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# A GUIDE TO RESOLVING CONDUCT ISSUES

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## Introduction

### *Purpose*

This procedure should be read in conjunction with Te Papa Code of Professional Conduct and is a guide for all Managers and staff involved in a disciplinary process. Following this procedure will ensure that a fair and impartial process is undertaken.

This document is a guide that supplements but does not replace any Te Papa documentation on conduct.

The procedure deals with misconduct and serious misconduct.

Cases of misconduct can often be addressed at an early stage through sound managerial practices and without resorting to formal procedures.

**Managers must consult Human Resources prior to taking any disciplinary action.**

### *Standards of Behaviour*

**It is essential during the induction process that Managers establish the standards of behaviour expected of their employees. Employees must be aware of the consequences if these standards are not met or Te Papa's policies are breached.**

Standards for satisfactory and acceptable behaviour by employees are outlined in a number of documents. These are:

- Te Papa Code of Professional Conduct. (issued to all employees at commencement of employment)
- Te Papa Collective Employment Agreements/collectives, individual contracts/agreements of employment and associated individual performance agreements and Job Descriptions.
- Te Papa Human Resources Policy Manual and other policies and instructions that may be issued from time to time.
- Legislation – for example Occupational Health and Safety in Employment Act, Privacy Act, Human Rights Act, Employment Relations Act.

Managers have a responsibility to ensure that employees read and understand these documents and have free access to them at any time.

Where an employee makes an allegation of serious wrongdoing under the Protected Disclosures Act, they will not be subject to disciplinary action, unless they do so knowing the allegations to be false (refer to the Policy on Kupenga for further information regarding the Protected Disclosures Act).

## **Explanations**

### ***Misconduct/Serious Misconduct***

Misconduct at Te Papa is divided into two levels:

**NB: The particular circumstances and/or severity of any misconduct or serious misconduct will determine the appropriate form of disciplinary action (including dismissal).**

1. *Misconduct*

will generally lead to disciplinary procedures being initiated. A series of acts of misconduct over a period of time may have the cumulative effect of justifying dismissal.

2. *Serious Misconduct*

will generally lead to summary dismissal, that is, dismissal without further warning. In cases of serious misconduct dismissal will usually be without notice.

Misconduct is where an employee is found to have breached the code of conduct. Serious Misconduct is where the code of conduct has been breached to such an extent that it destroys employer's trust and confidence in the employee.

Whether such actions fall into the category of misconduct or serious misconduct will depend on the circumstances in each case. In making judgements of this kind, regard should be given to the following factors:

- The nature and circumstances of the activity
- The position, duties and responsibilities of the employee
- The consequences of the misconduct on the employee's ability to fulfil her or his duties and responsibilities
- The effects of the activity or its consequences on working relationships with colleagues, customers, outside contacts and the general public.

### **Criminal Behaviour**

In all cases where allegations of criminal behaviour may be involved the matter is to be referred in the first instance to the Manager Human Resources and to the Chief Executive and Kaihautū for information and consideration.

It is Te Papa's policy to refer matters to the Police or other agencies such as the Serious Fraud Office if it has evidence or reasonable grounds to suspect that an employee has committed an offence of a criminal nature.

Where a criminal charge is laid or suspected, regardless of a criminal conviction, Te Papa is obligated to meet with the employee and hear their explanation of the events before a dismissal can occur.

If an employee is convicted of an offence which is unrelated to their employment, dismissal may not occur. Each case will be reviewed on an individual basis.

## **Disciplinary Procedures**

### ***Employee Rights***

At any stage of any disciplinary process all employees have the following rights:

- To hear any allegations made against them, including viewing any written complaints
- To be given a genuine opportunity to refute those allegations or to explain and/or justify their actions
- To receive impartial consideration of the matter
- To have representation of their own choosing

**The Disciplinary process requires that any action taken shall be:**

- **Taken promptly** – As soon as practicable after the event
- **Non punitive** – The emphasis will be on changing behaviour not punishing the person
- **Impartial** – all employees will have disciplinary procedures applied in an unbiased way
- **Consistent** – Similar action will be taken for similar offences
- **Fair** – The degree of the discipline will relate to the nature of the offence

### ***Informal Interview***

In instances of minor misconduct, it is appropriate for Managers to undertake an informal counselling interview with the employee with the intention of getting the employee back on track.

The Manager should meet with the employee on a one to one basis to discuss the problem/issue and to hear the employee's explanation. The Manager should be explicit about the problem and clarify the expectations of the employee. Offering Employee Assistance via the EAP programme, or training and development options may be appropriate ways of dealing with the issue.

The Manager should inform the employee that if the expectations are not met and the situation does not improve within the agreed timeframe that disciplinary action may be required.

The Manager should document that the meeting has occurred and the outcomes of that meeting. These notes should be retained in a confidential location (not on the employee's personal file).

**NOTE: A member of Human Resources should be involved in all aspects of the disciplinary procedure. (this would normally be the Section Leader)**

#### *Step 1: Preliminary Enquiry – informal meeting with employee*

Once an allegation has been brought to the Manager's attention it is usually appropriate to have a one to one informal discussion with the employee to determine whether further investigation and/or disciplinary action is required.

Immediately on becoming clear that there may be some substance to the allegations, the Manager should advise the employee that further action may be required and stop the meeting.

## *Step 2: Investigation*

Refer to flow chart one

All allegations of breaches of the code of conduct must be investigated by the Manager directly responsible for the employee concerned.

The nature/severity of the actions will determine whether the allegations should be treated as misconduct or serious misconduct.

Where serious misconduct is alleged and/or dismissal is a possible outcome, the Director and/or Chief Executive/Kaihautü may be involved.

A full and fair investigation of the situation must be carried out immediately, to determine the facts and circumstances associated with the disciplinary matter.

An investigation is undertaken to:

- Gather the facts
- Listen to explanations
- Establish who is involved
- Review documentation
- Interview witnesses/complainants
- Determine whether disciplinary action is required.

### ***Suspension***

PLEASE NOTE – where there is a risk of serious harm to staff or customers, Managers should take **immediate** action to remove that risk in consultation with the Manager Human Resources who will consult with the Chief Executive and Kaihautü. To defuse a potentially threatening situation, it may be necessary to immediately remove an employee from the work place. The procedures for formal suspension can be followed later.

### **Human Resources must be consulted prior to an employee being suspended.**

Suspension may only be undertaken by the Chief Executive in consultation with the Kaihautü.

In situations where serious allegations have been made and further investigation is required, it may be appropriate to suspend the employee, these circumstances are:

- Staff/customers are at risk and/or
- The employee may be at risk and/or
- The situation is highly emotive and/or
- The allegation is criminal in nature and/or
- The organisation or the property of the organisation is at risk

### **Note – suspension is not to be used as a punitive measure and must be for as short a period as possible.**

The Manager will advise the employee that he/she is suspended on full pay whilst an investigation is undertaken, and that during that period he/she is not to enter the premises.

The employee is to be advised that a further meeting will be held to discuss the outcome of the investigation.

All details relating to the suspension are to be put in writing to the employee.

Suspension will be on full pay.

### **Undertaking an investigation**

Where a complaint has been made, the Manager (with HR) should interview the person who has made the complaint to get an explanation of what has occurred. At this interview:

- The complainant may bring a support person (Manager to advise)
- The complainant must be told that notes will be taken (to ensure an accurate record of events)

- The complainant must be advised that his/her name and a copy of the complaint will be made available to the person/s who has allegedly breached the code of conduct, policy, contract/agreement or law
- The complainant should be asked to explain what has occurred in his/her own words to determine; who was involved, what was said or done, when and where the incident/s took place and whether there were other witnesses.
- All witnesses should be interviewed
- The Manager needs to ascertain whether more than one person is involved

### *Step 3: Formal Meeting with Employee*

The employee is to be interviewed as early as possible during the investigation process.

#### **Before the meeting**

The Manager must ensure that the employee has been:

- Advised in advance of the purpose of the meeting.
- Advised of their entitlement to have a union representative or other support person present at the meeting.

The Manager must have a witness present (this would usually be an HR representative) at any disciplinary interview to ensure that natural justice/procedural fairness requirements are met and that Te Papa has a witness available as to what happened.

#### **During the meeting**

**Note – Adjournments may be requested by either party at any time throughout the meeting.**

The Manager must:

- Advise the employee of the possible consequences of the allegations being substantiated. (eg dismissal)
- Advise the employee of the nature of the allegation and that it is being investigated
- Provide the employee with all the facts – including written complaints, if any
- Request an explanation from the employee
- Give the employee representative/support person a reasonable opportunity to speak.
- Objectively consider any explanation offered by the employee.

It is important that other possibilities are also considered, for example, whether the misconduct or poor performance is due to lack of training, or extenuating circumstances exist that accounts for the action.

## **Decision on Appropriate Action**

Once the Manager is satisfied that he/she has completed the investigation and that the employee has been provided with a full opportunity to explain, the Manager should adjourn the meeting to consider the employee's explanation and determine the consequences.

In coming to a decision, the Manager must consider the following issues:

- frequency and nature of the behaviour
- seriousness of the behaviour
- degree of communication with employee on the behaviour to date
- employee's work history – length of service and performance
- any extenuating factors such as personal problems, personality clashes, language difficulties, cultural issues and the like
- implications, what impact will the decision have, if any, on other employees
- history and consistency – how have similar transgressions been dealt with in the past?
- any explanation or denial given by the employee
- procedural fairness

The Manager needs to take whatever time is considered reasonable to fully consider the employee's comments or explanations. In some cases this will be clear cut, for example when the employee admits to the misconduct, in others further information may need to be sought.

Once the Manager has made a decision, in consultation with Human Resources, the meeting should be reconvened to advise the employee with his/her representative of the proposed action. This decision should always be issued in person.

The employee and his/her representative should be given the opportunity to respond and that response considered by the Manager.

If the allegations are unsubstantiated no further action will be taken.

## **Warnings**

*Refer to flow chart two*

**NOTE – A Manager should never prejudge the outcome of a disciplinary hearing by preparing a warning letter in advance.**

The warning must be put in writing and should include:

- The original allegation against the employee - state time, date, conduct or actions involved
- When the meeting to investigate the problem was held and who was present
- The employee's response to the allegation
- The employee's position following the investigation, showing how their conduct is inappropriate or unacceptable and how it has breached the code of conduct, contract or policies of the organisation
- The improvements in performance/behaviour required
- The training/development/coaching/mentoring considered appropriate for addressing the problem
- The timeframe for delivery of these improvements
- How performance will be monitored
- That the letter is a formal warning, effective for an appropriate period of time and a further breach of contract may place the employee's employment in jeopardy

**Warnings must be in writing. The type of warning issued will vary depending on the level of seriousness and whether previous warnings have been issued.**

### *Verbal Warning (first formal warning)*

Where there is a clear case of misconduct, but the level of the problem is less severe than serious misconduct the appropriate course of action is to issue a verbal warning.

NOTE – A verbal warning constitutes a first formal warning and all procedural steps must be taken as outlined above. The warning must be put in writing.

### *Final Warning*

A final warning may be issued in circumstances where a verbal warning has been issued **or** where the misconduct is of a serious enough nature to forego the first formal warning, (and conversely, not serious enough to warrant summary dismissal).

### *Documentation*

The employee is to be given a copy of the warning. The employee is to be advised of the consequence of any further instances of misconduct.

- Request that the employee and witness sign the warning as being an accurate account of the events.
- Place the signed copy on the employee's personal file. If the employee refuses to sign, this should be noted but the copy must be placed on the employee's personal file.
- Advise the employee of his/her right to have a written explanation or response of the alleged 'behaviour' on his/her personal file.

### **Dismissal**

**It is essential that all steps outlined under disciplinary procedures are undertaken in conjunction with Human Resources. Dismissal action may only be taken by the Chief Executive and the Kaihautū (or to those with delegated authority from the Chief Executive).**

### **Summary of Preceding Action**

All actions taken have been prompt, consistent, fair and constructive. For example:

- Issues have been addressed promptly and a full and thorough investigation taken place
- The employee has seen all relevant documentation
- The employee has had the opportunity to present explanations
- The process has been conducted in a procedurally fair manner
- Mitigating factors have been considered.

### **Period of Notice**

There are two types of dismissal; the first is where further instances of misconduct occur and where the employee is already subject to a current final warning that has not yet expired. As per Te Papa's employment contracts/agreements, a minimum period of notice must be included. This is normally one month. Te Papa may choose to pay the employee in lieu of notice.

The other type of dismissal is summary (or instant) dismissal, which occurs, in instances of serious misconduct. The employee is entitled to be paid only up until the time of dismissal.

### **Written Notice of Termination**

Written notice of termination is to be handed to the employee and a copy sent to the employee's representative if appropriate.

The letter of dismissal must contain the same information as a warning:

- The original allegation against the employee - state time, date, conduct or actions involved
- When the meeting to investigate the problem was held and who was present
- The employee's response to the allegation
- Te Papa's position following the investigation, showing how their conduct is inappropriate or unacceptable and how it has breached the code of conduct, contract or policies of the organisation
- That the decision of the organisation is dismissal (state type of dismissal)
- The arrangements to be made regarding final pay and other relevant factors such as handing back of Te Papa property.

### **Final Pay**

The Manager is to advise payroll IMMEDIATELY that the employee has been dismissed in order for the final pay to be processed on that same day.

**Handing Back of Property**

The Manager should collect any Te Papa property from the employee. This may include; keys, building access cards/pendants, cell-phones, and library books.

**Records**

When an employee has been dismissed, all papers relating to the dismissal, including the report recommending dismissal action and the letter of dismissal, are to be placed on the employee's personal file.

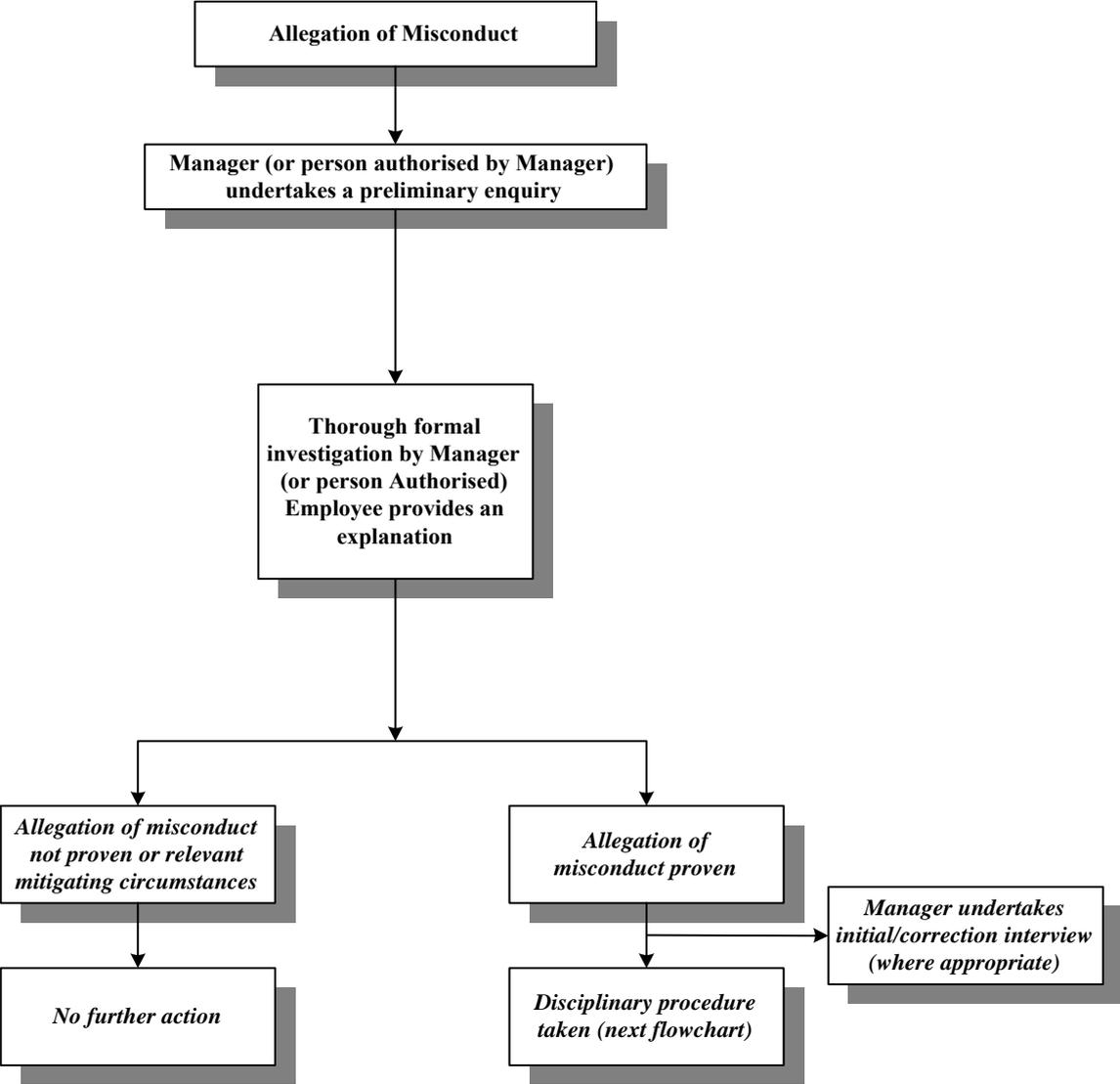
**Personal Grievances**

Employee's have the right to pursue a personal grievance if they feel they have been treated unfairly in relation to either the process or outcome of a disciplinary process (refer Employment Relationship Problems – attached).

**FLOW CHART**

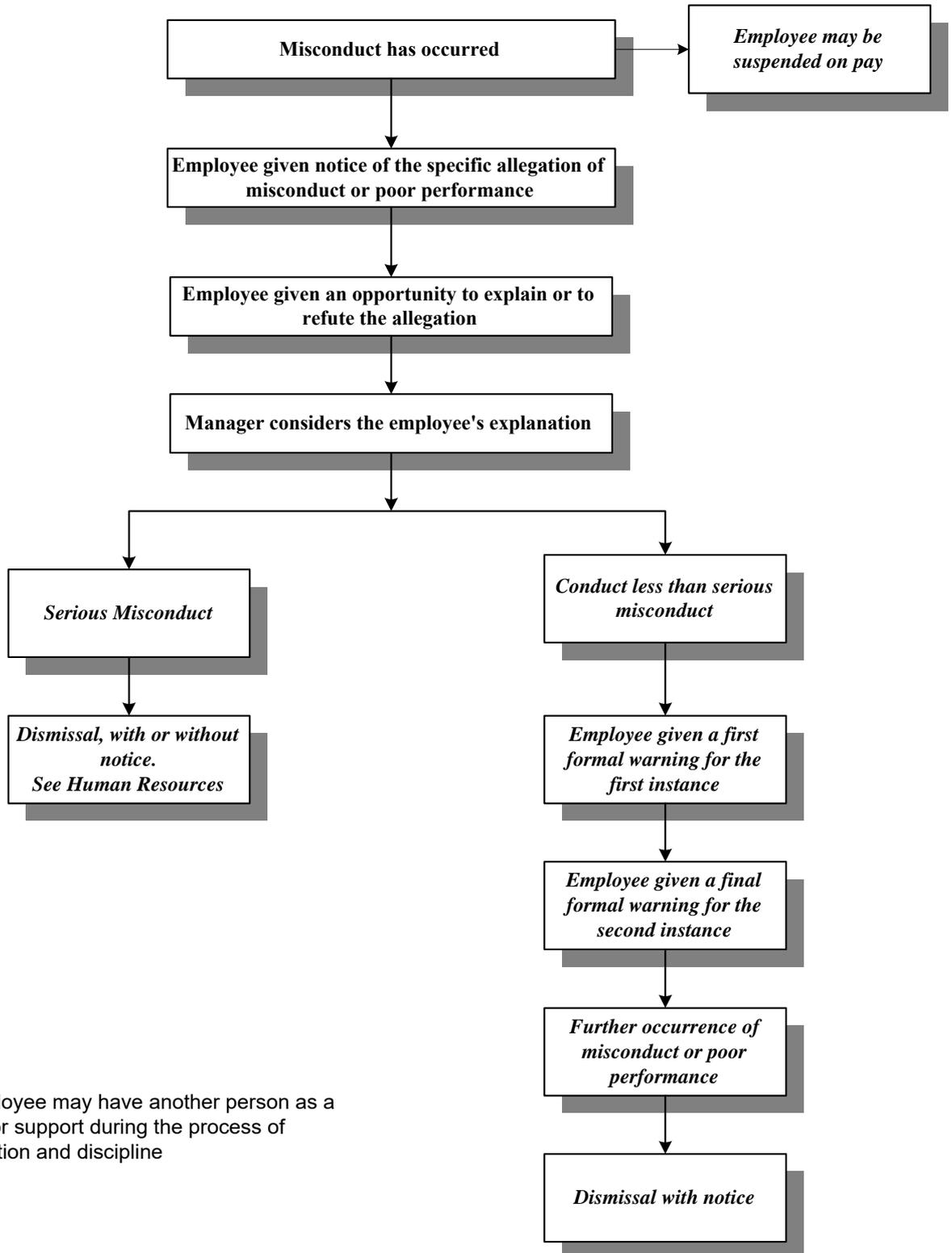
**DISCIPLINE AND DISMISSAL**

**Investigation Procedure**



NOTE: The employee may have another person as a witness or support during the process of investigation and discipline

## DISCIPLINARY PROCEDURE



**NOTE:**

The employee may have another person as a witness or support during the process of investigation and discipline

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# Employment Relationship Problems: How to Resolve Them

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## Introduction

The *Employment Relations Act 2000* is effective from 2 October 2000. This Act introduces a new process and services aimed at the resolution of problems in the workplace.

These provisions apply to any employment relationship problems raised by all staff members from 2 October 2000. The Act also provides that all new employment agreements entered into from 2 October must include a plain language explanation of the services available for the resolution of employment relationship problems. The following information is provided to meet these obligations.

## Statement of Intent

The Museum of New Zealand Te Papa Tongarewa (Te Papa) recognises the role of its employees in delivering the outputs required of it.

To this end, Te Papa aims to be a good employer with respect to all of its employees. As part of this, we (Te Papa) provide a process for the resolution of disputes or problems that may arise within the workplace and the opportunity for redress against unfair or unreasonable treatment by the employer.<sup>1</sup>

If we (you and Te Papa) are unable to resolve problems ourselves, we can get outside help. Set out below is the process for resolving employment relationship problems and the services available.

## Employment Relationship Problems

For the purposes of this process and the services that can be accessed by you as a staff member, an employment relationship problem includes a personal grievance, dispute, or other problem relating to your employment relationship with Te Papa.

It does not include any problem with the fixing of new terms and conditions of employment, that is, when bargaining for a new agreement.

Examples of an employment relationship problem (this is not an exhaustive list):

- a personal grievance;
- a dispute over the interpretation, application or operation of your employment agreement;
- a breach of your employment agreement;
- not being allowed to take part in union meetings or employment related education leave; or
- where you feel you have been treated unfairly.

## Getting Help

### *Within Te Papa*

To help resolve your employment relationship problem you should in the first instance raise this with your immediate Manager or his/her Manager.

You can also contact a member of the Human Resources team if you do not feel the matter has been resolved or can be resolved by your Managers.

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<sup>1</sup> Refer Code of Professional Conduct

Te Papa also provides confidential employee assistance in dealing with personal issues through EAP Services (tel. 0800 327 669) or Workplace Support (tel. 021 397 030).

### ***Outside Te Papa***

**The Department of Labour offers free information and has a free mediation service (see *Mediation Services* below) to provide us with assistance in working together to resolve the problem.**

You can contact the Department of Labour on:

- ph. 0800 800 863; or through
- [www.dol.govt.nz](http://www.dol.govt.nz)

You also have the right to seek assistance from:

- a union representative or other advocate;
- a legal advisor; or
- whanau, iwi or any other support network or group you feel can assist us in resolving the problem.

### **Personal Grievances**

A personal grievance is a specific type of employment relationship problem that can be raised and can be remedied in certain ways.

A personal grievance means any grievance you have with Te Papa as the employer because of a claim that:

- you have been unjustifiably dismissed;
- action taken by Te Papa disadvantages you in your employment or a term of your employment is unjustifiable;
- you are discriminated against in your job;
- you are sexually or racially harassed in your job; or
- you have been pressured in your job because of your membership or non-membership of a union or employee's organisation.

### **Resolving Personal Grievances**

To raise a personal grievance, you must make us aware of your claim (verbally or in writing) **within 90 days** of the personal grievance arising unless:

- Te Papa consents to you raising the grievance after 90 days; or
- You successfully apply to the Employment Relations Authority for leave to raise the grievance after 90 days.

**After the personal grievance is raised, we must both try to resolve the grievance through mediation.**

**After you raise a personal grievance, you have 3 years to bring any action arising from it to the Employment Relations Authority or the Employment Court.**

### **Mediation Services**

If we are unable to resolve your employment relationship problem between us, then either of us can request assistance from the Department of Labour.

One of the Department's roles in assisting with such problems is to provide mediation services which may include:

- information about rights and obligations;
- information about services available;
- facilitating discussion between the parties; or
- any other assistance that they see as appropriate to help the parties resolve the problem.

### **Problem Not Resolved at Mediation**

If we cannot resolve the problem using mediation, you can refer the problem to the Employment Relations Authority.

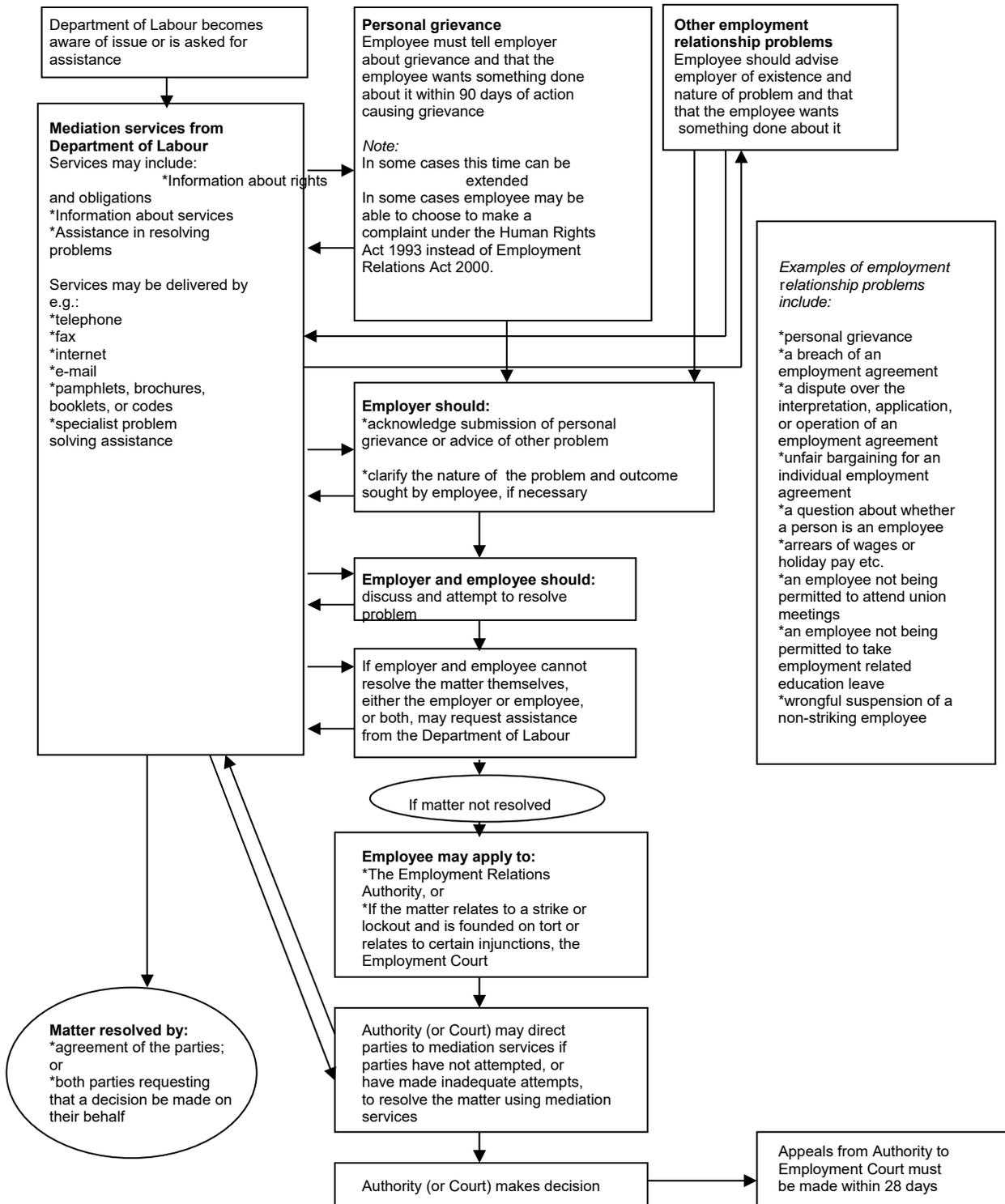
### **Summary**

A summary of the process for resolving employment relationship problems is set out in the attached flowchart.

Please contact Human Resources if you would like further information.



## Information About Resolving an Employee's Employment Relationship Problem



**Note:** The information in this diagram is to assist parties to employment relationships to resolve their problems. It should not be treated as a complete description of any of the legal processes involved.