

MISCONDUCT AND DISCIPLINARY ACTION

PART I

MISCONDUCT AND DISCIPLINARY ACTION

1. PURPOSE

The purpose of charging a staff member with misconduct and the ensuing disciplinary action is to maintain a good standard of work and conduct required from a staff member as well as to ensure that the rules and regulations of the Public Service are complied with.

2. REGULATORY FRAMEWORK

These rules are issued in terms of Sections 35 of the Public Service Act, 1995 (Act 13 of 1995) (hereinafter referred to as the Act), read in conjunction with sections 25 to 29 thereof. It was approved by the Prime Minister, on recommendation of the Public Service Commission, in terms of Section 5(2)(j) read in conjunction with section 5(3) of the Act.

3. SCOPE OF APPLICATION

This policy applies to a staff member recruited for permanent, temporary and contract appointment from outside or within the Public Service.

4. IMPLICATIONS

Because of the many legal provisions that have to be met, misconduct is a highly formalised process. The effectiveness of the process is dependent on the efficient manner in which it is executed and managed.

5. STAKEHOLDERS

5.1. In terms of Section 26 of the Public Service Act, 1995, if a permanent secretary has reason to believe that any staff member in his/her OMA is guilty of misconduct, he/she may charge the staff member in writing under his/her hand with misconduct.

5.2. The **Public Service Commission** (PSC) is the arbiter of transparency, fairness and consistency of the disciplinary process in the Public Service. Employee misconduct poses a threat to service delivery and compromises the example which the Public Service should set for other employers in the country. Furthermore, disciplinary procedures which are not managed effectively and consistently can exacerbate this threat. Thus the disciplinary process and the meting out of sanctions should be applied swiftly, fairly and consistently. Failure to do so, threatens labour peace which is an essential ingredient of workplace harmony and productivity. The PSC will continue to review cases submitted for approval and recommendation. The PSC may refer cases back to the Permanent Secretary concerned if there are irregularities in the process.

- 5.3. The **Public Service Commission Secretariat (PSCS)** is responsible for reviewing, presenting to and advising the PSC on misconduct cases submitted to ensure that the correct disciplinary are complied with and substantive fairness prevails in the process.
- 5.4. The **Permanent Secretary (PS)** as the overall head of an OMA is responsible for the management of discipline as part of his/her managerial duties to ensure that staff members execute their duties as expected and conduct themselves in a reasonable manner.
- 5.5. The Human Resource Division/Sub-division in each OMA is the custodian of the misconduct and disciplinary process. The **Human Resource Practitioner (HRP)** must provide expert guidance and support to supervisors and managers and as the driver of the process must ensure that each step is executed swiftly, fairly and consistently without compromising the integrity of the process.

6. POLICY

6.1. INTRODUCTION

- 6.1.1 While the Act defines misconduct and provides the legal framework within which cases of misconduct must be dealt with, the measures contained in this chapter provides the administrative process that supports it and must be followed rigorously.
- 6.1.2 The contents of this chapter must, however, be read in conjunction with sections 25 to 29 of the Act in order to obtain an overall view on how to deal with charges of misconduct.
- 6.1.3 In cases where the staff member concerned was appointed on probation, suspension should not be considered at all as a probationary appointment is a conditional appointment subject to the staff member's display of diligence and satisfactory conduct. Any form of serious misconduct during this period should thus be conclusive reason to terminate the probationary appointment after the staff member concerned has been granted the opportunity to be heard (*audi alteram partem* rule). For example -
- (a) During each quarter of the probationary period, there should be a dialogue between the supervisor and the staff member. This is to discuss performance and propose corrective measures to improve any shortcomings. These sessions or any interventions should be recorded.
 - (b) The Act does not make provision for appeals on grounds of termination of appointment on probation. However, a staff member may appeal to the Public Service Commission as one of the administrative bodies or any other competent body as he/she may deem fit. The appeal will be submitted via the Permanent Secretary. In terms of Article 18 of the Namibian Constitution, administrative bodies and officials shall act fairly and reasonably and comply with the requirements imposed upon such bodies and officials by common law and any relevant legislation, and persons aggrieved by the exercise of such acts and decisions shall have the right to seek redress before a competent court or tribunal.
- 6.1.4 In cases of promotion or transfer on probation a staff member cannot be discharged from the Public Service by merely terminating his/her probation. In such a case the misconduct procedure must be followed. To demote a staff member, the probation must be

terminated, provided the staff member has been granted the opportunity to be heard. Section 22(5)(b) of the Public Service Act, 1995 (Act 13 of 1995) provides that “with the approval of the Prime Minister, granted on the recommendation of the Commission, and notwithstanding anything to the contrary contained in section 14 or 24 or in subsection (3) or (4) of this section, any person who immediately prior to his or her promotion or transfer on probation was a staff member, not being on probation, shall, if his or her promotion or transfer on probation is not confirmed, revert to the post or employment previously held by him or her, or to any other post or employment of an equivalent grade, and to the salary and scale of salary he or she would have attained in his or her previous post or employment and the equivalent benefits applicable to such previous post or employment, or be employed additional to the establishment on a suitable grade with an appropriate rank, salary and scale of salary. (Also refer to PSSR B.V: Filling of posts: On Probation).

6.1.5 A contract of employment is a contract with reciprocal rights and obligations. Having regard to such rights and obligations flowing from a contract of employment, both the employee and the employer must fulfil their obligations in terms of the contract of employment and the provisions of the Labour Act. The employer must also act fairly when enforcing its rules and regulations.

6.1.6 In terms of Public Service Regulation 23, it is the duty of every supervisor to take appropriate action in every case of breach of any of the provisions of the Public Service Act, the regulations or staff rules. Supervisors who fail to comply with this duty shall lay themselves open to a charge in terms of section 25(1)(d) and (q) of the Public Service Act.

6.1.7 This means, amongst other things, that disciplinary action taken must be consistent and the penalty imposed must be in keeping with the seriousness of the transgression taking into account mitigating factors.

6.2 COUNSELLING

6.2.1 Employee shortcomings can arise for a number of reasons. Through discussion such reasons may be put in perspective making decisions easier. This, of course, depends on a whole range of factors including the nature of the transgression, the extent of the damages caused and whether it has happened before.

6.2.2 In order to get to the source of the shortcoming, a joint problem solving approach with the staff member should be adopted in order to -

- (a) identify the real problem(s) and cause(s);
- (b) work out solutions to the problem(s);
- (c) obtain the staff member’s commitment to agreed corrective action.
- (d) ensure that the staff member knows what is expected of him or her i.e. is aware of the standards and requirements of the job;
- (e) ensure that the staff member has the right tools, equipment, support, training etc. to perform the job to the required standard.
- (f) carefully appraise the staff member’s work performance and make the staff member aware of his or her shortcomings;
- (g) warn the staff member of the possibilities in terms of the Act, for example a misconduct charge, or a discharge due to inefficiency or incapacity, if his or her performance does not improve;
- (h) grant the staff member a reasonable opportunity (a time period) in which to improve his or her performance; and

- (i) record the dates and content of discussions as proof of them having taken place and be signed off by both parties.

6.2.3 Unless the above measures are adhered to, the Public Service Commission may not be inclined to support punitive measures instituted against a staff member.

6.2.4 A witness /workplace union representative may be present during the counselling of a staff member.

6.3 WARNINGS WITH REGARD TO MISCONDUCT

6.3.1 If the counselling referred to above is not sufficient for dealing with the problem or improving behaviour or performance, the supervisor may give warnings to emphasize that further transgressions/deficiencies may lead to formal disciplinary action being taken against the staff member: Provided the *audi alteram partem rule* is applied.

6.3.2 There are two types of warnings – one is given in terms of section 26(12)(a)(i) of the Act, while the other is issued before the staff member is actually charged with misconduct. The warnings referred to in this part are not in terms of the Act but are warnings which are given when a staff member commits an offence and is informed that the OMA is aware of the particular offence and is warning him/her that further offences of the same nature can lead to a charge of misconduct in terms of section 26 of the Act. These warnings are not preceded by a Disciplinary Inquiry and in fact may not even lead to a Disciplinary Inquiry if the staff member does not commit the same or a similar offence again.

6.3.3 If a warning is issued before the staff member is actually charged with misconduct, it must not state that the staff member is guilty of misconduct. Such a statement is only valid if the full misconduct procedure has been followed and upon conclusion thereof the staff member has been found guilty.

(a) Verbal Warning

- (i) Verbal warnings may be initiated by a supervisor if he/she is of the opinion that the staff member's behaviour is unsatisfactory, but does not warrant a written warning or more stringent disciplinary action.
- (ii) A verbal warning is normally valid for a period of three months.

(b) First Written Warning

- (i) First written warnings can be given by the supervisor to the staff member when verbal warnings for minor offences were unsuccessful or for a first serious offence.
- (ii) A first written warning is normally valid for a period of six months.

(c) Second Written Warning

- (i) The supervisor can issue a second written warning to the staff member if the first written warnings were unsuccessful.

(ii) A second written warning is normally valid for a period of nine months.

(d) Final Written Warning

(i) A final written warning can be requested by the supervisor and will be issued by the Human Resource Practitioner under the signature of the permanent secretary concerned. This must be done after an investigation by the supervisor.

(ii) Final written warnings can be given for major offences or for additional offences by staff members to whom previous written warnings were issued.

(iii) A final written warning is normally valid for a period of twelve months.

6.3.4 A witness/workplace union representative may be present when a verbal or written warning is given to a staff member.

6.4 GUIDELINES IN DEALING WITH ACTIONS THAT CONSTITUTE MISCONDUCT

The following offences can be used as guidelines when dealing with actions that constitute misconduct:

6.4.1 Major Offences

(a) Examples Of Major Offences

- (i) Theft.
- (ii) Fraud.
- (iii) Embezzlement or mismanagement, etc.
- (iv) Bribery.
- (v) Malicious damage to State property.
- (vi) In unauthorised possession of State property.
- (vii) Driving an official vehicle under the influence of stupefying drugs/liquor.
- (viii) Intimidation.
- (ix) Incitement.
- (x) Perjury.
- (xi) Falsification or forgery of records/documents (This includes medical certificates and educational qualifications, etc.).
- (xii) Assault.
- (xiii) Making false statements when applying for employment or undergoing a medical examination.
- (xiv) Disobeying or disregarding work-related orders.
- (xv) Inebriety or drug abuse where the lives or property of others are endangered.
- (xvi) Sexual harassment.
- (xvii) Revealing confidential information to unauthorised persons.
- (xviii) Gross discourteousness.
- (xix) Racism.
- (xx) Tribalism.
- (xxi) Nepotism.
- (xxii) Gross abuse of authority.

- (b) If a staff member is caught red-handed with stolen goods or is suspected of a criminal offence, the offence must be reported to the Namibian Police, as well as to the Auditor-General in terms of the relevant Treasury Instructions.

(c) Possible action to be considered

First Offence : Charge with misconduct

6.4.2 Serious Offences

(a) Examples of Serious Offences:

- (i) Illegal striking in terms of the Labour Act.
- (ii) Flagrant disregard of safety standards.
- (iii) Misuse of State property for private purposes.
- (iv) Under the influence of intoxicating liquor or stupefying drugs during official hours of duty.
- (v) Abusing of sick leave.
- (vi) Sleeping on duty.
- (vii) Repeated absence from the workplace while on duty.
- (viii) Repeated unauthorised and/or non-communicated absenteeism.
- (ix) Physical fighting.
- (x) Using abusive language.
- (xi) Failure to report an accident or damage.
- (xii) Driving State vehicles without authority.
- (xiii) Reckless driving of State vehicles.
- (xiv) Insolence.
- (xv) Gross negligence or indolence.

(b) Possible action to be considered:

- (ii) First Offence : First written warning
- (iii) Second Offence : Final written warning
- (iv) Third Offence : Charge with misconduct

6.4.3 Minor Offences

(a) Examples of Minor Offences:

- (i) Poor time control.
- (ii) Horseplay.
- (iii) Improper conduct
- (iv) Carelessness.
- (v) Not reporting for overtime without a reasonable excuse, after agreeing in writing to work overtime.
- (vi) Not dressed in a clean, decent and tidy manner.

(b) Possible action to be considered

- (i) First Offence : Verbal warning
- (ii) Second Offence : First written warning

- (iii) Third Offence : Final written warning
- (iv) Fourth Offence : Charge with misconduct

- 6.4.4 The examples of misconduct and the possible action to be considered merely serve as guidelines. Depending on the seriousness of the offence and the circumstances, different action can be taken e.g. immediately charging a staff member with misconduct without a prior final warning.
- 6.4.5 In all cases before a staff member is given a warning, be it a verbal or a written warning, the supervisor must apply the *audi alteram partem* rule. This means that the supervisor should hold an informal inquiry into the alleged misconduct where the staff member is given an opportunity to present his or her case.
- 6.4.6 An informal inquiry should be attended by at least three people, namely the supervisor, the accused staff member and a person who records the proceedings of the inquiry.
- 6.4.7 If, on hearing the staff member's side of the case, the supervisor is still not satisfied, a warning shall be given and recorded and shall form part of the staff members records.
- 6.4.8 If a staff member is not satisfied with the decision of the supervisor, PSSR J.I/III: Grievance Procedure must be followed in order to afford the staff member an opportunity to appeal against the decision of the supervisor.

6.5 SUSPENSION OF STAFF MEMBERS

- 6.5.1 Section 26(2)(a) to (d) of the Act fully describes the procedure to follow for the suspension of a staff member. The procedure is as follows:
- (a) The Permanent Secretary concerned may, subject to the recommendation of the Public Service Commission, suspend any staff member at any time before or after he or she is charged under this section, if the Permanent Secretary has reason to believe that the staff member is guilty of misconduct: Provided that the staff member shall be suspended only where the nature of the misconduct dictates that the staff member be removed from his or her place of duty or if the possibility exists that the staff member may interfere or tamper with witnesses or evidence.
 - (b) Any staff member suspended in terms of paragraph (a) shall not be entitled to any remuneration for the period of his or her suspension, except to such an extent as may be approved by the Prime Minister on the recommendation of the Public Service Commission: Provided that the staff member may, within seven days after his or her suspension, appeal in writing to the Prime Minister against his or her non-entitlement to any remuneration or any part thereof.
 - (c) Any staff member who has been suspended shall forthwith be permitted by the permanent secretary concerned to reassume duty and shall be paid his or her full remuneration for the period of his or her suspension-
 - (i) if no charge is brought against him or her under this section within 14 days after his or her suspension;
 - (ii) if he or she is found not guilty on the charge brought against him or her;
 - (iii) if his or her appeal is allowed against the finding that he or she is guilty on the charge brought against him or her;

(iv) if he or she is dealt with in a manner contemplated in subsection (12)(a)(i), (ii), (iii) or (iv) of the Act.

(d) The suspension of any staff member may at any time be abrogated-

(i) by the Permanent Secretary who has suspended the staff member under subsection (2)(a) if in his or her opinion all the reasons for the suspension have lapsed; or

(ii) by the Prime Minister-

(aa) if in his or her opinion no valid cause exists for the suspension; or

(bb) if the Commission has recommended to the Prime Minister the abrogation thereof,

but the abrogation of the suspension shall not affect any proceedings in connection with the charge of misconduct.

(e) OMAs must give feedback to the Public Service Commission within 14 days after the staff member has been suspended to indicate if such staff member has been charged with misconduct. The same applies when the suspension of the staff member has been abrogated.

6.5.2 Suspension is a traumatic experience, which must not be effected lightly. Suspension and the duration thereof must be restricted to the minimum.

6.5.3 Suspension should under no circumstances be utilised as a punitive measure in itself, as this will constitute punishment before the case has been investigated and the person heard.

6.5.4 Therefore, the Public Service Commission will not consider the suspension of a staff member if there is sufficient evidence to charge the staff member with misconduct immediately.

6.5.5 The period of suspension can be restricted by -

(a) allowing a staff member to resume duty immediately after the need for suspension expires; and/or

(b) expediting the investigation and fixing specific dates for an inquiry.

6.5.6 After a suspension has been recommended by the Public Service Commission, the staff member must be **accorded a hearing prior to suspension to inform him/her of the contemplated suspension and the reasons thereof** as well as that he/she has the right to appeal against the suspension or the non-entitlement to remuneration and must do so within **7 days** after his or her suspension.

6.5.7 A staff member who intends to appeal against the non-entitlement of remuneration must provide the Public Service Commission with the following documents:

(a) Statement of all sources of income

(b) Statement of spouse's income

(c) Statement of assets

(d) Statement of expenditure with documentary proof, where possible.

6.5.8 Suspension can often be avoided by temporarily transferring a staff member elsewhere in the OMA in terms of section 31(1) of the Act.

6.6 FORMULATING OF CHARGES OF MISCONDUCT

6.6.1 Preliminary Investigation by the Supervisor

- (a) The purpose of the preliminary investigation is to gather substantive information regarding an alleged offence. The result of the investigation is taken up in a report to be submitted to the Permanent Secretary. The supervisor is responsible for conducting the preliminary investigation which is normally initiated after -
 - (i) a major or serious offence is alleged to have been committed by the staff member;
 - (ii) an accumulation of minor offences by a staff member; or
 - (iii) if the staff member contravenes or fails to comply with any provision relating to his/her employment or conditions of service, or contravenes or fails to comply with any provision of a prescribed code of conduct.
- (b) If a Permanent Secretary has reason to believe that a staff member has transgressed the provisions of any statutory or other instructions applicable to his/her conduct and/or duties, based on the report of the preliminary investigation.
- (c) A Permanent Secretary does not have to wait for the conclusion of the police investigation if the staff member is suspected of misconduct which is a criminal offence relating to the performance of his/her official duties or to the administration of any OMA. However, in such cases care must be taken that the charge is based on the offences indicated in the Act and is not simply a reflection of the criminal charge. A charge in terms of Section 25(1)(n) of the Act is only possible if a person has been found guilty in a court of law. To prove any criminal charge, the procedure in Section 26(10) must be followed as a Disciplinary Committee does not have the authority to find someone guilty of criminal offences but only for not following the applicable Acts, Regulations, Rules (Code of Conduct) etc. [Refer paragraph 6.16.3(a) (If in any doubt the Office of the Attorney General must be consulted.)]
- (d) It must be remembered that it is not the aim of the misconduct procedure to find staff members guilty according to the standard of proof used in criminal cases (i.e. beyond reasonable doubt) but rather to make a finding (including one of not guilty) on the balance of probabilities of having transgressed the provisions of the Act, Regulations and Staff Rules.
- (e) When an investigation by the Investigating Officer into an alleged misconduct is conducted the staff member concerned as well as witnesses should be interviewed separately to *inter alia* obtain answers to the following questions:
 - (i) How did it happen?
 - (iii) When did it happen?
 - (iii) Where did it happen?
 - (iv) What was the consequence of the alleged misconduct?

- (v) Who was involved?
- (vi) Why did it happen?
- (vii) Who witnessed it?
- (viii) What is the explanation for the incident?

6.6.2 Formulating of Actual Charge

- (a) A staff member may only be charged with misconduct in terms of the provisions of Section 26(1) read in conjunction with Section 25 of the Act. (Refer **Anne C** for an example of the charge sheet). If the Permanent Secretary decides to charge the staff member based on the findings of the Investigating Officer, the charges must be formulated within 14 days by the HR Office and serve onto him/her.
- (b) It must be pointed out that where a staff member is charged with an offence and the facts support a conviction on a lesser, alternative charge, the accused staff member cannot be found guilty of both the main and the alternative charge. The purpose of the alternative charge is to create a safety mechanism to ensure that if the evidence does not support a conviction on the main charge there can still be a conviction on the alternative charge that is usually a less serious offence.
- (c) If the misconduct with which a staff member is charged, constitutes an offence of which s/he has been convicted by a court of law, a certified copy of the record of his/her trial and conviction by that court (**Annexure A**) shall, upon the identification of the staff member as the person referred to in the record, be conclusive proof -
 - (i) of the commission by him/her of that offence; and
 - (ii) to the disciplinary committee that he/she is guilty of misconduct on account of the commission of that offence,

unless the conviction has been set aside by a superior court.
- (d) In instances where a staff member has been convicted by a court of law, the staff member must be informed that he/she has been found guilty of misconduct and his/her case has been referred to the disciplinary committee for considering mitigating factors and a recommendation of punitive measures. (**Annexure D**).
- (e) If a staff member is convicted in a court of law it is accepted that s/he was given a chance to be heard. An enquiry to establish guilt or innocence is thus not required, because the court record is used instead. The disciplinary committee must, however, recommend punitive measures after considering mitigating circumstances and inform the staff member in writing accordingly, as well as of his/her right to appeal against the recommended punitive measures. Section 26(10) of the Act can only apply to the actual case that was heard in court. Any other issue must be handled separately, and other evidence must be collected.

6.7 ADMISSION OF GUILT BY STAFF MEMBER OR FAILURE TO COMPLY WITH DIRECTIVES

- 6.7.1 If a staff member charged admits to the charge or fails to comply with the directives in the charge, he/she is deemed to have been found guilty of misconduct as charged in terms of section 26(4) of the Act.

- 6.7.2 If the staff member is deemed to have been found guilty as referred to in paragraph 6.7.1, the permanent secretary concerned may refer the case to a disciplinary committee for a recommendation of punitive measures to be taken or s/he may take action in terms of section 26(12)(a)(i) or (ii) of the Act or propose more stringent disciplinary action in terms of section 26(12)(a)(iii), (iv) or (v) of the Act after the staff member concerned has been given the opportunity to be heard. To ensure fairness, it is recommended that the disciplinary committee be involved. Such a disciplinary committee does not have to be appointed in terms of Section 26(5) as it is an additional procedure to the Act.
- 6.7.3 Where a staff member admits guilt or fails to comply with the direction in the charge, it is not necessary to conduct a formal disciplinary hearing but mitigating circumstances must be taken into account and the charged staff member must be given the opportunity to appeal against the intended punitive measures. (Mitigating circumstances: The reasons given by the staff member as to why the DC should not recommend heavier punitive measure.)

6.8 DENIAL OF GUILT BY A STAFF MEMBER

- 6.8.1 If a staff member denies the charge the permanent secretary concerned must establish a disciplinary committee within 7 days in terms section 26(5) of the Act. (**Annex E**)
- 6.8.2 In order for a staff member to prepare for the inquiry he/she must be given reasonable notice in writing (**Annex F**).

6.9 APPOINTMENT OF THE DISCIPLINARY COMMITTEE

- 6.9.1 The appointment of the disciplinary committee is made in terms of section 26(5) of the Act.
- 6.9.2 The roles and functions of persons who are involved in disciplinary inquiries are as follows:

(a) The Chairperson

(i) General

He/she –

- (aa) must be a member of the management cadre of the OMA in which the staff member is employed and may not be co-opted from another OMA.
- (bb) should not have been involved in the offence that led to the charge of misconduct.
- (cc) should not have a close relationship or family ties with the staff member charged.
- (dd) shall appoint the interpreter in co-ordination with the staff member charged.
- (ee) should not be involved in the investigation in any way.

(ii) Role, Functions and Powers

He/she –

- (aa) shall fix the time and place of the inquiry and shall give the staff member charged reasonable notice in writing of the said time and place.
- (bb) may authorise any staff member to adduce evidence and arguments in support of the charge.
- (cc) shall cause to be kept by any staff member designated by him/her a written record of the proceedings at the inquiry.
- (dd) shall in co-operation with the other members of the disciplinary committee find whether the staff member charged is guilty or not guilty of the misconduct with which he/she has been charged and shall inform him/her of the finding.
- (ee) If the staff member charged is found not guilty of misconduct he/she shall inform the staff member and submit a record of the proceedings, including documentary evidence adduced at the inquiry, together with a written statement of the committee's findings and its reasons therefore to the permanent secretary concerned.
- (ff) If the staff member charged is found guilty of misconduct, after having given him/her the opportunity to state mitigating factors, he/she shall submit to the PSC and the permanent secretary concerned a copy of the record of the proceedings, including documentary evidence adduced at the inquiry, together with a written statement of the committee's findings and its reasons and the disciplinary measures recommended.

(iii) Guidelines In Chairing An Inquiry

When chairing an inquiry the under-mentioned guidelines should be taken into account:

- (aa) To structure proceedings at an inquiry use **Annex G**.
- (bb) Remain impartial - do not take sides.
- (cc) Allow all parties a chance to have their say - do not allow "butting in".
- (dd) Do not talk too much - listen and ask questions.
- (ee) Do not be side-tracked by "red herrings" (i.e. a tactic to lead one off a particular train of thought).
- (ff) Do not be side-tracked into a repetition of what has already been said.
- (gg) Do not allow parties to jump ahead. They must answer questions in the order asked.
- (hh) Focus on the facts, not the individuals involved.
- (ii) Remain calm.
- (jj) Do not allow or use vague or undefined language (e.g. I think, I feel, etc.).
- (kk) Be sensitive to feelings and if possible allow parties to save face.
- (ll) Do not allow defence/attack spirals to develop.
- (mm) Do not use irritators (e.g. self-flattery "I am being very fair", thereby putting parties on the defensive).
- (nn) Do not discuss proposed action in the presence of persons who are not members of the disciplinary committee.
- (oo) Summarise - present both sides of the argument.
- (pp) Adjourn when unsure or if in difficulty and to consult experts, including legal advisors.

(b) **Head of organisational component responsible for Human Resource Administration**

(i) He/she must be a Chief Human Resource Practitioner or his/her delegate except in those OMAs where the establishment does not provide for a Chief HR Practitioner.

(ii) He/she is a member of the committee and may participate in the proceedings.

(c) **Human Resource Practitioner**

He/she shall be the secretary of the committee only and will not participate in any of the proceedings other than to keep minutes and other tasks as instructed by the chairperson.

(d) **Expert of the subject on which the charge is based**

(i) He/she shall be appointed by the permanent secretary concerned and shall not be the head of the organisational component in which the staff member charged is employed nor the staff member's supervisor.

(ii) He/she is a member of the committee and shall participate as such.

(iii) He/she must be knowledgeable in the subject matter.

(e) **Representative of a recognised trade union as Observer**

Should the staff member charged desire that a representative of a recognised trade union be present, he or she will serve on the committee as an observer and will not be allowed to participate in any proceedings. [Section 26(5)(d)]

(f) **Staff Member Charged Or His Or Her Representative**

In terms of section 26(8)(a) of the Act the staff member charged shall have the right to be present and to be heard, either personally or through a representative, to cross-examine any person called as a witness in support of the charge, to examine any documents produced in evidence, to give evidence himself or herself and to call other persons as witnesses at the inquiry. Representation other than by himself or herself includes a member of a trade union but may not be the member of a trade union who shall serve on the disciplinary committee as an observer. Legal representation is not permitted during the disciplinary process as per the judgement in the Labour Court of Namibia delivered on 21 November 2008 (Case Number LCA 48/2007).

(g) **Witnesses (Including Supervisors)**

A person(s) who witnessed the offence or who can provide evidence relevant to the case. Any person can be called as a witness during a disciplinary hearing i.e. it does not have to be a staff member.

(h) **Investigating Officer**

- (i) He/she is appointed by the Chairperson of the disciplinary committee in terms of section 26(7) of the Act to investigate an alleged misconduct and his/her role is a vital and essential one. (Refer **Annex H**)
- (ii) He/she should not have a close relationship or family ties with the staff member charged and may not be the representative of a recognised trade union selected by the staff member.
- (iii) Apart from what is required of the supervisor and which is also applicable to the investigating officer, he/she shall -
 - (aa) investigate the alleged misconduct beforehand;
 - (bb) obtain written or oral statements from the alleged perpetrator or witnesses without any coercion;
 - (cc) obtain all relevant documentary evidence and records and impound any exhibits e.g. stolen goods, broken equipment, photographs of accidents and/or injuries etc. and sign for them if required;
 - (dd) obtain the names and particulars of witnesses and cross-examine any person who has given evidence in rebuttal of the charge;
 - (ee) adduce evidence and arguments in support of the charge;
 - (ff) report any evidence which is found to the contrary to the chairperson; and
 - (gg) not be allowed to participate in the findings or recommendations of the committee.
- (iv) It is advisable for the investigating officer to interview and, where applicable, take statements from witnesses as soon as possible after he/she has been appointed as-
 - (aa) the offence will still be fresh in the mind and will therefore ensure the most accurate recollection of the relevant incident; and
 - (bb) it will avoid a situation where witnesses may be intimidated later into not testifying.
- (v) If a statement is signed it becomes admissible and the alleged offender and his/her representative is entitled to study it before the hearing.
- (vi) The accused staff member's explanation should be checked or verified if possible.
- (vii) It should be established whether witnesses from outside the Public Service are prepared to testify (if available).
- (viii) The situation should be analysed to identify any underlying problem(s) and cause(s).
- (ix) For the protection of the Investigating Officer, it is advisable that a person witnesses/observes when the investigating officer, is taking written statements and/or interview the accused.

(i) **Interpreter**

- (i) The selection of an interpreter to interpret the proceedings of inquiries is important as the interpreter -
 - (aa) should be articulate and should be fluent in the languages to be translated; and
 - (bb) must not have or be seen to have a vested interest in the outcome of the case. An interpreter, particularly if there is no one to check him/her, has the potential to change the meaning of statements. It is therefore very important that the person selected be impartial and trusted by both the Disciplinary Committee and the staff member charged.
- (ii) Unless the role of the interpreter is clearly defined, if the outcome of an inquiry is not popular with the work force, the interpreter could be seen as being a party to management's decision. Should this be so, his/her colleagues may subject him/her to ostracism, abuse or even assault.
- (iii) At the onset of the inquiry the chairperson must make it clear that the interpreter is present merely to translate proceedings and that he/she has no say in any decision reached. For this reason, when the inquiry is adjourned, the interpreter should leave the room with the staff member and the witnesses.
- (iv) Some of the common mistakes made by people when speaking through an interpreter are as follows:
 - (aa) Speaking too quickly;
 - (bb) Saying too much at one time (i.e. the interpreter is not able to remember all that has been said);
 - (cc) Not pausing and allowing the interpreter a chance to catch up;
 - (dd) Speaking while the interpreter is still translating;
 - (ee) Conferring with the interpreter (i.e. using him/her as a counsellor as opposed to a translator);
 - (ff) Going into a monologue (although it might be translated perfectly, if the speaker does not allow the other party a chance to reply, he/she will not know how that party is going to react or whether he or she has received the message);
 - (gg) Using complicated words (e.g. intrinsically, altruistic, etc.);
 - (hh) Using technical jargon, especially if it is not in common use and understood by the other party (e.g. pH content, LIFO, FIFO, Form Series Test, VCR, etc.); and
 - (ii) Using idioms (i.e. words that mean something different from the normal meaning of the word).
- (v) The following are guidelines when speaking through an interpreter:
 - (aa) Keep it short and simple (short sentences, simple words).
 - (bb) Allow the interpreter ample time to translate.

- (cc) Question the other party to ensure that the correct message was received and understood.

6.10 PROCEDURAL FAIRNESS IN DISCIPLINARY INQUIRIES

6.10.1 In order for a disciplinary inquiry to be considered fair the prescribed procedures must be followed e.g. the time limits set by the Act must be adhered to.

6.10.2 In addition to the matters already discussed the under-mentioned should also be taken into account in disciplinary inquiries:

- (i) The inquiry must be convened and guilt established before any punitive measures are considered.
- (ii) If the staff member requires an interpreter to be appointed to assist him/her in translating the proceedings into the language he/she is most familiar with, he/she has the right to such an interpreter.
- (iii) Evidence to support the charges shall be presented to the staff member or his/her representative before the commencement of the disciplinary inquiry to allow him/her enough time to prepare his/her case.
 - (aa) The disciplinary inquiry must, however, still take place within the prescribed period unless the staff member charged is on sick leave or reasonable grounds have been given by the employer to postpone the proceedings.
 - (bb) Should the staff member or his/her representative require further time to prepare the case, he/she or his/her representative must request the chairperson of the disciplinary committee in writing for a postponement after the disciplinary committee has convened for the first time.
- (iv) Substantive reasons for a fair dismissal must not be allowed to override procedural fairness. (The accused staff member has the right to a fair hearing even if substantive reasons exist which warrants an immediate dismissal.)
- (v) An inquiry must be convened – except in cases where the person is deemed guilty. In those cases refer to paragraph 7.5 regarding mitigating factors. (“Open and shut” cases are often based on circumstantial evidence, which can be proved wrong). A hearing is therefore essential.

6.11 SUBSTANTIVE FAIRNESS IN DISCIPLINARY INQUIRIES

A disciplinary action would probably be regarded as being substantively UNFAIR if -

- (a) the dismissed staff member was reasonably unaware of the rule which was broken;
- (b) the reason for the disciplinary action is not clear;
- (c) the expectations of the employer were unreasonable or unlawful;
- (d) there was insufficient proof of misconduct;
- (e) there was no consideration of special circumstances, such as the previous record of the staff member;

- (f) the sanction imposed on the staff member is inconsistent with sanctions imposed on other staff members who committed similar offences;
- (g) the sanctions are more severe than the offence warrants;
- (h) the dismissal/disciplinary action constitutes victimisation; and/or
- (i) the dismissal/disciplinary action contradicts a law or a contract of employment.

6.12 CROSS-EXAMINATION OF WITNESSES IN DISCIPLINARY INQUIRIES

6.12.1 Purpose Of Cross-Examination

The purpose of cross-examining a witness at a disciplinary inquiry is to -

- (i) demonstrate that the witness' evidence is unreliable and should not be believed;
- (ii) show that the witness' evidence is improbable or unlikely;
- (iii) demonstrate by highlighting inconsistencies that the witness is not telling the truth;
- (iv) draw from a witness pertinent facts which may prove one's case; and
- (v) obtain facts from one witness that can be used in cross-examination of other witnesses.

6.12.2 Methods Of Cross-Examination

- (i) Elicitation of all evidence from the witness that could possibly have an effect on the case.
- (ii) Weakening of unfavourable evidence by putting evidence in a different context. This shows that while the witness may be sincere, his/her evidence is distorted by his/her perceptions or is simply not reliable.
- (iii) Demonstrating that the witness is untruthful by showing that -
 - (aa) the evidence led is impossible;
 - (bb) it conflicts with other evidence; and
 - (cc) the witness is contradicting himself or herself.
- (iv) Putting one's version of the facts to the witness and asking him or her to comment on it. This is a valuable strategy that enables one to point out discrepancies between one's own and the witness's version of the facts.

6.12.3 Practical Guidelines For Cross-Examination

- (i) Do not mislead witnesses in an attempt to "score points" - one is likely to harm one's case in the process.
- (ii) Do not try to improve upon favourable answers - they may be undone in the process.
- (iii) Only cross-examine if one stands to gain from it. If a witness has not harmed one's case, there is no need to cross-examine. The exception is if one wants to elicit information to use during the cross-examination of another witness.

- (iv) Stick to the chronological sequence (e.g. dates of events) in cross-examination as far as this is feasible.
- (v) Do not ever answer a question posed by a witness. His/her role is limited to answering questions, not asking them.
- (vi) Use “filter questions” that lead up to a final and crucial question. In the process one covers all the alternatives that the witness could use to evade providing the information one wants from him or her.
- (vii) Only ask questions while cross-examining a witness. Do not make speeches, argue or comment. The other party can use comments made by one to the detriment of one’s case. Golden rule for cross-examiners - Ask questions, do not talk too much.

6.12.4 Evaluating evidence

- (i) When evaluating evidence, various types of evidence are normally excluded or considered inadmissible on the grounds that they are inherently unreliable. Hearsay evidence is one of these. Examples of hearsay evidence would be evidence of rumours or of overheard conversations or of statements made by someone else who will not himself/herself be called to give evidence.
- (ii) Evidence of someone’s opinion would generally not be considered to be relevant except in cases where the opinion of an expert may be relevant. For example, where the competence of a professional engineer is being called in to question.
- (iii) Evidence of someone’s suspicion is also irrelevant and cannot be relied upon. Before accepting or rejecting evidence, the Chairperson should take into consideration whether (a) it is reliable and (b) it proves or disproves any point of fact at issue in the enquiry. Sound reason and common sense must guide the Chairperson.
- (iv) When weighing up the evidence, the Chairperson should consider -
 - (aa) **Burden of proof** – the onus is on the employer (Initiator) to prove the case against the staff member.
 - (bb) **Sufficiency of evidence** – is there enough evidence to support the conclusion? In some situations, direct evidence is not available but circumstantial or surrounding information is on hand. Circumstantial evidence can be taken into account provided that it supports the main allegation and, secondly, that there is only one inference that can be drawn from it.
 - (cc) **Corroboration** – this relates to evidence, which confirms that of a witness. The fact that evidence has not been contradicted does not in itself mean that it is the truth. Also where there are contradictions, it is necessary to decide on which is the more probable version.
- (v) Where the charged staff member accuses the witness of lying or makes counter claims, these statements cannot be accepted. The staff member must give evidence

to prove his/her statements or provide his/her own witnesses or cross question witnesses brought by the employer to prove these statements.

6.12.5 Re-Examination Of Evidence

- (a) The only purpose for re-examining evidence is to clear up any obscure answers furnished during cross-examination.
- (b) Re-examination of evidence should be applied cautiously and only to redress a serious inconsistency that emerged during cross-examination.

6.13 GUIDELINES FOR A DISCIPLINARY INQUIRY

See attached **Annex G**.

6.14 TAKING MINUTES

- 6.14.1 It is the responsibility of the Human Resource Practitioner or his/her representative to take minutes that should be a true and accurate reflection of the proceedings.
- 6.14.2 See **Annex I** for an example of how the minutes should be structured.
- 6.14.3 A copy of the signed minutes should be distributed to the members of the disciplinary committee.

6.15 FINDING OF THE DISCIPLINARY COMMITTEE

- 6.15.1 The staff member's guilt should be proven on the balance of probabilities i.e. that the probability of him/her having committed the offence is most likely.
- 6.15.2 If the staff member is found not guilty, he/she as well as the permanent secretary concerned shall be so informed. If he/she is found guilty, appropriate disciplinary action must be decided upon after having afforded him/her the opportunity to present mitigating factors.

6.16 APPROPRIATE DISCIPLINARY ACTION

- 6.16.1 After finding the staff member guilty as charged, the chairperson should ask the staff member or his/her representative if there are any mitigating circumstances.
- 6.16.2 Where the staff member pleads guilty or fails to comply with the direction in the charge to respond within **14 days**, the disciplinary committee must consider mitigating circumstances before recommending punitive measures. (To ensure fairness it is recommended that the disciplinary committee be involved. However, such a disciplinary committee does not have to be appointed in terms of Section 26(5) as it is an additional procedure to the Act. It is not necessary to conduct a formal disciplinary hearing in this case – it can either be done through correspondence or orally).
- 6.16.3 Once guilt has been established, the following factors must be considered in deciding on the disciplinary action:

- (a) Were the provisions of the Act, the Regulations, the Staff Rules, the State Finance Act, the Treasury Instructions, the Labour Act or any other directive that pertain to the functions of staff members has been transgressed.
- (b) The seriousness of the offence (extent of the damage).
- (c) Mitigating Circumstances
 - (i) Weakness in the organisation's procedures, systems, etc.
 - (ii) Personal circumstances of the staff member.
- (d) Extenuating Circumstances

Provocation.
- (e) Intent

Pre-meditation.
- (f) Personal Record
 - (i) Review the staff member's previous conduct and performance.
 - (ii) Proof and validity of warnings.
 - (iii) History of similar offences.

Note: The staff member has the right to see previous warnings i.e. all documentary evidence on which a recommendation as to sanction is going to be made.
- (g) Precedent

Similar offences that were dealt with in the past should be taken into account by referring to their own records and by making enquiries to the Secretariat of the Public Service Commission.

6.17 APPROVAL OF DISCIPLINARY ACTION

- 6.17.1 At the conclusion of the hearing, once the disciplinary committee has determined that the staff member is guilty or not guilty as charged of the misconduct, he/she will be informed of the committee's findings.
- 6.17.2 In terms of section 26(12)(a) of the Act, the chairperson shall submit to the Public service Commission and the Permanent Secretary a copy of the record of the proceedings of the inquiry, all the documentary evidence submitted, a written statement of the findings of the disciplinary inquiry for recommendation and approval. The following punitive measures may be considered and recommended by the disciplinary committee once the staff member has been found guilty as charged of misconduct:

- (a) Staff member charged may be cautioned or reprimanded;
- (b) A fine not exceeding N\$ 2 000 can be imposed; or
- (c) He/she may be transferred to any other post or that s/he may be retained in employment additional to the establishment; or
- (d) His/her salary or scale of salary or rank (job designation) may be reduced or decreased, or both, to such an extent as may be recommended; or
- (e) He/she may be discharged or be called upon to resign from the Public Service.

6.17.3 Section 26(17) of the Act fully describes the procedure to be followed for the approval of the disciplinary action which is as follows:

- (a) If the staff member charged is deemed to have been found guilty or has been found guilty of misconduct and has not appealed against the finding within the prescribed time (**14 consecutive days**) for appeals, or has appealed against the finding and the appeal has been dismissed in whole or in part in terms of the Act.
- (b) The Permanent Secretary may approve the recommendation made by the disciplinary committee in terms of subsection (12)(a)(i) or (ii) of the Act, or if the staff member charged is deemed to have been found guilty, take any action which he/she could have taken if the disciplinary committee had recommended it in terms of the subsection.
- (c) The Prime Minister may, on the recommendation of the Public Service Commission, approve the recommendation made by the disciplinary committee in terms of subsection (12)(a)(iii), (iv) or (v) if the staff member charged has been found guilty.

6.18 DISMISSAL AS A PUNITIVE MEASURE

6.18.1 Dismissals must usually be based on relatively serious misconduct, but consideration must be given to all the surrounding factors, including the individual's employment record. Less serious misconduct (e.g. coming to work late) may in itself be trivial, but may be considered more serious if it is repeated after warnings have been given. The following are usually regarded as fair and valid grounds for dismissal:

- (i) Failure or refusal to work.
- (ii) Absenteeism (i.e. absenteeism which is not for illness or any other valid reason).
- (iii) Gross negligence
- (iv) Serious incompetence
- (v) Refusal to carry out work-related orders.
- (vi) Repeated unpunctuality.
- (vii) Dishonesty in the sphere of work (e.g. theft or fraud).
- (viii) Dishonesty outside the sphere of work (if sufficient to cast serious doubts on the official's trustworthiness).
- (ix) Disloyalty to the employer (e.g. leaking of confidential information).
- (x) Under the influence of intoxicating liquor or drugs during official hours of duty.
- (xi) Assault while on duty.

- (xii) Intimidation of a fellow staff member.
- (xiii) Gross insubordination or insolence.
- (xiv) Sexual harassment.
- (xv) Gross abuse of authority.

6.18.1 In terms of generally accepted international principles, a dismissal (or a disciplinary action) would probably be regarded as being procedurally **UNFAIR** if -

- (i) the staff member was unaware of the nature of the offence;
- (ii) the staff member was not given sufficient warning of the charges (i.e. was not given adequate time to prepare a defence);
- (iii) the staff member was not given an opportunity to tell his or her side of the case (*Audi Alteram Partem* rule);
- (iv) the staff member was not allowed representation;
- (v) the staff member was not given the opportunity to challenge the evidence by way of cross-examination of witnesses, inspection of documents, etc.;
- (vi) the staff member was not given the opportunity to call witnesses or present arguments in his or her defence;
- (vii) the staff member's case was prejudged, or the decision-maker was not impartial (for example, the accuser cannot also be the decision-maker);
- (viii) the staff member was not fully informed of the reasons for the decision; and/or
- (ix) the staff member did not have the opportunity to appeal against the decision.
- (x) if the chairperson discusses the case with the investigating officer, affecting his or her objectivity.

6.19 ABSCONDMENT OF STAFF MEMBERS

6.19.1 In terms of section 24(5)(a)(i) of the Act, a staff member who, without the permission of the permanent secretary of the office, ministry or agency in which he or she is employed, absents himself or herself from his or her office or official duties for any period exceeding 30 days, shall be deemed to have been discharged from the Public Service on account of misconduct with effect from the date immediately succeeding his or her last day of attendance at his or her place of employment.

6.19.2 Staff members who are absent for a period exceeding 30 days on account of being detained or arrested and serving a prison sentence shall therefore be deemed to have been discharged from the Public Service in terms of section 24(5)(a)(i) of the Act and a disciplinary hearing is therefore not necessary.

- 6.19.3 A staff member who absented himself or herself from duty for a period exceeding 30 days should not be allowed to resume duty as it would be tantamount to condonation of the absence.
- 6.19.4 In cases where staff members were allowed to resume duty after unauthorised absence exceeding 30 days, he or she must be charged with misconduct in terms of section 25(1)(o) of the Act.

6.20 STAFF MEMBERS ARRESTED AND GRANTED BAIL WITH SPECIFIC CONDITIONS

Where a staff member has been arrested and granted bail under the condition that he or she may not return to work after 30 days he or she is deemed to have absconded.

6.21 APPEALS

- 6.21.1 Sections 26(14) to (16) of the Act fully describes the procedure to follow for appeals. (See **Annex J** for an example of the format to be used.)
- 6.21.2 In order to ensure that staff members who wish to appeal against the finding and/or recommendation of the disciplinary committee follow the procedure described in sections 26(14) to (16) of the Act, offices, ministries and agencies must explain the appeal procedure in writing. This will also prevent allegations by staff members that they have not been informed of the procedure to follow when appealing.
- 6.21.3 When a staff member appeals against the finding of the disciplinary committee offices, ministries and agencies must ensure that the appeal is forwarded to the Public Service Commission together with the recommendation of the disciplinary committee and not wait until the punitive measure has been recommended by the Public Service Commission before forwarding the appeal. The Public Service Commission may condone non-compliance with timeframes if good and reasonable grounds exist, taking into account the reasons for the non-compliance and general considerations of fairness associated with the disciplinary process.
- 6.21.4 General grounds for appeals are based on -
- (a) claims of procedural or substantive unfairness before or during the disciplinary hearing;
 - (b) when new material information that was not known at the time of the disciplinary hearing is submitted;
- 6.21.5 However, to ensure fairness, the following reasons for considering an appeal, which are additional to the Act, will be allowed -
- (a) where those that are educationally challenged did not understand the process;
 - (b) where the Public Service Commission recommends and the Prime Minister approves a heavier punitive measure than the permanent secretary or the Disciplinary Committee;
 - (c) where staff members were wrongly informed of the appeal procedure; and

- (d) where staff members plead guilty or fail to comply with the direction in the charge to respond within 14 days.

6.21.6 As the appeals in paragraph 6.23.5 are additional to the Act, Section 26(14) to (16) of the Act must be used as a procedural guideline. The Public Service Commission will in principle follow the same procedure as relating to appeals in the Act.

6.22 REVIEW BY THE PUBLIC SERVICE COMMISSION

Notwithstanding the right to appeal set out in the disciplinary procedure, every disciplinary case is reviewed by the Public Service Commission to ensure that the disciplinary process followed is managed equitably and fairly. After reviewing all the documents submitted, the Public Service Commission may if not satisfied –

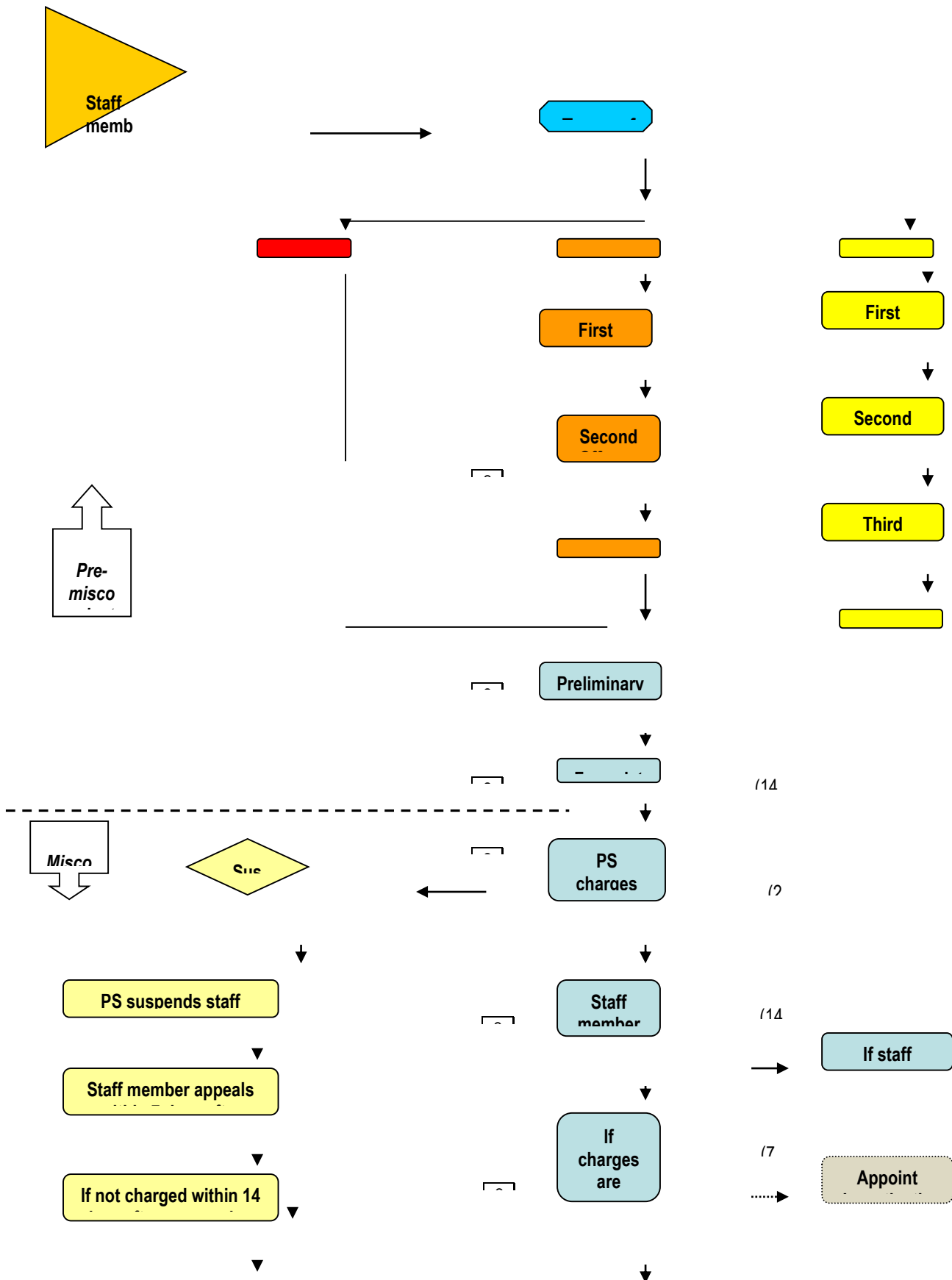
- (a) Refer the matter in connection with the inquiry to the permanent secretary concerned, if it is found that there were some procedural irregularities that the disciplinary process be started afresh; or
- (b) Refer the matter back in connection with the inquiry to the permanent secretary concerned to hold further inquiry and to make a finding and recommendation thereon.

7. GENERAL

- 7.1.1. The provisions of the Act must be strictly adhered to at all times e.g. the time-frame provided by the Act must be adhered to and not more than the stated persons may be part of the disciplinary committee.
- 7.1.2. It is very important that full records be kept of dates of any action taken in terms of the prescribed procedure to support the case should the staff member challenge the procedure.
- 7.1.3. Wherever the Act does not provide specific rules, offices, ministries and agencies must quote the PSSR and not the Act.
- 7.1.4. To encourage uniformity in terms of sanctions, a record of sanctions as they appear must be forwarded to the Secretariat of the Public Service Commission in all cases.
- 7.1.5. Any disciplinary procedure initiated and abandoned for any reason must be formally withdrawn in writing and not just left hanging in the air.
- 7.1.6. Any reference to “days” in these measures refers to “consecutive days”.
- 7.1.7. In any count of days in terms of section 26 of the Public Service Act, 1995 (Act No. 13 of 1995) when the last day falls on a Sunday or Public Holiday, the next working day must be regarded as the last day of action e.g. If a person appeals and the last day of the 14 days falls on a Sunday or a Public Holiday, then the following working day must be regarded as the last day for allowing the appeal.
- 7.1.8. A staff member has the right to administrative action that is lawful, reasonable and procedurally fair and any staff member whose rights has been adversely affected by an administrative action, has the right to be given reasons. In accordance with the

administrative justice principles, anything not dealt or covered by these measures, may be done in terms of the administrative/common law principles.

8. MISCONDUCT PROCESS



9. IMPLEMENTATION

The Human Resource Division/sub-division in each OMA is responsible for the administration of this policy in so far as implementation and provision of expert advice, guidance and support to staff members are concerned.

10. COMMUNICATION

This policy is available on the Eservice. However, as not all staff members have access to the EService, HR Practitioner in each OMA must ensure that all staff members are informed of this policy and have access to a hard copy if required.

11. MONITORING

As the need arises, the respective stakeholders shall make proposals and suggestions to the Office of the Prime Minister regarding possible changes and amendments to this policy.

12. EXCEPTIONAL CASES

In the event of circumstances arising that justify a departure from the provisions of any parts of this Chapter, the Permanent Secretary may approach the Public Service Commission with a fully motivated request for a recommendation and approval by the Prime Minister.

(Example of a letter to obtain a certified record of a staff member's trial in a court of law)

The Permanent Secretary
Ministry of Justice
Private Bag 13248
WINDHOEK

CONVICTION IN A COURT OF LAW: MR/MS

Mr/Ms a staff member in the
(OMA) was convicted of on (date) at
..... (Court) (Name)

It would be appreciated if you would furnish this OMA with a certified record of the trial.

PERMANENT SECRETARY

LETTER HEAD

Ref. No. SP

PERSONNEL / CONFIDENTIAL

Mr/Ms

Job designation

OMA of

Private Bag

WINDHOEK

CHARGE OF MISCONDUCT

I have reason to believe that you have made yourself guilty of misconduct and I now charge you in terms of section 26(1) of the Public Service Act, 1995 (Act 13 of 1995), with misconduct. The particulars of the charges are set out in the attached charge-sheet in duplicate. Please acknowledge receipt on the copy and return it to your supervisor without delay.

You are requested in terms of section 26(3)(b) of the Public Service Act, 1995, (Act 13 of 1995), to furnish me*, within 14 days from the date of the charge, with a written admission or denial of the charges and if you so desire with a written explanation of the conduct with which you have been charged.

Should a written admission or denial not be received within the specified time, it will in terms of section 26(4) of the Act be deemed that you have been found guilty of misconduct as charged and further action shall be taken according to the prescribed procedures.

PERMANENT SECRETARY

**Note: In terms of the Act, this may be delegated. It is suggested that it be delegated to an appropriate person in the Regions.*

EXAMPLE OF A CHARGE SHEET**MAIN CHARGE**

You, Mr/Ms, a staff member as referred to in sections 1(1) and 4 of the Public Service Act, 1995 (Act 13 of 1995) (hereinafter referred to as “the Act”), and employed in the (OMA) are hereby charged in accordance with the provisions of the said Act with misconduct as defined in section 25(1) of the Act, as follows:

Whereas

On 2 July 1994 you used or were under the influence of intoxicating liquor during the prescribed official hours of attendance without a prescription of a medical practitioner.

Now Therefore

I have reason to believe that you are guilty of misconduct as defined in section 25(1)(j) of the Act.

FIRST ALTERNATIVE CHARGE**Whereas**

On the date mentioned in the main charge, you conducted yourself in a disgraceful, improper or unbecoming manner causing embarrassment to the Public Service in that you were under the influence of intoxicating liquor during the official hours of duty.

Now Therefore

I have reason to believe that you are guilty of misconduct as defined in section 25(1)(h) of the Act.

SECOND ALTERNATIVE CHARGE**Whereas**

On the date mentioned in the main charge, you performed an act prejudicial to the discipline of the ministry in that while you were under the influence of intoxicating liquor during the official hours of duty.

Now Therefore

I have reason to believe that you are guilty of misconduct as defined in section 25(1)(b) of the Act.

THIRD ALTERNATIVE CHARGE**Whereas**

On the date mentioned in the main charge, you contravened or failed to comply with a prescribed code of conduct in that you were under the influence of intoxicating liquor during the official hours of duty.

Now Therefore

I have reason to believe that you are guilty of misconduct as defined in section 25(1)(q) of the Act.

PERMANENT SECRETARY

EXAMPLE OF PROCEDURE TO BE FOLLOWED WHEN USING SECTION 26(10) OF THE PUBLIC SERVICE ACT, 1995 (ACT 13 OF 1995) (WHEN THE STAFF MEMBER HAS BEEN CONVICTED IN A COURT OF LAW)

(To be used in conjunction with Annexure C)

You, Mr/Ms, a staff member as referred to in sections 1(1) and 4 of the Public Service Act, 1995 (Act 13 of 1995) (hereinafter referred to as “the Act”) and employed in the (OMA) are hereby identified as the staff member (Identity number. who has been convicted of in a court of law as is indicated by the attached copy of the conviction by the court.

You are requested to attend a meeting of the Disciplinary Committee on (date) (time) at (venue) where any mitigating circumstances will be considered before punitive measures are recommended.

**CHAIRPERSON
DISCIPLINARY COMMITTEE**

**AUTHORISATION TO APPOINT MEMBERS OF A DISCIPLINARY COMMITTEE IN TERMS OF
SECTION 26(5) OF THE PUBLIC SERVICE ACT, 1995 (ACT 13 OF 1995)**

I in my capacity as Permanent Secretary of
..... (OMA) hereby authorise
Mr/Ms, job designation
in terms of section 26(5) of the Public Service Act, 1995, (Act 13 of 1995), to chair/attend an inquiry
against Mr/Ms, job designation who
is charged with misconduct in terms of section 26(1) of the said Act and to inquire into the charge.

The inquiry shall be conducted within 21 days of this notice.

GIVEN under my hand on this day of 20....

PERMANENT SECRETARY

NOTICE OF DISCIPLINARY INQUIRY

You, Mr/Ms, job designation
are hereby notified that a disciplinary inquiry will be held on (date)
..... (time) at (venue).

The purpose of this inquiry is to investigate the allegations of misconduct against you as detailed in the charge sheet and to which you pleaded not guilty.

At this inquiry you will be afforded the opportunity to refute the allegations made against you. You have the right to a representative of your choice. You may also request that a representative of a recognised trade union, who shall serve as an observer only, be present at the inquiry.

You or your representative may also call witnesses and present documentary and verbal evidence and cross-examine witnesses in support of your case at the inquiry.

The proceedings will be conducted in English and you have the right to have these proceedings translated into your home language by an interpreter. Your wishes in this regard must be conveyed at least 3 working days before the date of the inquiry in order for an interpreter to be appointed.

Please be advised that should you fail to attend, the inquiry may be conducted in your absence.

**CHAIRPERSON
DISCIPLINARY COMMITTEE**

GUIDELINES FOR A DISCIPLINARY INQUIRY

Good morning/afternoon Ladies/Gentlemen, it is now (time) (date)
 (place) I am (name)
 and my designation/OMA is
 I am the chairperson of this meeting. The purpose of this meeting is to investigate a charge of
 misconduct against Mr/Ms

I would like to introduce all persons present:

1. The Head of Human Resource Administration or his or her representative:

2. The Human Resource Practitioner or his or her delegate:
3. The Staff Member charged:
4. Expert:
5. Representative of a trade union:
6. Investigating Officer:
7. Witnesses:
 - (a)
 - (b)
 - (c)
 - (d)
8. Representative of staff member:
9. Interpreter (if applicable):

Before we begin the inquiry, I would like to stress a few important points:

1. I would like a frank and open discussion.
2. No threats may be made to anyone during or after this meeting.
3. Everyone will adhere to the agenda of the meeting and no misbehaviour or interruption of the meeting will be tolerated.
4. The representative of the trade union will merely serve as an observer without participating in any of the proceedings.
5. The interpreter (if present) is not a member of this disciplinary committee and may only act as a translator between the members of the committee and the staff member charged.

I will now read the accusations and particulars of the allegations, namely:

On (date) the following occurred:

.....

.....

.....

.....

.....

Mr/Ms what do you plead?: Guilty/Not guilty

1. I now request the investigating officer Mr/Ms to state his or her case.
2. Clarifications may be sought from the investigating officer by members of the disciplinary committee.
3. I now ask the staff member charged Mr/Ms to state his or her case.
4. Any questions to the staff member charged?
5. I now call the witnesses of the Complainant, one at a time to give evidence.
6. Any questions to the witnesses?
7. I now call the witnesses of the staff member charged, one at a time. (He or she or his or her representative leads their evidence.)
8. Any questions to the witnesses?
9. If the evidence is not clear, the chairperson will call back the witnesses at his or her discretion after consultation with the Investigating Officer.
10. The witnesses, defendant, interpreter and representative adjourn.
11. The committee considers their verdict. When a decision has been reached and a punitive measure decided upon (if relevant), the defendant, his or her representative and the interpreter are requested to rejoin the committee. The chairperson announces the verdict.
12. If guilty, the chairperson requests the accused staff member to state any facts in mitigation.
13. Adjourn the proceedings. The committee considers the punitive measures. Recall defendant and his or her representative as well as the interpreter.
14. The chairperson announces punitive measures to be recommended after consultation with the committee members.

15. The chairperson informs the staff member charged of the appeal procedure. The Human Resource Practitioner or his or her representative explains the procedure in detail and gives the procedures for appeal in writing to the staff member.
16. The chairperson declares the inquiry closed at (time) (date).

**AUTHORISATION TO APPOINT AN INVESTIGATING OFFICER IN TERMS OF SECTION 26(7) OF
THE PUBLIC SERVICE ACT, 1995 (ACT 13 OF 1995)**

I in my capacity as chairperson of the disciplinary committee hereby authorise Mr/Ms in terms of section 26(7) of the Public Service Act, 1995 (Act 13 of 1995), to attend an inquiry against Mr/Ms, (job designation) who is charged with misconduct in terms of section 26(1) of the said Act and to adduce evidence and arguments in support of the charge and to cross-examine any person who has given evidence in rebuttal of the charge.

The inquiry shall be conducted on (date) at (time) at (venue).

GIVEN under my hand on this day of 20.....

**CHAIRPERSON
DISCIPLINARY COMMITTEE**

FORMAT FOR MINUTES OF A DISCIPLINARY INQUIRY

MINUTES OF A DISCIPLINARY INQUIRY HELD ON (DATE) AT (TIME)
 AT (VENUE)

PRESENT:

Mr/Ms	(Chairperson)
Mr/Ms	(Investigating officer)
Mr/Ms	(Head of Human Resource Administration or his or her delegate)
Mr/Ms	(Staff member's representative)
Mr/Ms	(Accused)
Mr/Ms	(Human Resource Practitioner or his or her delegate)
Mr/Ms	(Expert on the subject)
Mr/Ms	(Union representative)
Mr/Ms	(Witness 1)
Mr/Ms	(Witness 2)
Mr/Ms	(Interpreter)

APOLOGIES:**1. WELCOME**

Mr/Ms welcomed everyone to the meeting.

2. INTRODUCTION

Mr/Ms introduced all present.

3. CONFIRMATION OF RIGHTS

The Chairperson confirmed the rights of the staff member charged as follows:

Right to

Right to

4. INVESTIGATING OFFICER'S CASE

4.1 Witness 1 - Mr/Ms
 Cross-questioning

4.2 Witness 2 - Mr/Ms

Cross-questioning

5. **ACCUSED STAFF MEMBER'S CASE**

Cross-questioning

6. **CHAIRMAN'S SUMMARY**

7. **VERDICT/DECISION**

8. **MITIGATING FACTORS**

9. **RECORD OF STAFF MEMBER CHARGED**

10. **DISCIPLINARY STEPS RECOMMENDED**

.....
**CHAIRPERSON
DISCIPLINARY COMMITTEE**

.....
**HUMAN RESOURCE PRACTITIONER
OR
HIS/HER DELEGATE**

DISCIPLINARY APPEAL FORM

NAME: DATE:

OFFICE/MINISTRY/AGENCY

DEPARTMENT:

DIVISION:

APPEAL AGAINST DISCIPLINARY FINDINGS:

FULL MOTIVATION FOR APPEAL:

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SIGNATURE:

STAFF MEMBER

(Please make use of annexures if space provided is not sufficient)