



This Guideline will assist in achieving best practice when undertaking a discipline process under the *Public Sector Employment and Management Act* (the Act). The Guideline is to be read in conjunction with Part 8 of the Act and Employment Instruction Number 7, Discipline, but does not form part of the legislation.

Note:

Part 8 (Discipline) of the Act does not apply to fixed period (including Executive Contract Officers) employees or casual employees. Chief Executive Officers should apply the general principles contained in the Act, EI 3 (Natural Justice), EI 7 and this Guideline when considering their options for taking action in relation to the employee's continued employment.

1. Agency Procedure

A Chief Executive Officer may develop discipline procedures consistent with the Act, its subordinate legislation and any relevant award or enterprise agreement.

2. Reasonable Opportunity under section 49A(3)(b)(ii)

The particular circumstances of each case should be taken into account when determining what constitutes a "reasonable opportunity" for an employee to show why the action should not be taken. Relevant factors include (but are not limited to) health issues affecting the employee's ability to respond, the complexity of the matter, or the seriousness of the discipline action contemplated.

3. Suspension with or without remuneration

Under the Act a suspension may only be imposed if a Chief Executive Officer is of the opinion that the suspected breach of discipline is of such a serious nature that the employee should not continue performing the duties he or she is assigned to perform pending the making of that decision.

In considering suspending an employee, a Chief Executive Officer should have regard to the following:

- any possible alternatives that might be appropriate in the circumstances (e.g. a transfer to perform other duties under section 35 of the Act);
- the employee's work performance history and relevant employee records; and
- the risk that retaining the employee in the workplace could be potentially injurious to the employee or others.

Suspensions without remuneration should generally only be considered if the grounds are of such a nature that, if proven, they would lead to termination of the employee's employment and strong evidence pointing to this outcome already exists.



The particular circumstances of each case should be taken into account when determining what constitutes a reasonable opportunity to make submissions in relation to a foreshadowed suspension. Relevant factors include (but are not limited to) health issues affecting the employee's ability to respond, the complexity of the matter, or the seriousness of the action contemplated.

Extensions or variations to an employee's suspension should be actioned by a Chief Executive Officer in a timely manner, noting that such variations may require approval from the Commissioner.

A period of suspension cannot be backdated. If a suspension period lapses, a new suspension process will need to be carried out.

4. *Summary Dismissal (section 50)*

Summary Dismissal means the immediate termination of an employee (i.e. termination without notice), and the general principles of natural justice do not apply. However, natural justice should be applied so far as possible, taking into account the nature of, and circumstances surrounding the breach. Examples of situations which may justify summary dismissal include those where clear evidence exists that the employee has engaged in theft, fraud, or violence.

5. *Support Person*

Employee requests for a support person to be present at discipline meetings should be accommodated wherever possible. The support person is a person nominated by the employee, and may include his or her union organiser or delegate.

The role of the support person is to provide emotional support and act as a witness for the employee. If the support person fails to effectively perform his or her role (e.g. being disruptive), the agency may suspend the meeting and reschedule. In such cases, the employee may decide to nominate another support person.