

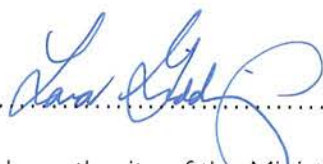
Employment Direction No. 4

PROCEDURE FOR SUSPENSION OF STATE SERVICE EMPLOYEES WITH OR WITHOUT PAY

Operative Date: 4 February 2013

Directive

Pursuant to Section 17 of the *State Service Act 2000*, I hereby direct that the arrangements and requirements set out in this Employment Direction are to apply.



Issued by authority of the Minister administering the *State Service Act 2000*.

Date: 4-2-13

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1. Purpose

The purpose of this Direction is to set out the basic procedural requirements for suspension of State Service employees either with or without pay.

2. Application

This Direction is to apply to all State Service Agencies and officers and employees within those Agencies.

3. Definitions

'The Act' means the *State Service Act 2000*.

'The Minister' means the Minister administering the Act.

'Employee' means a permanent or fixed-term employee appointed under Section 37 of the Act.

'Officer' means a person appointed as a holder of a prescribed office, senior executive or equivalent specialist in accordance with Section 31 of the Act.

'Head of Agency' is the person holding that office for the purposes of the Act in accordance with Section 30 of the Act.

'The Employer' is the Minister administering the *State Service Act 2000* in accordance with Section 14 of the Act.

'Employment Direction' means an Employment Direction relating to the administration of the State Service and employment matters as issued by the Employer in accordance with Section 17 of the Act.

'Head of the State Service' means the person appointed by the Premier to perform the functions and powers of the Employer, other than the power to issue Employment Directions, in accordance with Section 20 of the Act.

4. Legislation/Award Basis and Related Documents

State Service Act 2000 Part 4 (sections 14, 15, 16) and sections 17, 20, 21, 31, 37, 49 and 50.

Employment Direction No. 5 - Procedures for Determination of Breaches of the Code of Conduct.

Employment Direction No. 6 - Procedures for Determination of Inability to Perform Duties.

State Service Regulations 2000 Regulations 34 and 35 support Section 43 of the *State Service Act 2000* which state that the provision for suspension from duties of employees, with or without salary, will be made in the Regulations.

5. Date of Operation

5.1 This Direction will take effect from the date the issue and will remain in force until varied or revoked.

5.2 Where a suspension has commenced under the previous Commissioner's Direction and remains in effect as of 4 February 2013 the suspension shall be managed in accordance with this Direction.

6. Direction

6.1 A Head of Agency who has reasonable grounds to believe that it is in the public interest to do so may suspend an employee with full pay if the Head of Agency believes that:

- a. the employee has, or may have, breached the Code of Conduct in such a manner that the employee should not continue in the performance of his/her duties; or
- b. the employee has been charged in Tasmania with an offence punishable by imprisonment for a term exceeding six months or has been charged outside of Tasmania with an offence punishable by imprisonment for a term exceeding six months; or
- c. the employee is, or may be, unable to efficiently and effectively perform the duties assigned to the employee.

6.2 The Head of the State Service, after considering submissions by:

- the Head of Agency who has reasonable grounds to believe that it is in the public interest; and
- the employee concerned; and
- may suspend an employee without pay.

Note:

Submissions by the Head of Agency to the Head of the State Service are to include:

- why suspension is in the public interest; and
- any consideration of the employee's response to the alleged breach of the code of conduct or alleged inability; and
- affect on the employee; and
- affect on the workplace; and
- consideration of any alternatives to suspension.

6.3 The Head of Agency is to keep the employee informed of the proceedings at all times.

6.4 Any decision to suspend an employee is to be taken on a case-by-case basis. The following issues are to be taken into account:

- a. the nature of the offence; and

- b. the impact on other employees of the employee remaining in the workplace; and
- c. the danger of disruption in the workplace; and
- d. the ability of the employee to undertake duties to a satisfactory standard; and
- e. the attitude of the public towards the breach and the employee; and
- f. the repercussions of the decision on the State Service; and
- g. whether reassignment of duties within the Agency or the State Service is appropriate; and
- h. the type of duties they undertake; and
- i. any response received from the employee.

Note:

While each case varies the following factors should be taken into account in deciding whether to suspend an employee:

- a. the breach of the Code of Conduct or inability is of such a serious nature that it is inappropriate for the employee to continue to perform assigned duties; or
- b. where it is in the best interests of the public, the Agency, other employees and the employee being investigated.

Suspension is not a sanction, it is only to be used where an investigation of an employee is underway and proper investigation requires the employee to be absent or where because of the nature of the alleged offence it is not appropriate that the employee remain in the workplace.

Suspension is not always the best course of action. A Head of Agency should ensure that other alternatives are also considered before suspending an employee.

- 6.5 Any suspension is to be reviewed regularly so that the possibility of the employee returning to the workplace is monitored over time. If it becomes practicable to return the employee to the workplace, either within the original Agency or elsewhere within the State Service, then this should be considered. Consultation with the Director, State Service Management Office is required if return to work in another Agency is being considered.

- 6.6 A Head of Agency is not able to suspend an employee without pay. For suspension without pay the approval of the Head of the State Service is essential. When the Head of the State Service does approve the suspension without pay and the case against the employee is not proven then the employee will be entitled to a full reimbursement of all salary owing to them for the period of the suspension.
- 6.7 Generally suspension without pay will not exceed 60 days. It is only under exceptional circumstances that the Head of the State Service will consider approving suspension without pay for a greater period of time.
- 6.8 The Head of Agency is to immediately end the suspension if the Head of Agency no longer believes on reasonable grounds that:
- a. the employee's suspension is in the public interest or the Agency's interest; or
 - b. the employee has, or may have, breached the Code of Conduct; or
 - c. the employee is, or may be, unable to perform the duties assigned to the employee.
- 6.9 The Head of Agency is to immediately end the suspension if:
- a. a sanction has been imposed on the employee for the relevant breach of the Code of Conduct; or
 - b. the Minister has taken action in relation to the employee being found to be unable to efficiently and effectively perform the duties assigned to the employee.

7. Reporting and Monitoring

Not applicable.

8. Review

This Direction will be reviewed by 4 February 2014.

