

# EMPLOYEE PERFORMANCE AND INABILITY

## Employment Instruction Number 6

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### 1. Scope

1.1. This Employment Instruction:

- a) sets out rules for undertaking an employee performance and inability process in accordance with the *Public Sector Employment and Management Act* (the Act);
- b) is issued in accordance with section 16 of the Act;
- c) is to be read in conjunction with, and subject to, Part 7 of the Act; and
- d) is to be read in conjunction with Employment Instruction Number 3 (Natural Justice).

Note:

*This Employment Instruction does not apply to Executive Contract Officers, Chief Executive Officers, fixed period or casual employees.*

### 2. Determining reasonable grounds

2.1. Any information that is relied upon by a Chief Executive Officer under section 44(4) of the Act to satisfy him or herself, on reasonable grounds, that there are inability or performance grounds for an employee, must be documented in a form that enables it to be provided to the employee for comment.

### 3. Medical Examinations

3.1. If a Chief Executive Officer decides that a medical examination is required under section 45 of the Act, the Chief Executive Officer must follow the instructions contained in Employment Instruction Number 5 (Medical Examinations).

### 4. Suspension

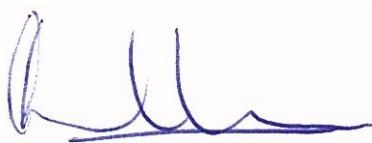
4.1. If a Chief Executive Officer considers that it may be appropriate to suspend the employee pursuant to section 47 of the Act pending a decision to take remedial action under section 46, the Chief Executive Officer must foreshadow in writing that he or she is considering suspending the employee, including:

- a) the reason for considering suspension;
- b) the period of the suspension; and
- c) whether the suspension is with or without remuneration.

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- 4.2. The employee must be given a reasonable opportunity, with the timeframe to be specified in writing, to make submissions in relation to a foreshadowed suspension.
  - 4.3. Where a period of suspension is with remuneration, and a Chief Executive Officer is contemplating changing this to without remuneration, the Chief Executive Officer must foreshadow in writing that he or she is considering changing the terms of the suspension and the reasons for considering the change.
  - 4.4. The employee must be given a reasonable opportunity, with the timeframe specified in writing, to make submissions in relation to the foreshadowed change.
  - 4.5. A Chief Executive Officer may direct the employee to make him or herself available for the purpose of assisting with any investigation or inquiry relating to the matter, at any time during the period of suspension.

## **5. Transfers**

- 5.1. If a Chief Executive Officer considers that it may be appropriate to transfer the employee to perform other duties under section 35 of the Act pending a decision to take remedial action under section 46, the Chief Executive Officer must foreshadow in writing that he or she is considering transferring the employee, the reason for the transfer, and the period of the transfer.
- 5.2. The employee must be given a reasonable opportunity, with the timeframe specified in writing, to make submissions in relation to a foreshadowed transfer.



**GRAHAM SYMONS**  
**Commissioner for Public Employment**

14 December 2011