

1 Title: Post-separation discipline

2 Purpose:

To establish directions in relation to disciplinary action against former public service employees and public service employee who change employment and to specify the requirements for disclosure of previous disciplinary action.

3 Application:

Application of **Part A**:

- (a) Part A of this directive applies to current and former public service officers, including senior executive and senior officers, unless otherwise stated.
- (b) Part A of this directive applies to temporary employees engaged under section 148 or general employees engaged under section 147 of the *Public Service Act 2008* (**the Act**) provided the disciplinary grounds arose on or after 1 November 2010¹.

Application of **Part B**:

- (a) Part B of this directive applies to any person who is or was a public service employee, including senior executives, senior officers, temporary employees engaged under section 148 and general employees engaged under section 147 of the Act.

4 Legislative Provision:

Public Service Act 2008– sections 53, 98, 179A, Chapters 6 and 7

5 Effective date: 1 November 2010

6 Definitions:

For the purposes of this directive:

changes employment includes employment changes by promotion, transfer, redeployment or secondment.

disciplinary declaration means

- (a) the disciplinary finding against a former public service employee and the disciplinary action that would have been taken against the employee if the employee's employment had not ended ("disciplinary declaration"), made under the *Public Service Act 2008*, the *Police Service Administration Act 1990*, or the *Misconduct Tribunals Act 1997*, or

¹ Refer Clause 7.4 for Commencement Provisions.

- (b) a declaration under another public sector disciplinary law that states the disciplinary action that would have been taken against the person if the person's employment had not ended.

disciplinary finding means a finding that a disciplinary ground exists.

disciplinary ground means a ground for disciplining a public service employee under section 187 of the *Public Service Act 2008*. A disciplinary ground arises when the act or omission constituting the ground is done or made.

disciplinary information means information about the following made or taken against the person under a public sector disciplinary law by the chief executive or another entity:

- (a) a current investigation into whether the person should be disciplined
- (b) a finding that the person should be disciplined
- (c) possible disciplinary action under consideration, or
- (d) disciplinary action, including a disciplinary declaration.

employ means to appoint, second or otherwise engage an person under the *Public Service Act 2008*.

employing chief executive means the chief executive of the department in which the employee holds an appointment or is employed, after the employee changes employment from one department to another.

former public service employee means a public service employee whose employment ends for any reason after a disciplinary ground arises.

other chief executive, for the purposes of section 7.5, means the chief executive who receives a request for disciplinary information about a person who is or was a public service employee.

previous chief executive means the chief executive of the department in which the public service employee holds an appointment or was employed before the employee changes employment from the department to another department, or the employment of the employee as a public service employee ends for any reason.

public sector disciplinary law means:

- (a) the *Public Service Act 2008*
- (b) the *Police Service Administration Act 1990*
- (c) the *Misconduct Tribunals Act 1997*
- (d) a disciplinary provision of an award or industrial agreement, or
- (e) another Act prescribed under a regulation.

serious disciplinary action means disciplinary action under a public sector disciplinary law involving:

- (a) termination of employment
- (b) reduction of classification level or rank
- (c) transfer or redeployment to other employment
- (d) reduction of remuneration level, or
- (e) a disciplinary declaration under a public sector disciplinary law of termination of employment or reduction of classification level or rank.

7 Directive:

PART A

7.1 *Disciplinary action after an employee changes employment*

- (a) This section applies if a disciplinary ground arises in relation to a public service employee and after the disciplinary ground arises², the employee changes employment from one department to another department.
- (b) The previous chief executive may make a disciplinary finding about the disciplinary ground even though the employee holds an appointment with or is employed by another department.
- (c) Alternatively, the previous chief executive may delegate to the employing chief executive the authority to make a disciplinary finding about the employee. In deciding whether it is appropriate to delegate this authority, the previous chief executive should take into account:
 - (i) whether an investigation has already commenced and if so, how far it has progressed
 - (ii) the availability of witnesses and other evidence within the previous department
 - (iii) whether the public service employee has changed employment on a permanent or temporary basis, and
 - (iv) any other considerations the previous chief executive believes are relevant.
- (d) If the previous chief executive makes a disciplinary finding under (b) and the previous chief executive and the employing chief executive agree that disciplinary action against the employee is reasonable in the circumstances, the employing chief executive may take disciplinary action against the employee under section 188 of the Act.
- (e) If the previous chief executive delegates to the employing chief executive under (c) and the employing chief executive makes a disciplinary finding about the employee, the employing chief executive may take disciplinary action against the employee under section 188 of the Act without the agreement of the previous chief executive.
- (f) The previous chief executive may give to the employing chief executive any information about a public service employee or a disciplinary ground relating to the employee to help the employing chief executive perform a function under (d) or (e) in relation to the employee.

² See the definition of “disciplinary ground” in section 6 for when a disciplinary ground arises.

7.2 Disciplinary action against a former public service employee³

- (a) A previous chief executive may make a disciplinary finding or take or continue to take disciplinary action against a former public service employee.
- (b) When making a decision on whether to proceed with a disciplinary matter against a former public service employee, the previous chief executive must consider the following issues:
 - (i) the seriousness and nature of the allegations and the likelihood that, if substantiated, a serious penalty, such as dismissal or demotion, would be incurred
 - (ii) the estimated cost of proceeding or continuing with the matter compared with the benefits to be gained by completing the investigation
 - (iii) whether the matter is being considered by another authority, such as a professional standards or registration body, the Crime and Misconduct Commission or the Queensland Police Service
 - (iv) whether there are any on-going impacts within the organisation that require resolution
 - (v) whether it is impractical to gain access to the former employee
 - (vi) whether the former employee's previous disciplinary history is relevant or shows a pattern of escalating or repeated behaviour, and
 - (vii) any other consideration the previous chief executive believes is relevant.
- (c) A disciplinary finding or disciplinary action must be made or taken within two years of the end of the former employee's employment. This time limit does not apply to investigations of a suspected criminal offence or an investigation of a matter of suspected official misconduct under the *Crime and Misconduct Act 2001*.
- (d) Notwithstanding the time limit in (c), a previous chief executive must ensure that disciplinary matters are finalised in a timely manner.
- (e) If the consideration of a disciplinary matter is delayed due to a Queensland Police Service (QPS) investigation or a Crime and Misconduct Commission (CMC) investigation, a previous chief executive must ensure that any disciplinary finding or disciplinary action is taken within 6 months of the completion of the QPS or CMC investigation, wherever possible.
- (f) Principles of natural justice must be observed in a disciplinary process for a former public service employee. A previous chief executive must ensure that appropriate show cause notices are provided to a former public service employee and an opportunity for the employee to comment on the proposed action.

³ This section does not apply to:

- a former employee if the employee is an ambulance service officer and the ambulance service chief executive is or intends to take disciplinary action against the employee for a discipline ground under the *Ambulance Service Act 1991*, or
- a former employee if the employee is a fire service officer and the fire service chief executive is or intends to take disciplinary action against the employee for a discipline ground under the *Fire and Rescue Service Act 1990*.

- (g) However, if a former public service employee does not provide a response to a properly served show cause notice within the stated time period, the disciplinary process can continue.
- (h) In disciplining a former public service employee, a previous chief executive may make a disciplinary declaration and may not take any other disciplinary action.
- (i) A previous chief executive may only make a disciplinary declaration if the disciplinary action that would have been taken against the employee if the employee's employment had not ended would have been:
 - (i) termination of employment, or
 - (ii) reduction of classification level.
- (j) A disciplinary declaration does not affect the way in which the employee's employment ended, or any benefits, rights or liability arising because the employment ended.

7.3 *Disciplinary action against a former ambulance service officer or former fire service officer*⁴

- (a) Disciplinary action may be taken against a former ambulance service officer or former fire service officer (former service officer) if a disciplinary ground arises in relation to the former service and after the disciplinary ground arises, the former service officer's employment with the ambulance or fire service ends for any reason, *and* the former service officer is a public service employee in a department.
- (b) The previous chief executive may make a disciplinary finding about the disciplinary ground even though the former service officer is not longer employed by that service.
- (c) Alternatively, the previous chief executive may delegate to the employing chief executive the authority to make a disciplinary finding about the officer. In deciding whether it is appropriate to delegate this authority, the previous chief executive should take into account:
 - (i) whether an investigation has already commenced and if so, how far it has progressed
 - (ii) the availability of witnesses and other evidence within the previous department
 - (iii) whether the public service employee has changed employment on a permanent or temporary basis, and
 - (iv) any other considerations the previous chief executive believes are relevant.
- (d) If the previous chief executive makes a disciplinary finding under (b) and the previous chief executive and the employing chief executive agree that disciplinary action against the employee is reasonable in the circumstances, the employing chief

⁴ This section does not apply to:

- a former employee if the employee is an ambulance service officer and the ambulance service chief executive is or intends to take disciplinary action against the employee for a discipline ground under the *Ambulance Service Act 1991*, or
- a former employee if the employee is a fire service officer and the fire service chief executive is or intends to take disciplinary action against the employee for a discipline ground under the *Fire and Rescue Service Act 1990*.

executive may take disciplinary action against the officer under section 188 of the Act.

- (e) If the previous chief executive delegates to the employing chief executive under (c) and the employing chief executive makes a disciplinary finding about the employee, the employing chief executive may take disciplinary action against the employee under section 188 of the Act without the agreement of the previous chief executive.
- (f) The previous chief executive may give to the employing chief executive any information about a public service employee or a disciplinary ground relating to the officer to help the employing chief executive perform a function under (d) or (e) in relation to the employee.

7.4 Commencement

- (a) Section 7.1 only applies to a public service officer who changed employment from a department to another department after 2 November 2009. Section 7.1 only applies to a temporary or general employee where the discipline ground occurs or is alleged to have occurred on or after 1 November 2010 and who changes employment on or after this date.
- (b) For section 7.2, a person is a former public service officer only if the person's employment as a public service officer ended after 2 November 2009. Section 7.2 only applies to a temporary or general employee where the discipline ground occurs or is alleged to have occurred on or after 1 November 2010 and whose employment ends on or after this date.

PART B:

7.5 Requirement to disclose previous history of serious disciplinary action

- (a) If a chief executive proposes to employ a person, the chief executive may require applicants to disclose particulars of any previous serious disciplinary action taken against them.
- (b) The requirement to disclose previous serious disciplinary action must be included in a role description.
- (c) In deciding whether to require a disclosure of serious disciplinary action, chief executives should consider the nature of the particular duties to be performed and whether it is necessary to have regard to any serious disciplinary history as part of a selection process.
- (d) The person must comply with the requirement to disclose before the a employment takes effect.
- (e) The disclosure must be made:
 - (i) in writing, and
 - (ii) within seven days of the request.
- (f) If a person fails to comply with the requirement or gives false or misleading information in response to the requirement, the chief executive is not required to further consider the person for employment.

- (g) If a public service employee fails to disclose a serious disciplinary action or gives false or misleading information, without reasonable excuse, this constitutes a ground for discipline under section 187 of the Act.
- (h) When considering any disclosure of previous serious disciplinary action, a chief executive must take into account:
 - (i) the duties and responsibilities of the position
 - (ii) the seriousness and nature of any disciplinary history
 - (iii) when any disciplinary breaches were committed
 - (iv) the penalty imposed
 - (v) whether the disciplinary history shows a pattern of behaviour, and
 - (vi) any other relevant discipline and, if appropriate, criminal history.

7.6 Information exchange

- (a) This section applies if:
 - (i) the chief executive of a department asks the chief executive of another department (**other chief executive**) for disciplinary information that the other chief executive has about a person who is or was a public service employee; and
 - (ii) The information is reasonably necessary for the chief executive to make a decision about:
 - a. employment or continued employment of the person to the chief executive's department, or
 - b. a disciplinary finding, disciplinary action or disciplinary declaration, the chief executive is considering in relation to the person.
- (b) The other chief executive must give the disciplinary information to the chief executive unless the other chief executive is reasonably satisfied that giving the information may prejudice the investigation of a suspected contravention of the law in a particular case.

7.7 Decisions based on disciplinary information

- (a) Chief executives must ensure that any decisions made under section 7.4 that may be detrimental to a current public service employee's interests, are made in compliance with section 12 of the *Public Service Regulation 2008* (Dealing with employee record if detrimental to employee's interests).
- (b) Applicants must be given a reasonable opportunity to make a written submission about the information used to inform the decision, before an adverse decision about the person is made.
- (c) The applicant must be given a copy of all information used to inform the decision.

7.8 Appeals

- (a) Employee appeals are to be lodged in accordance with the provisions of relevant directives issued by the commission chief executive.