

# Suspension directive

Directive: 16/20

Effective date: 25/09/20

## 1. Purpose

1.1 This directive:

- (a) outlines the procedures relating to suspension
- (b) details the periodic reviews of suspension matters
- (c) establishes natural justice considerations, including requirements about providing reasons for decisions about suspensions
- (d) describes the circumstances in which a chief executive may decide a public service employee is not entitled to normal remuneration during their suspension
- (e) details the circumstances in which an employee suspended without remuneration may be reimbursed for remuneration they do not receive during suspension after a determination on discipline penalty is made.

1.2 This directive supports the *Public Service Act 2008* (PS Act) requirements relating to suspension. Suspension is an administrative action, taken for administrative necessity. It is not disciplinary action and is not to be used as a form of punishment. Suspension should be used as a last resort after a decision maker considers all alternative duties prior to making the decision to suspend an employee.

## 2. Authorising provisions

This directive is made pursuant to sections 53 and 137A of the PS Act.

## 3. Application

3.1 This directive, where indicated, applies to public service officers as defined in section 8 of the PS Act, and where otherwise indicated applies to public service employees as defined in section 9 of the PS Act.

3.2 This directive applies to the following entities (each entity being an “agency” for this directive) and their employees:

- (a) departments
- (b) public service offices listed in Schedule 1 of the PS Act
- (c) an entity declared to be a public service office under a regulation and where the regulation applies this directive to the entity (sections 22-23 PS Act).

3.3 Section 52 of the PS Act outlines the relationship between a directive and industrial instrument including how to deal with inconsistencies.

# Directive

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## 4. Principles

- 4.1 Suspending an employee should not be the automatic or default position. The PS Act requires that before suspending an employee, the chief executive must consider all reasonable alternatives, including alternative duties, a temporary transfer, or another alternative working arrangement, that is available to the employee.
- 4.2 Suspension decisions are to be made fairly:
  - (a) Natural justice is required in relation to a suspension without normal remuneration
  - (b) Natural justice is not required in relation to a suspension with normal remuneration.
- 4.3 Whether it is more appropriate to suspend an employee, or to direct them to undertake alternative duties or another alternative working arrangement will depend on the circumstances and facts in each case.
- 4.4 Under the *Human Rights Act 2019*, decision makers have an obligation to act and make decisions in a way that is compatible with human rights, and when making a decision under this directive to give proper consideration to human rights.

## 5 Suspension considerations

### 5.1 Suspension

- (a) Section 137 of the PS Act provides that the chief executive of a department may, by notice, suspend a person from duty if the chief executive reasonably believes:
  - (i) for a public service officer—the proper and efficient management of the department might be prejudiced if the officer is not suspended
  - (ii) for a public service employee—the employee is liable to discipline under a disciplinary law.
- (b) Section 137(2) provides that the suspension notice must state:
  - (i) when the suspension starts and ends
  - (ii) whether the person is entitled to remuneration for the period of the suspension; and
  - (iii) the effect that alternative employment may, under subsection 137(5), have on any entitlement to remuneration.

Suspension notices must state an end date or express the period of the suspension in terms of a specified number of weeks or months. It is not sufficient to state that suspension will end by reference to events, such as ‘until this disciplinary process is finalised’, or to state that the suspension will continue until ‘otherwise determined’.

- (c) Section 137(8) provides that the chief executive may cancel a suspension at any time.

### 5.2 Obligation to consider all reasonable alternatives

- (a) Section 137(3) of the PS Act provides that a chief executive must consider all reasonable alternatives before suspending an employee.



- (b) The alternative duties do not have to form part of an established role and can be outside the employee's usual place of work.
- (c) Employers are required to document and provide to the employee what duties or other options had been identified and considered, including any reason why the employee could not undertake those alternative options. This could include:
  - (i) temporary transfer to alternative duties (either in the employee's workplace or at another workplace)
  - (ii) directing the employee to work under close supervision or with another employee
  - (iii) asking the employee if they wish to access accrued recreation and/or long service leave (access to accrued leave is at the discretion of the employee).

## 6. Suspension without remuneration

- 6.1 Section 137(4) of the PS Act provides that the chief executive may decide that normal remuneration is not appropriate during a period of suspension where the employee is a public service employee liable to discipline.
- 6.2 A decision that normal remuneration is not appropriate during the suspension will usually occur after a period of suspension with remuneration but may be made from the start of the suspension.
- 6.3 In deciding that normal remuneration is not appropriate, the factors the chief executive is to consider include:
  - (a) the nature of the discipline matter
  - (b) any factors not within the control of the agency that are preventing the timely conclusion of the discipline process
  - (c) the public interest of the employee remaining on suspension with remuneration.
- 6.4 A decision to suspend an employee without remuneration is subject to the principles of natural justice. Natural justice is the right to be given a fair hearing and the opportunity to present one's case, the right to have a decision made by an unbiased or disinterested decision maker and the right to have that decision based on logically probative evidence<sup>1</sup>. As part of the suspension process:
  - (a) The employee must be given the opportunity to respond to the proposed suspension without remuneration prior to the decision being made by the delegate. This can occur through a 'show cause' process at the time of notification of the initial suspension on normal remuneration, or at any subsequent stage during the suspension.
  - (b) The employee is to be provided with written notice, including the particulars required by section 137 of the PS Act, and reasons for the decision that suspension is without normal remuneration.

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<sup>1</sup> *Salermi v MacKellar (No 2)* (1977) 137 CLR; 14 ALR 1



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- (c) The chief executive must provide the employee with a minimum of 7 days from the date of receipt of a show cause notice to consider and respond to the notice, having regard to the volume of material and complexity of the matter. The chief executive may grant, and must consider any request for, an extension of time to respond to a show cause notice if there are reasonable grounds for extension.
  - (d) If the employee does not respond to a show cause notice or does not respond within the nominated timeframe in clause 6.4(b) and has not been granted an extension of time to respond, the chief executive may make a decision on grounds based on the information available to them.
- 6.5 A public service employee may appeal a decision to suspend without normal remuneration. An appeal is made to the Queensland Industrial Relations Commission (QIRC) and further information can be found in their Appeals Guide.
- 6.6 An employee must be reimbursed for remuneration the employee does not receive during the employee's suspension if a decision on discipline has been made that does not result in termination of their employment.
- 6.7 The amount to be reimbursed is the employee's normal remuneration at the date of suspension without pay for the period the employee was suspended:
- (a) taking into account any increase due to certified agreements or rulings made in State Wage Cases, but
  - (b) less any amounts of paid leave taken by the employee during a period of suspension.
- 6.8 An employee who ceases employment prior to a decision on discipline being made is not entitled to reimbursement.
- 6.9 Any amount earned by the employee from alternative employment the employee engaged in during the period of suspension must be deducted from the amount repaid to the employee under 6.7 above, unless:
- (a) the employee was engaged in the employment at the time of the suspension, and
  - (b) the employee, in engaging in the employment, was not contravening:
    - (i) the PS Act, or
    - (ii) a standard of conduct applying to the employee under an approved code of conduct or standard of practice under *the Public Sector Ethics Act 1994*.
- 6.10 If the employee was not available to work during the period of suspension for reasons other than being suspended (for example, due to being detained in a corrective services facility), then the amount repaid to the employee must be less the total number of days that the employee was not available to work during the period of suspension.



## 7. Communication and support of suspended employee

- 7.1 Agencies need to have ongoing and clear communication with the employee, both throughout the suspension process and immediately before returning to work. This will assist in clarifying the employer's expectations for the employee and help in the situation where an employee needs to be reintegrated into the workplace. An appropriate contact person may be assigned to perform this function.
- 7.2 The employee should also be offered support on an ongoing basis whilst on suspension (for example, referral to an employee assistance program, participation in a mentoring process with a third party, or other invitations to access support).

## 8. Periodic review of a suspension

- 8.1 This section applies to a work performance matter, other than a corrupt conduct matter.
- 8.2 A chief executive is expected to resolve the matter giving rise to a suspension in a timely way.
- 8.3 A suspension commences when a chief executive writes to the subject employee to inform them that they are suspended (usually a notice of suspension with remuneration and a show cause notice for suspension without remuneration, where applicable).
- 8.4 A suspension may be extended by the chief executive, following review:
  - (a) at six months by an independent decision maker in the agency
  - (b) at nine months by the chief executive
  - (c) at 12 months:
    - (i) for employees of the department responsible for health, in accordance with section 62(2) of the PS Act, by the chief executive of that department
    - (ii) for employees of the department responsible for education, in accordance with section 62(2) of the PS Act, by the chief executive of that department
    - (iii) for employees of all other agencies, by the Commission Chief Executive (CCE).
  - (d) at 18 months by the CCE, and every three months thereafter.
- 8.5 The review must consider whether the suspension should be cancelled or continued having regard to the considerations for suspension in section 137 of the PS Act and this directive.
- 8.6 A suspension should remain in place while the review is completed.
- 8.7 The findings of the review must be communicated to the employee and, where the suspension is continued, the chief executive must provide notice of the suspension to the employee as required by section 137 of the PS Act and this directive.



## 9 Suspended employee may ask Public Service Commission for review of suspension procedure

- 9.1 This section applies to a work performance matter, other than a corrupt conduct matter.
- 9.2 A suspended employee may ask the Public Service Commission to conduct a review of a suspension procedural aspect of the agency's handling of a work performance matter, provided:
- (a) the suspended employee reasonably believes the chief executive has not complied with this directive
  - (b) the suspended employee has utilised internal review procedures under the directive on individual employee grievances
  - (c) having utilised the procedures at clause 9.2(b) the suspended employee is dissatisfied with a decision made following the internal review, and
  - (d) a decision has not been made for the work performance matter that the suspended employee may appeal under chapter 7, part 1 of the PS Act.
- 9.3 The suspended employee must request the review in writing.
- 9.4 The request under clause 9.3 must address the eligibility for review under clause 9.2 and include:
- (a) a clear statement of how the employee believes the agency has not complied with this directive; and
  - (b) the action the employee seeks from the review.
- 9.5 On receiving the request, the Public Service Commission may, but is not required to, conduct a review contemplated in section 88IA of the PS Act, and may but is not required to give the chief executive a report on the review.
- 9.6 The CCE must provide a written decision to the subject employee, along with reasons for the decision, including when the CCE decides not to conduct a review under clause 9.5.

## 10 Appeal rights

- 10.1 An employee suspended without remuneration may appeal a suspension without remuneration decision (section 196(bb) of the PS Act).

## 11 Transitional arrangements

- 11.1 Provisions relating to periodic reviews under clause 8 and provisions relating to reviews requested by a suspended employee under clause 9 apply to work performance matters that commence after the commencement date of this directive.

## 12 Definitions

**Agency**—see application section

**Work performance matter** means a matter involving a public service employee's work performance or personal conduct, including, for example, an allegation against the employee that constitutes or would, if proved, constitute a disciplinary ground.



## 13 Related resources and reference materials

This material does not form part of the directive but may assist in the interpretation and application of the directive and may be considered by decision makers.

- Chapter 3, Part 6 (Functions of commission relating to work performance matters) and section 137 (Suspension) of the PS Act are relevant provisions for suspension.
- PSC [Managing employee suspensions](#)
- [Commission chief executive guideline: discipline](#) template letters
- [Find Resources about managing employees](#) in the Queensland Government
- QIRC information about [public service appeals](#)

