

# Discipline

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Directive: 14/20

Effective date: 25/09/20

## 1. Purpose

- 1.1 The *Public Service Act 2008* (PS Act) requires disciplinary processes to comply with the PS Act, this directive and the principles of natural justice.
- 1.2 The PS Act requires the Commission Chief Executive to make a directive about disciplinary action.
- 1.3 The purpose of this directive is to:
  - (a) outline the process for managing disciplinary action under the PS Act, including how natural justice requirements may be met
  - (b) provide for periodic reviews of disciplinary action being considered or undertaken, including the period within which reviews must be conducted, to ensure timely resolution of disciplinary matters
  - (c) outline the circumstances in which a contravention of section 187(1)(g) of the PS Act is likely to be considered sufficiently serious to warrant disciplinary action.

## 2. Authorising provisions

This directive is made pursuant to sections 53 and 192A of the PS Act.

## 3. Application

- 3.1 This directive applies to all public service employees in relation to disciplinary processes under Chapter 6 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 This directive does not replace, modify or revoke any legislative requirements that apply to the management of particular types of complaints (e.g. corrupt conduct under the *Crime and Corruption Act 2001*, public interest disclosures under the *Public Interest Disclosure Act 2010*, or complaints under the *Human Rights Act 2019*).
- 3.4 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 Disciplinary process is not a substitute for management action and the need for managers to undertake early intervention to address unacceptable conduct. Early intervention, 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.
- 4.2 Discipline is not appropriate for matters that may be dealt with:
- (a) through management action, which may include use of alternative dispute resolution (ADR), use of warnings, or other management action that is reasonable in the circumstances
  - (b) under the directive on positive performance management.
- 4.3 There will be occasions when it will be necessary and appropriate for a chief executive to commence and complete a disciplinary process, however, the purpose of discipline is to promote integrity. Discipline is as much about maintaining a 'disciplined workforce' as implementing supportive and corrective actions for an employee who is the subject of a disciplinary process.
- 4.4 Discipline under Chapter 6 of the PS Act must:
- (a) be timely, fair, appropriate and proportionate to the seriousness of the work performance matter, and
  - (b) comply with the requirements of the PS Act, the provisions of this directive and the principles of natural justice.
- 4.5 Under the *Human Rights Act 2019* a decision maker has 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. Requirements to commence a discipline process

- 5.1 Where a work performance matter arises that may constitute a ground for discipline under section 187 of the PS Act, a chief executive must determine whether to commence a disciplinary process. In making this determination, the chief executive must assess:
- (a) the seriousness of the employee's personal conduct and/or work performance, subject to clause 5.2
  - (b) whether the matter should be resolved through management action
  - (c) whether the matter is a Public Interest Disclosure under the *Public Interest Disclosure Act 2010* and/or whether the matter must first be referred to the Crime and Corruption Commission, Queensland Police Service or other regulatory agency for assessment
  - (d) whether further information is required to commence a disciplinary process.



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- 5.2 In forming a view about the seriousness of the employee's personal conduct and/or work performance under clause 5.1(a), the chief executive should consider:
- (a) whether there are recent previous and/or repeated instances of inappropriate conduct from the employee, and management action has recently been taken for similar conduct
  - (b) the impact of the alleged conduct on the employee, their colleagues, the workplace, the complainant, and the reputation of the public sector
  - (c) whether the alleged conduct is reasonably suspected to have caused actual harm, or a risk to the health and safety of employees, or other people
  - (d) the nature of the alleged conduct, including what the most serious disciplinary outcome may be for conduct of this nature.

## 6. Discipline for performance

- 6.1 Section 186C of the PS Act provides that a chief executive must not take disciplinary action against an employee for a matter relating to the employee's performance until the chief executive has complied with the directive about positive performance management.

## 7. Discipline for conduct

- 7.1 Section 187 of the PS Act provides a chief executive may discipline an employee if they are reasonably satisfied a ground for discipline arises.
- 7.2 The circumstances in which a contravention of a relevant standard of conduct under section 187(1)(g) of the PS Act is likely to be considered sufficiently serious to warrant disciplinary action are where the chief executive forms a view that management action is not likely to address and/or resolve the work performance matter.
- 7.3 In forming a view under clause 7.2, the chief executive must consider whether there are more proactive strategies than disciplinary action to manage the personal and professional development of employees, including through training and development. Additionally, the chief executive must consider:
- (a) whether the matter has been assessed as meeting the definition of corrupt conduct and has been referred to the Crime and Corruption Commission, or has been referred to the Queensland Police Service as a potential criminal offence
  - (b) whether management action is an appropriate response based on the nature of the alleged conduct (for example, management action is not appropriate for matters involving theft, fraud, sexual harassment, negligence, or maladministration)
  - (c) whether implementing management action would eliminate or effectively control the risk to the health and safety of employees, or other people, posed by the alleged conduct
  - (d) whether management action would alleviate or mitigate the impact of the alleged conduct on the employee, their colleagues, the workplace, the complainant, and the reputation of the public sector
  - (e) whether management action has recently been taken for previous similar instance/s of inappropriate conduct, and the management action did not result in sustained correction of the employee's conduct

- (f) if the contravention is of a more serious nature, but is a single and/or isolated incident of poor conduct (that is, not a pattern of unreasonable behaviours), whether the chief executive has reasonable concerns about the employee's potential for modified behaviour through management action that clarifies the expected standards of conduct and provides the opportunity and support for the employee to demonstrate sustained correction of their conduct.

## 8. Discipline process

- 8.1 Section 190 of the PS Act provides that in disciplining a public service employee or former public service employee, a chief executive must comply with the PS Act, this directive, and the principles of natural justice.
- 8.2 The chief executive must demonstrate consideration of conflicts of interest and ensure conflicts of interest are declared, monitored and appropriately managed by all parties to the disciplinary process.
- 8.3 Show cause process for disciplinary finding
  - (a) The chief executive is to provide the employee with written details of each allegation and invite the employee to show cause why a disciplinary finding should not be made in relation to each allegation (a show cause notice on disciplinary finding):
  - (b) Written details of each allegation in clause 8.3(a) must include:
    - (i) the allegation
    - (ii) the particulars of the facts considered by the chief executive for the allegation
    - (iii) the disciplinary ground under section 187 of the PS Act that applies to the allegation.
  - (c) A copy of all evidence relevant to the facts considered by the chief executive for each allegation in clause 8.3(a) must be provided to the employee, including, where relevant, specific reference to page or paragraph numbers that comprise the relevant evidence.
  - (d) The chief executive must provide the employee with a minimum of 14 days from the date of receipt of a show cause notice on disciplinary finding 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 on disciplinary finding if there are reasonable grounds for extension.
  - (e) If the employee does not respond to a show cause notice on disciplinary finding, or does not respond within the nominated timeframe in clause 8.3(d) 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.
- 8.4 Decision on grounds (disciplinary finding)
  - (a) A chief executive must review all relevant material, including any submissions from the employee, and make a decision on the disciplinary finding on the balance of probabilities.
  - (b) The chief executive must advise the employee of the chief executive's finding in relation to each allegation included in the show cause notice on disciplinary finding.
  - (c) For each finding in clause 8.4(a) the chief executive must clearly explain their finding of fact on the balance of probabilities, including the evidence relied on to reach the finding, and state if the disciplinary ground to which the allegation was applied has been established.



- (d) The employee is to be informed of the finding and explanation of the finding in writing, including information that the employee may appeal the disciplinary finding.
- (e) If the chief executive determines that discipline ground/s have been established, the chief executive may consider whether disciplinary action should be proposed (clause 8.5) and/or management action implemented, or to take no further action.  
If the chief executive determines that no ground/s for discipline have been established, the chief executive may consider whether any management action is required and advise the employee in writing.

#### 8.5 Show cause process for proposed disciplinary action

- (a) The chief executive is to provide the employee with written details of the proposed disciplinary action and invite the employee to show cause why the proposed disciplinary action should not be taken (a show cause notice on disciplinary action).
- (b) The chief executive may propose more than one type of disciplinary action, and if relevant, detail any management action to be implemented.
- (c) The disciplinary action the chief executive may propose is not limited to the examples of disciplinary action listed in section 188 of the PS Act.
- (d) In proposing appropriate and proportionate disciplinary action, the chief executive should consider:
  - (i) the seriousness of the disciplinary finding
  - (ii) the employee's classification level and/or expected level of awareness about their performance or conduct obligations
  - (iii) whether extenuating or mitigating circumstances applied to the employee's actions
  - (iv) the employee's overall work record including previous management interventions and/or disciplinary proceedings
  - (v) the employee's explanation (if any)
  - (vi) the degree of risk to the health and safety of employees, customers and members of the public
  - (vii) the impact on the employee's ability to perform the duties of their position
  - (viii) the employee's potential for modified behaviour in the work unit or elsewhere
  - (ix) the impact a financial penalty may have on the employee
  - (x) the cumulative impact that a reduction in classification and/or pay-point may have on the employee
  - (xi) 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.
- (e) A show cause notice on disciplinary action must only state the employee is liable for termination of employment if the chief executive reasonably believes that the employee might, in the circumstances, have their employment terminated.
- (f) The chief executive must provide the employee with a minimum of 7 days from the date of receipt of a show cause notice on disciplinary action 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 on disciplinary action if there are reasonable grounds for extension.



- (g) If the employee does not respond to a show cause notice on disciplinary action, or does not respond within the nominated timeframe in clause 8.5(f) and has not been granted an extension of time to respond, the chief executive may make a decision on disciplinary action based on the information available to them.

#### 8.6 Decision on disciplinary action

- (a) A chief executive must review all relevant material, including any submissions from the employee in response to a show cause notice, and make a final decision on the disciplinary action to be taken.
- (b) The chief executive must inform the employee of the decision in writing, including:
  - (i) the reasons for the decision, including consideration of any information provided by the employee in response to a show cause notice
  - (ii) excluding a termination decision, information that the employee may appeal the decision on disciplinary action
  - (iii) for a termination decision, information that the employee may lodge an application for reinstatement under the *Industrial Relations Act 2016*.
- (c) A chief executive may decide to impose disciplinary action different to the disciplinary action proposed in the show cause notice on disciplinary action, provided that:
  - (i) the revised disciplinary action is objectively less onerous<sup>1</sup> than the original action proposed, or
  - (ii) the employee is 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, or
  - (iii) the employee has suggested the disciplinary action as an appropriate alternative penalty.
- (d) 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.

#### 8.7 The chief executive may combine the procedural elements of a show cause process for disciplinary finding and a show cause process for proposed disciplinary action where:

- (a) the particulars of the evidence being relied on to determine discipline liability are not likely to be disputed (for example, where the employee has been found guilty, or pleaded guilty, to a criminal offence in relation to the conduct the subject of the discipline process, regardless of whether a conviction is recorded in relation to that offence), and
- (b) the chief executive reasonably believes the progression or finalisation of the matter is in the best interests of the employee.

#### 8.8 Action taken against a former public service employee under section 188A of the PS Act must comply with the requirements of section 190 of the PS Act.

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<sup>1</sup> For example, where the proposed disciplinary action was for a reduction in classification level (demotion) but after considering the employee's response, the chief executive determines to reduce the employee's increment/pay-point within the employee's existing classification level.



## 9. Support persons and industrial representatives

- 9.1 A subject employee may be supported by a person of their choosing and/or represented by an industrial representative of a union to which the person is a member provided the support person:
- (a) is not otherwise involved in the disciplinary process (for example, as a subject employee or witness)
  - (b) does not provide direct evidence on behalf of, or otherwise talk for the subject employee.
- 9.2 If a support person is an officer of a union to which the employee is a member, the officer also has a role to support their member's interests, including actively ensuring that natural justice and procedural fairness has been afforded to their member.

## 10. Periodic review of discipline process

- 10.1 This section applies to a work performance matter, other than a corrupt conduct matter.
- 10.2 A chief executive is required to finalise an ongoing discipline process in a timely way.
- 10.3 A discipline process commences when a chief executive writes to the subject employee to inform them that discipline will commence (usually a show cause notice on disciplinary finding).
- 10.4 A discipline process 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), Public Service Commission.
  - (d) at 18 months by the CCE, and every three months thereafter.
- 10.5 The review must consider whether the discipline process complies with section 190 of the PS Act and this directive.
- 10.6 A discipline process must not continue until the review is completed.
- 10.7 The findings of the review must be communicated to the subject employee in writing.

## 11. Subject employee may ask Public Service Commission for review of discipline process

- 11.1 This section applies to a work performance matter, other than a corrupt conduct matter.
- 11.2 A subject employee may ask the commission to conduct a review of a procedural aspect of the agency's handling of a work performance matter, provided:
- (a) the subject employee reasonably believes the chief executive has not complied with this directive
  - (b) the subject employee has used internal review procedures under the directive on individual employee grievances



- (c) having used the procedures at clause 11.2(b) the subject 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 subject employee may appeal under chapter 7, part 1 of the PS Act.

11.3 The subject employee must request the review in writing.

11.4 The request under clause 11.3 must address the eligibility for review under clause 11.2 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.

11.5 On receiving the request, the commission may, but is not required to, conduct a review of a procedural aspect of the agency's handling of a work performance matter contemplated in section 88IA of the PS Act, and may but is not required to give the chief executive a report on the review.

11.6 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 11.5.

## 12. Appeal rights

12.1 A subject employee has a right of appeal in relation to disciplinary findings or a disciplinary decision (with the exception of a termination decision) as provided for under sections 194(1)(eb) or 194(1)(b) of the PS Act.

12.2 A subject employee has a right of appeal in relation to a direction given to a chief executive about the handling of a work performance matter, to the extent the direction affects the subject employee, as provided for under section 194(1)(ba) of the PS Act.

## 13. Transitional arrangements

13.1 Section 296 of the PS Act provides the transitional arrangements for disciplinary processes under section 187(1)(a) or (f)(ii) or (iii) as in force immediately before commencement.

13.2 Provisions relating to periodic reviews under clause 10 and provisions relating to reviews requested by a subject employee under clause 11 apply to work performance matters that commence after the commencement date of this directive.

## 14. Definitions

Where there is no relevant definition in the PS Act, terms in this directive have their ordinary meaning and are to be interpreted consistently with established public service employment practice.

**Agency**—see application section.

**Balance of probabilities** refers to the civil standard of proof. For an allegation to be substantiated on the balance of probabilities, the evidence must establish that it is more probable than not that the alleged conduct occurred. The strength of evidence necessary to establish an allegation on the balance of probabilities may vary according to the:

- relevance of the evidence to the allegations



- seriousness of the allegations
- inherent likelihood or improbability of a particular thing or event occurring
- gravity of the consequences flowing from a particular finding.

**Chief executive** in the context of exercising a decision making power, includes a person to whom the chief executive has delegated the decision making power.

**Disciplinary process** means anything done in making (or in contemplation of making) a disciplinary decision under Chapter 6 of the PS Act, including making a disciplinary finding under section 187, section 187A, or section 188AB and taking disciplinary action under section 188, section 188A, section 188AB, section 188AC or section 188AD.

**Natural justice** is a right recognised and defined by law that involves two key elements—the hearing rule (everyone is entitled to a decision by a disinterested and unbiased adjudicator), and the bias rule (the parties shall be given adequate notice of the case against them, and a right to respond)

**Union**, for the purpose of this directive, means an employee organisation registered under chapter 12 of the *Industrial Relations Act 2016* or under the *Fair Work (Registered Organisations) Act 2009* (Cth).

**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.

## 15. 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 should be considered by the chief executive:

- Chapter 3, part 6 (Functions of commission relating to work performance matters) and Chapter 6 (Disciplinary action for public service employees and former public service employees) of the PS Act are relevant provisions for disciplinary processes
- [Commission Chief Executive Guideline: Discipline](#)
- QIRC information about [Public Service Appeals](#)
- [Directives about positive performance management, employee suspensions, workplace investigations, appeals](#)
- [Find Resources about managing employees](#) in the Queensland Government
- [Role of a support person](#) in the Queensland Government

