

Commission Chief Executive Guideline 01/13: Discipline

1. PURPOSE:

This Guideline is an aid to managing disciplinary processes under the *Public Service Act 2008* (PSA), Chapter 6 ('Disciplinary action for public service employees and former public service employees'). This Guideline is to be used as an adjunct to (that is, not instead of) the PSA. Its purpose is to only provide guidance. It does not bind or substitute for decision makers needing to properly exercise their managerial discretion in line with the PSA, in response to the unique set of facts of each actual case.

This Guideline highlights that a disciplinary process is not a substitute for management action and the need for managers to undertake early intervention to address unacceptable conduct. An early conversation, even in the context of a likely disciplinary process, provides the best hope for:

- the cessation of unacceptable conduct,
- early resolution,
- preserving working relationships, and
- avoiding an unnecessary and disproportionately protracted dispute.

This Guideline also recognises that there will be occasions when it will be necessary and appropriate for managers (or other delegate) to commence and complete a disciplinary process, and if circumstances warrant it, the process may result in a decision to dismiss the employee.

2. EFFECTIVE DATE:

21 March 2013¹

3. SUPERSEDES:

Discipline Guideline (issued 2 November 2009)

4. LEGISLATIVE AUTHORITY:

Sections 53(c) and Chapter 6 of the *Public Service Act 2008* (PSA).

5. APPLICATION:

This guideline applies to public service employees and their chief executives (and delegates) in relation to actions and decisions made under Chapter 6 of the PSA.

The guideline must be considered by, but does not bind, those to whom it applies.

¹ Note that minor amendments were made to schedules 8, 9 and 10, and relevant links updated, on 5 October 2016.



6. WHAT THIS GUIDELINE COVERS

- Legislative basis including application and reach provided by PSA - especially Chapter 6 (noting s190)
- Steps in the disciplinary process, including initial enquiries, show cause processes, making discipline findings and determining and implementing discipline action
- How the disciplinary process differs for 'former employees' of the organisation
- Pro-forma letters for key decision points in the suspension and discipline process. The pro-forma letters contain information in support of the processes set out in the body of the guideline.
- Supporting information, from notable appeals cases is also referenced e.g. Notable Case A7415 'Unacceptable length of time for discipline decision resulted in reduction in discipline action'².

7. WHAT THIS GUIDELINE DOES NOT COVER

- Performance management
- Managing unacceptable conduct or unsatisfactory (work) performance³
- Management action
- Suspension that is independent of the disciplinary process (that is, under s137 of the PSA)
- Discipline appeals process
- Managing parallel processes in other jurisdictions

8. RELATED INFORMATION:

- *Public Service Act 2008* (in particular Chapter 6)
- The Directives relating to:
 - Post Separation Discipline
 - Managing Employee Complaints
 - (Complaints Management Systems
- Appeals Guide
- *Public Sector Ethics Act 1994* (PSEA)
- Code of Conduct for the Queensland Public Service
- PSC Appeal Decision - Notable Case A7401 'Discipline vs management action'⁴

² <https://www.qld.gov.au/gov/file/24701/download?token=rCRj5z2B>

³ While unacceptable conduct or unsatisfactory performance may give rise to a discipline process, this guideline does not deal with managing these situations through alternative means, such as performance improvement processes.

⁴ <https://www.qld.gov.au/gov/file/11981/download?token=fL2-uCJg>

GUIDELINE:

9. How the *Public Service Act 2008* applies to a discipline matter

- 9.1. The PSA, Chapter 6 provides the framework for disciplining public service employees. It sets out the grounds on which disciplinary findings may be made (s187) and lists (non-exhaustively) examples of disciplinary action that may be taken against a public service employee (s188), a former public service employee (s188A) and a former ambulance service officer or former fire services officer (s188AB).
- 9.2. Where no alternative duties are available for an employee likely to be subject to a disciplinary process, (and on the assumption that remaining in their current position would not be viable) the PSA provides for the employee to be suspended (s189).
- 9.3. The PSA expressly states that in disciplining and suspending an employee, there must be compliance with the PSA (overall⁵), relevant directives and natural justice principles (other than when suspending on normal remuneration)(s190).
- 9.4. While the PSA provides for a disciplinary process, managers are still responsible for taking early intervention whenever possible and for proactively managing the conduct of all their employees in the context of performance development generally and performance improvement initiatives when required.

10. Steps in the disciplinary process – overview

- 10.1. The following steps form the disciplinary process
 - Step 1: Initial enquiries and considerations
 - Step 2: Determining whether or not to proceed with a formal disciplinary process
 - Step 3: Show cause process for allegations (if yes to above)
 - Step 4: Decision on disciplinary finding(s)
 - Step 5: Show cause process (if disciplinary action proposed following a disciplinary finding)
 - Step 6: Decision on disciplinary action

11. Step 1: Initial enquiries and considerations

- 11.1. Following the receipt of a complaint / allegations, the agency needs to determine who the decision maker will be in the process (a file copy of the (relevant part of the) instrument of delegation should be retained by the decision maker). The decision maker should be clear about what decision they are making and what authority they have to make the decision.
- 11.2. The decision maker should conduct a preliminary assessment to determine the most appropriate response. The decision maker's assessment of the appropriate response may change if / as further information becomes available.
- 11.3. The decision maker should:
 - (a) decide if the allegations have application/obligations under other legislation and any implications for departmental processes as a result. For example as a public interest disclosure under the Public Interest Disclosure Act 2010 (PIDA), whether they attract mandatory reporting under the

⁵ Not only the provisions dealing with discipline (Chapter 6).

*Crime and Corruption Act 2001*⁶ or the Queensland Police Service⁷, or obligations set out in the Code of Conduct⁸ issued under the PSEA.

- (b) consider whether / what further information is required and how this information should be obtained (for example, through discussion with the employee or an investigation – see below)
 - (c) consider if management action is the best response or whether the matter warrants commencing a disciplinary process. The decision maker may need further information before making this determination. Where applicable, identify why the disciplinary process is more appropriate, for example;
 - (i) the potential educative benefits of management action will be insufficient on their own
 - (ii) the serious nature of the allegations (including the impact on stakeholders) warrants starting one
 - (iii) an effective deterrent is required because it is not the employee's first breach, management action has been taken previously, or a previously completed 'management of poor performance process' has failed to result in improved conduct overall; or
 - (iv) not commencing a disciplinary process would have a negative impact on the work unit/workforce generally.
 - (d) consider whether it is necessary for the employee who is subject to the allegations to be removed from their current role on grounds of customer or worker health and safety, financial risk or public interest. Information about the consideration of suspension is set out below at section 11.8.
- 11.4. In determining the appropriate approach, the decision maker should also look to ensure that resources to be expended in the proposed response are proportionate to the seriousness of the matter.
- 11.5. Generally, a face-to-face meeting with the employee who is subject to the allegations should be arranged as early as possible to discuss the allegation(s) and provide them copies of relevant material (for example, a report, a letter detailing the complaint / allegations or a show cause letter) and explain their meaning and purpose.⁹ More than one meeting may need to occur depending on the process adopted. An employee should be offered the opportunity to bring a support person to such a meeting.
- 11.6. The decision maker may nominate a case manager. The role of the case manager is to provide support to the decision maker, by providing advice and assistance (e.g. in drafting correspondence).
- 11.7. To assist the employee, a contact officer¹⁰ (independent of the work unit and the decision making process) can be nominated at this point. The role of the contact officer is to provide the employee who is subject to the allegations with information about the discipline process, such as the steps involved and the role of a support person, and to act as a point of liaison for any queries to the decision

⁶ <http://www.ccc.qld.gov.au/corruption/report-corruption/how-to-report-corruption>

⁷ Decision makers need to consider whether the allegations trigger mandatory reporting to the Queensland Police Service or whether it is a discretionary decision to do so. In cases of the latter, decision makers should consider the seriousness of the allegations in determining whether a report is required / appropriate.

⁸ i.e. 'to report suspected wrongdoing, including conduct not consistent with the Code' (See Standard of Conduct 1.1(d))

⁹ For example, when clear evidence of inappropriate conduct is available and such conduct is not consistent with the employee's conduct and work history, such that any outcome would not be termination, a possible scenario would see the manager have a face-to-face meeting with the employee, discuss the matter and the likely outcome and encourage a quick finalisation of the matter as an alternative to the disciplinary process, such as a letter providing a warning that further inappropriate conduct would likely lead to discipline.

¹⁰ Where it is unreasonable to appoint a separate contact officer (e.g. because of the agency's size), the agency should ensure steps are put in place to provide the employee with access to the information the contact officer would otherwise provide.

maker/investigator. The employee subject to the allegations may also request the contact officer to act as an intermediary with colleagues, where the employee believes the colleagues may be able to provide information relevant to the employee's response. The contact officer's role is to convey the request – it is not to instruct or otherwise influence the provision of information by the colleagues. The agency must clearly communicate the contact officer's role, including its limitations, to the employee. It is also not the role of the contact officer to advocate for any party (including providing the employee with advice about the content of their response or the decision maker's likely decision).

11.8. Suspension under section 189 of the PSA

- (a) The PSA allows a chief executive to suspend an employee (with or without remuneration) if it is reasonably believed the employee is liable to discipline¹¹ (i.e. there is information that indicates a ground for discipline may exist – see s187). The requirement for the decision maker to consider all alternative duties that may be available is an absolute obligation under the PSA (s189(2)) and must occur before any suspension, not as an afterthought; suspension should be the last option. In reaching a decision to suspend an employee in the context of a disciplinary process, a record should be kept of the alternative duties considered and the reasons they were deemed unworkable.
- (b) The PSA does not prescribe the factors to consider when determining whether alternative duties are available, however relevant factors for the decision maker to consider *may* include (but are not limited to)¹²:
 - (i) whether the provision of alternative duties will address any risks identified as being associated with the alleged conduct / performance issues if the employee remains in the workplace
 - (ii) the employee's skill set
 - (iii) the availability of duties or meaningful work required to be performed in the current or an alternative location

11.9. Investigation

- (a) The nature of the allegations themselves will inform whether formal investigation is necessary. An early conversation with the employee about their alleged conduct may prevent any need for a formal or informal investigation or disciplinary process.
- (b) If the decision maker considers an investigation is warranted, they then need to determine if an internal or external provider is most appropriate. If the latter, ensure there are probity safeguards and compliance with procurement procedures (for example, establish terms of reference, realistic time frames and availability of required funding).
- (c) Decision makers may wish to consider the CCC's investigation guide 'Corruption in focus: a guide to dealing with corrupt conduct in the Queensland public sector (Formerly "Facing the facts")' when making a decision about an investigation, however it must be noted that this guide is for investigations into allegations of official misconduct. Accordingly, this resource contains comprehensive advice on conducting investigations, including the most complex. Having said this, parts of it have application for less complex investigations.

Link: <http://www.ccc.qld.gov.au/corruption/information-for-the-public-sector/corruption-in-focus>

¹¹ PSA sections 189-192 details comprehensive requirements for suspension as part of the disciplinary process.

¹² See also Notable Appeals Decision: #7451 "Suspension without pay – Mandatory requirement to consider alternative duties

11.10. Confidentiality Considerations

- (a) All participants in a disciplinary process must remain mindful of their ethical responsibilities, including any obligations of confidence that arise. All parties involved in an investigation and/or discipline process should be directed to not discuss the matter in the workplace. Where the employee who is subject to the discipline process might wish to speak with colleagues to assist them in their response to a show cause process, they should approach their contact officer to act as an intermediary on their behalf to oversee and coordinate communications.

11.11. Timeliness

- (a) It is in the interests of all parties that discipline processes are finalised in a timely manner. The attached pro-forma correspondence provide guiding timeframes, however the decision makers need to determine appropriate timeframes based on the particular matter. It is also important that timeframes for decisions in the disciplinary process are appropriately consistent with the timeframes for response provided to employees.

See:

- *schedule three - Pro-forma letter - Show cause on suspension without remuneration*
- *schedule four - Pro-forma letter - Decision on suspension (without remuneration)*
- *schedule five - Pro-forma letter – Decision on suspension (with remuneration)*

12. Step 2: Determining whether to proceed with a formal disciplinary process

- 12.1. During and at the conclusion of any investigation, the decision maker should review their decision about the appropriateness of a discipline process. If the decision maker is satisfied that a discipline process is not required, a decision should then be made as to whether no further action or management action only is the best course of action.
- 12.2. If not already arranged, a contact officer should be appointed if a disciplinary process is to commence/continue.¹³
- 12.3. In some circumstances, when the matter has been referred to/is in the hands of the police, the agency may still continue the disciplinary process. The existence of criminal proceedings (ongoing or finalised) does not prevent a decision maker starting a workplace disciplinary process, making a disciplinary finding on the balance of probabilities (the civil standard of proof) or taking disciplinary action. Whether a disciplinary process should be placed on hold awaiting the outcome of criminal proceedings will be determined on a case-by-case basis. In deciding whether to continue with a disciplinary process, relevant factors to consider include:
 - (a) the existence of a real (not merely notional) danger of injustice in the criminal proceedings. That is, the existence of both a discipline and a criminal process is not sufficient, in of itself, to establish a real danger exists; there must be information that reasonably leads to a conclusion that the continuation of the discipline process will have a real (adverse) impact on the employee's ability to put forward their case in the criminal proceedings¹⁴
 - (b) the effect on the employer weighed against the effect on the employee and taking into account the employee's obligation to their employer
 - (c) that no party to a civil proceeding is entitled 'as of right' to have the matter stayed because of a pending or possible criminal proceeding

¹³ For further information on the role of the contact officer, refer to section 11.6.

¹⁴ Noting also, the differing standards of proof; the criminal jurisdiction requirement for proof beyond reasonable doubt is a higher threshold than the civil standard of balance of probabilities applied in discipline processes

- (d) a 'right of silence' in criminal proceedings does not extend 'as of right' to the same protection in civil proceedings; and
- (e) the possibility of statements made in disciplinary proceedings being used as evidence in a related criminal trial.¹⁵

12.4. The decision maker may wish to consult the Queensland Police Service (as appropriate) when making a decision about the continuation of a discipline process while a criminal process is on foot.

12.5. Employees are able to seek their own advice on the impacts of concurrent processes.

13. Step 3: Show cause process for disciplinary finding¹⁶

13.1. Where the decision maker decides to commence / continue with the disciplinary process, the decision maker is to give the employee written details of each allegation, the disciplinary ground applied to it (refer s187), the evidence being relied on for each ground (for example, refer to relevant parts of the investigation report) and invite the employee to show cause why a disciplinary finding should not be made in relation to each allegation. The employee is to be given a copy of all relevant parts (if not all) of any investigation report.

13.2. Although the same alleged instance or instances may give rise to more than one possible ground for discipline, the most appropriate ground is to be selected (i.e. one ground per allegation).¹⁷ By contrast, if there are separate types of instances and these separate types give rise to separate grounds, it needs to be made clear which alleged instance or instances give rise to which ground. This becomes particularly crucial if some of the allegations are later found to be not proven.

See schedule six - Pro-forma letter - Show cause on allegation(s)

14. Step 4: Decision on grounds (disciplinary finding/s)

14.1. When determining whether a discipline ground is established, the decision maker should consider all information available to them and make their decision on the balance of probabilities (i.e. it is more probable than not). The strength of evidence necessary to establish an allegation on the balance of probabilities may vary according to the seriousness of the issues involved.

14.2. The decision maker should advise the employee of their finding in relation to each allegation included in the show cause notice, clearly explaining their findings of fact for each allegation including the evidence relied on to reach that finding and state if the ground to which the allegation was applied has been established.

14.3. If the decision maker determines that no discipline grounds have been established, they should consider whether any management action is required and advise the employee accordingly. If the decision maker determines discipline ground(s) have been established, they must then consider whether disciplinary action should be proposed (see section 15).

14.4. The allegation(s), ground(s) and disciplinary finding(s) must be consistent with and based on the information provided in the 'show cause' letter and reference how the employee's response to the first show cause invitation was considered before arriving at the decision.

See

¹⁵ See *Bannister & Others v Director General Department of Corrective Services* [2002] QSC 469.

¹⁶ The decision maker may elect to vary the steps in the discipline process based on the nature of the allegations and the information available to them. For example, where criminal proceedings provide factual evidence of serious misconduct, it is open to the delegate to move to immediate termination or a consolidation of the discipline process by combining the show cause steps in the disciplinary process.

¹⁷ An allegation may be presented against alternative grounds, but multiple findings of liability against the same instance should not be made.

- *schedule seven - Pro-forma letter - Decision on disciplinary finding (no finding and termination of disciplinary process)*
- *schedule eight - Pro-forma letter - Decision on disciplinary finding (finding made that ground exists but discipline process terminated)*
- *schedule nine - Pro-forma letter – Decision on disciplinary finding (and proposed disciplinary action)*

15. Step 5: Show cause process for proposed disciplinary action

- 15.1. Where the decision maker determines one or more discipline grounds exist (a discipline finding), they need to decide whether disciplinary action and/or management action, or no action at all, is to be taken.
- 15.2. If a decision to take no further action is made, the disciplinary process concludes at that point and the employee is to be informed of that decision in writing. This will generally occur at the same time as the employee (or former employee) is told the outcome of the disciplinary finding.
- 15.3. Alternatively, having made a disciplinary finding under s187 (or s187A or 188AB) that a disciplinary ground exists, if the decision maker proposes to take disciplinary action under s188, (s188A or s188AB) the employee (or former employee) is to be advised what disciplinary action is proposed and given the opportunity to show cause why it should not be taken. Ideally, the 'show cause' invitation will be provided at the same time as the employee (or former employee) is told the outcome of the disciplinary finding.
- 15.4. Section 188 lists examples of disciplinary action that can be taken, however, the decision maker is not limited to these examples. The following factors will be relevant considerations:
- (a) the seriousness of the disciplinary finding
 - (b) the employee's classification level and expected level of awareness about their performance or Code of Conduct obligations
 - (c) whether extenuating or mitigating circumstances applied to the employee's actions
 - (d) the employee's overall work record including previous management interventions and/or disciplinary proceedings
 - (e) the employee's explanation (if any)
 - (f) the degree of risk to the health and safety of staff, customers and members of the public
 - (g) the impact on the employee's ability to perform the duties of their position
 - (h) the employee's potential for modified behaviour in the work unit or elsewhere
 - (i) the impact a financial penalty may have on the employee
 - (j) the cumulative impact that a reduction in classification and/or paypoint may have on the employee
 - (k) the likely impact the disciplinary action will have on public and customer confidence in the unit/agency and its proportionality to the gravity of the disciplinary finding.

See schedule nine - Pro-forma letter – Decision on disciplinary finding (and proposed disciplinary action)

16. Step 6: Decision on disciplinary action

- 16.1. At the end of the show cause period, the decision maker should review all relevant material, including any submissions the employee has provided, make a final decision on the disciplinary action to be taken and advise the employee of the decision. The decision should reflect the reasons for the decision maker's decision including their consideration of any information provided by the employee.

16.2. If the decision maker decides to impose disciplinary action different to that proposed in the 'show cause' invitation the employee must be given a further opportunity to comment on the appropriateness of the new proposed action, before a final decision on the disciplinary action is made and communicated to the employee. However, if the revised disciplinary action is objectively less onerous¹⁸ than the original action proposed, the agency is not obliged to seek the employee's response. The decision letter should include reference to how the employee's response (if any) to the (second) show cause invitation was considered before reaching the decision.

See schedule ten - Pro-forma letter – Decision on disciplinary action

17. Implementing disciplinary action

17.1. Disciplinary action (other than a termination decision) is not to be implemented until the period for an appeal against the decision to discipline the public service employee has expired or any appeal lodged is finalised. Following this period, the decision maker is to advise the employee in writing that the disciplinary action is being implemented including all relevant details attaching to and arising from it.

17.2. Records associated with the disciplinary process should be managed in accordance with departmental record keeping requirements and the *Public Service Regulation 2008*.

18. Dictionary

Unless otherwise specified the terms used in this guideline have the meaning prescribed under the *Public Service Act 2008*.

- **Date of receipt**, where correspondence is posted, is taken to be the date at which the correspondence would be delivered in the ordinary course of post, unless the contrary is proved.
- **Decision maker** is the person who has been delegated authority under the PSA to make decisions in the disciplinary process. The decision maker may be assisted throughout the discipline process e.g. by a HR officer or manager, undertaking activities on their behalf (e.g. meeting with the affected employee(s)).
- **Disciplinary process** - Anything done in making (or in contemplation of making) a disciplinary decision under Chapter 6 of the PSA, including making a disciplinary finding under s187, s187A, or s187AB and taking disciplinary action under s188 or s188A. The disciplinary process commences when a decision maker considers that there is, prima facie, grounds for discipline and determines to deal with the matter as a disciplinary matter as management action has been exhausted or deemed inappropriate. The disciplinary process concludes when all disciplinary decisions under Chapter 6 are completed. A disciplinary process can also conclude at any time during the process if a decision to discontinue or abandon the disciplinary process is warranted. All decisions made as part of the disciplinary process should be recorded and the employee notified in writing.
- **Disciplinary finding (ground)** - refer to s187
- **Disciplinary action** - refer to s188
- **Employee** includes a reference to a former employee (where applicable)
- **Suspension** – refer to s189. Section 137 also provides for suspension, however, suspension under this section is independent of the disciplinary process and applies only in relation to public service officers.

¹⁸ For example, where the proposed disciplinary action was for a reduction in classification level (demotion) but after considering the employee's response, the decision maker determines to reduce the employee's increment / pay-point within the employee's existing classification level.

- **Management action** – This is independent of the disciplinary process and, if possible and appropriate, should be considered as the first response and/or alternative to the disciplinary process in managing unacceptable conduct or performance. Following a disciplinary finding under s187, management action can accompany or substitute for disciplinary action under s188. If appropriate, management action can replace an ongoing disciplinary process at any stage. While not limited, management action is predominantly focused on corrective action.
- **Natural justice** (also known as ‘procedural fairness’) is a common law requirement with two parts: (a) the hearing rule and (b) the rule against bias. Both are integral to a disciplinary process. When a person’s rights or interests may be adversely affected by a decision they should be informed about the allegations (and evidence) against them and provided with an opportunity to be heard (the hearing rule). The decision maker should be unbiased in that they don’t have an actual, possible or perceived conflict of interest in the matter and/or its outcome (the rule against bias).

Superseded by
Discipline guideline 01/13

SCHEDULE ONE – FREQUENTLY ASKED QUESTIONS

1. How does the disciplinary process differ for an employee who leaves the organisation (but not the public service) after a disciplinary ground arises but before a disciplinary process is commenced or finalised?

Chapter 6 provides for a disciplinary process to commence or continue against a public service employee who continues to be a public service employee in a different organisation to that in which the disciplinary ground arose. Section 187A allows the previous chief executive to make a disciplinary finding or delegate this authority to the employee's current chief executive. In continuing such a disciplinary process, s188 provides for the taking of disciplinary action against the employee.

Chapter 6 also provides for the commencement and continuation of a disciplinary process against a former public service employee, provided the process (which might consist of a disciplinary finding only or in certain cases, comprise both a finding as well as disciplinary action in the form of a 'disciplinary declaration') is completed within two years of the employee's employment ending (refer s188A). A 'disciplinary declaration' can only be made if the disciplinary action that would have been taken against the employee if their employment had not ended would have been termination or reduction in classification level.¹⁹

Chapter 6 also provides similar terms for a disciplinary process to commence or continue against a former ambulance service officer or fire service officer who became a public service employee after the disciplinary ground arose during their service officer employment.²⁰

2. Anticipating and troubleshooting delays

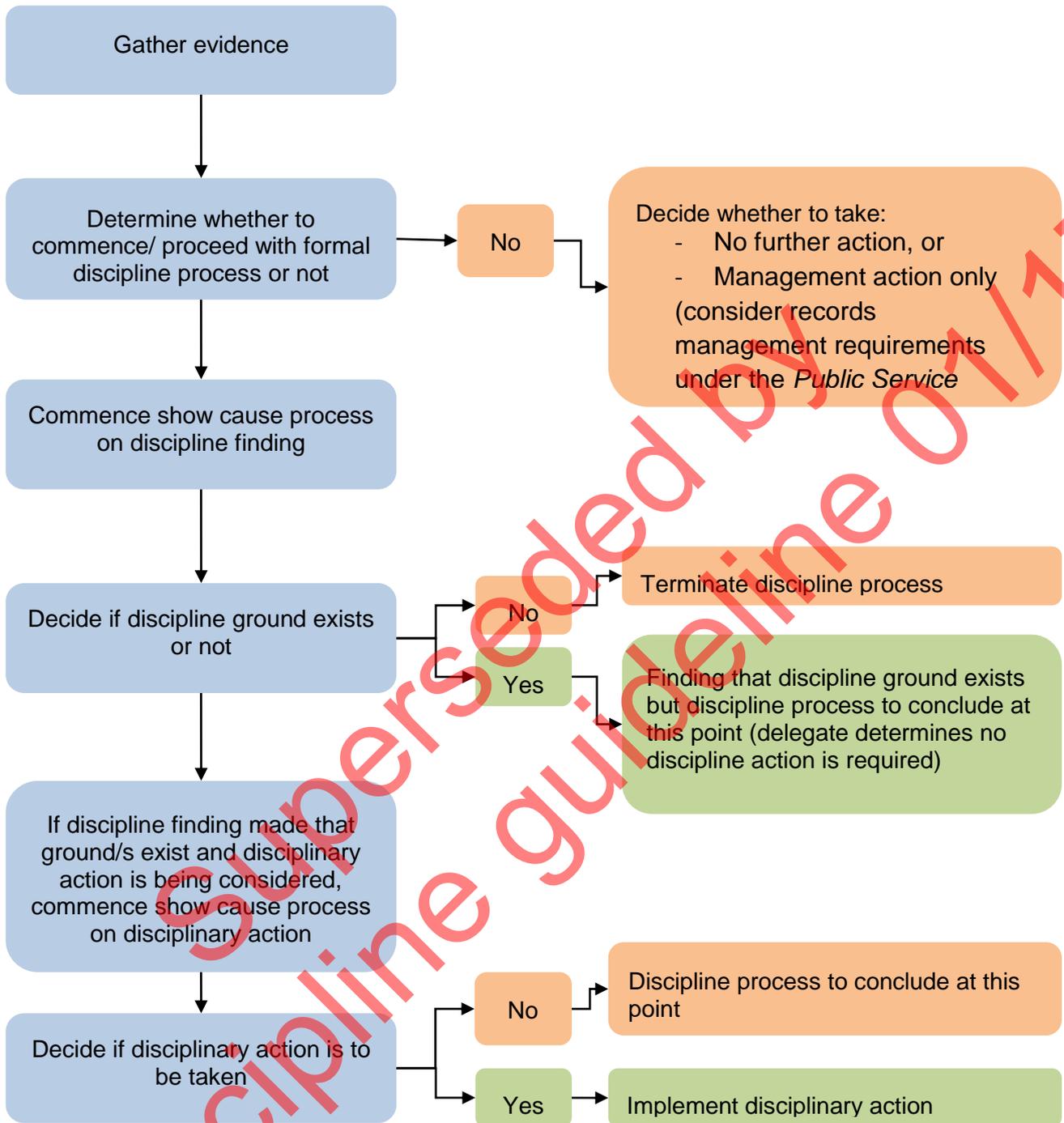
Delays in obtaining responses and decision making do occur but should be minimised whenever and wherever possible. For example, when a delay is due to an employee or witness being absent on sick leave, a medical certificate may be required²¹.

¹⁹ PSA, section 188A(8)

²⁰ PSA, section 188AB

²¹ Medical certification should address the employee's ability to participate in the discipline process: *QPSU v Corrective Services* [2006] QIRComm 136; 183 QGIG 964.

SCHEDULE TWO – DISCIPLINE PROCESS FLOW CHART



SCHEDULE THREE – PRO-FORMA LETTER: SHOW CAUSE ON SUSPENSION WITHOUT REMUNERATION

[Address Block]

Dear [insert name]

I have received [a report/an investigation report/a statement/information] dated [insert date] prepared/provided by [investigator/complainant/internal consultant/external consultant] concerning allegations [insert overview of allegations].

Section 189(1) of the *Public Service Act 2008* (PSA) provides that an employee may be suspended from duty if the chief executive reasonably believes that the employee is liable to discipline. In accordance with [insert description of delegation e.g. HR delegations of XX date] I have been delegated the functions of the chief executive for this matter.

On preliminary consideration of the material before me, I reasonably believe you are liable to discipline.

Until this matter is resolved, given the risk [to the safety of customers / other employees / significance of financial risk / public interest], I have decided that you should not remain in your current workplace. I have considered all possible alternative duties to which you could be assigned in the meantime, including:

- XX
- XX
- XX

[Reference why the above duties were found to be not suitable.]

I have formed the view that no alternative duties are possible at this time because [state reasons].

Given the nature of the allegation(s), I am considering suspending you without remuneration. I invite you to respond in writing why you should not be suspended from duty without remuneration. Your response should provide any information or explanation that you believe could be relevant. I will not make a decision about suspension without remuneration until you have had the opportunity to respond.

You are required to provide your response marked 'Private and Confidential' to me within seven (7) days from the date of receipt of this letter. If no response is received within this time, I will make a decision about your suspension under section 189(1) of the PSA based on the material I currently have.

Please be aware that matters which are the subject of this process are to remain confidential. This will safeguard the integrity of the process. Consequently, you are directed to not discuss this matter with your work colleagues or any person likely to have information relevant to the allegation(s) against you, other than your union, legal representative or support person. If, however, to assist you in your response, you wish to approach particular colleagues, please discuss this with your contact officer, [XX] to determine appropriate arrangements. You are further reminded that your obligations under the Code of Conduct continue to apply throughout and following the conclusion of the disciplinary process.

Please be advised that the [insert name of department's employee assistance service] is available to departmental employees. The service is a confidential counselling and support service and is available on [insert telephone number]. You may also wish to seek advice and assistance from your union.

If you have any questions about the contents of this letter please do not hesitate to contact [insert name of contact] on telephone number xxx.

Yours sincerely

Decision Maker

[Address Block]

SCHEDULE FOUR – PRO-FORMA LETTER: *DECISION ON SUSPENSION (WITHOUT REMUNERATION)*

[Address Block]

Dear [insert name]

I refer to my letter dated (*insert date of show cause on suspension letter*) in which I invited you to say why you should not be suspended from duty without remuneration in relation to the following allegations:

- [insert allegation(s)]

I have carefully considered the material before me, including your response received [insert date received]. I note in particular [insert summary of relevant response information and the delegate's response to same].

In accordance with section 189(1) of the *Public Service Act 2008* (PSA) I have decided to suspend you from duty without remuneration because on preliminary consideration of the material, I reasonably believe you are liable to discipline.

Your suspension will take effect immediately on your receipt of this letter and will remain in place until [insert end date of suspension] unless otherwise determined. During your suspension you are not entitled to normal remuneration. (*Insert all details as required by PSA, section 192 for notice of suspension.*)

You are directed to immediately return all equipment and materials belonging to [insert name of work unit/branch/department] to [insert name of manager/case manager] {specify how this is to occur – e.g. a meeting to be arranged}. During your suspension you are directed to not return to the [work unit/branch/department] or any other departmental site without obtaining permission from [your manager/case manager] on telephone number xxx.

As previously advised, to assist in protecting the integrity of this process you are directed to not discuss this matter with your work colleagues or any person likely to have information relevant to the allegation(s) against you, other than your union, legal representative or support person. If, however, to assist you in your response, you wish to approach particular colleagues, please discuss this with your contact officer, [XX] to determine appropriate arrangements. You are further reminded that your obligations under the Code of Conduct continue to apply throughout and following the conclusion of this process.

As previously advised, the [insert name of department's employee assistance service] is available to departmental employees. The service is a confidential counselling and support service and is available on [insert telephone number]. You may also wish to seek advice and assistance from your union.

If you have any questions about the contents of this letter please do not hesitate to contact [insert name of contact] on telephone number xxx.

Yours sincerely

Decision Maker

[Address Block]

SCHEDULE FIVE – PRO-FORMA LETTER: *DECISION ON SUSPENSION (WITH REMUNERATION)*

[Address Block]

Dear [insert name]

I have received [a report/investigation report/a statement/information] dated [insert date] [prepared/provided] by [investigator/complainant/internal consultant/external consultant] concerning allegations [insert overview of allegation(s)].

- [insert allegation(s)]

Section 189(1) of the *Public Service Act 2008* (PSA) provides that an employee may be suspended from duty if the chief executive reasonably believes that the employee is liable to discipline. In accordance with [insert description of delegation e.g. HR delegations of XX date] I have been delegated the functions of the chief executive for this matter.

On preliminary consideration of the material before me, I reasonably believe you are liable to discipline.

Until this matter is resolved, I have decided that you should not remain in your current workplace, as I hold concerns about [the risk to customers / other employees / financial risk / public interest]. I have considered all possible alternative duties to which you could be assigned in the meantime, including:

- xx
- xx
- xx

[Reference why the above duties were found to be not suitable.]

I have formed the view that no alternative duties are possible at this time because [state reasons].

Given the nature of the allegation(s), I have decided to suspend you from duty on normal remuneration, effective from the date you receive this letter.

Your suspension will take effect immediately on your receipt of this letter and will remain in place until [insert end date of suspension] unless otherwise determined. [Insert all other details as required by PSA, section 192 for notice of suspension.]

During your suspension you are entitled to normal remuneration, less any amount you have earned from alternative employment undertaken during your suspension. Alternative employment does not include employment you were engaged in at the time of the suspension and which was not in contravention of the PSA, Code of Conduct or a directive issued by the Public Service Commission. Any deduction for alternative employment will not exceed your normal remuneration. You are required to advise XXXX if you engage in any alternative employment during your period of suspension.

You are directed to immediately return all equipment and materials belonging to [insert name of work unit/branch/department] to [insert name of manager/case manager] {specify how this is to occur – e.g. a meeting to be arranged}. During your suspension you are directed to not return to the [work unit/branch/department] or any other departmental site without obtaining permission from [your manager/case manager] on telephone number xxx.

To assist in protecting the integrity of this process, you are directed to not discuss this matter with your work colleagues or any person likely to have information relevant to the allegation(s) against you, other than your union, legal representative or support person. If, however, to assist you in your response, you wish to approach particular colleagues, please discuss this with your contact officer, [XX] to determine appropriate arrangements. You are further reminded that your obligations under the Code of Conduct continue to apply throughout and following the conclusion of this process.

As previously advised, the [insert name of department's employee assistance service] is available to departmental employees. The service is a confidential counselling and support service and is available on [insert telephone number]. You may also wish to seek advice and assistance from your union.

If you have any questions about the contents of this letter please do not hesitate to contact [*insert name of contact*] on telephone number xxx.

Yours sincerely

Decision Maker

[Address Block]

Superseded by
Discipline guideline 01/17

SCHEDULE SIX – PRO-FORMA LETTER: *SHOW CAUSE ON ALLEGATION(S)*

[Address Block]

Dear [insert name]

I have received [a report/an investigation report/a statement/information] dated [insert date] [prepared/provided] by [investigator/complainant/internal consultant/external consultant] concerning allegations [insert overview of allegation(s)]

The particulars of these allegations are as follows:

- Allegation 1 [insert]
- insert the relevant part of the report/evidence relating to the allegation that is being relied on
- insert the section of the *Public Service Act 2008* (PSA), Code of Conduct or policy which has allegedly been breached and how the allegation, if proven, would establish grounds for discipline under s187 of the PSA.

- Allegation 2 [if relevant repeat particulars for any additional allegation(s)].

A copy of [refer to all documents enclosed e.g. relevant provisions from Chapter 6 of the PSA, other relevant legislation, discipline guideline, the Code of Conduct (or relevant extracts); the investigation report (or relevant extracts), witness statements, copies of relevant hard and electronic documents] are enclosed for your consideration.

Section 187 of the PSA provides that a chief executive may discipline an employee if they are reasonably satisfied that a discipline ground has been established. In accordance with [insert description of delegation e.g. HR delegations of XX date] I have been delegated the functions of the chief executive for this matter.

You are invited to respond in writing why a disciplinary finding should not be made against you on the ground of [insert specific section here e.g. section 187(1)(a)]. Your response should provide any explanation you believe is relevant. In providing natural justice to you, no final decision will be made about [insert numbered allegations] until you have had the opportunity to formally respond.

You are required to provide your response marked 'Private and Confidential' to me within 14 days [or relevant timeframe] from the date of receipt of this letter. If no response is received within this time, I will make a final decision based on the material I currently have.

Please be aware that matters which are the subject of this disciplinary process are to remain confidential. This will safeguard the integrity of the process. Consequently, you are directed to not discuss this matter with your work colleagues or any person likely to have information relevant to the allegation(s) against you, other than your union, legal representative or support person. If, however, to assist you in your response, you wish to approach particular colleagues, please discuss this with your contact officer, [XX] to determine appropriate arrangements. You are further reminded that your obligations under the Code of Conduct continue to apply throughout and following the conclusion of the disciplinary process.

Please be advised that the [insert name of department's employee assistance service] is available to departmental employees. The service is a confidential counselling and support service and is available on [insert telephone number]. You may also wish to seek advice and assistance from your union.

If you have any questions about the contents of this letter please do not hesitate to contact [insert name of contact] on telephone number xxx.

Yours sincerely

Decision Maker

[Address Block]

SCHEDULE SEVEN – PRO-FORMA LETTER: *DECISION ON DISCIPLINARY FINDING (FINDING NO DISCIPLINE GROUND/S EXIST AND TERMINATION OF DISCIPLINE PROCESS)*

[Address Block]

Dear *[insert name]*

I refer to my letter dated *[insert date of show cause on allegation(s) letter]* in which I invited you to respond to say why a disciplinary finding should not be made against you under the *Public Service Act 2008 (PSA)* on the ground of *[insert specific section]*. I acknowledge receipt of your response on *[insert date received]*.

The allegation(s) made against you are as follows:

- Allegation 1 *[insert]*

I have carefully considered all the evidence, including your response and have determined that the allegation is not substantiated *[include reasons] [where appropriate distinguish between factual findings about conduct / performance and findings about disciplinary grounds (i.e. the facts may establish that a particular event occurred but the delegate may not be satisfied that it constitutes a ground for discipline)]*.

As I have found that no disciplinary ground exists, the disciplinary process is now finalised. Please note, this matter remains confidential and should not be discussed in the workplace. Records relating to this process will be retained on a confidential departmental file.

If you have any questions about the contents of this letter please do not hesitate to contact *[insert name of contact]* on telephone number xxx.

[Where appropriate – insert information re: Recognition of willing participation in process/professionalism/need to be vigilant about adherence to Code of Conduct (and performance)]

Yours sincerely

Decision Maker

[Address Block]

SCHEDULE EIGHT – PRO-FORMA LETTER: DECISION ON DISCIPLINARY FINDING (FINDING MADE THAT GROUND/S EXIST BUT DISCIPLINE PROCESS TERMINATED)

[Address Block]

Dear *[insert name]*

I refer to my letter dated *[insert date of show cause on disciplinary finding letter]* in which I invited you to respond to why a disciplinary finding should not be made against you under the *Public Service Act 2008 (PSA)* on the ground of *[insert specific section]*. I acknowledge receipt of your response on *[insert date received]*.

After considering all of the information and evidence including your statements/response I am now able to make the following finding in relation to *[the/each]* allegation.

Allegation No. 1 *[insert]*

I have determined that the allegation *[is/is not]* substantiated on the basis that *[support why the allegation is or is not substantiated, summarise the evidence relied on and the employee's response.]*

On the basis of the substantiated finding in relation to allegation 1, I have determined that you have contravened section *[insert section and subsection]* of the PSA. In particular

- *[outline the behaviour/conduct that supports the specific disciplinary ground]*

[Repeat for each allegation and make finding for each whether it is or is not substantiated.]

Based on consideration of all the facts, I have determined that no disciplinary action should be imposed against you and the formal discipline process is now concluded. *[I have determined that the following management action will be taken Detail the management action that is to be taken, if that option is used.]*

A record of this action will be retained on a separate confidential disciplinary file and may be a factor in the consideration of any future disciplinary process initiated against you. Your personnel file will contain only the outcome of the disciplinary process and a notation that a separate disciplinary file exists.

A right of review of a disciplinary decision is contained in the *Public Service Act 2008* (Chapter 7). You may appeal my decision within 21 days of receiving this letter.

Please note, this matter remains confidential and should not be discussed in the workplace.

If you have any questions about the contents of this letter please do not hesitate to contact *[insert name of contact]* on telephone number xxx.

Yours sincerely

Decision Maker

[Signature Block]

SCHEDULE NINE – PRO-FORMA LETTER: *DECISION ON DISCIPLINARY FINDING (AND PROPOSED DISCIPLINARY ACTION)*

[Address Block]

Dear [insert name]

I refer to my letter dated (*insert date of show cause on disciplinary finding letter*) in which I invited you to say why a disciplinary finding should not be made against you under the *Public Service Act 2008* (PSA) on the ground of [insert specific section]. I acknowledge receipt of your response on [insert date received].

After considering all of the information and evidence including your statements/response I am now able to make the following finding in relation to [the/each] allegation.

Allegation No. 1 [insert]

I have determined that the allegation [is/is not] substantiated on the basis that [support why the allegation is or is not substantiated, summarise the evidence relied upon and the employee's response.]

On the basis of the substantiated finding in relation to allegation 1, I have determined that you have contravened section [insert section and subsection] of the PSA. In particular

- [outline the behaviour/conduct that supports the specific disciplinary ground]

[Repeat for each allegation and make finding for each whether it is or is not substantiated.]

Having determined that the above discipline ground(s) exist, I am now considering whether disciplinary action should be imposed against you. Section 188 of the PSA states that the chief executive may take action that the chief executive considers reasonable in the circumstances. Section 188 lists examples of disciplinary action that may be taken. As previously noted, I have been delegated the functions of the chief executive for this matter.

I am currently giving serious consideration to imposing the following disciplinary action:

- [insert the proposed disciplinary action and reasons]

In providing natural justice to you, no final decision about the disciplinary action to be taken will be made until you have had the opportunity to respond. You have seven days [or relevant timeframe] from the date of this letter to say why the above disciplinary action should not be imposed. Your response will be considered in my final decision on the disciplinary action, together with consideration of the following: [insert the following where relevant]

- the seriousness of your conduct
- your overall work record, including any previous disciplinary findings and disciplinary actions
- any explanation you provide
- any extenuating circumstances which may have had a bearing on your actions
- the degree of risk to the health and safety of employees and customers
- the impact the disciplinary finding has on your ability to perform the duties of your position; and
- the impact of your conduct on the public and customer confidence in the agency.

If no response from you is received within seven days I will make a final decision based on the material I currently have.

As previously advised, the [insert name of department's employee assistance service] is available to departmental employees. The service is a confidential counselling and support service and is available on [insert telephone number]. You may also wish to seek advice and assistance from your union.

Please note, this matter remains confidential and should not be discussed in the workplace.

If you have any questions about the contents of this letter please do not hesitate to contact [insert name of contact] on telephone number xxx.

Yours sincerely

Decision Maker

[Address Block]

Superseded by
Discipline guideline 01/17

SCHEDULE TEN – PRO-FORMA LETTER: *DECISION ON DISCIPLINARY ACTION*

[Address Block]

Dear *[insert name]*

I refer to my letter dated (*insert date of show cause on disciplinary action letter*) in which I invited you to respond to why the following disciplinary action should not be imposed under section *[insert the disciplinary action that was proposed]*

I have carefully considered all the evidence available to me, including your response received *[insert date received]*.

[Address points raised by the employee in their response].

Accordingly, following my earlier decision of (*date of disciplinary finding*) under section 187(1)(x) of the PSA on the grounds that you *[insert the grounds]*, I have decided to impose the following disciplinary action under section 188(1):

- *[insert the disciplinary action here]*.
- *[if disciplinary action varies from what was originally proposed explain why]*

A record of this action will be retained on a separate confidential disciplinary file and may be a factor in the consideration of any future disciplinary process initiated against you. Your personnel file will contain only the outcome of the disciplinary action and a notation that a separate disciplinary file exists.

As previously advised, the *[insert name of department's employee assistance service]* is available to departmental employees. The service is a confidential counselling and support service and is available on *[insert telephone number]*. You may also wish to seek advice and assistance from your union.

A right of review of a disciplinary decision is contained in the *Public Service Act 2008* (Chapter 7). You may appeal my disciplinary decision within 21 days of receiving the decision. Subject to any appeal, the above disciplinary action will be implemented on the conclusion of the appeal lodgement period. *[Note – this does not apply in relation to termination decisions]*

Please note, this matter remains confidential and should not be discussed in the workplace.

If you have any questions about the contents of this letter please do not hesitate to contact *[insert name of departmental contact]* on telephone number xxx.

Yours sincerely

Decision Maker /Delegated Authority

[Address Block]