Annexure F - (SCANLON Statement)

PROFESSIONAL PRACTICE
Improvement through insight and education

Ethical Standards Command

GUIDELINE

Suspension and Stand Down

Values
Leadership
Accountability
INTEGRITY FRAMEWORK
K Know
E Educate
E Ensure
P Protect

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Introduction

This Guideline provides information regarding the practice for standing down or suspending Queensland Police Service (Service) employees pending disciplinary processes.

The purpose of stand down or suspension action is to manage risk pending the resolution of a complaint. The reputation of the Service as well as the specific risk posed by the employee is to be considered.

Natural justice is not required when deciding to stand down or suspend an employee (subject member) with salary and allowances. A subject member, who is a police officer, can review either of these decisions to the Commissioner for Police Service Reviews. A subject member, who is a staff member, can review a decision suspending them without pay to the Queensland Industrial Relations Commission.

Responsibility for the on-going management of an employee who is stood down or suspended rests with the subject member's Region, Command or Division. This includes the continuous assessment of the appropriateness of the stand down or suspension.

A decision to stand down or suspend is determined on a case by case basis after considering all aspects of the matter. The decision to stand down or suspend an employee should be reconsidered after any material change in circumstances including the passing of time.

Scope

This Guideline applies to all staff members and police officers except the Commissioner. The document provides a guide to considering and imposing stand down and suspension action against employees on disciplinary grounds.

Stand down or suspension action relating to health issues is a separate matter and not covered by this Guideline. Where appropriate, processes for discipline matters and health issues can be progressed concurrently.

Human Rights

The *Human Rights Act 2019* (HRA) requires the Service and its members to act and make decisions in a way that is compatible with human rights and that relevant human rights are given proper consideration when making decisions. This means the Service needs to ensure decisions and acts in relation to suspension and stand down considerations are compatible with and appropriately consider the protected human rights when applied to members of the Service.

These considerations extend to the protection and/or limitation of human rights outlined in the HRA arising from requirements placed on, or conditions imposed upon, members of the Service subject to alternative duties, stand down or suspension. Where a member's human rights are to be limited due to any decision or action outlined in this Guideline, such limitations must be lawful, reasonable and demonstrably justifiable and be necessary and proportionate to the objective to be achieved. For further information refer to Human Rights webpage on the Service Intranet.

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Authorities and Delegations

Police Officers:

The statutory authority to stand down or suspend a police officer is found in Part 6 of the *Police Service Administration Act 1990* (PSAA). Generally, a police officer may be stood down, or suspended from duty if it appears on reasonable grounds the officer is liable to disciplinary action. Stand down or suspension action is not limited to discipline matters where the likely outcome is dismissal.

Stand down means the officer is relieved of their powers and duties and is directed as to the duties they are to perform. An officer who is stood down continues to be paid salary and allowances at the same rate at which the officer would have received salary and allowances had the standing down not occurred. An officer who is stood down will be directed to surrender their badge and accoutrements and to not wear uniform.

Suspension means the officer is relieved of their powers and duties and is excluded from the workplace. An officer who is suspended will be directed to surrender their badge and accoutrements. An officer who is suspended from duty continues to be paid salary and allowances at the same rate at which the officer would have received salary and allowances had the suspension not occurred, unless determined otherwise. Before determining to remove a suspended officer's entitlement to salary and allowances, the officer will be provided an opportunity to provide submissions.

Staff Members:

The statutory authority to suspend a staff member is found in section 137 of the *Public Service Act 2008* (PS Act). A staff member may be suspended if they are liable to discipline under a disciplinary law. There is no authority to stand down a staff member.

Section 137 of the PS Act provides that before suspending a staff member, consideration must first be given to all alternative duties that may be available for the staff member to perform. If a staff member is to be suspended, the alternative duties considered and the reasons they were not suitable should be documented.

A suspended staff member continues to be entitled to normal remuneration unless determined otherwise. Before determining to remove a suspended member's entitlement to salary and allowances, the member will be provided an opportunity to provide submissions.

The Public Service Commission Chief Executive Guideline 01/17: Discipline, the Discipline directive (14/20) and the Suspension directive (16/20) provide additional guidance on suspension action against staff members and are to be read in conjunction with this Guideline.

Delegations

The authority to stand down and suspend police officers or suspend staff members has been delegated to Deputy Commissioners and the Assistant Commissioner Ethical Standards Command (AC ESC) by virtue of the Human Resource Delegations and Approval Authorities Schedule (Delegated Decision Maker). Generally, the AC ESC performs this function.

The same delegation applies to revoking the stand down or suspension, or making a determination concerning the pay of an employee who is suspended from duty. Subject to appropriate delegation level, suspension and stand down action may also be cancelled by the delegate level responsible for administering disciplinary action, subject to the finalisation of any disciplinary action determined to be appropriate or the matter under investigation being unsubstantiated.

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Forms*

Police officers:

- Stand down
- Suspension (with pay)
- Suspension and show cause
- Suspension (without pay)

Staff members:

- Suspension (with pay)
- Suspension and show cause for no pay
- Show cause for no pay
- Suspension (without pay)

* All forms are stored on an ESC file server and can be accessed by contacting the Discipline Support Unit (DSU), ESC.

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Process for requesting consideration of suspension or stand down

1. The subject member's Region, Command or Division (owning area) is primarily responsible for requesting the AC, ESC to consider stand down or suspension action. Where the relevant discipline or criminal investigation is being conducted outside of the subject member's owning area, the investigating Region, Command or Division may initiate the request for consideration of stand down or suspension action. The investigating Region Command or Division should consult with the subject member's owning area, before submitting the request.
2. Any request for consideration of stand down or suspension is to be actioned by completing an Executive Briefing Note (EBN). The EBN should contain:
   - Sufficient information concerning the allegations and risk posed by the subject member, to allow the AC ESC to make an informed decision;
   - Details of any existing or proposed Professional Development Strategy Document (PDSD) for police officers or Management Action Plan (MAP) for staff members drafted to address the risk posed by the subject member;
   - A nominated person from within the owning area who will have responsibility for monitoring the subject member while stood down or suspended and reviewing the ongoing need for the action to be continued;
   - Information regarding the proposed duties to be performed by a subject member while stood down;
   - In the case of staff members, alternative duties which are available to be performed and, if appropriate, reasons why the alternative duties may not be suitable. Examples of alternative duties include:
     - temporary transfer to alternative duties (either in the employee's workplace or at another workplace);
     - directing the employee to work under close supervision or with another employee;
     - asking the employee if the wish to access accrued recreation and/or long service leave (access to accrued leave is at the discretion of the employee).
3. Once the statutory authority for stand down or suspension action has been met, factors which then could be considered when making a request for stand down or suspension action include:
   - Nature and seriousness of the allegations;
   - Strength of the evidence to support the allegations;
   - What effect the presence of the subject member in the workplace would have on others, including members of the public;
   - Protection of the reputation of the Service and a consideration of the incompatibility between the subject member's conduct and the maintenance of confidence in the Service;
   - Availability of suitable, meaningful alternative duties the subject member can perform; and
   - For suspension without pay, perceptions of an individual being suspended from duty due to allegations of misconduct but continuing to receive full salary and allowances; and the subsequent effect on the reputation of the Service balanced against the impact on the individual and their family.
4. Before making a determination concerning appropriate action to be taken pursuant to Part 6 of the PSAA or section 137 of the PS Act, the Delegated Decision Maker may seek

advice from an officer attached to DSU. The advice can contain information on any subject, including:

- Legal precedents;
- Clarification of contents of an EBN;
- Further advice from the subject member's management;
- Seriousness of the allegations; or
- Strength of the evidence.

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Process for considering request for suspension or stand down action

1. The decision of the Delegated Decision Maker must be fair, just, compassionate, in accordance with sound human resource management practices and comply with the HRA while giving due regard to the efficiency, effectiveness and professionalism of the Service.
2. Natural justice is not required when deciding to stand down or suspend an employee with salary and allowances, however, where practicable it is appropriate for the investigator to obtain a version from the subject member before taking action.
3. When making a decision concerning stand down or suspension action, the Delegated Decision Maker should ensure the material to be considered and factors considered during the decision-making process are documented.
4. After determining the statutory authority to take action has been met, the Delegated Decision Maker may take appropriate action as is required by the circumstances.
5. The Delegated Decision Maker should take the least onerous action against a subject member, considering the following in order:
    a. ALTERNATIVE DUTIES: The risk can be suitably addressed by developing a PDSD (police only) or MAP (staff members only) for the subject member. A PDSD/MAP is designed to temporarily address the risk while an investigation is completed and may be modified in due course. The PDSD/MAP may involve increased supervision, alternative duties, change of workplace, performance development strategies or other appropriate management strategies. (Section 4.9 PSAA and OPM 1.4)
    b. STAND DOWN (police only): The risk is such that it is necessary to remove the powers and duties of a constable from the subject member. The subject member cannot wear police uniform and will perform duties as directed by their Assistant Commissioner or Executive Director (or delegate).
    c. SUSPENSION WITH PAY: The risk is such that it is necessary to remove the subject member from the workplace and in the case of a police officer, remove the powers and duties of a constable.
    d. SUSPENSION WITHOUT PAY: The subject member has been suspended and the circumstances are such that the reputation of the Service will be damaged unless the subject member is suspended without pay.

Examples of circumstances in which suspension without pay could be considered:

i. The subject member has been charged with a criminal offence and is remanded in custody;
ii. The subject member has been charged with a criminal offence punishable by more than two years imprisonment, an assessment of the strength of the evidence had been conducted (admissions, finding of guilt, committed for trial, independent assessment) and the misconduct, if proven, would result in dismissal;
iii. The subject member has allegedly committed serious misconduct, which if proven would result in dismissal, and an independent assessment of the strength of the evidence has been conducted.

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Public Service Commission Suspension Directive (16/20)

(This section only applies to Staff Members)

This Guideline is to be read in conjunction with the Public Service Commission Suspension Directive. A copy of the Directive can be found on the Queensland Government website (https://www.forgov.qld.gov.au/documents/directive/1620/suspension). In compliance with the Directive:

- In deciding that normal remuneration is not appropriate, the factors the Delegated Decision Maker is to consider include:
  - the nature of the discipline matter;
  - any factors not within the control of the agency that are preventing the timely conclusion of the discipline process; and
  - the public interest of the employee remaining on suspension with remuneration.
- For a work performance matter, other than a corrupt conduct matter, a suspension is to be for a maximum period of 6 months. A suspension can be extended by the Delegated Decision Maker following reviews*:
  - at six months by an independent decision maker within the Service;
  - at 9 months by the Commissioner;
  - at 12 months by the Commission Chief Executive (CCE);
  - at 18 months by the CCE and every 3 months thereafter.

  * The Office Manager, DSU is responsible for ensuring the reviews are initiated in time for the Delegated Decision Maker to extend the suspension where appropriate.
- For a work performance matter, other than a corrupt conduct matter, the suspended member may ask the Public Service Commission to review a suspension procedural aspect of the Service's handling of a work performance matter provided:
  - the suspended employee reasonably believes the Commissioner has not complied with the Suspension Directive;
  - the suspended employee has utilised the internal review procedures under the directive on individual employee grievances;
  - having utilised the grievance procedures, the suspended employee is dissatisfied with a decision made following the internal review; and
  - a decision has not been made for the work performance matter that the suspended employee may appeal under Chapter 7, Part 1 of the PS Act.

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Service of suspension or stand down documents

Once documents have been signed by the Delegated Decision Maker, urgent arrangements must be made for serving copies of the documents on the subject member. Usually, service will be affected through the owning area's Strategy and Performance Officer with a memo or email explaining requirements.

When serving a subject member with a notice of stand down or suspension, consideration should be given to the welfare of the subject member and any other member who may be affected. This consideration could include arranging a Senior Psychologist/Senior Social Worker or Peer Support Officer to be available at the time the notice is served to ensure welfare issues are addressed. For police officers, the QPUE or the QPCOUE can be contacted to assist with service and the welfare of the officer.

When serving documents on a subject member, the serving officer should ensure:

- If the subject member is represented by a legal representative, they are also advised of the action taken and provided with a copy of the notice.
- A copy of the stand down or suspension notice is served on the subject member. A copy of the EBN and any attachments must also be served on the subject member if a show cause for suspension without pay is being progressed.
- All conditions of the notice are explained to the subject member.
- All accoutrements as stated in the notice are to be obtained from the subject member.
- Email advice is provided back to '*Discipline.Support.Unit*' to confirm service.

Administration of suspended or stood down members

Responsibility for the on-going management of a stood down or suspended employee remains with the owning area. This includes a continual assessment of the appropriateness of the action taken and providing advice to the AC ESC of any change in circumstances.

The owning area is responsible for appointing a commissioned officer (or non-commissioned officer/ staff member where appropriate) to be a contact for the subject member. The appointed contact is responsible for liaising with the subject member concerning work and court commitments, as well as any administrative issues. The appointed contact should also consider the welfare of the subject member, making regular contact and if necessary,arranging for referral to appropriate support services.

All members who are subject to suspension or stand down action are to be placed on a PDSD/MAP. The PDSD/MAP should address any risk or development opportunities raised by the relevant complaint as well as any welfare concerns for the member. If the member is to be redeployed to alternative duties, the decision maker should endeavour to provide meaningful tasks which keep the member engaged with the functions of the Service.

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Review of suspension and stand down decisions

Statutory review of suspension and stand down decisions:

Police officers may apply to the Commissioner for Police Service Reviews, pursuant to section 9.3 of the PSAA, to review a decision to stand down or suspend the officer.

Staff members who believe the decision to suspend them without normal remuneration is unfair or unreasonable may appeal the decision to the Queensland Industrial Relations Commission (QIRC) pursuant to section 194(1)(bb) of the PS Act. Any appeal must be made within 21 days of the decision. The QIRC industrial registry will be able to assist with further information about public service appeal procedures. Further information on appeal rights can be obtained at the QIRC website (www.qirc.qld.gov.au) or by telephoning 1300 592 987 or (07) 3227 8060.

Internal monitoring of stand down or suspension actions:

The decision to stand down or suspend an employee should not be taken lightly. When the power is exercised, the investigation into the surrounding conduct should be completed expeditiously and given priority over other routine investigations. The decision to suspend or stand down an employee should be reassessed at regular periods and whenever there is a substantial change in circumstances.

The Office Manager, DSU will provide monthly advice to the AC ESC, concerning the status of investigations where stand down or suspension action has been taken. At the request of DSU, the Detective Superintendent IIG, or the District Officer will provide updated information concerning the status of any relevant investigations and any developments which could impact on the action taken against the subject member.

Section 4.14 (Client feedback) of the Complaint Resolutions Guidelines imposes an obligation on a case officer to provide regular progress updates to a subject member once they become aware of an investigation into their conduct. Where action has been taken pursuant to Part 6 of the PSAA or section 137 of the PS Act, a case officer must ensure compliance with this section and record the contact on the complaint management database.

Where stand down or suspension action is taken against a police officer after 1 July 2021, the Officer Manager, DSU will check to ensure:

- Within 2 months of the action being taken:
    - a copy of the PDSD has been uploaded to PIPs;
    - a contact officer has been appointed;
    - an update on the officer's conduct is provided from the District; and
    - the complaint has been detailed to a case officer for investigation.

Internal review of stand down or suspension actions:

(This section only applies to Police Officers)

This section applies when stand down or suspension action is taken against a police officer after 1 July 2021 and the officer is not charged with a criminal offence or Corrupt Conduct. The Delegated Decision Maker will review the decision to take stand down or suspension action every 6 months to ensure the action is still required. At 12 months and every subsequent 6 month review, the subject officer will be given the opportunity to provide submissions.

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The Officer Manager, DSU will ensure:

- suspension and stand down actions are monitored to ensure compliance with review periods;
- prior to each review period, a request is sent to the District responsible for the subject officer, via the PPM, to provide an updated EBN containing all relevant information; and
- advice is provided to the Delegated Decision Maker to facilitate a review of the action taken.

The District/Command/Division responsible for the subject officer will ensure (with assistance from the relevant PPM):

- an updated EBN is submitted containing all relevant information including:
  - an update from the contact officer on the subject officer's conduct;
  - an update from the case officer on the progress of the investigation; and
  - any other information relevant to the ongoing suspension or stand down of the subject officer.

The Delegated Decision Maker will:

- review all material relevant to the matter including the updated EBN and any submissions from the subject officer;
- reconsider the matter to ensure the action taken against the subject officer is still appropriate and compliant with this Guideline; and
- provide advice to the subject officer and their District of the outcome of the review.

Revoking stand down or suspension action:

The authority to revoke a stand down or suspension of a member of the Service is contained within section 6.1(2) of the PSAA and section 137 of the PS Act. This authority has been delegated to the Assistant Commissioner, Ethical Standards Command and the Deputy Commissioners. Revoking stand down or suspension action before a disciplinary proceeding against a member is finalised requires the preparation of an updated EBN by the responsible Region, Command or Division for consideration of the Delegated Decision Maker. All relevant information should be contained in the updated EBN, including:

- any relevant changes in the status of the matter;
- the subject member's conduct since the stand down/suspension was imposed;
- the subject member's compliance with a PDSD/MAP; and
- any Service requirements necessitating a review of the status of the subject member.

Revocations when disciplinary action is finalised: Subject to appropriate delegation level (Supt/Director or above), as defined in the Human Resource Delegations and Approvals Authorities Schedule, a member of the Service who is responsible for administering disciplinary action may revoke the stand down/suspension of a member after the finalisation of disciplinary action.

If a Prescribed Officer/Decision Maker (PO/DM) decides to revoke stand down/suspension action after the finalisation of a disciplinary proceeding, the PPM or DSU officer assisting will:

- prepare a revocation of Suspension/Stand Down notice for consideration by the PO/DM, or insert the following wording into the Decision on disciplinary action notice:
  - *I refer to the stand down/suspension notice issued to you on (insert date) by (insert original decision maker). As this Decision on disciplinary action notice finalises the disciplinary proceedings against you, you are no longer liable to*

discipline. Consequently, I revoke the stand down/suspension action imposed against you with immediate effect.

- prepare written advice to the Assistant Commissioner of the Region/Command/Division where the member is stationed to advise of the revocation and, if a separate revocation notice was signed by the PO/DM, request assistance with service of the Notice (usually by email to the relevant Strategy and Performance Inspector);
- consider providing advice of the revocation to the member's union or legal representative; and
- provide prompt advice to Officer Manager, DSU via an email to '*Discipline.Support.Unit*' concerning the revocation.

For all revocations, the Office Manager, DSU is responsible for ensuring:

- where a revocation is initiated by an updated EBN:
  - prepare written advice to the Assistant Commissioner of the Region/Command/Division where the member is stationed to advise of the revocation and, request assistance with service of the Notice (usually by email to the relevant Strategy and Performance Inspector);
  - consider providing advice of the revocation to the member's union or legal representative;
- advice of the revocation of Stand Down or Suspension action is forwarded to the Human Resources Division and all relevant members of the senior executive;
- a draft media release is completed and forwarded to the Strategy and Performance Officer, ESC when requested by the AC ESC;
- the Significant Disciplinary Matters data base is updated;
- if the member was suspended, an email is forwarded to 'ISS Access Control Unit' to re-activate computer and building access;
- all original Stand Down/Suspension documents are filed in the member's investigation folder; and
- advice is forwarded to the Complaint Management Unit to ensure the member's status on CSS is updated.

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Considerations for Outside Employment are provided in the Outside Employment Guidelines

Subject members who are stood down or suspended continue to be subject to these guidelines. Subject members who intend to apply for outside employment while stood down or suspended must include details of the action taken against them in their application. A police officer who is suspended from duty without pay is also subject to the provisions of section 6.3 of the PSAA and must inform the Commissioner if they enter employment whereby, they become entitled to salary, wages or other remuneration.

Any application for outside employment submitted by a member who is suspended without pay must be considered and determined as soon as practicable (ideally within 2 business days). A staff member who is suspended with pay is subject to section 137(5) of the PS Act. Consequently, any amount earned by a staff member in alternative employment engaged in after being suspended, must be taken into consideration when calculating their entitlement to remuneration during a period of suspension with pay.

Recall to duty during suspension

Subject members who have been suspended from duty may be recalled to attend a police establishment to take part in a disciplinary interview. If the subject member is represented by a member of their union or by a legal representative, the representative must be advised of the recall to duty and be given the opportunity to attend.

Where a subject member is required to attend court while suspended, consideration should be given to obtaining a summons for the member. If possible, alternative arrangements should be made to negate the need for a suspended member to attend court.

A subject member who is recalled to duty while suspended without pay is entitled to be paid an amount equal to the amount the member would have been paid if they weren't suspended without pay. This amount should be calculated using the subject member's normal hourly rate. Police officers should be paid an amount equivalent to at least 3 hours pay for each recall to duty. Staff members should be paid an amount equivalent to at least 2 hours pay for each recall to duty.

The subject member's welfare must be considered during any recall to duty, including having a support person (e.g. Senior Psychologist, Senior Social Worker, Peer Support Officer) available if required.

Returning to duty after suspension or stand down

Upon revoking a stand down or suspension order, the Delegated Decision Maker must provide notice to the subject member's owning area of the decision. The owning area is responsible for developing a return to work plan which considers:

- the welfare of the subject member;
- any reintegration measures necessary (training OST etc);
- any ongoing risk to the Service.

Media releases

The decision to release information into the public domain regarding criminal and disciplinary proceedings against members of the Service is underpinned by a strong stance on transparency, accountability and public interest expectation, balanced with the need to support members' mental and physical welfare and to provide a safe, fair and positive workplace.

Media releases for criminal proceedings against members of the Service shall be published via the myPolice News service and corporate social media channels (Facebook and Twitter). With respect to the privacy of the individual, identifying details should be limited to the rank, age and gender of the subject member as well as their Region, Command or Division, except in circumstances where those details may identify the subject member. A brief precis of the alleged conduct should also be provided (matters such as domestic violence should not be mentioned in media releases).

Media releases relating to action taken pursuant to Part 6 of the PSAA or section 137 of the PS Act where no criminal proceeding is commenced shall not be published on any platform, subject to any direction of the Assistant Commissioner, Ethical Standards Command. The Assistant Commissioner may also consider issuing a media release where action taken against a member is revoked or a subject member separates from the Service.

For further information refer to the QPS Media Guidelines available on the Media webpage.

Leave

A subject member who is suspended without pay is not entitled to access any form of leave during the suspension period. However, a subject member may apply to be paid for any long service or recreation leave which they accrued prior to being suspended without pay.

A subject member who is suspended with pay is not required to attend work, therefore does not need to access any leave. Any suspension with pay does not affect a subject member's entitlement to apply for leave. A subject member who is stood down from duty should ensure the person authorising any leave is aware of their employment status.