

## Suspension of employees

**Policy Number:** E14 (QH-POL-400)

**Publication date:** June 2021

**Purpose:** To outline the requirements under the *Public Service Act 2008* in relation to the suspension of Queensland Health employees.

**Application:** This policy applies to all Queensland Health employees.

This policy does not apply to employees of Queensland Ambulance Services. Instead, Queensland Ambulance Service employees are to refer to their local policy/procedure, where applicable.

**Delegation:** The 'delegate' is as listed in the relevant Department of Health Human Resource (HR) Delegations Manual, or Hospital and Health Services Human Resource (HR) Delegations Manual, as amended from time to time.

### Legislative or other authority:

- *Hospital and Health Boards Act 2011*
- *Human Rights Act 2019*
- *Public Sector Ethics Act 1994*
- *Public Service Act 2008*
- Public Service Regulation 2018
- PSC Directive No. 17/20: Workplace investigations
- PSC Directive No. 16/20: Suspension directive
- PSC Directive No. 14/20: Discipline
- PSC Directive No. 07/20: Appeals

### Related policy or documents:

- Discipline HR Policy E10 (QH-POL-124)
- Individual employee grievances E12 (QH-POL-140)
- Public Service Commission Guideline 01/17: Discipline
- [Code of Conduct for the Queensland Public Service](#)
- [Queensland Industrial Relations Commission public service appeal guide](#)

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## 1 Applied provisions and ruling

The provisions of the *Public Service Act 2008* relating to discipline have been extended to health service employees via Public Service Regulation 2018.

Public Service Commission (PSC) Directive No. 16/20: Suspension directive is applied to health service employees via the Public Service Regulation. Any replacement directive issued dealing with substantially the same subject matter is to be applied.

## 2 Key principles

Suspension from duty 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..

The *Public Service Act 2008* requires that before suspending an employee, a delegate must consider all reasonable alternatives, including alternative duties, a temporary transfer, or another alternative working arrangement, that are available to the employee.

In suspending an employee, the delegate must comply with the procedures outlined in PSC Directive No. 16/20: Suspension.

The following key principles apply to all suspension processes:

- Suspending an employee should not be the automatic or default position.
- Suspension decisions are to be made fairly. The principles of natural justice are required to be applied in relation to a suspension without normal remuneration (refer section 7.1 of this policy). Natural justice is not required in relation to a suspension with normal remuneration.
- 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.
- Employee suspensions should be used carefully, as they can result in significant costs to Queensland Health and can affect Queensland Health's capacity to deliver services on time and within budget.

- Ongoing and clear communication is to occur between the employee and the delegate/manager throughout the suspension process and immediately before the employee returns to work.

A decision maker has an obligation under the *Human Rights Act 2019* to act and make decisions in a way that is compatible with human rights. When making a decision under this policy, the delegate is to give proper consideration to human rights.

### 3 Suspension considerations

Section 137 of the Public Service Act provides that a delegate may, by notice, suspend an employee if the chief executive of a department reasonably believes:

- for a public service officer – the proper and efficient management of the department might be prejudiced if the officer is not suspended
- for a public service employee – the employee is liable to discipline under a disciplinary law.

For clarity, the above provision is applied to health service employees whether fixed term temporary, engaged under a contract of employment, or permanently appointed.

When a period of suspension ends, the suspension must not automatically be renewed. The delegate must reconsider whether suspension is still appropriate having regard to the consideration for suspension in section 137 of the Public Service Act, PSC Directive No. 16/20 and this policy.

### 4 Consideration of alternative duties

Before suspending an employee under section 137 of the Public Service Act, there is a legislative obligation that the delegate **must** consider all reasonable alternative duties the employee may be able to perform. The alternative duties do not have to form part of an established role and can be outside the employee's usual place of work.

The duties or other options that have been identified and considered are to be documented and provided to the employee by the delegate, including the reasons why the employee could not undertake those alternative options considered.

Prior to suspending an employee, consideration must also be given to (and is not limited to):

- temporary transfer to alternative duties (either in the employee's workplace or at another workplace)
- directing the employee to work under close supervision or with another employee
- working from home
- 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).

In determining whether suspension is appropriate, or whether the employee can be directed to undertake alternative duties, or another alternative working arrangement, will depend on the circumstances and facts of the individual case. Consideration can be given to whether:

- the safety or well-being of other employees, clients or members of the public may be adversely affected if the employee were to remain in the workplace
- the alleged behaviour of the employee is so unacceptable it is likely to cause loss or damage to Queensland Health either physically or through public perception
- there is an unacceptable risk to Queensland Health arising from the potential for fraud, serious breach of professional boundaries or concerns about the employee's honesty, judgement, trustworthiness or competency

- any investigation would be compromised if the employee were to remain in the workplace, e.g. there is a possibility that evidence will be tampered with or witnesses may be inappropriately approached or intimidated
- there is a likelihood the employee will continue with the alleged unacceptable conduct and the potential impact if this were to occur
- the proper and efficient management of the department might be prejudiced.

## 5 Notice of suspension

Section 137(2) of the Public Service Act provides that the delegate must give the employee written notice of the suspension, stating:

- when the suspension starts and ends
- whether the employee is entitled to remuneration for the period of the suspension
- the effect alternative employment may, under section 137(5), have on the remuneration the employee is entitled to while suspended.

In accordance with the requirements of section 5.2(c) of PSC Directive No. 16/20, the notice must also include information about consideration of all reasonable alternative options. This is to include what alternative duties or other options had been identified and considered, and the reasons why the employee could not undertake those alternative options.

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'.

The suspension period must not exceed the periods listed in PSC Directive No. 16/20 pertaining to periodic review of a suspension (refer section 8 of the directive). Only following a periodic review may a suspension be extended.

## 6 Suspension with remuneration

An employee suspended under section 137(1)(a) of the Public Service Act is entitled to normal remuneration, less any amount they earn from alternative employment during the period of suspension. An employee suspended under section 137(1)(a) cannot be suspended without remuneration.

An employee suspended under section 137(1)(b) of the Public Service Act is entitled to normal remuneration, unless the delegate considers it is not appropriate, having regard to the nature of the discipline to which the delegate believes the person is liable. Refer to section 7.

If an employee is entitled to normal remuneration during the suspension, any amount they earn from alternative employment during the period of suspension must be deducted from the employee's normal remuneration unless -

- the person was engaged in the employment at the time of the suspension; and
- the person, in engaging in the employment, was not contravening -
  - this Act; or
  - a standard of conduct applying to the person under an approved code of conduct or standard of practice under the *Public Sector Ethics Act 1994*.

The deduction of amounts earned from alternative employment must not be more than the amount of the person's normal remuneration during the period of the suspension.

## 7 Suspension without remuneration

Where a delegate decides normal remuneration is not appropriate for the suspended employee (suspended under section 137(1)(b) of the Public Service Act), the employee may be suspended without remuneration under section 137(4) of the Public Service Act. 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.

### 7.1 Decision to suspend without remuneration

Before a decision is made to suspend an employee without remuneration, the employee must be afforded an opportunity to respond, in writing, to the proposed action (this can occur through a 'show cause' process). The principles of natural justice apply for suspensions without remuneration.

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.

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 Public Service Act, and reasons for the decision that suspension is without normal remuneration.

The delegate must provide the employee with a minimum of seven (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 delegate 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.

If the employee does not respond to a show cause notice or does not respond within the nominated timeframe and has not been granted an extension of time to respond, the delegate may make a decision on grounds based on the information available to them.

In deciding that normal remuneration is not appropriate, the factors the delegate is to consider include:

- a) the nature of the discipline matter
- b) any factors not within the control of Queensland Health that are preventing the timely conclusion of the discipline process
- c) the public interest of the employee remaining on suspension with remuneration.

A public service employee may appeal a decision to suspend without normal remuneration. Refer section 14.

### 7.2 Reimbursement for remuneration

PSC Directive No. 16/20 provides that 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 employment.



The amount to be reimbursed is the employee's normal remuneration at the date of suspension without remuneration for the period the employee was suspended, taking into account:

- a) any increases 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.

An employee who ceases employment prior to a decision on discipline being made is not entitled to reimbursement.

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, 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 Public Service 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.

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.

## 8 Alternative employment

If an employee engages in alternative employment during a period of suspension the employee must advise the delegate. Alternative employment does not include employment that the employee was engaged in at the time of the suspension and which is not in contravention of the Public Service Act, the Code of Conduct for the Queensland Public Service or a directive issued by the PSC.

Section 137(5) of the Public Service Act provides that any amount earned from the alternative employment the employee engages in during the suspension period must be deducted from the remuneration paid to the employee while suspended. The amount deducted must not be more than the amount of the employee's normal remuneration during the period of the suspension.

## 9 Continuity of employment

In accordance with section 137(7) of the Public Service Act, suspension does not break the continuity of the employee's service.

## 10 Monitoring of suspension

An employee's suspension must be monitored. Consideration should be given to a number of factors including, but not limited to, whether:

- the employee should remain suspended
- any circumstances have changed
- there are alternative duties the employee could perform
- the suspension should be without remuneration (if suspended under section 137(1)(b)).

## 11 Communication and support of suspended employee

Clear and ongoing communication between the employee and the delegate/manager is to occur, 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.

A suspended employee should 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).

## 12 Periodic review of a suspension and extension

This section applies to a work performance matter, other than a corrupt conduct matter.

A delegate is expected to resolve the matter giving rise to a suspension in a timely way.

A suspension commences when a delegate 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).

A suspension may only be extended by a delegate following review:

- at six (6) months – by an independent decision maker in Queensland Health
- at nine (9) months – by the relevant Health Service Chief Executive or departmental Deputy Director-General
- at 12 months – by the Director-General, Queensland Health
- at 18 months – by the Public Service Commission Chief Executive, and every three (3) months thereafter.

The review must consider whether the suspension should be cancelled or continued having regard to the considerations for suspension under section 137 of the Public Service Act.

The findings of the review must be communicated to the employee and, where the suspension is extended, the delegate must provide written notice of the suspension as set out in section 137 of the Public Service Act, PSC Directive No. 16/20 and this policy.

A suspension should remain in place while the periodic review is completed.

The periodic review provisions apply to work performance matters that commence after the commencement date of PSC Directive No. 16/20 (25 September 2020 for public service employees and 1 October 2020 for health service employees).

## 13 External review of suspension procedure for work performance matters

This section applies to a work performance matter, other than a corrupt conduct matter.

Under section 9 of PSC Directive No. 16/20, a suspended employee may ask the PSC to conduct a review of a suspension procedural aspect of Queensland Health's handling of a work performance matter, provided:

- the suspended employee reasonably believes the delegate has not complied with the requirements of PSC Directive No. 16/20
- the suspended employee has utilised internal review procedures under the directive on individual employee grievances
- having utilised the internal review procedure, the suspended employee is dissatisfied with a decision made following the internal review, and

- a decision has not been made for the work performance matter that the suspended employee may appeal under chapter 7, part 1 of the Public Service Act.

The request for review must be submitted in writing by the suspended employee to the PSC, addressing the eligibility for review above and must include:

- a clear statement of how the employee believes the agency has not complied with PSC Directive No. 16/20
- the action the employee seeks from the review.

On receiving the request, the PSC may, but is not required to, conduct a review contemplated in section 88IA of the Public Service Act, and may but is not required to give the chief executive a report on the review.

The Commission Chief Executive must provide a written decision to the subject employee, along with reasons for the decision, including when the Commission Chief Executive decides not to conduct a review.

The provisions for external review apply to work performance matters that commence after the commencement date of PSC Directive No. 16/20 (25 September 2020 for public service employees and 1 October 2020 for health service employees).

#### 14 Right to appeal

An employee suspended without remuneration may appeal a suspension without remuneration decision under Section 196(bb) of the Public Service Act. An appeal is subject to timeframes and must be made to the Queensland Industrial Relations Commission (QIRC). Further information can be found in the QIRC Appeals Guide.

#### 15 Ending suspension

The delegate may cancel the suspension at any time under section 137(8) of the Public Service Act. The employee is to be advised of the cessation of the suspension in writing.

#### 16 Reporting

Information must be recorded on all suspensions and reported quarterly as per the PSC reporting requirements.

#### Definitions:

Alternative employment	Under section 137(5) of the <i>Public Service Act 2008</i> , alternative employment does not include employment where— <ol style="list-style-type: none"> <li>the employee was engaged in the employment at the time of the suspension; and</li> <li>the employee's engaging in the employment was not in contravention of—           <ol style="list-style-type: none"> <li>the Public Service Act; or</li> </ol> </li> <li>a standard of conduct applying to the employee under an approved code of conduct or standard of practice under the <i>Public Sector Ethics Act 1994</i>.</li> </ol>
Corrupt conduct matter	Section 15 of the <i>Crime and Corruption Act 2001</i> defines corrupt conduct as conduct of a person, regardless of whether the person holds or held an appointment, that:



	<p>a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of</p> <p>(i) a unit of public administration; or</p> <p>(ii) a person holding an appointment; and</p> <p>b) results, or could result, directly or indirectly, in the performance of functions or the exercise of powers mentioned in paragraph (a) in a way that:</p> <p>(i) is not honest or is not impartial; or</p> <p>(ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or</p> <p>(iii) involves a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers of a person holding an appointment; and</p> <p>c) is engaged in for the purpose of providing a benefit to the person or another person or causing a detriment to another person; and</p> <p>d) would, if proved, be</p> <p>(i) a criminal offence; or</p> <p>(ii) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or were the holder of an appointment.</p>
Natural justice	<p>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).</p> <p>Refer to section 7.1 of this policy for the application of natural justice in the context of suspension without remuneration.</p>
Normal remuneration	<p>Means:</p> <ul style="list-style-type: none"> <li>• the ordinary hours worked by the employee; and</li> <li>• the amounts payable to the employee for the hours, including (for example) allowances, loadings and penalties; and</li> <li>• any other amounts payable under the employee's employment contract.</li> </ul> <p>Where the employee is a shift worker, any decision to suspend the employee should not adversely affect their entitlements including remuneration, allowances, loadings or shift penalties provided for by the relevant industrial instrument.</p>
Work performance matter	<p>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.</p>

### History:

June 2021	<ul style="list-style-type: none"> <li>• Policy: <ul style="list-style-type: none"> <li>– amended to update references and naming conventions</li> <li>– amended to incorporate provisions, including reimbursement and periodic review, of new PSC Directive No. 16/20: Suspension issued 25 September 2020</li> <li>– amended to include <i>Human Rights Act 2019</i> statement.</li> </ul> </li> </ul>
June 2020	<ul style="list-style-type: none"> <li>• Policy application amended as a result of changes outlined in the Hospital and Health Boards (Changes to Prescribed Services) Amendment Regulation 2019.</li> </ul>
January 2020	<ul style="list-style-type: none"> <li>• Policy:</li> </ul>

	<ul style="list-style-type: none"> <li>– formatted as part of the HR Policy review</li> <li>– updated to include reference to the <i>Human Rights Act 2019</i>.</li> </ul>
October 2018	<ul style="list-style-type: none"> <li>• Policy: <ul style="list-style-type: none"> <li>– formatted as part of the HR Policy review</li> <li>– amended to update references and naming conventions</li> <li>– application excludes employees of Queensland Ambulance Service</li> <li>– amendments to the paid and unpaid components of suspension to align with the <i>Public Service Act 2008</i></li> <li>– amendments to align with the current reporting requirements.</li> </ul> </li> </ul>
January 2014	<ul style="list-style-type: none"> <li>• New policy developed. Suspension content removed from the Discipline HR Policy E10 and incorporated into this policy.</li> </ul>

Public Sector Act 2022  
applies on 1 March 2023

UNDER REVIEW

Managing the risk of psychosocial hazards at work  
Code of Practice 2022  
applies 1 April 2023