

State Service Act 2000



Commissioner's Direction No. 8-2001:

Title: PROCEDURE FOR SUSPENSION OF STATE SERVICE EMPLOYEE'S WITH OR WITHOUT PAY

Issue Date: 1 May 2001

Operation Date: 1 May 2001

Application

All Agencies
All Employees

Purpose (Intent/Outcome)

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

Note

Section 43 of the *State Service Act 2000* states that the provision for suspension from duties of employees with or without salary will be made in the Regulations.
The relevant Regulations are Regulations 34 and 35.

Legislative Basis and Related Documents

- *State Service Act 2000* sections 18(1)(g), 49 and 50.
- *Commissioner's Direction No. 5 of 2001* - Procedures for Determination of Breaches of the Code of Conduct.
- *Commissioner's Direction No. 6 of 2001* - Procedures for Determination of Inability to Perform Duties.
- *Commissioner's Direction No. 7 of 2001* – Review of State Service Actions.
- *State Service Regulations 2000* Regulations 34 and 35.

Definitions/Interpretations

'The Act' refers to the *State Service Act 2000*

'The Commissioner' refers to the State Service Commissioner

'The Minister' refers to the Minister administering the *State Service Act 2000*

'Employee(s)' refers to the permanent or fixed-term employee appointed under section 37 of the Act;

'Officer(s)' refers to a person appointed as a Head of Agency, prescribed office holder or senior executive under section 31 of the Act;

‘Position’ refers to an allocation of duties by a Head of Agency in accordance with section 34(1)(c) of the Act;

‘Gazette’ refers to the State Service Notices Section of the Tasmanian Government Gazette;

‘Delegations’ all powers exercised in accordance with this Direction are to be exercised in accordance with approved delegations. Consequently, reference to a Head of Agency should be read as including a delegate of that Head of Agency.

Directive

Regulation Number of <i>State Service Regulations 2000</i>
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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.

Reg 34

2. The State Service Commissioner, 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;

may suspend an employee without pay.

Reg 35

Note

Submissions by the Head of Agency to the Commissioner are to include:

- Why suspension is in the public interest.
- Any consideration of the employee’s response to the alleged breach of the code of conduct or alleged inability.
- Affect on the employee.
- Affect on the workplace.
- Consideration of any alternatives to suspension.

3. The Head of Agency is to keep the employee informed of the proceedings at all times.
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.
 - (b) The impact on other employees of the employee remaining in the workplace.
 - (c) The danger of disruption in the workplace.
 - (d) The ability of the employee to undertake duties to a satisfactory standard.
 - (e) The attitude of the public towards the breach and the employee.
 - (f) The repercussions of the decision on the State Service.
 - (g) Whether reassignment of duties within the Agency or the State Service is appropriate.
 - (h) The type of duties they undertake.
 - (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.
- (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.

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 Commissioner is required if return to work in another Agency is being considered.

Reg 34 & 35

Reg 34 & 35

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| <p>6. A Head of Agency is not able to suspend an employee without pay. For suspension without pay the approval of the Commissioner is essential. When the Commissioner 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.</p> | <p>Reg 35</p> |
| <p>7. Generally suspension without pay will not exceed 60 days. It is only under exceptional circumstances that the Commissioner will consider approving suspension without pay for a greater period of time.</p> | <p>Reg 35</p> |
| <p>8. The Head of Agency is to immediately end the suspension if the Head of Agency no longer believes on reasonable grounds that –</p> <ul style="list-style-type: none"> (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. | <p>Reg 34 & 35</p> |
| <p>9. The Head of Agency is to immediately end the suspension if –</p> <ul style="list-style-type: none"> (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. | <p>Regulation 34 and 35</p> |

Issued by authority of the State Service Commissioner pursuant to Section 20(1)

Date: 1 May 2001

Greg Vines
STATE SERVICE COMMISSIONER

Attachment 1

