) .docx

Hi Sch

Happy to discuss further, it has just been difficult to do while at work given the nature.

Thanks

Sch 2 s2.2(a)(ii)(xii)(xv)



From: Sch 2 s2.2(a)(ii)
Sent: Sch 2 s2.2(a)(ii)(xii) 2015 8:08 AM
To: Sch 2 s2.2(a)(ii)
Subject: RE: Sch 2

Sch 2

I'd like to get my report in asap - can you please get back to me with any comments you might have re the attached summary of our conversation.

Regards

Sch

Sch 2 s2.2(a)
Senior Consultant
HBA Consulting
PO Box 6262, O'Connor, ACT, 2602
Phone: Sch 2 s2.2(a)(ii)
Email:
Website: HBA Consulting

From: Sch 2 s2.2(a)(ii)
Sent: Sch 2 s2.2(a) 2015 2:12 PM

To: Sch 2 s2.2(a)(ii)(xii)(xv)
Subject: FW: Sch 2

Hi Sch 2

Thanks for talking to me this morning. I have attached a short summary of what we talked about. Please make any changes that you think are appropriate and then return it to me.

Happy to discuss further if needed.

Regards

This email, and any attachments, may be confidential and also privileged. If you are not the intended recipient, please notify the sender and delete all copies of this transmission along with any attachments immediately. You should not copy or use it for any purpose, nor disclose its contents to any other person.

STAFF IN CONFIDENCE



ACT Sch 2 s2.2(a)(ii)(xii)(xv)

Investigation into allegations of misconduct against Sch 2 s2.2(a)(ii)(xii)(xv)

Report prepared by

HBA Consulting

Sch 2
s2.2(a) **2015**

STAFF IN CONFIDENCE

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STAFF IN CONFIDENCE

1. Introduction

1. HBA Consulting (HBA) was engaged by Sch 2 s2.2(a)(ii)(xii)(xv) to conduct an investigation into allegations of possible misconduct that had been made against Sch 2 s2.2(a)(ii)(xii)(xv).
2. The investigation was conducted by Sch 2 s2.2(a)(ii) a Senior Consultant with HBA, and this report has been subject to peer review by HBA Senior Consultant, Sch 2 s2.2(a)(ii)(xii)(xv).

2. Terms of reference

3. The Terms of Reference were agreed with Sch 2 s2.2(a)(ii)(xii)(xv) in an exchange of emails on Sch 2 s2.2(a)(ii)(xii)(xv) 2015 - see Attachment A. They required me to investigate whether the behaviour of Sch 2 s2.2(a)(ii)(xii)(xv) had breached the requirements of Section 9 of the *Public Sector Management Act 1994* (the PSM Act) and to then provide a report to Sch 2 s2.2(a)(ii)(xii)(xv) on my findings
4. I was required to conduct the investigation in accordance with Section H7.1 of the *ACT Public Sector Administration and Related Classifications Enterprise Agreement 2013-2017* (the Enterprise Agreement).

3. Summary of findings

5. Having reviewed the available evidence against Sch 2 s2.2(a)(ii)(xii)(xv) and his response to the allegations I have determined, on the balance of probabilities, that Sch 2 s2.2(a)(ii)(xii)(xv) behaviour constituted misconduct. More particularly, I have determined that Sch 2 s2.2(a)(ii)(xii)(xv) has failed to satisfy the following obligations placed on him by section 9 of the *Public Sector Management Act 1994*:

- s9(d) - a public employee shall treat members of the public and other employees with courtesy and sensitivity to their rights, duties and aspirations;
- s9(h) - a public employee shall comply with this Act, the management standards and other territory laws; and
- s9(i) - a public sector employee shall comply with any lawful and reasonable direction given by a person having the authority to give the direction.

4. Allegations against Sch 2 s2.2(a)(ii)(xii)(xv)

6. Sch 2 s2.2(a)(ii)(xii)(xv)

STAFF IN CONFIDENCE

Sch 2 s2.2(a)(ii)(xii)(xv)

7.

5. Process of Investigation

8. I met with Sch 2 s2.2(a)(ii)(xii)(xv) 2015 to discuss the allegations that had been made against Sch 2 s2.2(a) and to discuss my approach to the investigation. Sch subsequently provided me with a number of papers including various emails and records prepared by the complainant, Sch 2 s2.2(a)(ii)(xii)(xv)
9. After reviewing the various papers provided by Sch 2 I suggested that a number of the issues raised by Sch 2 s2.2(a) were performance management issues that should be handled separately under the appropriate performance management processes - Sch 2 agreed with this approach.
10. On Sch 2 2015 I contacted Sch 2 s2.2(a) to go through the various incidents that she had raised. I then contacted Sch 2 s2.2(a) by email on Sch 2 2015 to advise him of my appointment and of the allegations that had been made against him. My letter also advised him of the sanctions that were available to the employer should the allegations be proven. A copy of my letter is at Attachment B.

STAFF IN CONFIDENCE

11. Given that Sch 2 s2.2(a)(ii)(xii)(xv) were witnesses to some of Sch 2 s2.2(a)(ii) behaviour I spoke to them on Sch 2 2015 and subsequently met with Sch 2 on Sch 2 2015.
12. After talking to the staff concerned I prepared a written record of my discussion with each staff member and these records were subsequently endorsed, by email, as an accurate summary of the issues discussed - see Attachment C.
13. I then considered all of the relevant material and prepared this report. The principles of natural justice and procedural fairness were adhered to and the standard of proof that I applied to my considerations was the balance of probabilities. In my consideration of the issues I referred to the following documents:
- the endorsed summaries of my discussions with Sch 2 s2.2(a)(ii)(xii)(xv)
 - papers provided by Sch 2 s2.2(a)(ii) that provided the detail of Sch 2 s2.2(a)(ii)(xii)(xv) complaint);
 - *ACT Public Sector Administration and Related Classifications Enterprise Agreement 2013-2017*;
 - the *Public Sector Management Act 1994*;
 - the ACTPS Guidelines for Independent Reviewers and Appeal Panels; and
 - the ACT Public Service Code of Conduct.

6. What is misconduct?

14. Section H6.5 of the Enterprise Agreement provides a definition of misconduct - that definition includes situations where:
- the employee fails to meet the obligations set out in section 9 of the Public Sector Management (PSM) Act; and
 - the employee engages in conduct that has brought, or is likely to bring, the Directorate or ACTPS into disrepute.
15. Section 9 of the PSM Act sets out the general obligations that ACT public sector employees are expected to adhere to. The sub-sections of section 9 that are relevant to the allegations against Mr Graham are:
- s9(d) - treat members of the public and other employees with courtesy and sensitivity to their rights, duties and aspirations;
 - s9(h) - a public employee shall comply with this Act, the management standards and other territory laws; and
 - s9(i) - a public sector employee shall comply with any lawful and reasonable direction given by a person having the authority to give the direction.

STAFF IN CONFIDENCE


16. In addition to the requirements set out in section 9 of the PSM Act the Workplace Discrimination and Bullying Prevention Policy sets out a framework intended to eliminate workplace discrimination and harassment (including sexual harassment). Under that policy all staff have a responsibility to understand their own behaviour and how it may be perceived and impact on others in the workplace as well as complying with the requirements of the policy.

17. The policy defines harassment as any form of behaviour, normally unreciprocated, that is unwelcome, offensive, humiliating, threatening or creates an atmosphere that is offensive, humiliating or threatening. Sexual harassment in the workplace generally includes:

- any sexual advance (which may be physical, verbal or written); and/or
- requests for sexual favours; and/or
- any other form of unsolicited or unwelcome conduct of a sexual nature from a person (eg. an employer or colleague) towards another person, who reasonably feels offended, humiliated or intimidated by this conduct.

7. **Sch 2 s2.2(a)(ii) (xii)(xv) response to the allegations**

18. **Sch 2 s2.2(a)(ii)(xii)(xv)**



19.

STAFF IN CONFIDENCE

Sch 2 s2.2(a)(ii)(xii)(xv)

20

21

Sch 2 s2.2(a)(ii)(xii)(xv)

8. Consideration of the issues

Sch 2 s2.2(a)(ii)(xii)(xv)

23

24

25

STAFF IN CONFIDENCE

Sch 2 s2.2(a)(ii)(xii)(xv)

26.

27.

28.

29.

30. Sch 2 s2.2(a)(ii)(xii)(xv)

10. Conclusion.

31. Sch 2 s2.2(a)(ii)(xii)(xv)

32.

33. Sch 2 s2.2(a)(ii)(xii)(xv)

I have determined that Sch 2 s2.2(a)(ii)(xii)(xv) behaviour has breached the following sections of the *Public Sector Management Act 1994* by failing to:

- treat Sch 2 s2.2(a)(ii)(xii)(xv) with courtesy and sensitivity (section s9(d) of the PSM Act);
- comply with the requirements of the PSM Act, the management standards and other territory laws (section 9(h) of the PSM Act); and
- comply with any lawful and reasonable direction given by a person having the authority to give the direction (section 9(i) of the PSM Act. In this case Sch 2 s2.2(a)(ii) failed to comply with requirements of the Workplace Discrimination and Bullying Prevention Policy.

Sch 2 s2.2(a)(ii)
Senior Consultant
HBA Consulting

Sch 2 s2.2(a)(ii) 2015

STAFF IN CONFIDENCE

ATTACHMENT A

Hi Sch 2 s2.2(a)

I agree with the approach outlined below and have made a few minor corrections to the attached letters.

Thanks

Sch 2 s2.2(a)(ii)(xii)(xv)

From: Sch 2 s2.2(a)(ii)
Sent: Sch 2 s2.2(a)(ii) 2015 11:13 AM
To: Sch 2
Subject: RE: Sch Matters

Sch 2 s2.2(a)

Thanks for the papers you have provided.

I will endeavour to speak to Sch 2 s2.2(a) early this week so that I have detailed picture of what happened Sch 2 s2.2(a)(ii)(xii)(xv) 2015.

There are clearly a number of other issues re the work performance and the behaviour of Sch 2 s2.2(a) It is important that the performance issues are kept separate from the Code of Conduct even though there is a link between them. As a result I recommend that the issues with Sch 2 s2.2(a) work performance be dealt with separately by his managers and that the terms of reference for my investigation should cover the following matters:

- the incident on Sch 2 s2.2(a)(ii) 2015 - Sch 2 s2.2(a)(ii)(xii)(xv) and Sch 2 s2.2(a)(ii)
- failure to treat Sch 2 s2.2(a) with respect - as well as the incident on Sch 2 s2.2(a)(ii)(xii)(xv) Sch 2 s2.2(a)(ii)(xii)(xv)

Sch 2 s2.2(a)(ii)(xii)(xv)

I have attached draft letters to go to Sch 2 s2.2(a) and for your comment noting that it may change depending on what Sch 2 s2.2(a) tells me.

STAFF IN CONFIDENCE

Happy to discuss if needed.

Regards

Sch 2
s2.2(a)(ii)

Sch 2 s2.2(a)
(ii)

Senior Consultant
HBA Consulting
PO Box 6262, O'Connor, ACT, 2602

Phone: Sch 2 s2.2(a)(ii)

Email:

Website: HBA Consulting

STAFF IN CONFIDENCE

ATTACHMENT B

Sch 2 s2.2(a)(ii)(xii)
(xv)
(by email)

Dear Sch 2 s2.2(a)
(ii)(xii)(xv)

I am writing to you to advise that I have been engaged by Sch 2 s2.2(a)(ii)(xii)(xv) to investigate allegations of possible misconduct that have been made against you. I understand you have already been made broadly aware of the allegations and that a formal investigation was to be initiated.

Sch 2 s2.2(a)(ii)(xii)(xv)

More detailed information relating to the allegations is attached for your information.

My investigation will be conducted in accordance with the procedures set out in Section H7.1 of the *ACT Public Sector Administration and Related Classifications Enterprise Agreement 2013-2017* (the Enterprise Agreement).

Consistent with those procedures I am now inviting you to provide a written response to the allegations that have been made against you - alternatively you may wish to discuss the allegations with me. If you choose to provide a written statement it should be submitted to me within seven calendar days of receiving this notice. Should you require more time to prepare your response please contact me to discuss your request.

If you choose to discuss the allegations with me you may have a second person present for support during the discussion. If you are interviewed, a record of the interview will be provided to you, giving you the opportunity to correct any inaccuracies in the record and to provide any further response in relation to the allegations.

If you do not make a written and/or oral statement, you will not for that reason alone, be taken to have admitted to committing the suspected breaches.

Should the allegations be proven your behaviour may constitute misconduct as defined in the Enterprise Agreement and you may have breached the following sections of the *Public Sector Management Act 1994* (the PSM Act):

- s9(a) – a public employee shall exercise reasonable care and skill;
- s9(d) - treat members of the public and other employees with courtesy and sensitivity to their rights, duties and aspirations;
- s9(h) – a public employee shall comply with this Act, the management standards and other territory laws; and
- s9(i) - a public sector employee shall comply with any lawful and reasonable direction given by a person having the authority to give the direction.

STAFF IN CONFIDENCE

Should a determination be made that you have breached Section 9 of the PSM Act a sanction may be imposed under section H10.1 of the Enterprise Agreement. The available sanctions are:

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

Please note that the confidentiality attached to investigations requires that the enclosed information is not discussed or disseminated to anyone outside of this process and that any comments you have by way of a response to the allegations should be made to me.

You should be aware that any information that you provide to me as part of the investigation process may be released in part or in its entirety to other people that I speak to in the course of my enquiry including people that may be identified by you in responding to the complaint.

Can you please advise whether you will be providing a written response to the allegations in the first instance. If you have any questions about this matter please do not hesitate to contact me either by phone or by email. My contact details are provided below.

Yours sincerely

Sch 2 s2.2(a)
(ii)

Senior Consultant

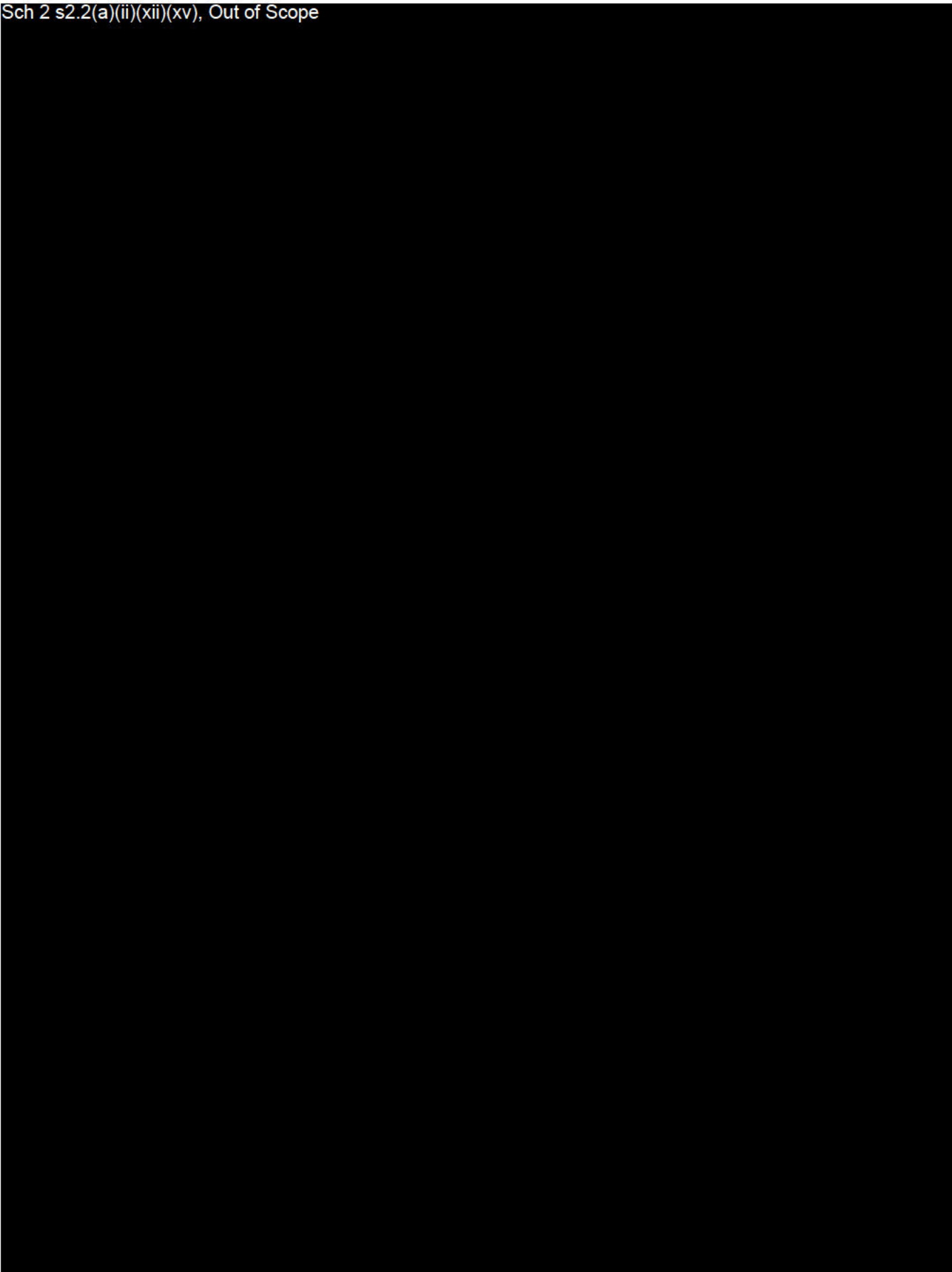
HBA Consulting

Mobile: Sch 2 s2.2(a)(ii)

Email: [REDACTED]

Sch 2
s2.2(a)(ii) 2015

Sch 2 s2.2(a)(ii)(xii)(xv), Out of Scope





ACT
Government

Chief Minister, Treasury and
Economic Development

Sch 2 s2.2(a)(ii)(xii)(xv)

Dear Sch 2

Alleged Misconduct – Proposed decision and proposed sanction

On Sch 2015 I wrote to you advising that an investigation was to be conducted in accordance with clause H7 of the *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013 - 2017* (the Agreement). The investigation was conducted into alleged incidents that occurred Sch 2 s2.2(a)(ii)(xii)(xv) 2015. The investigation has concluded and I am now writing to inform you of the outcome and the proposed discipline action to be taken.

After considering the investigation report, including your response to the allegations, I have determined your actions constitute misconduct under clause H6.5(a) of the Enterprise Agreement and I am satisfied you have breached subsections 9 (d), (f) and (h) of the *Public Sector Management Act 1994*. I have outlined my findings and proposed action below. The full reasons for my decisions are at **Attachment A**.

In reaching my decision on the proposed discipline action to be taken in relation to the allegations, I have taken account of those elements required by clause H10.3 of the Agreement (outlined below) and as addressed in the investigation report:

- a) the nature and seriousness of the misconduct;
- b) the degree of relevance to the employee's duties or to the reputation of the directorate;
- c) the circumstances of the misconduct;
- d) any mitigating factors, including any full admission of guilt; and
- e) the previous employment and the general conduct of the employee.

The sanction I propose is termination of your employment as per clause H10.1 (e).

Stand down with pay

To allow you time to consider a response to my proposal, I immediately suspend you from duty with pay in accordance with the discipline provisions set out in Section H of the Enterprise Agreement. Whilst suspended with pay, you will be paid in accordance with clause H8.5 of the Enterprise Agreement.

Right of Reply

You may provide a written response to me within fourteen calendar days from the date of this letter, addressing my findings of misconduct and associated proposed decision on the breaches of the code of conduct and the proposed sanction. I will consider this response before I make a final decision in this matter. Should you choose not to provide a response, the above findings and disciplinary action will be implemented from Sch 2 s2.2(a) 2015.

Any response should be addressed to:

Sch 2 s2.2(a)(ii)(xii)(xv)

PO Box 158
Canberra ACT 2601

Or by email to Sch 2 s2.2(a)(ii)(xii)(xv)

The Enterprise Agreement does not provide a right of appeal against a decision to terminate your employment. Any appeal against termination of employment is by application to Fair Work Australia in accordance with the *Fair Work Act 2009* (www.fairwork.gov.au).

In accordance with the disposal schedules under the *Territory Records Act 2002*, records of investigations of misconduct allegations which are found substantiated will be retained for a minimum of five years.

The Employee Assistance Program (EAP) is available to provide confidential and professional counselling to you and members of your family throughout this process. You may access this service by phoning Converge International 1300 687 327.

If you require clarification or additional information in relation to this letter please contact Sch 2, A/g Manager Employee Relations, CMTEDD HR on Sch 2.

Yours sincerely

Sch 2 s2.2(a)

Delegate

Sch 2 s2.2(a)(ii)(xii)(xv)

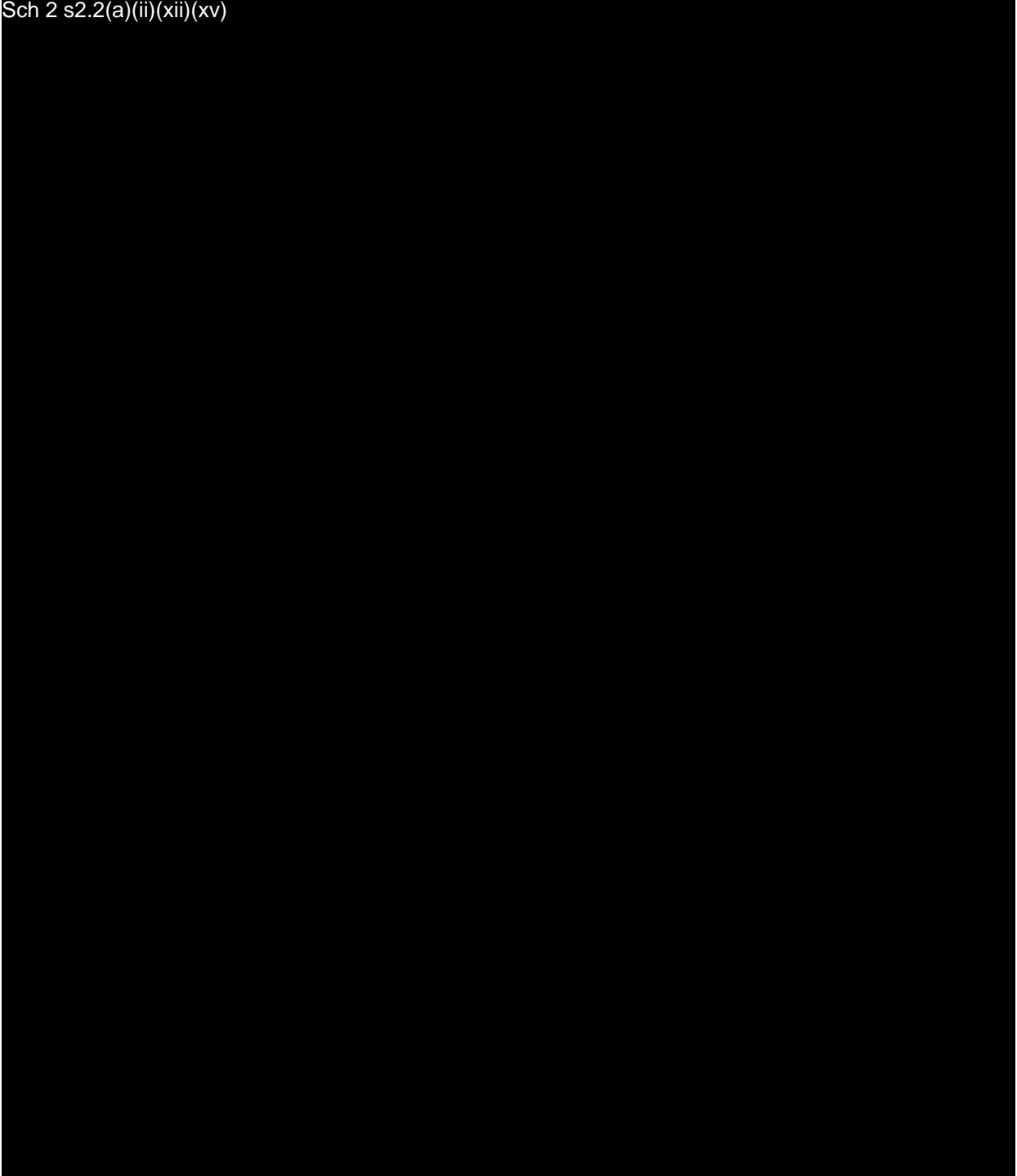
Sch 2 2015

Attachment A: Statement of Reasons – Proposed Disciplinary Action – Sch 2 s2.2(a)(ii)


In making a determination on the allegations I have considered your response at interview on Sch 2 2015, a statement made by the complainant and statements taken from two witnesses. This evidence was provided to me as part of the investigation process.

In arriving at this determination I have had regard to the requirements of clause H10.3 of the Enterprise Agreement, which provides that discipline action taken under these procedures must be proportionate to the degree of misconduct concerned. I have considered these factors as follows.

Sch 2 s2.2(a)(ii)(xii)(xv)



Sch 2 s2.2(a)(ii)(xii)(xv)



I have determined the allegation of **Sch 2** 2015 is substantiated. On the balance of probabilities I am satisfied that the allegation is more likely to have occurred than not to have occurred. Your action constitutes misconduct under clause H6.5 of the Agreement on the following basis:

- (a) You have failed to meet the obligations set out in section 9 of the *Public Sector Management Act 1994*.


The conduct breaches the following provisions of the *Public Sector Management Act 1994*, subsection 9:

- (d) treat members of the public and other public employees with courtesy and sensitivity to their rights, duties and aspirations;*
- (f) not harass a member of the public or another public employee, wether sexually or otherwise; and*
- (h) comply with this Act, the management standards and all other territory laws.*

I am of the preliminary view that your alleged conduct **Sch 2 s2.2(a)(ii)(xii)(xv)** 2015 is incompatible with the continuation of your employment.

Accordingly, I propose to **terminate your employment** in accordance with clause H10.1 (e) of the Enterprise Agreement in respect of this misconduct.

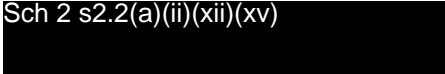
Out of Scope



Sch 2 s2.2(a)

Delegate

Sch 2 s2.2(a)(ii)(xii)(xv)



Sch 2 2015



ACT
Government

Chief Minister, Treasury and
Economic Development

Sch 2 s2.2(a)(ii)(xii)(xv)

Dear Sch 2
s2.2(a)(ii)

Alleged Misconduct – Proposed decision and proposed sanction

On Sch 2 2015 I wrote to you advising that an investigation was to be conducted in accordance with clause H7 of the *ACT Public Service Administrative and Related Classifications Enterprise Agreement 2013 - 2017* (the Agreement). The investigation was conducted into alleged incidents that occurred Sch 2 s2.2(a)(ii)(xii)(xv) 2015. The investigation has concluded and I am now writing to inform you of the outcome and the proposed discipline action to be taken.

After considering the investigation report, including your response to the allegations, I have determined your actions constitute misconduct under clause H6.5(a) of the Enterprise Agreement and I am satisfied you have breached subsections 9 (d), (f) and (h) of the *Public Sector Management Act 1994*. I have outlined my findings and proposed action below. The full reasons for my decisions are at **Attachment A**.

In reaching my decision on the proposed discipline action to be taken in relation to the allegations, I have taken account of those elements required by clause H10.3 of the Agreement (outlined below) and as addressed in the investigation report:

- a) the nature and seriousness of the misconduct;
- b) the degree of relevance to the employee's duties or to the reputation of the directorate;
- c) the circumstances of the misconduct;
- d) any mitigating factors, including any full admission of guilt; and
- e) the previous employment and the general conduct of the employee.

The sanction I propose is termination of your employment as per clause H10.1 (e).

Stand down with pay

To allow you time to consider a response to my proposal, I immediately suspend you from duty with pay in accordance with the discipline provisions set out in Section H of the Enterprise Agreement. Whilst suspended with pay, you will be paid in accordance with clause H8.5 of the Enterprise Agreement.

Right of Reply

You may provide a written response to me within fourteen calendar days from the date of this letter, addressing my findings of misconduct and associated proposed decision on the breaches of the code of conduct and the proposed sanction. I will consider this response before I make a final decision in this matter. Should you choose not to provide a response, the above findings and disciplinary action will be implemented from Sch 2 s2.2(a) 2015.

Staff in Confidence

Any response should be addressed to:

Sch 2 s2.2(a)(ii)(xii)(xv)

PO Box 158
Canberra ACT 2601

Or by email to Sch 2 s2.2(a)(ii)(xii)(xv)

The Enterprise Agreement does not provide a right of appeal against a decision to terminate your employment. Any appeal against termination of employment is by application to Fair Work Australia in accordance with the *Fair Work Act 2009* (www.fairwork.gov.au).

In accordance with the disposal schedules under the *Territory Records Act 2002*, records of investigations of misconduct allegations which are found substantiated will be retained for a minimum of five years.

The Employee Assistance Program (EAP) is available to provide confidential and professional counselling to you and members of your family throughout this process. You may access this service by phoning Converge International 1300 687 327.

If you require clarification or additional information in relation to this letter please contact Sch 2
A/g Manager Employee Relations, CMTEDD HR on Sch 2

Yours sincerely

Sch 2 s2.2(a)(ii)(xii)(xv)

Delegate

Sch 2 s2.2(a)(ii)(xii)(xv)

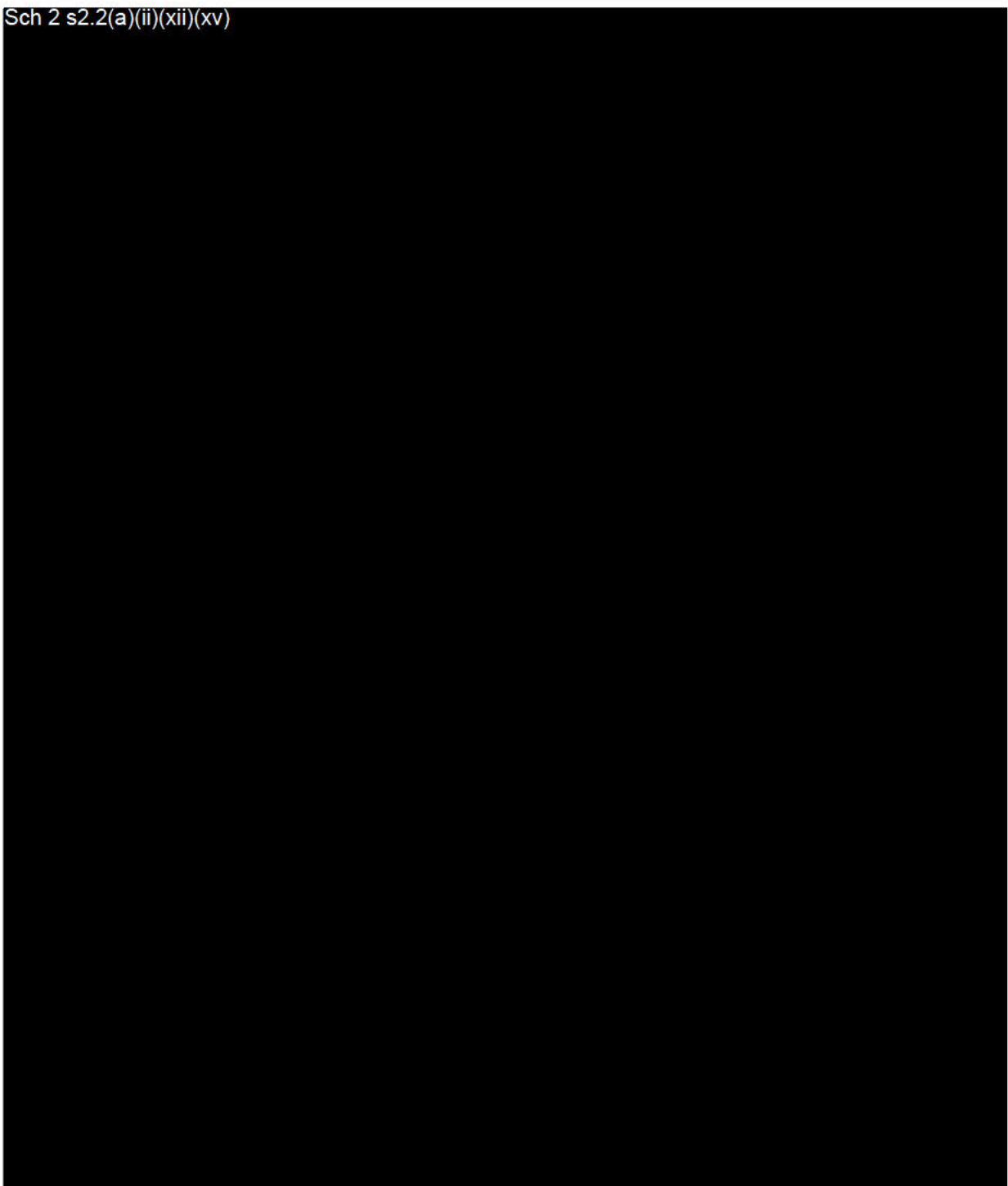
Sch 2 s2.2(a)(ii)(xii)(xv) 2015

Attachment A: Statement of Reasons – Proposed Disciplinary Action – Sch 2 s2.2(a)(ii)(xii)(xv)

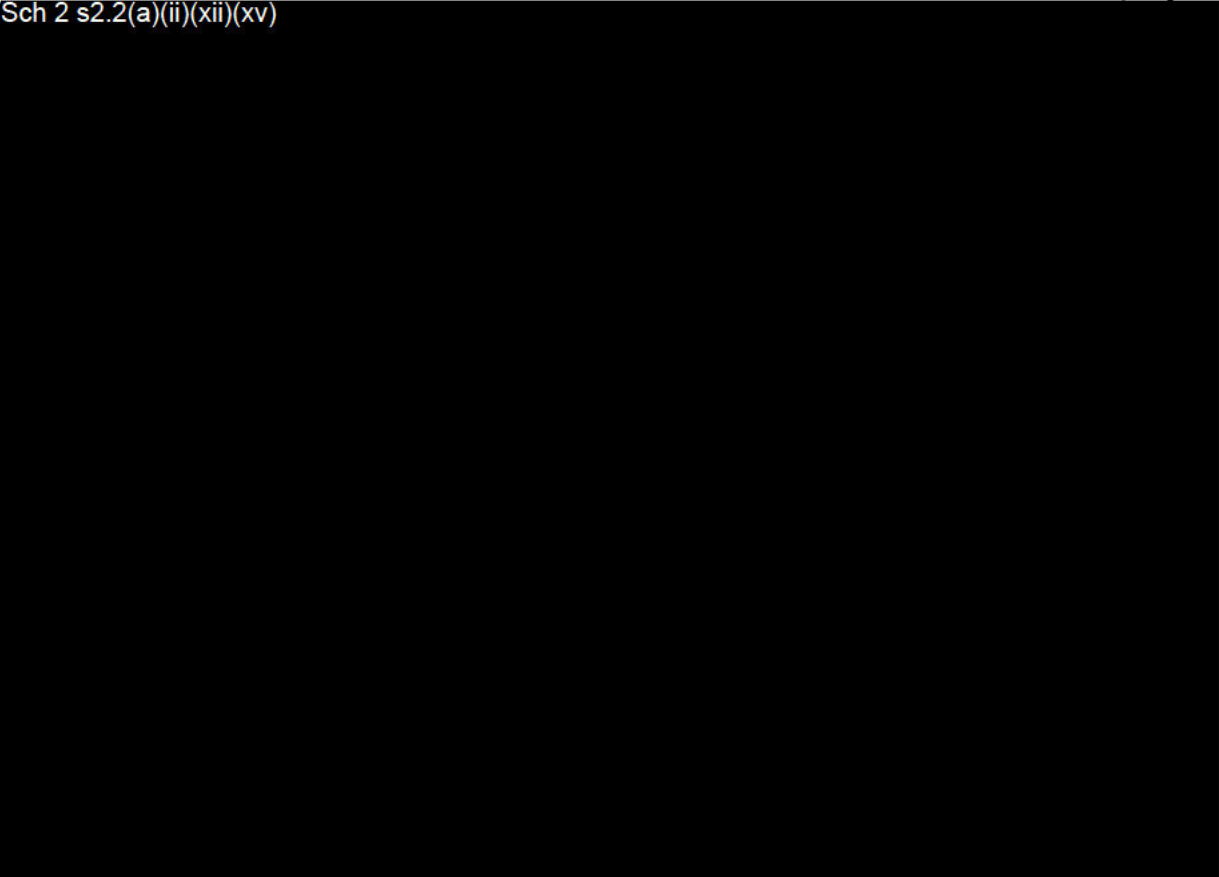
In making a determination on the allegations I have considered your response at interview on Sch 2 s2.2(a) 2015, a statement made by the complainant and statements taken from two witnesses. This evidence was provided to me as part of the investigation process.

In arriving at this determination I have had regard to the requirements of clause H10.3 of the Enterprise Agreement, which provides that discipline action taken under these procedures must be proportionate to the degree of misconduct concerned. I have considered these factors as follows.

Sch 2 s2.2(a)(ii)(xii)(xv)



Sch 2 s2.2(a)(ii)(xii)(xv)



I have determined the allegation of Sch 2 s2.2(a) 2015 is substantiated. On the balance of probabilities I am satisfied that the allegation is more likely to have occurred than not to have occurred. Your action constitutes misconduct under clause H6.5 of the Agreement on the following basis:

- (a) You have failed to meet the obligations set out in section 9 of the *Public Sector Management Act 1994*.

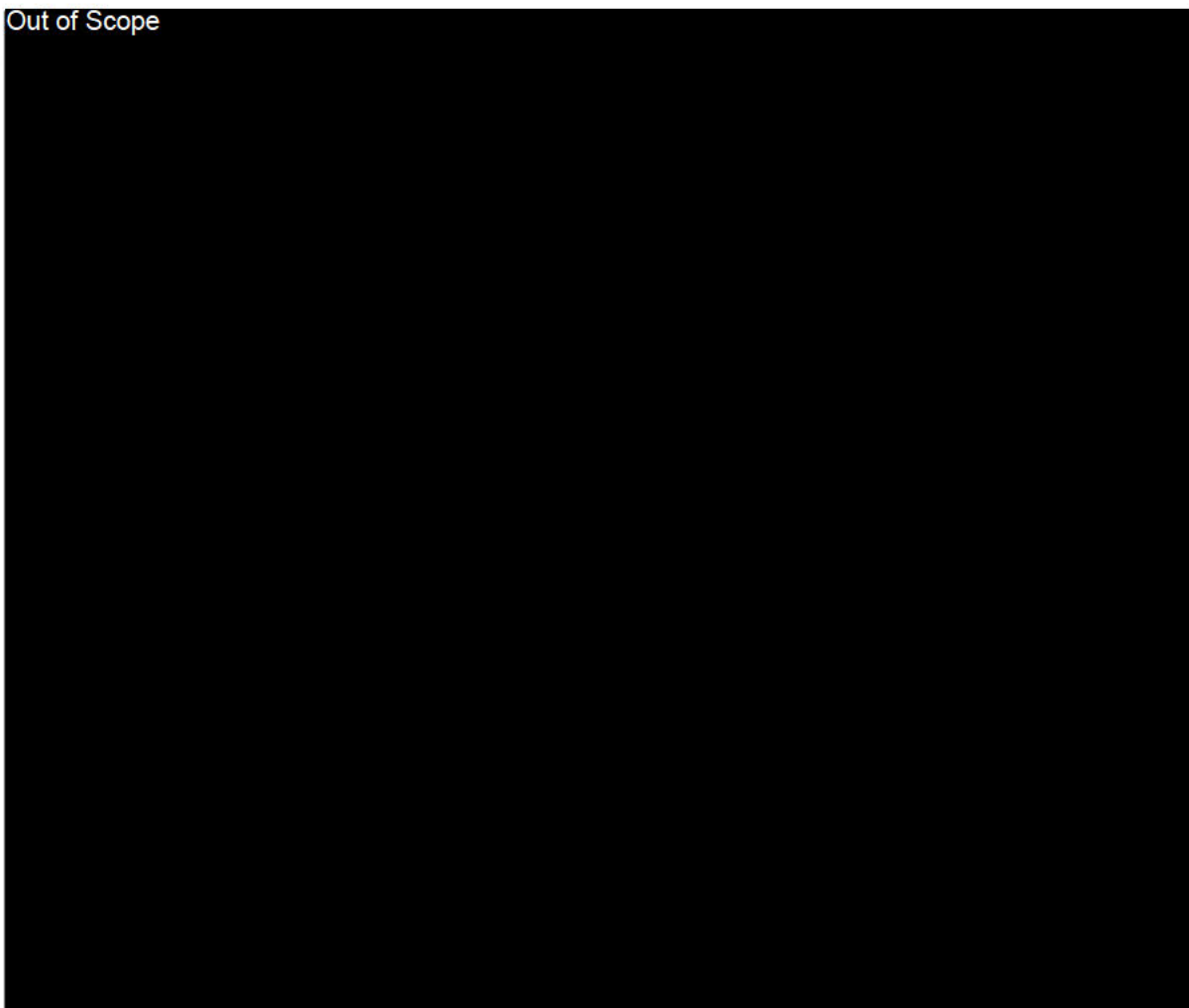
The conduct breaches the following provisions of the *Public Sector Management Act 1994*, subsection 9:

- (d) *treat members of the public and other public employees with courtesy and sensitivity to their rights, duties and aspirations;*
- (f) *not harass a member of the public or another public employee, wether sexually or otherwise; and*
- (h) *comply with this Act, the management standards and all other territory laws.*

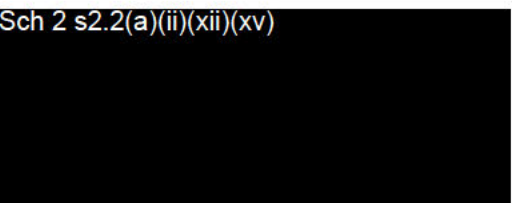
I am of the preliminary view that your alleged conduct Sch 2 s2.2(a)(ii)(xii)(xv) 2015 is incompatible with the continuation of your employment.

Accordingly, I propose to **terminate your employment** in accordance with clause H10.1 (e) of the Enterprise Agreement in respect of this misconduct.

Out of Scope

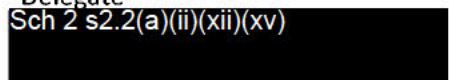


Sch 2 s2.2(a)(ii)(xii)(xv)



Delegate

Sch 2 s2.2(a)(ii)(xii)(xv)



Sch 2 s2.2(a)(ii)(xii)(xv) 2015

From: Sch 2
To: Sch 2
Subject: FW: FW: Proposed findings and notification letter
Date: Sch 2 s2.2(a)(ii)(xii) 2015 9:39:51 AM

fyi

From: Sch 2 s2.2(a)
Sent: Sch 2 s2.2(a)(ii)(xii)(xv) 2015 9:40 AM
To: Sch 2 s2.2(a)(ii)(xii)(xv); Sch 2 s2.2(a)
Subject: RE: FW: Proposed findings and notification letter

Dear Sch

Thank you for your email below I accept your resignation effective from Sch 2 s2.2(a)(ii)(xii).

Sch 2 s2.2(a)(ii)(xii)(xv)

From: Sch 2 s2.2(a)(ii)(xii)(xv)
Sent: Sch 2 s2.2(a)(ii)(xii) 2015 11:18 AM
To: Sch 2 s2.2(a); Sch 2 s2.2(a)
Subject: Re: FW: Proposed findings and notification letter

Hi Sch 2,

In regards to your proposed findings and sanction I don't not wish to provid any comments for your consideration.

I am notifying you of my resignation that will be effective Sch 2 s2.2(a)(ii)(xii). Please arrange for my entitlements to be paid including pro rata annual leave loading.

Thank you,

Sch

Sent from [Outlook](#)

On Sch 2, 2015 at 7:37 PM -0700, "Sch 2 s2.2(a)(ii)"
Sch 2 s2.2(a)(ii) wrote:

Hi Sch

As discussed.

Sch 2 s2.2(a) | A/g Manager Employee Relations
Human Resources | Corporate Branch
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 2, Canberra Nara Centre, Cnr Constitution Ave & London Crt, Canberra City | GPO Box 158 Canberra City
2601

Web: www.act.gov.au | Phone: Sch 2 | Fax: Sch 2 | Email:

Sch 2 s2.2(a)(ii)

From: S
Sent: Sch 2 s2.2(a)(ii)(xii)(xv) 2015 1:49 PM
To: Sch 2
Cc: Sch 2 s2.2(a)
Subject: Proposed findings and notification letter

Hi Sch

As discussed and agreed by phone please find attached the letter detailing proposed findings and action resulting from the investigation.

I will speak to you again shortly to discuss some aspects of the letter.

Sch 2 s2.2(a) | A/g Manager Employee Relations
Human Resources | Corporate Branch
Chief Minister, Treasury and Economic Development Directorate | ACT Government
Level 2, Canberra Nara Centre, Cnr Constitution Ave & London Crt, Canberra City | GPO Box 158 Canberra City
2601
Web: www.act.gov.au | Phone: Sch 2 | Fax: Sch 2 | Email:
Sch 2 s2.2(a)(ii)

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