

PNG LAW & JUSTICE SECTOR



THE PNG
MAGISTERIAL SERVICE



PUBLIC
SOLICITOR'S OFFICE



NATIONAL JUDICIAL
SERVICES



DEPARTMENT OF JUSTICE
& ATTORNEY-GENERAL



PUBLIC
PROSECUTOR'S OFFICE



GENDER EQUALITY

in the public service

A Guide to the Rights of Public Servants



Promoting a Just, Safe & Secure Society for All

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FOREWORD



Every day in Papua New Guinea, the women and men of the National Public Service draft policies, administer laws and discharge portfolio responsibility for Ministers and departmental heads. Their contribution is integral to the smooth administration of the Government of PNG. Their job is often tough as they try to be productive in the midst of resource constraints and shifts in government policy. They must endeavor to satisfy both their government masters and a public hungry for more and better services.

Respect for the role of this essential workforce demands action to create a workplace which is fair to public servants and firm in its insistence on holding them to the oaths they swore to obey and uphold the General Orders and to deal with fellow officers, peers, subordinates and superiors alike, in a just and honest manner regardless of their gender.

When Papua New Guinea passed the Constitution of the Independent State of Papua New Guinea in 1975 and ratified the UN Convention on the Elimination of Discrimination against Women in 1994, the Government and people of Papua New Guinea formally embraced equality for all citizens and agreed to act to eliminate discrimination against women.

The principle of equality for all citizens can be found in the Public Services (Management) Act, Regulations and Public Service General Orders. It is manifest in the commitment made in swearing the Oath of Loyalty and Service to the State and Executive Government and in the Code of Business Ethics and Conduct. It is manifest in rights and responsibilities in public service laws designed to eliminate discrimination against individual public servants based on gender. It is manifest in entitlements such as maternity or paternity leave and breaks for breastfeeding mothers.

For these rights to be of practical value, public servants must to be able to find and use them irrespective of age, education or experience. Rights and responsibilities touching on gender discrimination and leave entitlements are scattered throughout a number of laws, regulations and orders. This Guide has been written to bring together information necessary for public servants to better understand their rights and to guide them in taking action to use them. It is set out in question and answer format to make the information it contains as approachable as possible for all public servants. It is also intended to be used with a companion Guide to the responsibilities of departmental heads, managers and supervisors for ensuring employees within each section or branch of the public service behave in the manner required in the Code of Business Ethics and Conduct.¹

To those who discriminate based on gender, we send this message: You have sworn a solemn oath to act according to the Public Services (Management) Act and the Public Service General Orders. You have promised to deal with fellow officers, peers, subordinates and superiors alike regardless of gender. This promise has legal effect. You will be called to account.

To those who believe you have suffered gender discrimination at the hands of other public servants in your workplace; you are encouraged to come forward, complain and play a part in the improvement of your own work conditions and those of your many female and male colleagues. In taking action, you will serve both yourself and others who have encountered gender discrimination. Others will observe your resolve to take action and feel encouraged to take action in their own case. Those who discriminate based on gender will see that such actions have consequences. Your example is more powerful than you think.

The National Public Service is capable of being a workforce committed to excellence and to nurturing the career development of the individuals within it. This goal will only be realised when the great majority of public servants actively support it by taking pride in their professionalism as public servants, embracing the principles they swore to uphold in the Oath of Loyalty and Service to the State and Executive Government, applying it in every aspect of work and demanding the same standards from colleagues. Embrace this cause; in your own interests, in the interests of your colleagues and in the interests of Papua New Guinea.

Mr Joe Kanekane

Director

Law and Justice Sector Secretariat

2. Introducing the Public Services (Management) Act and General Orders

2.1. The Constitution of the Independent State of Papua New Guinea

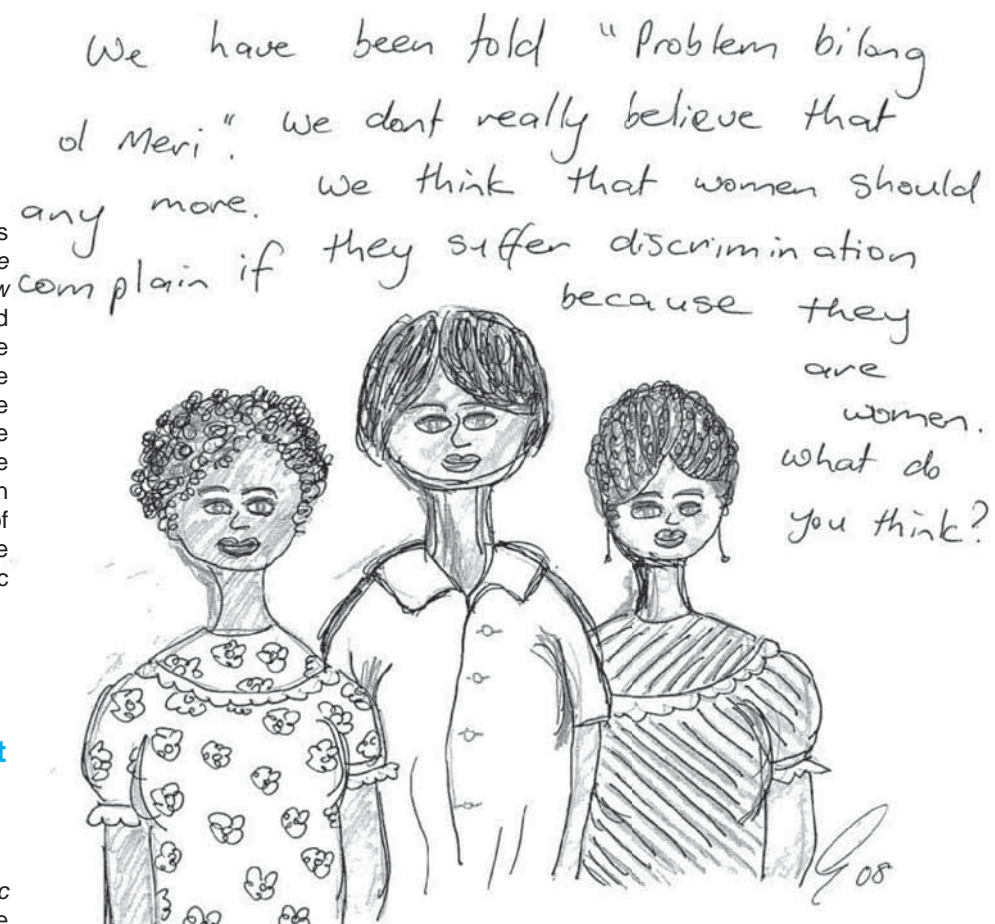
The National Public Service is created under the *Constitution of the Independent State of Papua New Guinea (the Constitution)*. It is created as a "State Service". State Services are important services in PNG. They include the National Public Service, the Police Force, the Correctional Service and the Defence Force. All State Services are independent and are separately given power to set terms and conditions of employment for their employees. The Constitution also establishes the Public Service Commission and its functions.

2.2. Scope of the Public Services (Management) Act and Public Service General Orders

One of the objectives of the *Public Services (Management) Act* is to use the Constitutional power to make a law about the organization of the public service, how people are employed in the Public Service and the terms and conditions of their employment. Powers in the Act enable the Secretary of the Department of Personnel Management to give directions to officers, known as "General Orders".

The Act sets out the broad structure of the organization of the public service. The General Orders contain further details about matters mentioned in the Act and matters necessary for the efficient management and control of the public service.

The Public Services (Management) Act and Public Service General Orders apply to all officers, employees and other people employed under the Act. They do not apply to members of other state services such as the Correctional Service or to officers in the service of the Ombudsman Commission.



2.3. What does the Public Services (Management) Act say about disciplinary offences?

The Act creates the broad arrangements for the organization of the public service. It can be thought of as being like the wooden structure of a building. It can look quite bare, but a simple but strong simple structure can support a building which functions predictably and effectively. The General Orders are more like the palm leaves and other bush materials used to fill in the walls and cover the roof. The General Orders provide the detail which fits into the structure and makes it work.

The Act sets up the structure of the Public Service Commission, the operations of the public service and makes broad rules about recruitment, appointments and promotions and

discipline. Part XIV covers discipline and sets out a list of 13 disciplinary offences.

A full list of public service disciplinary offences is included in **Schedule 5**. The offences are also found in the General Orders².

The Act does not include much detail about the process of conducting a disciplinary investigation. The purpose of the Act is to set the structure. The smooth operation of disciplinary processes requires a lot of detail about what is done when and by whom. This is provided in the General Orders. The General Orders contain the detailed disciplinary processes and these will be described in greater detail below.

2.4. Where does gender discrimination fit into public service disciplinary offences?

Thirteen disciplinary offences are set out in the Act³ and General Orders⁴. A disciplinary complaint must be made on one of these "grounds" or reasons for complaint about another public servant. None of the disciplinary offences specifically mentions gender discrimination. Despite this, it is certainly possible to complain alleging gender discrimination because it can be fitted into several disciplinary offences. Those offences most relevant to gender discrimination include:

- Committing a breach of the Act.
- Committing disgraceful or improper conduct in an employees official capacity or otherwise.
- Doing or saying anything in violation of the Oath of Loyalty and Service to the State and Executive Government.



2.5. How can gender discrimination fit into "disgraceful or improper conduct"?

The offence of "disgraceful or improper conduct" is important. It can cover a range of behaviors. These behaviors can certainly include gender discrimination or sexual harassment depending on the nature of what has been alleged. This offence is quite likely to be alleged in complaints about gender discrimination and sexual harassment.



2.6. How can gender discrimination fit into "doing or saying anything in violation of the Oath of Loyalty and Service to the State and Executive Government"?

The offence of "doing or saying anything in violation of the Oath of Loyalty and Service to the State and Executive Government" is also important as the Oath and Code of Business Ethics and Conduct both specifically state the requirement to "Deal with ...fellow officers, peers, subordinates and superiors alike, in a just and honest manner regardless of their gender". This clearly includes discrimination based on gender. Violating this requirement is a specific breach of the Act⁵ and the General Orders.⁶

2.7. How can gender discrimination fit into “committing a breach of the Act”?

The other offence of committing a breach of the Act may also be added in a number of offences, depending on the behaviors leading to the complaint. It would almost always be added to a complaint alleging “doing or saying anything in violation of the Oath of Loyalty and Service to the State and Executive Government” as this would almost always be a breach of the Act if proven.

The General Orders provide the detail of the process for investigations into allegations of disciplinary offences. A flowchart of the process is included in **Schedule 3**.



2.8. What about sexual harassment?

The General Orders specifically state that sexual harassment is a disciplinary offence. Sexual harassment occurs where an employee is subject to:

- Demands of a sexual nature in exchange for promotion or other benefits unless demands of a sexual nature are met; or
- Unwelcome verbal or physical suggestions of a sexual nature which interferes with an employees work and creates an offensive or intimidating work environment.

It should be noted that if an employee is subjected to sexual harassment, she or he should report the matter immediately to the departmental head. If supporting evidence is available, the departmental head must lay charges for a serious disciplinary offence.⁷

It should be noted that supporting evidence can be direct or circumstantial. Direct evidence could include actually seeing the conduct complained about. Circumstantial evidence may include:

- evidence of the demeanor of the complainant who may be distressed;
- medical evidence including evidence of stress;
- evidence of workmates who may not have seen the acts giving rise to the complaint, but may have witnessed behavior consistent with such acts taking place.

For example, workmates may have witnessed:

- o the complainant being asked to go into the respondents office and the door being closed;
- o the complainant being asked to work late by the respondent; or
- o the complainant appearing distressed after an encounter with the respondent.

The way in which discrimination and sexual harassment fit into disciplinary offences under the *Public Services (Management) Act* and General Orders is set out in a flowchart in **Schedule 4**.



²Section 50 Public Services (Management) Act

³General Order No 10, Order 10.8

⁴Section 50 Public Services (Management) Act

3. Gender Discrimination

In deciding whether you have suffered gender discrimination, it may be useful to consider some information about the nature of discrimination.

3.1. What is discrimination?

Discrimination means treating someone unfairly because of a personal characteristic, such as their gender, race, colour, religion, political opinion, national extraction or social origin.

Discrimination against women means treating women unfairly, just because they are women. Some examples of gender discrimination include unfair treatment because of:

- gender
- marital status
- pregnancy (or possible pregnancy)
- family responsibilities

You would be the victim of gender discrimination, if you lost your job because you were pregnant, were sexually harassed, were denied a promotion because you were a woman, were dismissed because of family responsibilities or were offered less pay than a man would have been offered, just because you were a woman.



⁵Section 50 Public Services (Management) Act

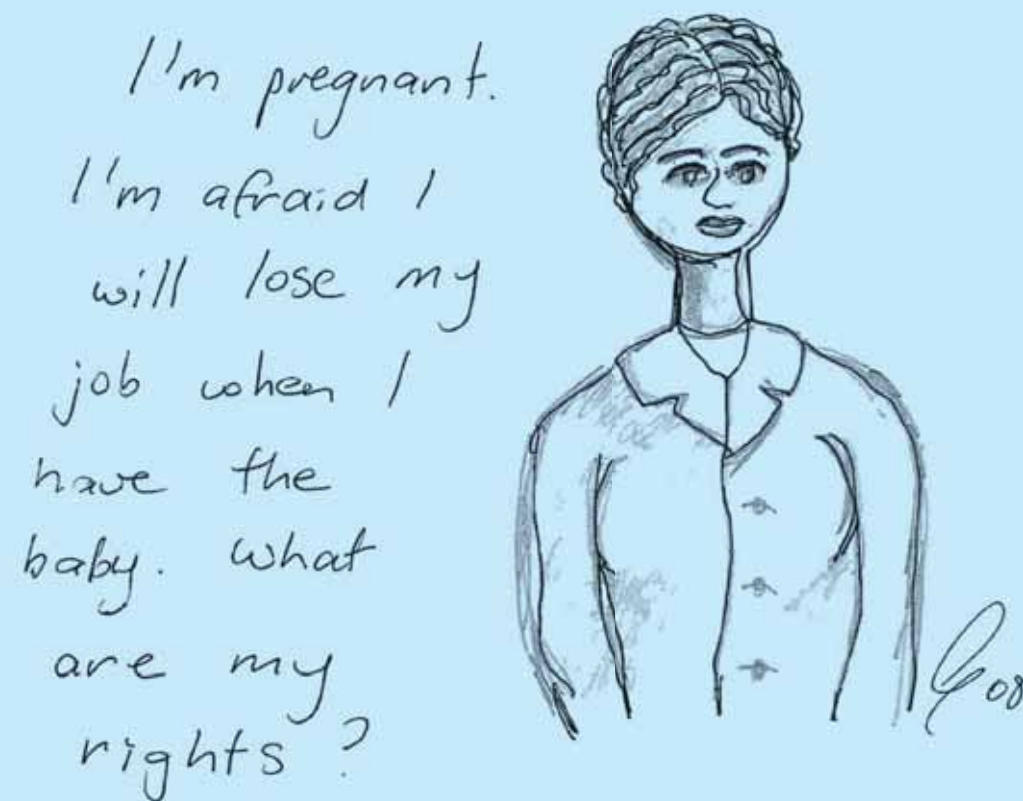
⁶General Order No 10, Order 10.8

⁷General Order No 10, Order 10.49 and 10.50

3.2. What does “gender discrimination in employment” mean?

This kind of gender discrimination could mean many things, such as denying you:

- the right to the same employment opportunities, including the application of the same criteria for selection in employment
- the right to free choice of profession and employment
- the right to job security and all benefits and conditions of service
- the right to receive vocational training and retraining
- the right to equal pay, including benefits, and to equal treatment for work of equal value, as well as equality of treatment in the evaluation of the quality of work
- the right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction
- the right to work during pregnancy



3.3. What are some examples of gender discrimination in employment?

Some examples of gender discrimination in employment are:

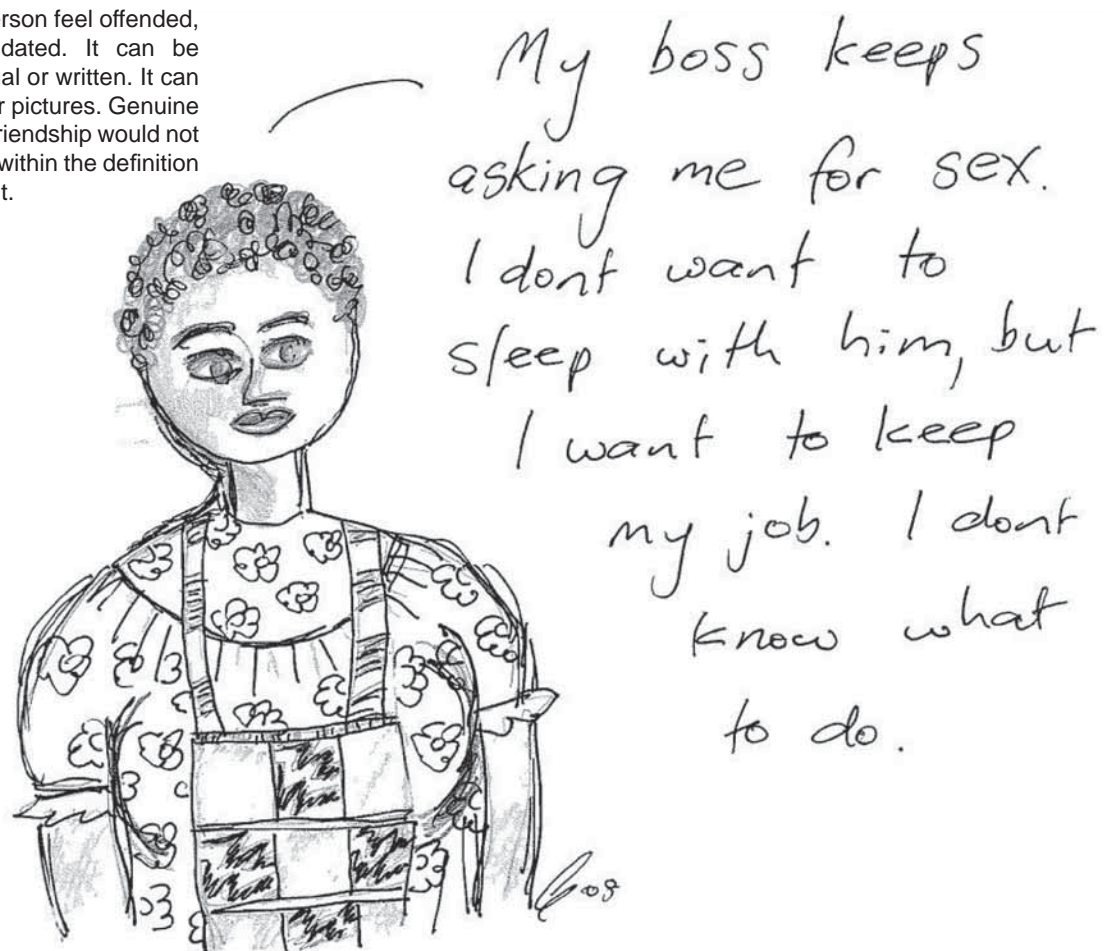
- Missing out on a job because you are of child-bearing age.
- Missing out on a job because you are a woman.
- Being demoted to a lower-paid position because you are pregnant.
- Being refused a job because of your marital status, whether you are single, married, divorced, widowed or in a de facto relationship.
- Being overlooked for promotion because of your role as a carer for a sick relative (for example a family member who is infected with HIV)
- Not being considered for a role because you have young children
- Working in an identical role as a man, but earning less pay and receiving lower benefits

We know we are good at our jobs. Neither of us have been promoted for five years. Is there anything we can do?



3.4. What does “sexual harassment” mean?

Sexual harassment is one type of discrimination, and is unwelcome or unwanted conduct of a sexual nature that could make a person feel offended, humiliated or intimidated. It can be physical, verbal, visual or written. It can involve statements or pictures. Genuine mutual attraction or friendship would not be considered to fall within the definition of sexual harassment.



3.5. What are some examples of sexual harassment?

Some examples of sexual harassment include:

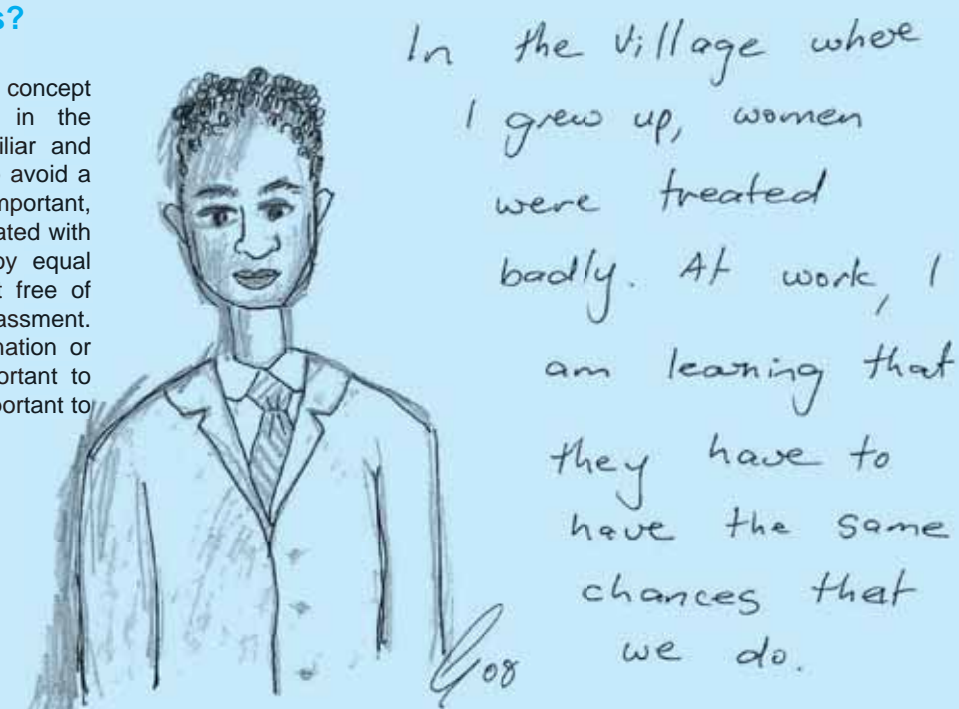
- An unwelcome sexual advance.
- A request for sexual favours, with or without promises of promotion or other benefits, or else refusal to approve benefits unless demands of a sexual nature are met.
- Unnecessary physical intimacy, such as brushing up against a person.
- Being exposed to sexually explicit material, such as photographs or computer images.
- Receiving sexual propositions or repeated requests for dates.
- Being subjected to unwelcome verbal or physical suggestions which interfere with an employee's work and create an offensive or intimidating working environment.
- Linking employment or promotion opportunities to the provision of sexual favours.

Indecent assault is also a criminal offence, which could lead to a criminal prosecution being brought. If a public servant is convicted of a criminal offence, he or she must then be subject to the disciplinary process as it applies to criminal offences.



3.6. Does this mean that some people may have to change their attitudes?

Yes. For some people, the concept of equality of participation in the public service will be unfamiliar and challenging. It is important to avoid a culture of blame, but it is also important, that all public servants are treated with dignity and respect and enjoy equal rights to a work environment free of discrimination or sexual harassment. If you suffer gender discrimination or sexual harassment, it is important to do something about it. It is important to complain.



4. OPTIONS FOR INFORMAL ACTION ABOUT GENDER DISCRIMINATION UNDER THE PUBLIC SERVICES (MANAGEMENT) ACT AND GENERAL ORDERS

4.1.

Where do I start?



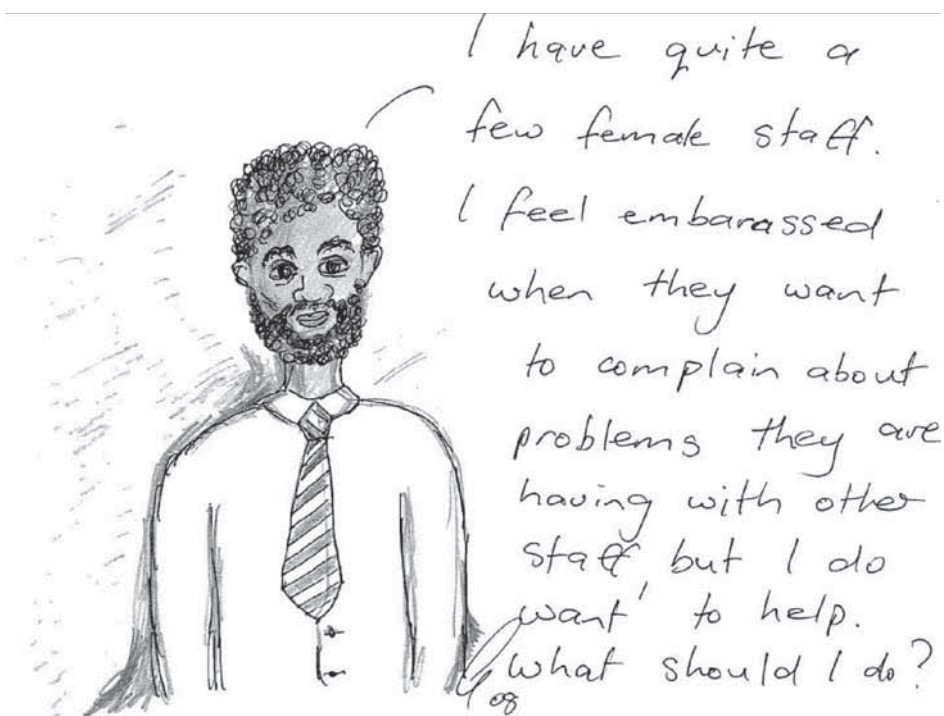
A good place to start is to discuss the matter with the EEO coordinator in your department, province or agency. A flowchart intended to help you make a decision about further action is found in **Schedule 1**.

Some people feel scared when thinking about making a disciplinary complaint. You need not do it alone. It can be helpful to bring a friend or supporter with you to discussions about making a complaint. This might be particularly helpful if you or your boss or the EEO coordinator find the conversation embarrassing or difficult.



4.2. If I want to take action about discrimination what should I do first?

It is important to write down your recollection of the incident or pattern of behavior which has caused you grief as soon as you can after the incident or behavior occurs. You will find that your recollection of exactly what happens becomes less clear and reliable over time. All options for taking action require a written report, so the sooner you record your recollection of what happened, the easier it will be for you to take action and to present a strong case.



4.3. Can I take informal action about gender discrimination at work?

Not for sexual harassment
Informal action is not appropriate for sexual harassment. Sexual harassment is a disciplinary offence. If you believe you have been sexually harassed, you should immediately write down what happened. You should report the matter immediately to the departmental head (or delegate as advised by the EEO coordinator or the human resources manager). You should also give the departmental head your written account of what happened and any other relevant materials. These may include witness statements, emails, photographs, medical reports or other relevant documents. If supporting evidence is provided, which could be your written account, witness statements or other things, the departmental head must lay charges for a serious disciplinary offence against the alleged offender.

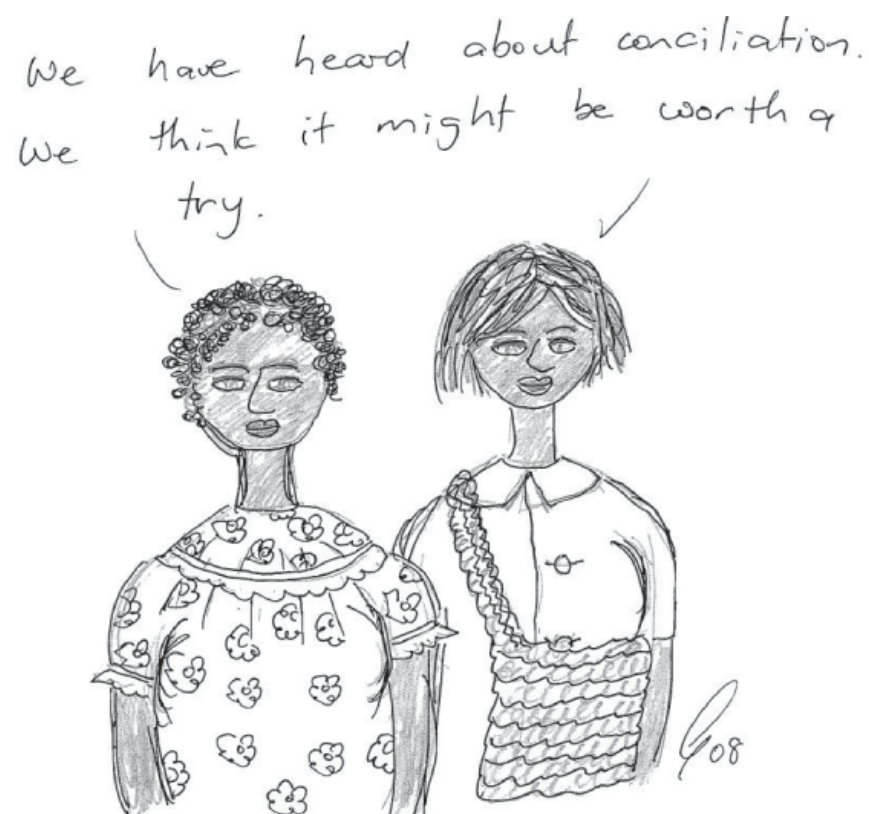
An informal approach is possible for many matters other than criminal matters or sexual harassment. The first possible informal approach is to speak directly to the person who is causing the problem and ask him or her to stop. Sometimes people can be quite unaware of the effect of their behavior on others and will stop their behavior if they are told it has caused you offence or grief.

If talking to the person who has caused you offence or grief does not work, another informal approach is to ask for the matter to be conciliated as a grievance.



4.4. What is conciliation?

Conciliation is a voluntary mediation process. In this process, an independent mediator assists complainants and respondents to resolve disputes when their efforts to do so have not succeeded. The process can be described as a facilitated search for agreement between disputing parties. In the public service process, it is conducted by an independent third person, possibly the EEO coordinator, the Human Resources Manager or another person.



4.5. How do I begin the process of conciliation?

Conciliation is entirely voluntary. You would ask your EEO coordinator to set up a conciliation process. Both you and the respondent must agree to participate. Arrangements for conciliation meetings are finalised only when both parties confirm their willingness to participate in the process.

To begin, you will need to give the conciliator your written complaint. The respondent will be asked for his or her written response. The conciliator will consider the material to try to identify issues where there may be a disagreement or misunderstanding between you and the respondent. Conciliation will happen soon after this.

4.6. What happens in conciliation?

Conciliation involves a series of meetings that usually take place on the same day. The process starts with the conciliator chairing a joint meeting between you and the respondent. The object of the meeting is to discuss the issues raised by you and to try to resolve the dispute and restore peace and harmony in the workplace. The conciliator may also meet you and the respondent separately. The first meeting enables the conciliator to hear the parties' assessment of the dispute. Subsequent meetings explore the possibilities for resolution. The conciliation process is informal and non-legalistic in its practice. You may wish to bring a friend or support person with you. The conciliator treats as confidential all information received during the course of conciliation. She or he will not divulge this information to any other party unless expressly permitted to do so.

4.7. Does conciliation work?

Yes it does work. Conciliation can be very successful in providing some acknowledgment that the respondent's behaviour has been inappropriate and has caused you grief. It can also help to get an agreement for the respondent that the behaviour will stop. You may request an apology from the respondent, which may be made. A flowchart setting out the grievance process is provided in **Schedule 2**.

4.8. Who is in control?

You and the respondent retain control during the conciliation process. The conciliator never imposes an outcome on you. Resolution of a dispute is an outcome that the parties themselves voluntarily decide. Likewise, where the parties do not resolve their dispute at conciliation, that is also their decision. If the grievance process resolves the matter, there is no need for further action. If the matter is not resolved, you will need to seriously consider taking formal action.



5. Taking formal action about gender discrimination or sexual harassment under the Public Services (Management) Act and General Orders

5.1. How do I formally complain about discrimination?

If you believe that you have been the victim of discrimination, you can make a formal disciplinary complaint about it.

5.2. Do I need to make a written complaint?

Yes, your complaint needs to be in writing. If you need help in completing the form, you should contact the EEO Coordinator or Human Resources Manager in your department, province or agency.



I don't really enjoy writing about what happened. Because I want to take action, I am just going to sit down and do it.

You will need to include the following information on a complaint form:

I. Your details

- Your name
- Address
- Telephone: home/work/mobile
- Fax number
- Email
- Name and address details of the individual or organisation which is the subject of your complaint.

II. If the person is an individual:

- What is his/her name?
- What is his/her position
- Name of his/her manager
- Name of his/her department
- Name of his/her departmental head

III. Details, in chronological order, about what happened, covering the following points:

- What happened to you?
- When did it happen?
- Where did it happen?
- How did you respond?
- Did it happen more than once, i.e. is it a pattern of behavior over a period of time such as six months
- Were there any witnesses? Who else was involved?
- Name/contact detail of witness (A brief statement from the witness or witnesses would be very useful)



IV. Which disciplinary offence are you alleging? This is likely to be

- Committing a breach of the Act.
- Committing disgraceful or improper conduct in an employees official capacity or otherwise.
- Doing or saying anything in violation of the Oath of Loyalty and Service to the State and Executive Government.
- Sexual harassment See discussion from paragraph 2.4 to 2.8 above to help you decide which disciplinary offence is best allege under the particular circumstances of your complaint. Your EEO coordinator or Human Resources Manager may be able to help you make this decision if necessary.

V. Include a statement about how this incident has affected you.

VI. If the behavior you are complaining about has happened over a period of time, it is important to estimate when it first started to happen and then how often it has happened since.

EXAMPLE 1:

I want to complain because my boss keeps asking me for sex. This first happened about two months ago, just after Easter. Since then, it has happened about once a week. It makes me scared and when he is in the office and working close to me, I feel scared he will ask me again. I am finding it hard to concentrate and do my work.

EXAMPLE 2:

There was a position going in my branch. It is a management position. I know the area well and I have a lot of relevant experience. I have been working in the branch for five years and I recently did a management training program. I was thinking about applying. I spoke to the Branch manager. He told me not to bother applying because the men in the branch would not like to take orders from a woman. He told me not to waste his time.



VII. Any other relevant written material should be included and attached to the complaint form. This may include:

- medical records;
- statements of witnesses;
- your own notes of events, if you are complaining about a pattern of behavior which has been going on for some time;
- copies of emails;
- photographs; or
- any other document which you think will help to support your case.

EXAMPLE:

I work at the desk next to Mary. Mary has been upset at work a lot lately and I have had to help her finish some things. Our boss goes to her desk a lot and talks to her. She gets red in the face and sometimes cries after this happens. I have seen this happen a few times, maybe three or four. The last time was about a week ago. I think the first time was quite a while ago, maybe a month. The last time it happened I heard him say to her "I want you to stay behind tonight and be with me". She went to the ladies toilet after that and didn't come out for about twenty minutes. When I saw her again, I thought she had been crying.

When you are happy with the content of your statement, you will need to sign and date the complaint form. You will need to ask your EEO Coordinator about where it is delivered and to whom. This may vary from the departmental head to the Human Resources Manager or the EEO Coordinator.

Your complaint will be treated confidentially, and will only be shown to:

- the person against whom the complaint has been made. They will be informed of the complaint and the circumstances surrounding it, and asked for their written response.
- any witnesses you have named, or witnesses named by the person against whom the complaint has been made
- the person whose task it is to deal with the complaint.

If you wish to withdraw your complaint, you can do so at any time. You need to put your request to withdraw in writing. Once a withdrawal has been received, the complaint process will be closed. Otherwise an investigation will proceed.



5.3. Will I get into trouble if I make a complaint?

No. If your employer or manager tries to punish you for making a complaint, that is also discriminatory behavior. If anyone tries to intimidate you or prevent you making a complaint, you should complain about that pressure or intimidation. You should contact your EEO coordinator.

5.4. Where do I lodge my complaint?

Your EEO coordinator can also advise you about the person with whom you should lodge your complaint. It may be the departmental head, the provincial administrator, the human resources manager or the EEO coordinator.

5.5. How do I appeal an employment decision if I believe discrimination occurred in the process?

The Oath of Loyalty and Service to the State and Executive Government and the Code of Business Ethics and Conduct both require public servants to deal with fellow officers, peers, subordinates and superiors alike regardless of gender. Further, it is a principle of the recruitment process that a vacant position must be filled by the best possible person on merit⁸. An appeal against an employment decision can be made by an unsuccessful applicant for the relevant position or job who is already employed in the public service⁹.

Appeals are made to the Public Service Commission. You must appeal in writing and the Commission must receive your appeal within 21 days from the date of the relevant appointment. The sole ground of appeal is that there has been a breach of the appointment process of such significance that it unfairly or unreasonably influenced the outcome.¹⁰

If you believe that the process was tainted by discrimination on the grounds of gender, you could appeal stating that gender discrimination occurred and its effect was of such significance that it unfairly or unreasonably influenced the outcome. You would attach to your written appeal any other relevant documents such as witness statements, emails, or other relevant documents which support your allegations.

You may wish to discuss the matter with the EEO coordinator in your department, province or agency before you lodge a formal appeal.

⁸General Order 2
⁹General Order 2
¹⁰GO 2

6. Other avenues for making a complaint about gender discrimination in the workplace

6.1. Ombudsman Commission

The Ombudsman Commission is established under the Constitution and has a number of purposes. One purpose is specifically addressed to helping “in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them”.¹¹ Further details about the Ombudsman Commission’s operations are contained in specific legislation, the *Organic Law on the Ombudsman Commission 1998*.

The jurisdiction of the Ombudsman Commission is triggered either following the making of a complaint by a “person affected”, or the decision by the Ombudsman Commission itself to investigate a matter.¹²

The discriminatory practices jurisdiction¹³ is one of three Ombudsman Commission jurisdictions.

Can the Ombudsman Commission investigate complaints of public servants about discrimination in employment under the Ombudsman Commission discriminatory practices jurisdiction?

It is clear that the Ombudsman Commission may investigate a complaint of discrimination in employment made by a public servant. However, it is also possible for the Ombudsman to decide not to hear the complaint if the complainant has available to him or her another remedy or channel of complaint that he or she could reasonably be expected to use¹⁴.

If you complain about discrimination to the Ombudsman Commission about discrimination before you have made a complaint under public service laws, it is likely that you will

be referred back to the process under the Public Service General Orders. However, if you have tried that process and believe the process has not been correctly followed, you might consider a complaint about the process to the Ombudsman Commission.

The Ombudsman Commission cannot award compensation and can only recommend improvements to administrative processes. The remedies available to the Ombudsman Commission are confined to procedural arrangements such as to:

- consider the matter further; or
- take certain specific action; or
- modify or cancel any administrative act; or
- alter any regulation or ruling; or
- explain more fully any administrative act; or do any other thing.¹⁵

Public Servants in the Law and Justice Sector may find these remedies useful if they have complaints about the way a disciplinary process was conducted.



¹¹Constitution of the Independent State of Papua New Guinea, section 218. The purposes of the Commission are set out in section 218 of the Constitution, and are for the Commission: (a) to ensure that all governmental bodies are responsive to the needs and aspirations of the people; and (b) to help in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them; and (c) to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies; and (d) to supervise the enforcement of the Leadership Code.

¹²Organic Law on the Ombudsman Commission, section 13.

¹³Constitution section 219 (1) (c) and Organic law on the Ombudsman Commission, Section 22

¹⁴Constitution of the Independent State of Papua New Guinea, section 218. The purposes of the Commission are set out in section 218 of the Constitution, and are for the Commission: (a) to ensure that all governmental bodies are responsive to the needs and aspirations of the people; and (b) to help in the improvement of the work of governmental bodies and the elimination of unfairness and discrimination by them; and (c) to help in the elimination of unfair or otherwise defective legislation and practices affecting or administered by governmental bodies; and (d) to supervise the enforcement of the Leadership Code. Organic Law on the Ombudsman Commission, section 13.

¹⁵Constitution section 219 (1) (c) and Organic law on the Ombudsman Commission, Section 22

¹⁶Organic Law on the Ombudsman Commission, section 16(3)(c)

¹⁷Organic Law on the Ombudsman Commission, Section 22

6.2. Industrial Relations Commission

At the time of writing this Guide, the Department of Labour and Industrial Relations were considering a draft Industrial Relations Bill. If passed, this law will considerably advance existing rights in relation to gender and discrimination. One of its objects is the prohibition of discrimination in employment on the basis of race, colour, sex, sexual orientation, age, disability, marital status, family responsibilities, pregnancy, religion, political opinion, actual or perceived HIV status, national extraction or social origin.

The Act prohibits discrimination on any of these grounds, requires equal remuneration for work of equal value and includes sexual harassment in the definition of discrimination. Powers are given to the Industrial Relations Commission to order the making of compensation, including punitive damages, against a person (including a governmental body) who is in breach of the Act. Individual claims and representative claims are allowed. The Commission must refuse to certify an agreement containing provisions which are discriminatory.¹⁶

The new Industrial Relations Bill, if passed, will also repeal the *Public Services Conciliation and Arbitration Act*.



¹⁶Industrial Relations Bill, Clause 216(5)(b)

6.3. Constitutional
challenge

This option is not seriously recommended for ordinary public servants, but may be a very useful mechanism for a test case funded by a civil society group, Non Government Organisation or other donor.

The Constitution recognises “equality of citizens” and contains the acknowledgement that all citizens have the same rights, privileges, obligations and duties irrespective of their gender.¹⁷

The Constitution guarantees freedom of choice of employment¹⁸ in any calling for which a person has the qualifications (if any) lawfully required.¹⁹ Provision is made for enforcement of guaranteed rights and freedoms in the Supreme Court or the National Court on the application of any person who has an interest in the protection and enforcement of the right in question. Amongst other relief, a person may be awarded exemplary damages for any infringement of rights or freedoms.²¹

To access your rights in a challenge to an exercise of power based on the argument that it is unconstitutional, you would need help. You would need to retain a lawyer to help you issue a summons to begin court proceedings. This can be an expensive process. It may be that some civil society organizations may be willing to pay your legal costs and mount a constitutional challenge, if the issue you raise is considered representative of issues faced by many women in the public service. This option is better used for test cases and would not be readily accessible to ordinary Papua New Guineans.



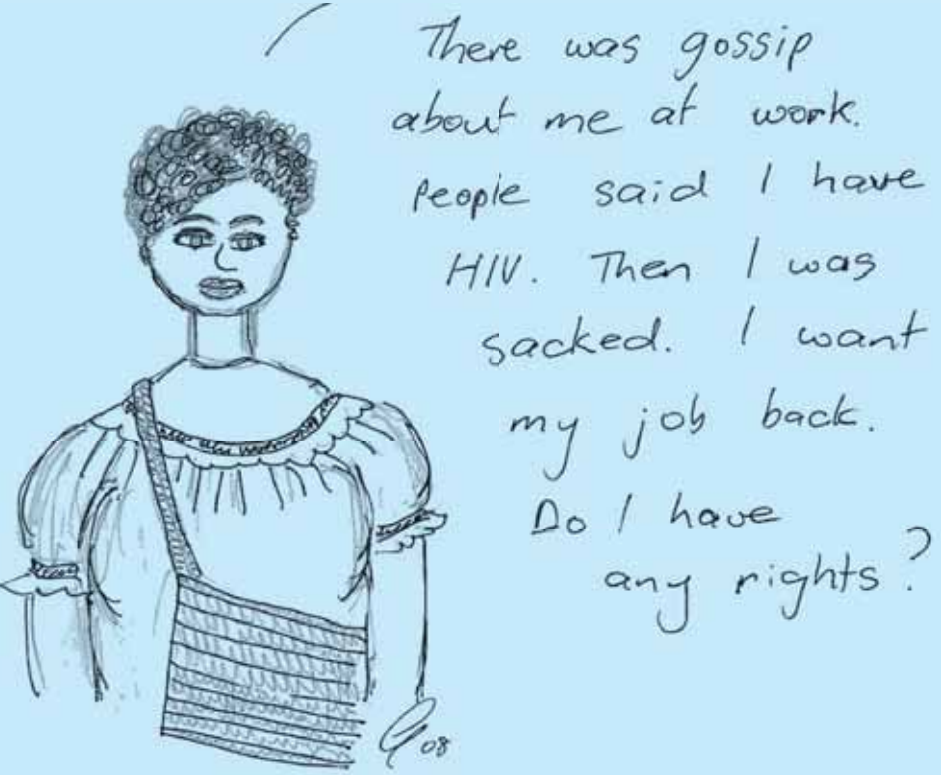
¹⁷Section 55 Constitution of the Independent State of Papua New Guinea 1975
¹⁸Section 48, Constitution of the Independent State of Papua New Guinea 1975
¹⁹Section 38, Constitution of the Independent State of Papua New Guinea 1975
²⁰Constitution section 57.
²¹Constitution section 58

6.4. What about
discrimination and HIV?

If you believe you have suffered discrimination based on:

- your HIV status; or
- a presumption that you are infected which may be correct or incorrect; or
- the fact that that you are associated with an infected person such as a spouse, child or wantok, or
- the fact that you are presumed to be associated with someone presumed to have HIV; you have rights under the HIV/ AIDS Management and Prevention Act. This Act forbids discrimination or stigmatization based on the HIV status of a person infected or affected by HIV. You cannot be asked to divulge your HIV status or to take a test for HIV.²²

If you want to complain about discrimination or another matter related to your HIV status or that of someone associated with you, you may complain under the public service complaints process set out in this Guide.



²²Section 14 HIV/AIDS Management and Prevention Act

6.4.1 Complaining to the Ombudsman Commission under the HAMP Act

You may also complain to the Ombudsman Commission under the discriminatory practices jurisdiction.

The Ombudsman Commission cannot award compensation²³ and decisions cannot be reviewed. While legal representation is not necessary, the resources and coverage of the Ombudsman Commission do not stretch throughout PNG. The Ombudsman Commission has regional offices for Southern (Port Moresby), Momase (Lae), Highlands (Mt. Hagen) and Islands (Kokopo/Rabaul).

The remedies available to the Ombudsman Commission are confined to procedural arrangements such as to:

- *consider the matter further; or*
- *take certain specific action; or*
- *modify or cancel any administrative act; or*
- *alter any regulation or ruling; or*
- *explain more fully any administrative act; or do any other thing.*²⁵



6.4.2 Taking action in the District or National Court under the HAMP Act

You may also take an action for relief in the District or National Court under the *HIV/AIDS Management and Prevention Act*. Relief may include²⁶:

- a declaration that the act complained of is unlawful;
- an order that the act is not to be repeated or continued;
- a declaration that an act similar to the act complained of is not to be performed in future;
- an order for apology or retraction;
- an order for damages by way of compensation for any loss, damage or injury to feelings suffered by reason of the act complained of;
- an order for payment of punitive or exemplary damages;
- an order for provision or restoration of access, admission, readmission or reinstatement to the place, facility, situation, workplace or institution from which the person the object of the act complained of has been excluded, ejected or dismissed;
- an order for employment, re-employment, promotion or restoration of benefits;
- an order for provision of or restoration of access to a means of protection from infection by HIV;
- an order for the performance of any reasonable act or course of conduct to redress any loss or damage suffered by reason of the unlawful act;
- an order declaring void in whole or in part, either ab initio or from such date as may be specified in the order, any contract or agreement made in contravention of this Act;
- a declaration that the termination of a contract or agreement should be varied to redress any loss or damage suffered by reason of the termination;
- a declaration that it would be inappropriate for any further action to be taken in the matter.



To take court action, you will need to retain a lawyer to help you draft the necessary court documents and so you will need to be able to pay for legal assistance.

If you cannot pay, legal assistance may be possible through the Office of the Public Solicitor. The Office of the Public Solicitor does provide legal assistance to people entitled to legal aid seeking civil assistance in all courts. The Office also has a constitutional obligation to provide assistance in criminal cases. Assistance in civil cases will be considered depending on the capacity of the Office at the time of the application.

The Office of the Public Solicitor may be contacted on 325 8866.



²³Organic Law on the Ombudsman Commission, Section 22

²⁴Organic Law on the Ombudsman Commission, Section 24

²⁵Organic Law on the Ombudsman Commission, Section 22

²⁶Section 29 HIV/AIDS Management and Prevention Act

7. Applying for leave relevant to parents, carers of children and breastfeeding mothers

7.1. What kinds of leave are available in the Public Service?

As an employee of the Public Service you are entitled to many different kinds of leave, both paid and unpaid. This includes recreation leave, maternity leave, sick leave, emergency or compassionate leave and study leave. All leave decisions are required to be in accordance with the General Order on Leave Entitlements.²⁷

7.2. Who is responsible for making decisions about leave applications?

The departmental head is responsible for administration of leave entitlements. The actual decision will be made by a person delegated with that responsibility by the departmental head. This is usually the human resources manager within an area.

7.3. Can men get paternity leave?

Yes. A departmental head may grant up to 10 days paid leave (in a 12 month period) for paternity leave. A man who wishes to take paternity leave must submit a formal application prior to taking leave, setting out the period of paid leave and the reason the paid leave is sought.²⁸



7.4. I am going to have a baby. What kind of maternity leave is available to me?

You can apply for up to 12 weeks leave: 6 weeks prior to the anticipated birth of the baby, and six weeks immediately following the date of birth.²⁹ You cannot come back to work earlier than 6 weeks following the baby's birth. There are specific provisions dealing with how your leave and pay will be calculated in the General Order on Leave Entitlements.³⁰ Prior to the birth, you may be paid either using sick leave credits. Sick leave credits accrue during public service employment, so depending on how long you have been working and how much sick leave you have accumulated, you may be able to have the entire six weeks as sick leave.

If you have not been working long, or have used your sick leave and have no credits available or insufficient credits six weeks sick leave, you will receive leave without pay for up to six weeks (to count as service).

Following the birth, you are entitled to six weeks maternity leave with full pay.



7.5. Can I have more than six weeks leave after the birth of my baby?

If a medical practitioner certifies that you are unfit to resume duty due to illness resulting from the birth, you may be granted additional leave. (If a medical practitioner is not available, a medical statement from an APO or HEO will be acceptable.³¹) You will need to utilise sick leave credits during this time.³² If you have no sick credits or have used them for maternity leave prior to the baby's birth, this further leave will be taken as leave without pay.

²⁷General Order Number 9.

²⁸GO 9.13.

²⁹GO 9.72.

³⁰GO 9.75 – 0.78.

³¹GO 9.78.

³²GO 9.79.

7.6.**Is there any other way I can extend my leave?**

Accrued recreation leave may be able to be taken to extend maternity leave.³³ Public Servants are entitled to 15 days in each twelve month period. If all entitlements are not taken in one year, entitlements accrue up to a maximum of 37.5 days plus public holidays. Applications for recreation leave are to be made two months in advance and submitted to the departmental head through the relevant supervisor.³⁴

The departmental head has discretion to grant an employee up to 12 months leave without pay. Only one period of leave without pay may be granted to an employee in any 24 month period.³⁵ This option is only available to employees who hold permanent positions within the public service.³⁶

Compassionate leave of up to ten days within a twelve month period is also available in limited circumstances such as the serious illness of the baby.³⁷



³³GO 9.17
³⁴GO 9.19

³⁵GO 9.121(c).
³⁶GO 9.121.



³⁷GO 9.12
³⁸GO 9.80 and 9.81.
³⁹GO 9.73.
⁴⁰GO 9.74.

**7.7.****What can I do about time to breastfeed my child?**

You can receive permission to take leave of up to one hour, twice a day, up to six months after the birth of your baby, for breast feeding. Leave for this is granted with pay, and will not affect continuity of service.³⁸

7.8.**I am adopting a child. Am I entitled to leave?**

When you adopt an infant you are entitled to six weeks leave immediately following the date of adoption.³⁹ There are some specific provisions about this: the adoption must be certified by a medical practitioner to be a newborn infant, and you must complete a statutory declaration certifying that you have adopted the infant in accordance with law. You will need, within 6 months of the infant's birth, to get either a local court or National Court certificate stating that the adoption has taken place in accordance with the law.⁴⁰



7.9. I have a sick child. Can I get leave to take care of her?

You can apply for up to 10 days paid leave for a number of reasons, including serious illness or death of your spouse, children (including legally adopted children), parents or your spouse's children.⁴¹ You can also apply for emergency leave for urgent personal reasons.⁴²

7.10. What steps do I need to take to apply for any of the leave discussed in this Guide?

This is a multi-step process, and is set out fully in General Order Number 9.⁴³ You will need to complete a leave form and attach supporting documentation (such as a certificate from your doctor.) For more detailed information, contact your department's human resources officer. You should apply for leave well in advance, to allow time for the request to be processed.



7.11. Where do I find the necessary leave forms?

All leave forms may found on the website of the Department of Personnel Management at <http://www.dpm.gov.pg/>. Follow the prompt for "General Orders" and you will find copies of General Orders, Schedules and Forms.

7.12. Where do I find copies of PNG Laws?

Most PNG laws can be found on the website www.paclii.org. This is an excellent resource for laws, treaties and journal articles relevant to PNG and other Pacific countries.



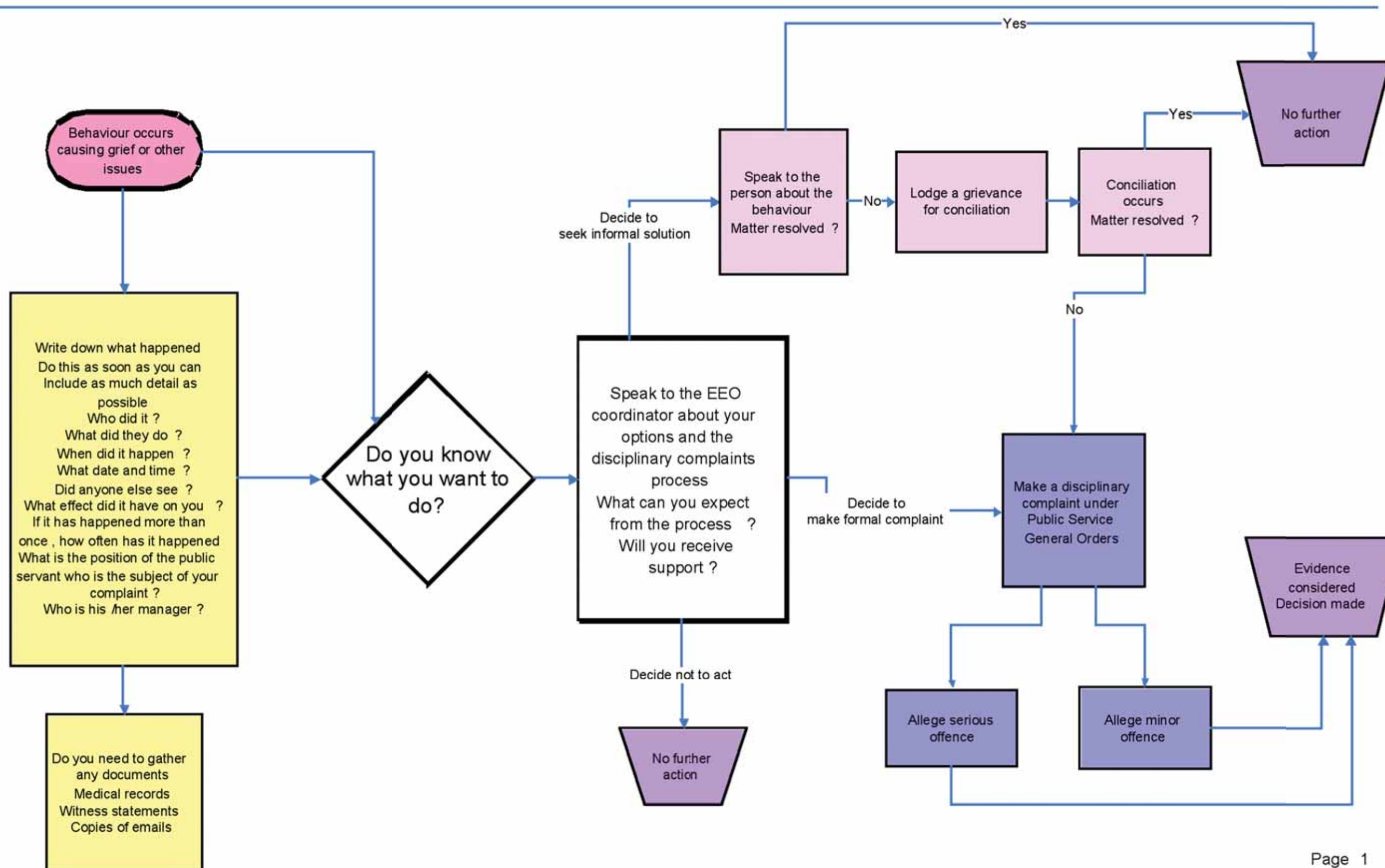
⁴¹GO 9.12.

⁴²GO 9.12 (c).

⁴³Administrative steps are set out in Part 5.

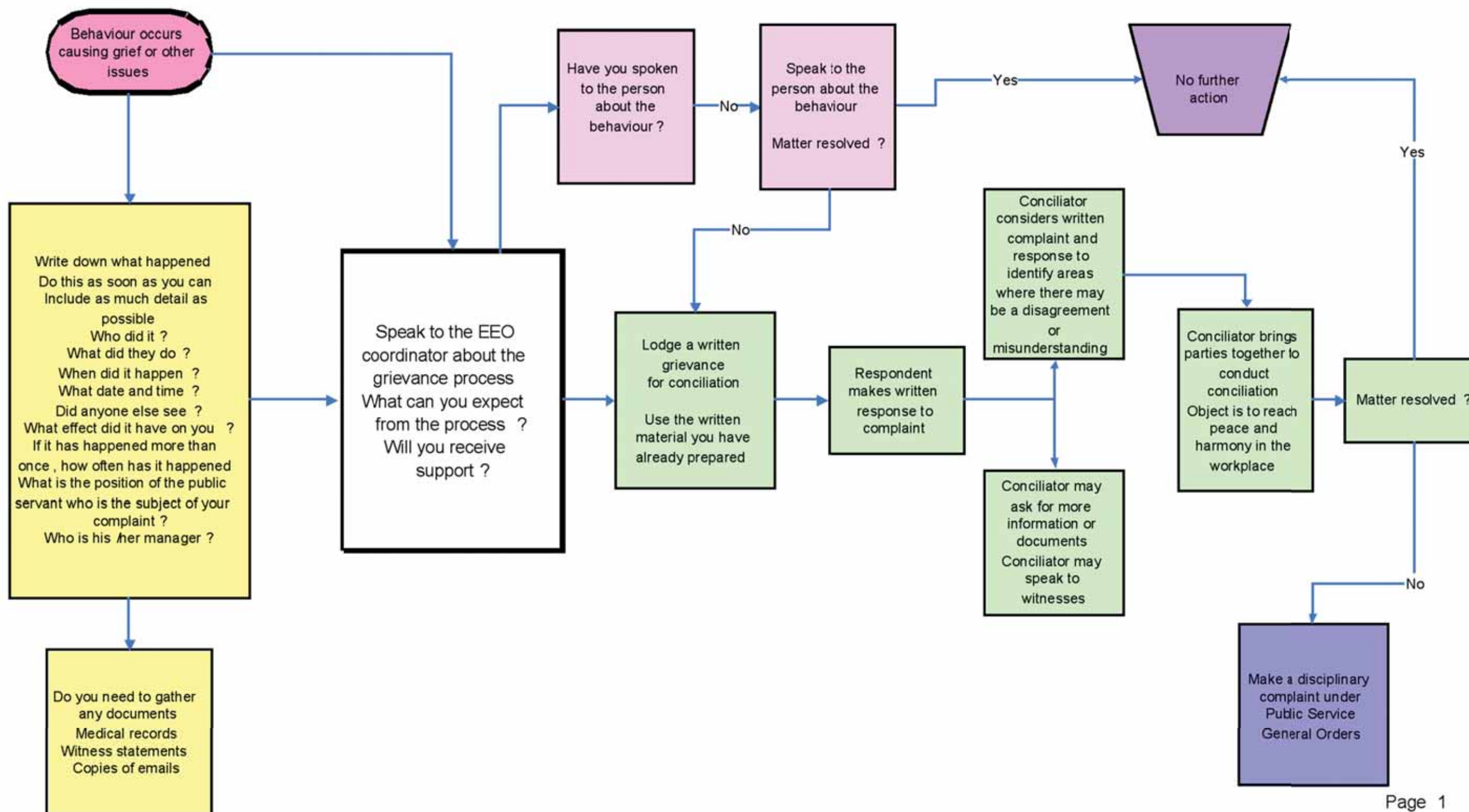
How do I decide whether to make a complaint?

Schedule 1



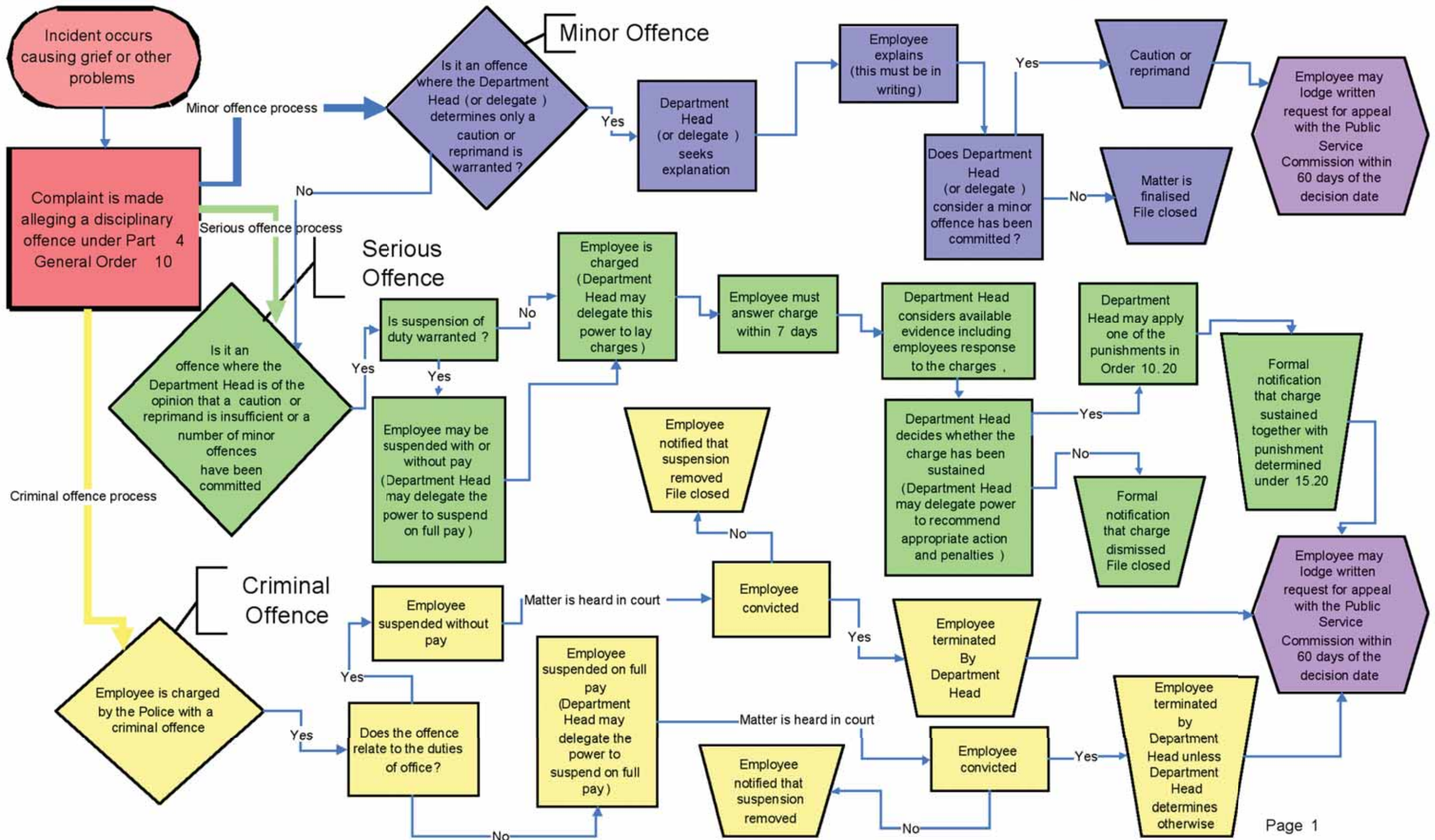
Process for conciliation of a grievance

Schedule 2

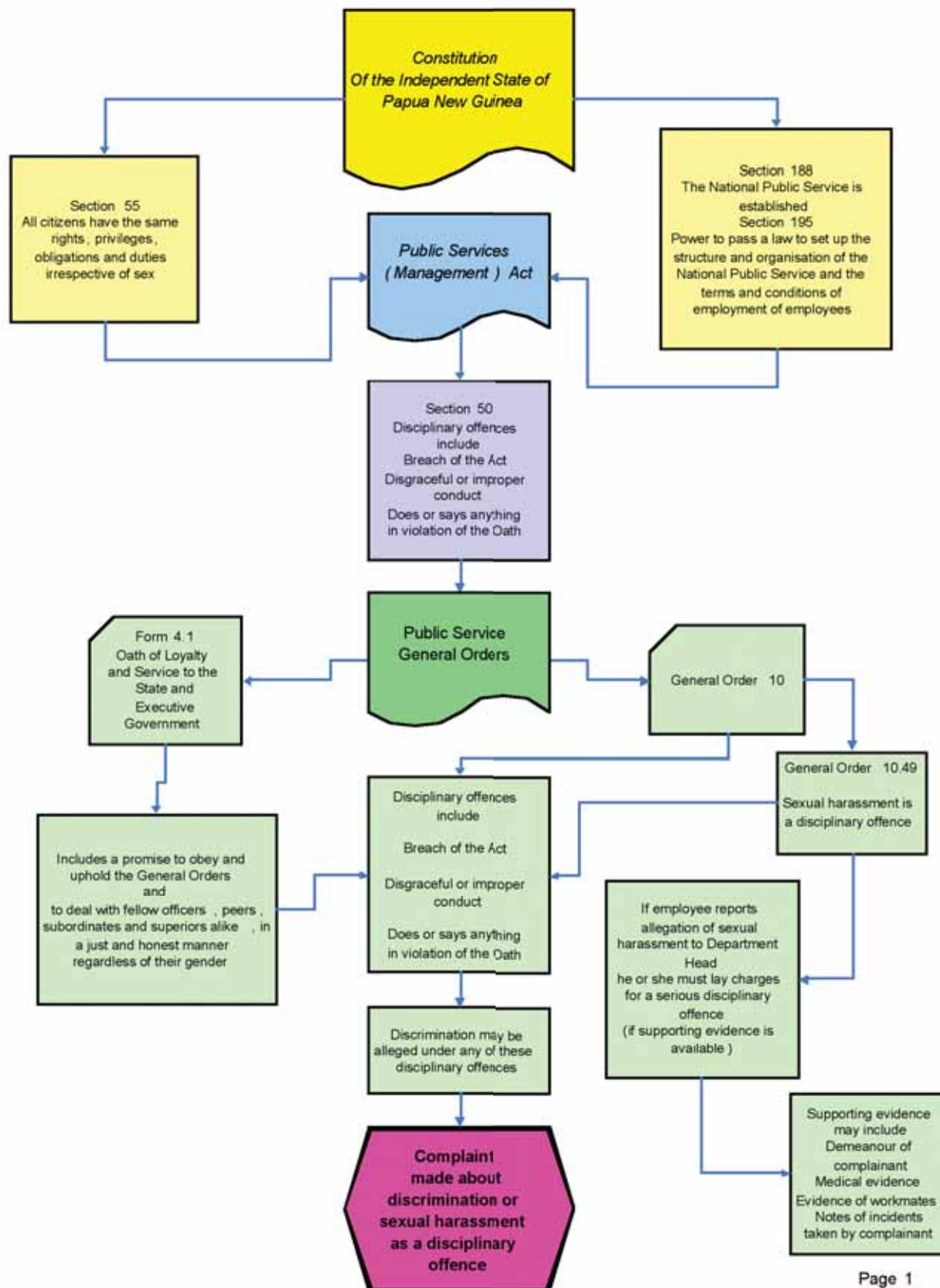


Discipline Process

Schedule 3



How discrimination and sexual harassment fit into disciplinary offences under the *Public Services (Management) Act* and General Orders Schedule 4



Schedule 5 - Disciplinary offences.

An officer who—

- (a) commits a breach of the Public Services (Management) Act; or
- (b) except as authorized in the course of official duty, does or divulges, directly or indirectly, any confidential information concerning public business or any matters of which he has official knowledge; or
- (c) except with the consent of the Head of State, acting on advice, or of an officer authorized for the purpose by the Head of State, acting on advice, publicly comments on administrative action or the administration of a department; or
- (d) wilfully disobeys or disregards a lawful order made or given by a person having authority to make or give it; or
- (e) is negligent or careless in the discharge of his duties; or
- (f) is inefficient or incompetent from causes within his own control; or
- (g) uses intoxicating liquors or drugs to excess; or
- (h) solicits or accepts a fee, reward, gratuity or gift in connection with the discharge of his official duties (other than his official remuneration); or
- (i) is guilty of disgraceful or improper conduct in his official capacity or otherwise; or
- (j) having taken an oath or made an affirmation in the form in Schedule 1, of the Public Services (Management) Act does or says anything in violation of it; or
- (k) seeks the influence or interest of any person in order to gain promotion, transfer or other advantage; or
- (l) supplies to another officer, for use for any purpose referred to in Paragraph (k), a certificate or testimonial relating to official capacity or the performance of official duties, is guilty of a disciplinary offence and is liable to be dealt with and punished.

