



KNOW YOUR RIGHTS WHEN THINGS GO WRONG

When something happens...

You may simply have seen an incident, you might have caused the incident yourself or be the focus of an allegation from a third party, but if managers decide an investigation into events is necessary, you need to know your rights. The most common sorts of disciplinary investigations in the school setting involve allegations of inappropriate conduct by staff towards students or colleagues.

Innocent or guilty, the same rights apply and all union members should make sure they apply them from the very start. It is in the interest of every member that we hold all managers at the school and departmental level to account to ensure they always conduct fair processes.

If you are asked to a workplace meeting

It is the recent experience of AEU NT that too often, workplace managers do not follow correct procedures, mostly because they are not well versed in workplace law and are unfamiliar with appropriate investigation techniques.

The most important overarching advice is: **don't handle the situation by yourself**, no matter how trivial it may at first seem. Speak with your sub-branch rep, and/or call the AEU NT office, particularly if you receive a letter quoting the *Public Sector Employment & Management Act* (PSEMA).

Disciplinary meetings

In a disciplinary matter, in the first instance you may be asked to attend a meeting with your manager. We would usually advise that you do so, however not unaccompanied. At a minimum, have a support person with you to witness

proceedings and take notes. If you feel uncomfortable with the process, you may ask for the meeting to be paused or ended. You may be asked to provide a written statement or to answer questions. We would generally advise that you not do this initially if you are the subject of an investigation, particularly if you do not yet know the nature or scope of the investigation.

Depending on how serious the alleged offence is, you may be asked to leave work and stay home until advised otherwise. You should comply with this directive, however this is not a formal suspension. In order to be formally stood down, a process must be followed and a directive issued by a senior officer.

Your right to natural justice

In the NT Public Sector, only a senior officer (usually at least Executive Director level) has the right to administer formal disciplinary action against an employee, and only if due process, or natural justice, has occurred.

All NTPS staff, including teachers, have a right to natural justice as spelled out in PSEMA Employment Instruction Number 3. Managers must follow these principles as well as other guidelines developed by the Office of the Commissioner for Public Employment (OCPE). If the employer intends to take disciplinary action against you, Employment Instruction Number 3 ensures your right to:

- know of all allegations against you and what information the decision maker is relying upon in foreshadowing disciplinary action;
- provide your version of events and supporting evidence;
- have an "impartial" decision maker consider the above (a different person to the person who carried out the investigation).



These principles apply in every type investigation, from a local school-level inquiry to formal disciplinary proceedings which may involve interviews with senior officers. Full natural justice is only achieved when relevant case law is taken into account, not just what OCPE have published.

Definition of natural justice

OCPE Employment Instruction No.3 states: *“A person who may be adversely affected by an impending decision must be afforded natural justice before a final decision is made. This means that:*

- a) *the person must be informed of any adverse information and other relevant information that may be taken into account by the decision maker;*
- b) *the person must be given a reasonable opportunity to respond to the information including providing any evidence he or she wishes to include in the response;*
- c) *the decision maker must impartially consider the employee’s submissions, prior to making a decision; and*
- d) *a decision maker must not have a personal interest in the outcome of a decision, and he or she must make the decision in a fair and considered manner, based on a consideration of all of relevant information.”*



References and further information:

<https://ocpe.nt.gov.au/employment-law/employment-instructions>

Employment instruction number 7— Discipline

Employment instruction number 3—Natural justice



The key points

1. If you are summonsed to a meeting with your manager and you don't feel comfortable, **don't go alone**. You have the right to be accompanied and if you are an AEU NT member, the right to be represented.
2. Managers will typically take notes in such meetings. You have a right to see those and contest any inaccuracies they contain. We strongly recommend you **check what is being recorded about you and/or take your own notes**.
3. Be clear who is investigating and about what. You have the right to know what allegations have been made, but not necessarily by whom or their precise words (e.g. if an allegation has been made against you, you might only see excerpts of it).

Seek expert advice

Disciplinary investigations are complex matters and as such each is different. Make sure you seek expert advice from your union on how the process should occur and what your rights and responsibilities are. As a member of the AEU NT, you will never be alone in meetings with management or forced to deal with complex issues on your own. Our staff are experts in industrial legislation, negotiation and advocacy. You simply won't find this level of experience and expertise anywhere outside of the AEU.

Join us at <https://aeunt.org.au/membership>