

Human Resources Policy

Discipline

Policy Number: E10 (QH-POL-124)

Publication date: October 2018

Purpose: To outline the policy and process for the management of discipline in Queensland Health.

Application: This policy applies to all Queensland Health employees, including employees working for:

- the Department of Health
- non-prescribed Hospital and Health Services
- prescribed Hospital and Health Services.

Queensland Ambulance Service employees are to refer to their local policy/procedure.

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:

- *Crime and Corruption Act 2001*
- *Public Sector Ethics Act 1994*
- *Public Service Act 2008*
- Public Service Regulation 2018
- PSC Directive No. 03/17: Appeals

Related policy or documents:

- [Code of Conduct for Queensland Public Service](#)
- Public Service Commission Guideline 01/17: Discipline
- [Requirements for reporting suspected corrupt conduct HR Policy E9](#) (QH-POL-218)
- [Suspension of employees HR Policy E14](#) (QH-POL-400)
- [Role of Union Representatives and Support Persons](#)

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1 Discipline

The *Public Service Act 2008* (Chapter 6) provides for the discipline of employees (extended to health service employees via the Public Service Regulation 2018).

A disciplinary process can only be commenced where the delegate is reasonably satisfied, based on the evidence before them, that the employee has under section 187 of the Public Service Act:

- (a) performed the employee's duties carelessly, incompetently or inefficiently; or
- (b) been guilty of misconduct; or
- (c) been absent from duty without approved leave and without reasonable excuse; or
- (d) contravened, without reasonable excuse, a direction given to the employee by a responsible person; or
- (e) used, without reasonable excuse, a substance to an extent that has adversely affected the competent performance of the employee's duties; or
- (ea) contravened, without reasonable excuse, a requirement of the chief executive under section 179A(1) in relation to the employee's appointment, secondment or employment by, in response to the requirement –
 - (i) failing to disclose a serious disciplinary action; or
 - (ii) giving false or misleading information; or
- (f) contravened without reasonable excuse –
 - (i) a provision of this Act; or
 - (ii) a standard of conduct applying to the employee under an approved code of conduct under the *Public Sector Ethics Act 1994*; or
 - (iii) a standard of conduct, if any, applying to the employee under an approved standard of practice under the Public Sector Ethics Act.

For the purpose of section 187 of the Public Service Act, *Misconduct* means –

- (a) inappropriate or improper conduct in an official capacity; or
- (b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public service.

Under section 188 of the Public Service Act, in disciplining an employee, the delegate may take action considered reasonable in the circumstances.

Examples of disciplinary action include, but are not limited to:

- termination of employment
- reduction of classification level and a consequential change of duties
- transfer or redeploy the employee to other public service employment
- forfeiture or deferment of a remuneration increment or increase
- reduction of remuneration level
- imposition of a monetary penalty (which cannot be more than the total of two of the employee's periodic remuneration payments)
- if a penalty is imposed, a direction that the amount of the penalty be deducted from the employee's periodic remuneration payments
- a reprimand.

2 Requirement to consider management action

Before commencing the disciplinary process, the delegate must consider whether management action could more appropriately address the concern. A disciplinary process is not a substitute for management action and managers need to undertake early intervention to address unacceptable conduct.

3 Natural justice must be afforded

Natural justice (also known as procedural fairness) is the right for a person to be made aware of and respond to information which will be used in the course of a decision that may adversely affect the person. The principles of natural justice must be applied when undertaking the disciplinary process. Natural justice must be afforded before making a decision on an allegation and any disciplinary action.

An employee subject to a discipline process is to be sufficiently informed about the allegations and evidence against them, as well as any proposed action or disciplinary decision, so that the employee may respond to the case against them. The employee is to be provided a reasonable opportunity to be heard, i.e. to make a full and detailed response regarding the information (the hearing rule).

The decision maker needs to ensure they are unbiased in that they do not have an actual, possible or perceived conflict of interest in the matter and/or its outcome (the rule against bias).

4 Key principles

The following key principles must be applied in all disciplinary processes:

- Compliance with relevant legislation and applicable policy.
- Allegations must be supported by objective evidence which has taken into account all relevant materials.
- The standard of proof to be applied in making a finding in relation to a disciplinary matter is on the balance of probabilities.
- Process must be maintained without bias (real or perceived) or conflict of interest.
- When practicable, all decisions should be made in a timely manner.
- An employee must be advised they can access Employee Assistance.
- Confidentiality.
- Employees are entitled to have a support person, union representative or legal representative support them through the process.
- All stages of the disciplinary process are to be documented and stored confidentially in a secure location and are not to be kept on the employee’s personnel file.
- There is a distinction between criminal process and disciplinary process. Therefore, an employee charged with a criminal offence, whether subsequently convicted or not, may still be subject to disciplinary action. Further, a criminal process and a disciplinary process may run concurrently, depending on the advice received from the relevant authority (usually Queensland Police Service).

Definitions:

Allegation	A stated claim that is yet to be substantiated on the balance of probabilities.
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Balance of probabilities	The civil standard of proof where the delegate assesses the direct evidence to determine whether or not it is more probable than not that a contested fact/s exists. The degree of probability varies according to the seriousness of the issues involved e.g. the more serious the allegation or proposed action the higher degree of probability that is required.
Corrupt conduct	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 - (a) adversely affects, or could adversely affect, directly or indirectly, the performance of functions or the exercise of powers of— (i) a unit of public administration; or (ii) a person holding an appointment; and (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— (i) is not honest or is not impartial; or (ii) involves a breach of the trust placed in a person holding an appointment, either knowingly or recklessly; or (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 (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 (d) would, if proved, be— (i) a criminal offence; or (ii) a disciplinary breach providing reasonable grounds for terminating the person’s services, if the person is or were the holder of an appointment.
Delegate	The role that has been delegated the authority to determine disciplinary matters in accordance with the HR delegations manual.
Disciplinary action	Action taken as an outcome of a disciplinary process pursuant to the <i>Public Service Act 2008</i> (section 188).
Disciplinary process	The method used to determine whether or not grounds for discipline exist and whether or not disciplinary action is warranted and should be taken against the employee. The process commences from the issuing of the ‘first show cause’ letter and concludes by notifying the employee of the decision made.
Employee Assistance	A confidential counselling and referral service for Queensland Health employees. Employee Assistance provides short term personal counselling to all employees and/or immediate family members for personal and work-related problems. Refer Chapter 6 of the Public Service Act.
Grounds for discipline	A ground for discipline exists if the employee’s alleged performance or conduct could be seen to have breached a section within 187(1)(a) to (f) of the Public Service Act.
Manager/supervisor	The person who has responsibility for the employee for performance management purposes and who is responsible for their performance outputs, development and guidance.

Natural justice	<p>Natural justice has two rules:</p> <ul style="list-style-type: none"> • Rule against bias: decision-makers are to be objective, free of bias, and have no personal interest in the matter being decided. • Hearing rule: an individual is to be informed of the substance of an allegation/s against them and have the opportunity to present their case prior to a decision being made.
Support person	<p>An employee may have a support person present during the interview with the investigating officer. The support person cannot advocate on behalf of the employee. The support person may assist by taking notes or quietly prompting or giving advice to the employee. The support person cannot be disruptive or obstruct the process.</p>

History:

October 2018	<ul style="list-style-type: none"> • Policy: <ul style="list-style-type: none"> – formatted as part of the HR Policy review – amended to update references and naming conventions – application excludes employees of Queensland Ambulance Service – amended to clarify the natural justice provisions (section 3), appeal options (Attachment One section 3.3), and the discipline process (Attachment One sections 1, 2 and 4) – amended to incorporate definition for corrupt conduct.
March 2014	<ul style="list-style-type: none"> • Policy formatted as part of the HR Policy Simplification project. • Policy amended to: <ul style="list-style-type: none"> – move all the process sections into Schedule One – accurately reflect the requirements for discipline under the Public Service Act 2008 and Public Service Commission Discipline Guideline 01/13 – remove suspension sections as they are now included in Suspension HR Policy E14 – update references and naming conventions.
May 2009	<ul style="list-style-type: none"> • Amended to reflect the provisions in the <i>Public Service Act 2008</i> for suspension from duty and to adjust the definition of support person.
July 2008	<ul style="list-style-type: none"> • Amended to reflect Public Service Act 2008 and Public Service Regulation 2008.
June 2008	<ul style="list-style-type: none"> • Developed as a result of the HR policy consolidation project.
Previous	<ul style="list-style-type: none"> • IRM 5.5 Prescribed Remuneration. • IRM 9.2 Disciplinary Offences. • IRM 9.3 Suspension of Officers or Employees. • IRM 9.8 Discipline – A Strategy for Managing Discipline.

Attachment One - Discipline process

The following information is provided as the minimum mandatory standard practice, procedure or process to enable satisfactory compliance with this Queensland Health HR policy.

Local guidelines/procedures may be developed to facilitate implementation of this policy. Any local guidelines/procedures must be consistent with this policy and attachment and ensure employee entitlements continue to be met.

1 Initial enquiries and considerations

On receipt of an allegation, a preliminary assessment of the matter should be undertaken to:

- determine whether there is a suspicion of corrupt conduct and therefore whether a referral needs to be made to the Ethical Standards Unit (for Department of Health employees) or to the Crime and Corruption Commission Liaison Officer (for Hospital and Health Service employees)
- assess whether management action could more appropriately address the concerns
- engage in early conversations, even in the context of a likely discipline process, to provide the best hope for:
 - the cessation of unacceptable conduct
 - early resolution
 - preserving working relationships
 - avoiding an unnecessary and disproportionately protracted dispute
- determine whether further information needs to be obtained and how this should occur.

Consideration should also be given to whether the matter has previously been raised and resolved with the employee, and therefore may be considered to have already been addressed.

If a manager determines disciplinary action may be necessary they are to consult with the local HR team prior to referral to the appropriate delegate.

The delegate can give consideration to suspending the employee at any stage of the disciplinary process in accordance with the Suspension of employees HR Policy E14.

Note: For consistency of decision making, the delegate should remain the same throughout the discipline process. It is however recognised that due to various circumstances the delegate may need to change. If the delegate needs to change during a process, this should be communicated to the subject officer including the reason why the delegate has changed, e.g. leave, resignation, higher duties, bias, conflict of interest or higher delegate required.

2 Determine whether to proceed with a disciplinary process

When the delegate is satisfied all relevant documentation is available to them, and they have given careful consideration to the information, they can make a determination on whether they are reasonably satisfied there may be grounds for discipline under section 187 of the *Public Service Act 2008* and whether to commence a disciplinary process.

A delegate may reach a conclusion that the behaviour may have been inappropriate and there are grounds for discipline; and still determine management action would appropriately address the concerns.

Should the delegate decide to proceed with a discipline process, the local HR team should be engaged to provide support to the delegate. However, if the employees involved are members of the local HR team, the delegate should consider who external to the team will provide HR assistance for the discipline process in order to avoid any bias (real or perceived) or potential conflict of interest.

2.1 Options during disciplinary process

At any stage of the discipline process the delegate can decide to:

- continue with the discipline process
- take management action
- take no further action.

3 Disciplinary process

If the delegate reasonably believes there are grounds for discipline, and determines a disciplinary process is warranted, the employee must be afforded the opportunity to:

- be provided with the written details of the allegation against them
- provide a response to the allegations. This is the employee's opportunity to accept or deny the allegations and provide any information they consider relevant
- respond to the proposed disciplinary action. The employee's response may include a recommendation of other disciplinary action the employee considers may be more appropriate.

When putting allegations to the employee, the employee must also be:

- advised what sections of the Public Service Act (section 187) the employee's alleged actions may have breached (for example section 187(1)(a) that the employee may have performed their duties carelessly, incompetently or inefficiently)
- provided with all the information the delegate intends to rely upon when determining whether an allegation can be substantiated. The employee should be advised what evidence is being relied upon to support the allegation/s.

In making a decision on the allegation (discipline finding), the delegate must:

- consider all information including the response (if any) from the employee
- advise the employee of the finding in relation to each allegation. This must include an explanation of the evidence relied on and how the delegate reached the finding (the standard of proof when substantiating an allegation is '*on the balance of probabilities*')
- advise the employee what ground/s of the Public Service Act (section 187) the employee's performance or conduct has breached (only one ground per allegation).

In making a decision on the disciplinary action, the delegate must:

- consider the response (if any) from the employee
and
- advise the employee of the decision on the disciplinary action to be imposed.

Note: If the delegate, having considered the employee's response to the proposed disciplinary action, decides a different (lesser) action may be appropriate, the delegate should consider providing the employee with an opportunity to respond to the different (lesser) action. This should occur in instances where the (new) lesser action is materially different to the initial action proposed.

3.1 Employee to be advised in writing

The employee must be advised of the delegate's decision in writing including, (but is not limited to):

- the finding on allegation/s (including the reasons the findings were made)
- proposed disciplinary action

- decision on disciplinary action (including the reason the disciplinary action is appropriate) including if the decision is not to take further action.

3.2 Timeframe for response

The employee should be provided with a reasonable period to provide their response:

- For a response to allegation/s - this is usually 14 days
- For a response to the proposed disciplinary action - this is usually seven days.

In determining a reasonable period, consideration should be given to:

- the individual circumstances of the employee
- the amount of information that needs to be considered
- the seriousness of the allegations
- the seriousness of the proposed disciplinary action.

3.3 Appeal options

The employee must be advised of their appeal options:

- Disciplinary finding – an employee is entitled to appeal a disciplinary finding by lodging a fair treatment appeal
- Disciplinary action (non-termination) - an employee may appeal the decision (in accordance with the Public Service Act and PSC Directive 03/17 Appeals). The notice of appeal must be received by the Queensland Industrial Relations Commission (QIRC) by the 21st day after the day on which the employee received written notice of the decision on disciplinary action. Where no notice of appeal is received, the decision on disciplinary action will be implemented.
- Disciplinary action (termination) - an employee is entitled to appeal the decision by lodging an Application for Reinstatement with the QIRC within 21 days of receipt of the letter advising of the termination.

4 Management of process, outcomes and documentation

Delegates and direct line managers are to ensure the process is managed efficiently, confidentially and in accordance with policies and legislation.

The employee should be kept informed regarding the progress of all stages of the discipline process and informed of any anticipated delays.

All aspects of the discipline process are to be recorded in a separate confidential discipline file and not on the employee's personnel file.