



CRIMINAL AND TRAFFIC OFFENCES

Guidelines for Dealing with a Serious Offence

1 Purpose

These Guidelines are issued for the purpose of dealing with an employee who is:

- charged with a serious offence
- convicted of a serious offence in NSW
- convicted of a traffic offence and is required to drive a motor vehicle as part of his or her duties

2 Definitions

A serious offence is an offence punishable by imprisonment for 12 months or more.

The prison term refers to the maximum term the offence may attract, not the actual prison term that is imposed.

A serious offence includes where an employee is:

- convicted of an offence in another jurisdiction that, had it been committed in NSW, would have been punishable by imprisonment of 12 months or more or
- found guilty of a serious offence, but where a conviction is not recorded (Division 3, section 10, *Crimes (Sentencing Procedures) Act 1999*).

A traffic offence means any of the following offences:

- (a) an offence under section 25A of the *Road Transport (Driver Licensing) Act 1998* (relating to driving while disqualified or unlicensed),
- (b) an offence under section 19 (2) of the *Road Transport (General) Act 1999* (Authorised officer may require production of driver licence and name and address from driver or rider),
- (c) an offence under any of the following sections of the *Road Transport (Safety and Traffic Management) Act 1999*:
 - section 9 (Presence of prescribed concentration of alcohol in person's blood),
 - section 12 (Use or attempted use of a vehicle under the influence of alcohol or any other drug),
 - section 42 (Negligent, furious or reckless driving),



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- section 43 (Menacing driving),
- section 70 (Duty to stop and give assistance where person killed or injured in road accident).

3 Application and Effect

The Procedural Guidelines apply to employees of the Ambulance Service who are defined to mean persons employed in staff or senior executive positions, including those on probation.

The Guidelines apply to a decision of the Chief Executive to take either disciplinary action or remedial action because an employee has been convicted of a serious or traffic offence under clause 21 of the *Ambulance Service Regulation Act 2005* (the Regulation).

4 Delegation - Chief Executive

The Chief Executive may delegate the power to take action in respect to an employee convicted of a serious offence or traffic offence.

In these Guidelines a reference to the 'Chief Executive' is to be read as to include a delegate.

5 Procedural Fairness

Prior to taking any disciplinary action the employee must have the opportunity to make representations in relation to any proposed disciplinary action, including an interview with the Chief Executive.

All steps in the process are to be completed in a timely and expeditious fashion.

6 Notification when charged with a Serious Traffic Offence

An employee who is charged with having committed, or is convicted of a serious or traffic offence is required to immediately report the fact to the Chief Executive. (Clause 19(1) of the Regulation)

An employee of the Ambulance Service who is required to drive a motor vehicle as part of his or her duties and who is charged with having committed, or is convicted of, a traffic offence must immediately report that fact in writing to the Ambulance Service. (Clause 19(2) of the Regulation)

The supervisor in the branch or section in which the employee is employed is required to immediately report to the Chief Executive if he/she has reason to believe that the employee has been charged with having committed,

or has been convicted of a serious offence or traffic offence but has not reported that fact as required. Clause 19(3) of the Regulation).



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The Chief Executive must notify specified external agencies and Departments of allegations, and disciplinary processes taken in relation to certain behaviour, incidents and conduct.

In general, external notification needs to be made when any action is taken to investigate matters that have been the subject of allegations involving any of the following matters:

- Child abuse
- Sexual misconduct which involves children, is directed at children, or take place in the presence of children
- Acts of violence committed by the employee in the course of employment which involves children, is directed at children, or take place in the presence of children
- Certain other criminal offences.

7 Alternative duties or Suspension of employees from Duty

Clause 23 of the Regulation allows for suspension from duty if an employee is charged with having committed a serious offence and until the offence has been dealt with.

Decisions in relation to this issue are to be based on the facts as they are known at the time and nature and seriousness of the criminal charge in the context of the employee's position. The first consideration should be is it appropriate for the employee to continue in their usual duties? If the decision is that it is inappropriate, the first option is to place the employee on alternative duties or duties at another location (see Sample letter 1).

Where it is inappropriate for the employee to be given alternative duties, *Premier's Memorandum 94-35* (see Appendix 4) sets out the circumstances in which suspension with pay or without pay is appropriate.

Suspension is not a penalty. It is a protective measure whilst the criminal charge is being considered.

- It is important to remember that all decisions in relation to suspension should be reviewed at least every 30 days.
- The position of the employee shall not be permanently filled while the employee is suspended from duty.



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7.1 Payment of owed shift penalties

If the employee is a shift worker on suspension with pay on the base rate of pay on a permanent and regular basis, or has worked shift work regularly for the previous 3 months, and has been:

- suspended, or
- allocated alternative duties pending the outcome of a criminal or misconduct investigation, or
- placed on duties which resulted in a loss of shift penalties and other allowances;
- and no finding of guilt is made against them; then the employee is to be reimbursed for the loss of shift penalties and other allowances that relate to work or conditions, that were withheld whilst on suspension or transfer to alternative duties. (Refer *NSW Health Circular 96/48- Appendix 5*)

8 Criminal Proceedings – Matter has a Direct Connection with Work

Where the matter directly relates to the employee's work, unless there will be an impact on the police investigation, there is usually no need unless requested by the Police to suspend the internal investigation concerning an allegation of misconduct under the Procedural Guidelines. All stages of dealing with the allegation as a disciplinary matter should continue unless requested by the external authority to not proceed. If all stages are not completed and the employee is charged criminally it is usually appropriate to await the outcome of the court proceedings.

The Ambulance Service should ensure that at all times they are aware of the progress of a matter and act promptly upon the conclusion of the criminal proceedings. It may be necessary to regularly liaise with the Police. It is often prudent to attend any final hearing where a sentence is to be imposed.

9 Employee Convicted of a Serious Offence or a Traffic Offence

When an employee has been convicted or has been found guilty (conviction not recorded) of a serious or traffic offence (where the employee is required to drive a motor vehicle as part of his or her duties) the Chief Executive may decide to:

- take disciplinary action
- take remedial action
- take no action (see Sample letter 5).

10 Matters to be considered in determining the appropriate action

The Chief Executive must exercise discretion in selecting the appropriate action and not adopt a policy that a particular serious offence or traffic offence will always attract the same punishment. It should not be assumed that all convictions will result in either disciplinary or remedial action. For either to occur one or more of the following issues need to apply to the conviction and the criminal matter:



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- Firstly, the objects of Part 3 of the Regulation, that is:
 - To protect the health and safety of the public by providing mechanisms to ensure that employees of the Ambulance Service are fit to perform their duties,
 - To ensure that the public interest is protected,
 - To maintain appropriate standards of conduct and work-related performance in the Ambulance Service;
 - To protect and enhance the integrity and reputation of the Ambulance Service.

then,

- Whether the conviction relates to conduct on duty.
- The connection between the criminal or traffic matter and the employee's position and duties if it did not occur on duty.
- The employment history and general conduct of the employee.
- The effect of the penalty imposed, order of the Court and/or the conviction on the employee's ability to undertake all or any of their range of duties
- Issues taken into account in the judgement regarding mitigation or culpability which might be relevant to the employee's position and duties.
- Other mitigating or extenuating circumstances.

The following material should be obtained as it may assist in cases where an employee is found guilty but no conviction recorded:

- The certificate of conviction
- The Court's decision, which will outline the findings made
- Where possible, a transcript of the Judge's/magistrate's remarks in sentencing.

11

Decision Process

11.1 Remedial Action

If the Chief Executive decides that remedial action is to be taken, the employee must be advised in writing of the details of the remedial action to be taken (see Sample letter 2). The employee is to be given an opportunity to make a submission if the proposed remedial action is a transfer to a different workplace location in the State.

11.2 Disciplinary action proposed

If the Chief Executive decides disciplinary action is appropriate, the employee must be notified in writing of that opinion and of the disciplinary action being considered, including the severest penalty.



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Before any disciplinary action is taken, the employee must have an opportunity to make a submission in relation to the disciplinary action being considered.

If the decision is to take disciplinary action the written notification (see Sample letter 3) must state:

- The fact that the employee's response will be taken into account.
- The disciplinary action penalty/s being considered. The severest penalty that is being considered for the particular matter should be stated. In particular the employee should be advised if dismissal, a direction to resign or annulment for an employee on probation is being considered.
- Outline any relevant employment history to be taken into account.
- Other materials to be taken into account (e.g. certificate of conviction, transcripts from criminal proceedings, other criminal convictions).
- That the employee has 14 days from the receipt of the written notice to make a submission and to provide any additional information which he/she considers should be taken into account in relation to the disciplinary action being considered, before a final decision is made.

The Chief Executive has discretion to extend the period for response if the employee applies for additional time within the fourteen day period and provides reasonable grounds for seeking the extension.

- That the employee may request an opportunity to have an interview with the Chief Executive and may be represented by a solicitor, barrister or agent, before a final decision is made.

The request for an interview should be made within 5 days of receipt of the written notice. Generally the Chief Executive should arrange to have the interview held within a few days of receipt of the written response. The representative may speak on behalf of the employee at the interview but not attempt to cross examine the Chief executive.

- That these further submissions and/or additional information will be considered before a final decision is made to implement the disciplinary action being considered.

Each step outlined in the letter must be taken and documented before the Chief Executive may make a final decision.



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12 Implementation of Final Decision

The Chief Executive, having considered any submission made by the employee in respect of the disciplinary action being considered and having had an interview, if requested, shall make a final decision promptly and expeditiously. Generally the Chief Executive should take no more than 14 days to make the final decision.

A final decision may consist of disciplinary action, remedial action or no action. The employee shall then be advised in writing of the final decision and its date of effect. See Sample letter 4.

In making a decision as to the appropriate disciplinary action, the Chief Executive must exercise his/her discretion and not adopt a policy a particular criminal offence will always attract the same punishment

The issues outlined in part 9 above should be considered as appropriate along with any submission made by the employee. The Chief Executive shall also consider any submission made on behalf of the employee by a union or legal representative.

The employee is then advised in writing of the final decision and the date it became effective.

13 Employee Found Not Guilty of a Serious Criminal Charge

A not guilty finding or dismissal of the charge does not necessarily mean that the employee may not have engaged in misconduct. A criminal offence must be proved beyond reasonable doubt. The lesser civil standard of the balance of probabilities applies to misconduct matters.

If the criminal matter concerned conduct whilst on duty, consideration would need to be given to whether there is sufficient reason to deal with the matter as an allegation of misconduct. If it is decided to deal with the matter as an allegation of misconduct, the matter should be dealt with promptly as usually considerable time would have lapsed for the criminal procedures.

Similar considerations apply where a criminal charge does not proceed to a hearing or the police decide not to lay any charges.

If it is decided to deal with the matter as an allegation of misconduct the Procedural Guidelines for Misconduct will apply.