Guide to the disciplinary provisions contained in Part 5 of the *Public Sector Management Act 1994*

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Disclaimer: While every attempt is made to ensure the accuracy, currency and reliability of the information in this publication, changes in circumstances over time may impact on the veracity of the information.

This guide is compiled from legislation, Commissioners Instructions, awards, industrial agreements and reports of decided cases relating to the discipline process applicable to the Western Australian public sector. The guide does not seek to replace these documents, but to draw their principal provisions into a single reference source. As such, the guide does not form part of the regulatory framework for discipline processes conducted under Part 5 of the *Public Sector Management Act 1994* (PSM Act).

The guide is primarily designed to provide assistance to Human Resource Managers and employing authorities in interpreting and applying Part 5 of the PSM Act and the Commissioner’s Instructions for discipline, but also includes some commentary on agency practices and policies. This commentary is suggested practice only and is in no way binding on agencies.

In developing this guide, the Public Sector Commission has drawn upon the following publications:

* Australian Public Service Commission, ‘Handling Misconduct: A human resource practitioner’s guide to the reporting and handing of suspected and determined breaches of the APS Code of Conduct’, 2008
* New South Wales Department of the Premier and Cabinet, ‘Personnel Handbook, Ch9: Procedural Guidelines for Dealing with Misconduct as a Disciplinary Matter and the Taking of Disciplinary Action Pursuant to Part 2.7 Division 2 of the *Public Sector Employment and Management Act 2002* (NSW)’
* Victorian Public Sector Standards Commissioner, ‘Managing Poor Behaviour in the Workplace’, 2008
* Office of the Commissioner for Public Employment. 1998, Investigation Officer’s Handbook Government of the Northern Territory

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1. Introduction

# 1.1 Overview

Robust procedures for dealing with inappropriate behaviour in the workplace enable disciplinary matters to be dealt with efficiently, sending out a clear message that officers engaging in unacceptable behaviour are accountable for their actions. In the public sector context, these procedures assist to maintain public confidence and trust in the operations of the agency.

Of equal importance to having disciplinary processes that allow for appropriate sanction of unacceptable behaviours, is that the processes are procedurally fair to employees. It is a common law requirement that when a person’s interests may be adversely affected by an official decision, that person is given information about the allegations against them, an opportunity to be heard, and the decision-maker acts without bias or self-interest, basing their decisions on compelling or 'logically probative' evidence. These requirements form the principles of procedural fairness, and underpin a range of decision making processes, including employee disciplinary proceedings.

For certain employees in the Western Australian public sector, the principles of procedural fairness are supplemented by a statutory scheme. Part 5 of the Public Sector Management Act 1994 (PSM Act) contains a statutory discipline scheme that must be followed by employing authorities in relation to the following employees:

* Public Service officers appointed under Part 3 of the PSM Act; Ministerial officers appointed under Part 4 of the PSM Act;
* Members of teaching staff and persons appointed as ‘other officers’ (section 239 *School Education Act 1999*); and
* Any employees prescribed in the Public Sector Management (General) Regulations 1994.

It is important that employing authorities are aware of their obligations under common law and statute when undertaking disciplinary proceedings.

# 1.2 The application and purpose of this guide

This guide aims to explain the legislative requirements as contained in Part 5 of the PSM Act and associated instruments, particularly the Commissioner’s instructions (CIs) relating to discipline. While the legislative provisions are comprehensively explained, the guide is not intended to be used as a substitute for compliance with the legislation and the CIs.

The principles of procedural fairness are explained in the guide, and their relationship to relevant legislative provisions is highlighted. What is required to satisfy the elements of procedural fairness will vary with the circumstances, so this guide cannot provide step-by-step procedural instruction in this regard. Instead, this guide aims to provide an understanding of the principles of procedural fairness so that persons undertaking disciplinary proceedings can confidently apply the principles to their particular situation.

This guide is targeted at human resource practitioners or other persons responsible for undertaking Part 5 disciplinary processes in public sector agencies. Practitioners undertaking a disciplinary process outside of Part 5 of the PSM Act may find the references to procedural fairness in this document useful, but must ensure that they do not apply the commentary relating to provisions of the PSM Act or CIs where these rules do not apply.

The Public Sector Commission (PSC) has used its best endeavours to ensure the accuracy of the material in this guide at the time of writing and will update the document as required. However, it should not be relied on as a substitute for detailed advice when making decisions on specific disciplinary matters. Agencies should consider obtaining procedural advice from the PSC in relation to questions about the CIs and these guidelines, and should obtain their own legal advice before making a decision if they are uncertain of their legal obligations in the course of conducting a disciplinary matter.

# 1.3 Terminology

### Disciplinary process

This guide uses the term ‘disciplinary process’ to refer to all actions:

* commencing after the employing authority decides to treat a matter as disciplinary under section 81(1)(a); and
* before any disciplinary finding, or decision to take no further action, is made.

### Employing authority

The body or individual with end-of-line responsibility for a public sector body, as identified in section 5 of the PSM Act. For example, the employing authority of a department is the Chief Executive Officer (often termed ‘Director General’).

Importantly, Part 5 of the PSM Act requires all decisions relating to the disciplinary process to be made by the relevant employing authority. This includes the decision to treat a matter as disciplinary, determining the process to be followed and the imposition of any action resulting from a finding that a breach of discipline occurred.

A person other than the employing authority (such as a line manager) can only make decisions or exercise a statutory power relating to the discipline process if that power has been delegated in writing by the employing authority under section 33 of the PSM Act.

### Improvement action

Under section 3 of the PSM Act, improvement action is defined as any one or more of the following actions taken by an employing authority for the purpose of improving the performance or conduct of the employee:

1. counselling;
2. training and development;
3. issuing a warning to the employee that certain conduct is unacceptable or that the employee’s performance is not satisfactory; and
4. any other action of a similar nature.

Outside Part 5 of the PSM Act, the actions listed above may also be exercised by an employer or manager without the need for a legislative basis. Within the PSM Act, they have been introduced for the purpose of:

* clarifying the management prerogative to deal with behaviour or conduct without treating it as a disciplinary matter; and
* adding to the range of actions available where an employing authority elects to treat a matter as disciplinary, providing for other management actions that may be taken, resulting from a finding that a breach of discipline occurred.

### Public sector body

A Western Australian department, agency, organisation or ministerial office that employs persons subject to Part 5 of the PSM Act.

# 1.4 Further support

This guide is produced by the Public Sector Commission, which is responsible for the administration of Part 5 of the PSM Act. We welcome your feedback on the content of this guide and/or any queries you may have.

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2. Legal framework

The PSM Act disciplinary provisions, and all subsidiary legislation, policies and procedures which stem from it, operate subject to the principles of procedural fairness. It is imperative that employing authorities or other persons progressing disciplinary matters have a thorough understanding of the principles and application of procedural fairness, in addition to the legislative framework.

# 2.1 Procedural fairness

Procedural fairness concerns rules of common law relating to how a decision maker should act when making decisions that may adversely impact upon a person’s rights or interests to ensure that there is a fair and equitable process.

The common law rules will generally be implied in the exercise of legislative powers, unless they have been specifically excluded. The discipline provisions contained in Part 5 of the PSM Act do not exclude procedural fairness.

## 2.1.1 Rules of procedural fairness

In the context of the disciplinary process, procedural fairness has three main rules or principles:

1. The bias rule

* The employing authority (or person requested to investigate) acts fairly and without bias; and
* The employing authority (or person requested to investigate) does not hold, or is not perceived to hold, a vested or direct personal interest in the outcome of the process.

2. Hearing rule

* The employee is provided with notice of any allegations against them, given a reasonable opportunity to respond to those allegations or decisions affecting him or her, and their response is genuinely considered.

3. Evidence rule

* Decisions are based on logically probative (compelling) evidence; and
* Irrelevant considerations are not taken into account in making the decision.

## 2.1.2 Application

What is required to satisfy the requirements of procedural fairness will vary according to the circumstances. For example, what length of time constitutes a ‘reasonable opportunity’ for an employee to provide a response to an allegation that he or she has committed a breach of discipline will depend on many factors, such as the complexity of the allegations and the number of alleged breaches.

While a procedurally fair process is the responsibility of the employing authority, guidance or advice may be from one or more of the following:

* relevant appeal decisions of the Western Australian Industrial Relations Commission (WAIRC) and Public Service Appeal Board (PSAB); similar cases that occurred in that or another public sector body;
* legal advice of the State Solicitor’s Office (SSO);
* policy or management advice from the PSC;
* industrial advice from the Labour Relations Division, Department of Commerce; and
* procedural advice or guidance from other accountability agencies such as the Corruption and Crime Commission (CCC) or Ombudsman.

In rare circumstances, an employing authority may validly choose not to apply the principles of natural justice to a particular situation. Courts and tribunals considering these matters have generally only deemed such actions valid if the circumstances are considered exceptional and the public interest considerations, for example immediate public safety, override the need to afford procedural fairness. The CIs relating to discipline contain direction on limited circumstances in which the principles of procedural fairness can be waived in relation to suspension [see 5.1 of this guide]. It is recommended that for any other aspect of the discipline process where the employing authority is considering not affording procedural fairness to the employee, the advice of the SSO or PSC is sought before the decision is made.

## 2.1.3 Consequences of not providing procedural fairness

If an employee lodges an appeal in relation to a disciplinary matter, the WAIRC or PSAB deliberations will likely include whether the principles of procedural fairness have been correctly applied to the circumstances of the case. If the WAIRC or PSAB finds that procedural fairness was not provided, and considers that this was a material failure, then it is possible that the whole decision or finding may be ruled invalid, or that the employing authority will need to recommence proceedings at the point directed by the WAIRC or PSAB.

# 2.2 Discipline Standard

The Public Sector Standards in Human Resource Management (the Standards) are binding, minimum requirements for merit, equity and probity in regard to specific human resource activities for all Western Australian public sector bodies and their employees. The Discipline Standard applies to all disciplinary processes undertaken in the public sector, not just processes conducted under Part 5 of the PSM Act. The Discipline Standard is the following:

### Outcome

The discipline process observes procedural fairness.

### The Standard

The minimum standard of merit, equity and probity is met for discipline if:

* decisions are based on a proper assessment of the facts and circumstances prevailing at the time of the suspected breach of discipline;
* the employing authority ensures procedural fairness is applied to all parties; and
* decisions are impartial, transparent and capable of review.

The provisions of the PSM Act and the CIs relating to discipline are consistent with the Discipline Standard. It is the responsibility of employing authorities to ensure that agency procedures and application to specific cases are in line with the Discipline Standard.

# 2.3 Part 5 PSM Act

Part 5 of the PSM Act establishes the statutory framework dealing with disciplinary matters in relation to certain employees (see 1.1 of this guide.). These provisions:

provide employing authorities with powers that would not be available under common law, such as the ability to suspend an employee without pay (section 82), take disciplinary action relating to specified criminal convictions (section 92), or reduce an employee’s classification if it is found that a breach of discipline occurred (section 80A);

provide employees with appeal rights to the WAIRC and/or PSAB in relation to certain disciplinary matter decisions or findings (section 78); and

require the Public Sector Commissioner to establish CIs for Part 5 disciplinary matters (see below).

Employing authorities must use the Part 5 PSM Act provisions for disciplinary matters concerning an employee covered by Part 5 of the Act.

# 2.4 Commissioner’s Instructions

There are two relevant CIs specifically addressing Part 5 disciplinary matters:

* CI Discipline – General; and
* CI Discipline – Former employees.

These instructions establish the minimum procedural requirements to be followed by employing authorities in dealing with suspected breaches of discipline, disciplinary matters and the taking of disciplinary action under Part 5 of the PSM Act.

CI Discipline - Former employees only has application in instances where an employing authority is commencing or continuing disciplinary proceedings in relation to a person no longer employed by that public sector body. Refer to section 8 of this guide for further information.

# 2.5 Policies and procedures of the public sector body

While the PSM Act, Discipline Standard and CIs set out high level requirements as to the manner in which disciplinary processes are to be conducted, there remains room for individual agencies to formulate their own policies or procedures that govern the manner in which disciplinary processes are to be conducted in that agency, so long as these are consistent with the higher level requirements. The benefits of doing so include helping to ensure consistency in the way in which processes are conducted and decisions are made; increased certainty for employees subject to a disciplinary process and persons conducting the process as to the procedure to be followed; and increased opportunity to help ensure that procedures followed and decisions made are compliant with legal requirements.

Any policies that are in place should be sufficiently flexible and reflect the operations and needs of the agency, as failure to comply with an internal policy may be used as a ground of appeal to the WAIRC and or PSAB.

3. Key considerations

# 3.1 What is a breach of discipline

Section 80 of the PSM Act defines the actions that constitute committing a breach of discipline. Summarised, an employee may commit a breach of discipline by:

* Disobeying or disregarding a lawful order;
* A lawful order is one that is given by an appropriate person (i.e. a supervisor) to an employee that is connected to their work related duties.
* Contravening either any applicable provision of the PSM Act, or any public sector standard or code of ethics;
* Sections 7 to 9 of the PSM Act contain general principles that are applicable to all public sector employees. Other sections of the PSM Act may be applicable to an employee in relevant circumstances.
* Committing an act of misconduct;
* Misconduct is not a defined term under the PSM Act, so is to be given its ordinary general meaning. Misconduct is generally considered to be conduct considered to be improper or immoral by the standards of ordinary people.
* Being negligent or careless in the performance of duties;
* This also relates to a broad range of actions. Some examples may include not following safety procedures, or neglectfully misplacing confidential documents.
* Committing an act of victimisation as defined under the *Public Interest Disclosure Act 2003* (PID Act)

Under the PID Act, persons who make, or are intending to make, a public interest disclosure are protected from victimisation.

There will be instances when the actions of an individual can fall within the definition of a breach of discipline in more than one way. For example, if an employee verbally assaults a colleague, then it may be alleged that this employee has committed a breach of discipline by:

* committing an act of misconduct; and/or
* contravening the Public Sector Code of Ethics by not treating ‘others with courtesy, consideration and dignity’.

Whilst conduct that may constitute a breach of discipline will usually occur in the workplace, or otherwise in the course of work duties, there may be instances where conduct that occurred outside of work hours may be treated as a disciplinary matter. Whether conduct that occurs outside the workplace but in a work-related context, such as work functions (e.g. Christmas parties) and business trips, can constitute a breach of discipline will depend on factors such as:

* whether the activity or event at which the conduct occurred was sponsored or organised by the employing authority;
* if the conduct has or could have a significant impact on the employer organisation, its reputation, other workers, customers, or on the workplace;
* where and when the conduct occurred (e.g. did it occur during work hours); and
* whether the employee was ‘on duty’ (e.g. acting in a representational or official capacity).

Courts and tribunals have provided guidance on what conduct by an employee that occurs outside of work is a legitimate concern of the employer and it is recommended that legal advice be obtained in relation to the facts of any particular matter.

# 3.2 Standard of proof

The standard of proof in employee disciplinary matters is that it is more probable than not that the alleged breach of discipline actually occurred. This is known as the ‘balance of probabilities’ test, and is a lesser test than “beyond reasonable doubt” as required in criminal law matters.

As part of the evidence rule of procedural fairness, the standard of evidence required to meet the balance of probabilities test increases with the seriousness and consequences of the allegation.

# 3.3 Confidentiality

## 3.3.1 Why is confidentiality important?

Preserving the confidentiality of the disciplinary process is important to ensure fair treatment and fair process, to minimise the risk of victimisation, to avoid defamation proceedings, and out of respect for people’s privacy. It will also help develop and maintain employee confidence in the process.

## 3.3.2 Can a complainant remain anonymous?

Not every disciplinary allegation involves a complaint. The hearing rule of procedural fairness requires that the employee the subject of the allegations has sufficient detail concerning the allegations so they can respond. In some cases, providing this detail will enable the employee to identify the complainant, if there is one, even if that person is not named.

While a complainant has no “right” to anonymity, public sector bodies should endeavour to protect the complainant’s identity wherever possible, unless the information has been disclosed under the PID Act, in which case a discloser’s identity can only be revealed in accordance with section 16(1) of that Act. In cases where preserving anonymity is not reasonably practicable, public sector bodies may consider suitable management actions, such as the deployment of staff to other sections of the organisation, to minimise disruption to the workplace. All staff should be made aware that bullying, harassment and intimidation in the workplace are not acceptable behaviours, and in addition to being a possible breach of discipline, may be a contravention of other legislation such as the *Occupational Safety and Health Act 1984* and the PID Act.

## 3.3.3 What information can the complainant receive?

The complainant’s understandable interest in wanting to know the outcome of an investigation must be carefully balanced against the confidentiality entitlements of the employee subject to the disciplinary process. Subject to the particular circumstances of the case, the balance should usually be in favour of the employee.

In order to respect the employee’s reasonable expectations of privacy, it is common practice for public sector bodies to only inform a complainant that an investigation took place and it resulted in an appropriate outcome. It is not usually appropriate to inform the complainant of the finding and any action taken, or to provide a copy of the investigation report.

## 3.3.4 Employee wellbeing

Disciplinary processes can be a stressful time for employees, whether they are the person the subject of the allegations, the complainant, or a co-worker. By following the CIs and legislative requirements, public sector bodies will be providing an acceptable level of procedural fairness to all parties; however the provision of additional support may also be warranted. For example, some public sector bodies when informing an employee that they are subject to a disciplinary matter will provide a brochure that explains the process and provides relevant contact details for further assistance. Such initiatives act to reduce misinformation about the discipline process and any related employee stress.

## 3.3.5 Record keeping

Public sector bodies will need to consider legislative requirements (such as the State Records Act 2000) and the principles of procedural fairness when developing record keeping policies for disciplinary matters.

Some general statements can be made about record keeping and disciplinary processes:

The disciplinary process is a confidential part of the human resource management process. Record keeping practices should reflect the need for appropriate levels of confidentiality at all stages of the process;

Employees should be aware of any information that may be placed on their personnel file, however this does not mean that any request to remove this information should be automatically granted;

Careful consideration should be given to the storage and location of documents, particularly in cases where there is a finding that no breach of discipline occurred;

Disclosures of disciplinary records may be appropriate in the context of inquiries from prospective employers and accountability agencies.

4. Disciplinary process overview

# 4.1 Process map



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# 4.2 Determining how to proceed

An employing authority may receive information that, if found to be true, would fall within the definition of a breach of discipline under the PSM Act, but commencing a discipline process may not be the most appropriate mechanism to deal with the issue. For example, a complaint that an employee behaved in a rude manner to a client, depending on the circumstances, may, from a management perspective, be better dealt with by providing customer service training, rather than commencing a discipline process.

In many cases, particularly those which are less serious and the suspected behaviour of the employee is unintentional or atypical, it may be more effective for the manager to deal directly and informally with the employee about their conduct.

The PSM Act allows the employing authority to exercise his or her judgement in determining whether an issue warrants being dealt with as disciplinary matter. Summarised, section 81 provides that once the employing authority is aware that an employee may have committed a breach of discipline, the employing authority may:

1. Decide to deal with the matter as a disciplinary matter under the PSM Act and in accordance with the CIs; or
2. Decide it is appropriate not to treat the matter as disciplinary and –
3. take improvement action in relation to the employee; or
4. take no action.

In determining whether or not to treat the matter as disciplinary, consideration should be given to the facts, seriousness and nature of the particular incident. Such considerations may include:

* whether it is an isolated incident;
* the circumstances surrounding the incident; the employment history of the employee;
* the status and position held by the employee;
* the risks to the reputation of the department or organisation and the public sector; and
* the impact on the department or organisation and other employees.

If, after considering the information, the employing authority determines to treat the matter as disciplinary, CI Discipline - General, 1.1 requires that the employing authority make a written record of the decision.

#  4.3 Notifying external bodies

## 4.3.1 Public Sector Commission and Corruption and Crime Commission

Principal Officers (generally a CEO or Director General) of notifying authorities are required to notify the Public Sector Commission of all suspicions of minor misconduct and the Corruption and Crime Commission of all suspicions of serious misconduct. [Notifying misconduct - A guide for principal officers of notifying authorities](https://www.ccc.wa.gov.au/sites/default/files/Notifying%20misconduct%20-%20a%20guide%20for%20Principal%20Officers%20of%20Notifying%20Autho....pdf) provides information on obligations under the *Corruption, Crime and Misconduct Act 2003* (CCM Act), what should be contained in a notification and steps that should be taken in processing allegations of misconduct raised with or within the authority.

## 4.3.2 WA Police

Any information that indicates criminal conduct should be immediately referred to the WA Police (in addition to notifying the CCC, as above), for advice and possible investigation. In some cases the WA Police may advise that disciplinary proceedings should not commence or continue while a criminal matter is under investigation or prosecution.

# 4.4 Special disciplinary inquiries

Section 87 of the PSM Act allows the Public Sector Commissioner to direct that a disciplinary matter may be commenced or continued as a special disciplinary inquiry. The Public Sector Commissioner may direct such an inquiry on his or her own instigation, or on request of an employing authority.

Unlike regular disciplinary processes, special disciplinary inquiries have substantial coercive powers to require the production of documents, summon witnesses and to examine witnesses under oath. Given the nature of these powers and the resources required, special disciplinary inquiries are only held in exceptional circumstances, and employing authorities should only make a request for a special disciplinary inquiry to the Public Sector Commissioner where:

* the subject matter of the disciplinary matter is serious;
* there is substantial doubt that a normal disciplinary process would establish the truth behind particular actions or events, or would otherwise be unable to establish sufficient facts upon which to reach a finding; and/or
* there is concern that the allegations may be replicated elsewhere in the organisation and a normal disciplinary process would not allow this to be examined.

This guide does not outline the procedures that are to be undertaken for special disciplinary inquiries. When an employing authority is of the view that a special disciplinary inquiry is called for, the advice of the PSC should be sought prior to submitting the request.

5. Dealing with a disciplinary matter

The PSM Act or CIs do not prescribe the process that an employing authority must use to reach a finding that a breach of discipline did or did not occur, but does require that some minimum procedural requirements are met, in addition to the overriding requirement of compliance with the principles of procedural fairness. This section of the guide will explain these requirements, but first discusses the use of suspension in the disciplinary process.

# 5.1 Suspension

Suspending an employee under section 82 of the PSM Act may only occur after the employing authority has made the decision to treat a matter as disciplinary under section 81(1)(a) of the Act (see 4.2 above). Suspension action must be taken in accordance with the Act, CI Discipline - General, and be consistent with the principles of procedural fairness.

## 5.1.1 The basis for suspension

Suspension is not a sanction and using it as such amounts to prejudging the matter, denying the employee procedural fairness. Suspension should be used as a protective or organisational risk management measure, when, in consideration of the relevant circumstances, it is inappropriate for the employee to remain in the workplace, and relocation elsewhere in the organisation is either not practical or inappropriate.

## 5.1.2 Forms of suspension

Section 82 of the PSM Act provides for an employee to be suspended:

* on full pay;
* on partial pay; and
* without pay.

Further guidance on determining what form of suspension may be appropriate to the circumstances of the case can be found in section 5.1.5.

## 5.1.3 Suspension commencement and cessation

Under section 82 of the PSM Act, an employee may be suspended at any point after a disciplinary process is commenced and before it is finalised. In accordance with section 92 of the PSM Act, the suspension provisions may also be used if an employee has been charged with committing a serious offence (see section 9.2 of this guide). In addition, section 82(3) of the PSM Act states that the employing authority can remove the suspension, or vary the terms at any time.

## 5.1.4 Required procedures before suspension can take effect

Suspension is an administrative action potentially adverse to an employee’s rights or interests, and accordingly, the principles of procedural fairness apply. Employing authorities should ensure that any procedures they have in place governing the consideration and implementation of suspension decisions are consistent with these principles, as well as the PSM Act and the CIs for discipline.

Consistent with the hearing rule of procedural fairness, CI Discipline - General, 2.1 requires that unless there are exceptional circumstances warranting suspension action without prior notice, before suspension action is taken, the employing authority is to notify the employee of the proposed suspension action and reasons for taking it, and provide him or her with a reasonable opportunity to respond, before any final decision to take suspension action is implemented. CI Discipline - General, 2.1 provides that the notification requirement can be foregone if the employing authority holds a reasonable belief that the employee’s presence on workplace premises poses a serious risk to:

* employee/public safety;
* the integrity of evidence relevant to the disciplinary matter;
* the operations of the organisation; and or
* the investigation of the disciplinary matter.

Suspension without notice under CI Discipline - General would only be used in exceptional circumstances, where the risk to personal or evidentiary safety outweighs the need to inform the employee of the reasons for the suspension and to seek his or her views.

Suspension without notice is also intended to be a temporary action and under CI Discipline - General, 2.2 and can only be on full pay. CI Discipline - General places no limit on the duration of the suspension without notice, but it should only be for the duration of the serious risk that warranted the employee’s removal from workplace premises. As soon as is practicable, the employing authority should assess the need to continue the suspension. If the decision is made that the suspension should continue, informing the employee of the reasons for the suspension, and seeking their comment, should occur in line with normal practice.

## 5.1.5 Determining which form of suspension to impose

In considering whether to suspend with or without pay, or on partial pay, procedural fairness considerations apply unless there are exceptional circumstances and the employee should be advised of the reasons for any proposed decision and given a reasonable opportunity to respond. If an employee provides information or arguments that have a bearing on whether they should be suspended from duty with or without remuneration, then the employing authority should take that material into account in deciding whether to suspend the employee with or without remuneration, or in the course of reviewing a suspension.

 There are no legislative restrictions on how suspension on partial pay may be used. As a guide, it may be a suitable tool in instances where an employee is in receipt of allowances that are not relevant when he or she is outside the work environment in which those allowances applied. This form of suspension may also be useful when the suspended employee has approval to undertake external employment, but receives less pay. In such a case, the employing authority may provide partial pay to ensure that they employee is not financially disadvantaged.

Relevant considerations for an employing authority to take into account in determining whether a suspension is on full, partial, or no pay may include:

* the seriousness of the alleged breach of discipline;
* the hardship that would be imposed on the employee by suspension on no or partial pay; and
* the estimated length of time that the discipline process will take to complete.

## 5.1.6 Forfeiture of pay

If the employee has been suspended without pay or on partial pay, and the discipline process either finds that:

* no breach of discipline has occurred;
* the process is discontinued; or
* a breach of discipline had occurred, but no disciplinary action will be taken the pay withheld is to be restored to the employee (section 82(5)).

If at the conclusion of the discipline process it is found that a breach of discipline has occurred and discipline action will be taken, then section 82(4) of the PSM Act states that the withheld pay will be forfeited unless otherwise directed by the employing authority. CI Discipline - General, 2.3 directs that in each case of suspension where forfeiture of pay is applicable, the employing authority is required to give consideration to whether forfeiture is, or is not, to occur, and require supporting rationale for the decision. An employing authority’s consideration of this matter will be dependent on the circumstances of the case, but some guiding criteria may include the following:

* the quantum of the salary to be forfeited;
* the nature and severity of the breach;
* whether the impact of salary forfeiture together with any disciplinary action will be disproportionate to the breach of discipline;
* the public perception and interest in adequately disciplining the breach;
* any prior disciplinary action taken and the employment record of the officer; the existence of any mitigating factors; and
* whether, and if so the extent to which, the employee earned other income during the period of suspension.

# 5.2 Undertaking a disciplinary process

## 5.2.1 Overview

It is the responsibility of the employing authority to determine the methodology or procedures used to determine if a breach of discipline did or did not occur.

The employing authority’s discretion to determine his or her own procedures operates subject to the principles of procedural fairness, the PSM Act and the CIs for discipline.

## 5.2.2 PSM Act requirements

Section 82A(1) of the PSM Act requires that an employing authority, in dealing with a disciplinary matter:

* proceeds with as little formality and technicality as permitted by the PSM Act, CIs, and the circumstances of the matter;

This means that the focus of the employing authority should be directed to ensuring that overly formal processes are not applied to less serious or less complex matters. This will also assist in ensuring that processes are undertaken as expeditiously as possible. Informality, however, must not be at the expense of satisfying procedural fairness or other administrative law principles.

* is not bound by the rules of evidence;

The rules of evidence which apply to legal proceedings are not applicable to disciplinary proceedings. PSM Act disciplinary processes are not intended to equate to legal proceedings in a court setting and it is inappropriate that they are conducted in accordance with the rules of evidence. Employing authorities and investigators should be guided by the most reliable evidence available and in this regard:

* + Primary sources of evidence are preferable to secondary sources (e.g. an original document is better than a photocopy);
	+ Disputed facts should, where possible, be corroborated by other evidence;
	+ Give consideration to the value that should be placed on hearsay evidence;
	+ Consider the credibility of witnesses.
* determines the procedure to be followed, subject to the Part 5 Division 3 of the PSM Act and the CIs.

No further procedural limitations are contained in the PSM Act. Information on the CI requirements can be found below.

## 5.2.3 Procedural requirements under Commissioner’s instruction Discipline - General

The CI Discipline - General requires that all disciplinary processes operate subject to the following:

* The employing authority is to ensure that the process undertaken to determine if a breach of discipline occurred is completed as soon as is practicable (CI Discipline General, 1.2).

NOTE: A range of factors will determine the length of time required to reach a finding on whether a breach of discipline did or did not occur, some of which may be outside of the employing authority’s control. It is good practice to communicate any unanticipated delays to the employee as soon as is practicable.

* The employing authority is to ensure that he or she, or any delegate or authorised person acts fairly when dealing with disciplinary matters and that all issues of perceived or actual bias or conflicts of interest are appropriately recorded and resolved (CI Discipline - General, 1.3).
* No finding can be made that an employee has committed a breach of discipline unless in the course of the discipline process:
1. the employee is notified in writing:
2. of the conduct relating to the possible breach of discipline, in sufficient detail to enable him or her to provide a response;
3. that if a breach of discipline is found to have occurred, action may be taken, which may range from counselling to dismissal; and
4. the employee is provided a reasonable opportunity to respond to the possible breach of discipline, either in person or in writing, and that response is genuinely considered by the employing authority (CI Discipline – General, 1.4).

NOTE: While the minimum requirement contained in the CI is for the employee to be notified and have the opportunity to respond before the finding is made, meeting the requirements of procedural fairness will in practice require that this occurs as soon as is practicable, as determined by the circumstances of the case.

## 5.2.4 Interviews – Support person or representative

CI Discipline – General, 1.5 requires that the employing authority notify the employee that he or she may request a support person or representative to be present at any interviews or meetings held in relation to the disciplinary process. Whether a support person or a representative is allowed to attend, and the extent of participation, depends upon the circumstances of the case and the decision of the employing authority.

### Support person

The presence of a support person in itself does not ensure procedural fairness – a support person simply assists the process go smoothly. An employee’s request to have a friend or support person present at any interviews should therefore be sympathetically considered and the employing authority well advised to grant it, unless there are good reasons for rejecting it. Whether the request will be refused will depend on the circumstances of the case. One such example may be where the employee’s nominated support person is also required to be interviewed as part of the disciplinary process.

Many employees choose to have a trusted colleague or union representative as a support person at interviews. Similarly, the person conducting the interview will often have another person in attendance to act as a scribe and to observe proceedings. A support person can be of benefit to the overall process if their presence acts to reassure the employee and create a more comfortable environment.

It is important that all parties present at the interview are clear on the role of the support person, which is to provide support and advice to the employee, but not to actively participate in the process, such as answering questions on the employee’s behalf. Instances where it may be appropriate for the employee to have a ‘representative’ who takes a more active role in the interview are discussed in the next section. In relation to support persons, some suggested guidelines are as follows:

* the support person is not to interrupt or interfere in the interview;
* the support person may not object to any questions or advance any legal arguments;
* the support person may make notes or record the interview so long as it does not distract from or delay the process;
* any additional information the support person may wish to elicit from the employee or provide by way of documents may be permitted at the end of the interview, at the discretion of person conducting the interview, otherwise such information or documentation may be supplied later;
* the employee may, at the discretion of the person conducting the interview, confer privately with their support person during a break;
* there may be a limit (usually one) to the number of support people who may be present.

### Representative

In most disciplinary processes it will be neither necessary nor appropriate for the employee to have a representative answering on their behalf at interviews. This is because a disciplinary process occurs in the context of an employment relationship, and is not to be conducted as a legal or adversarial process.

In some instances however, the employee may not be in a position to speak effectively on his or her behalf, or fully comprehend the proceedings and their ramifications. Such cases may include where there exist language barriers, or physical/mental impairment. An employee’s age, level of self-confidence, and intellectual capacity in relation to the complexity of proceedings, may also be relevant considerations.

The hearing rule of procedural fairness requires that the employee must be given reasonable opportunity to respond to allegations or decisions affecting him or her (see section 2.1.1, above). Requests for a representative to participate at interviews should be considered with the requirements of procedural fairness in mind, as they apply to the circumstances of the case.

## 5.2.5 Additional requirements in relation to ministerial officers

If the person who is the subject of a disciplinary process is a ministerial officer, the employing authority (who, in the case of ministerial officers is the Minister responsible for administering the PSM Act) cannot investigate the matter, but must direct another person to submit a report as to whether there has been a breach of discipline, and a recommendation as to any course of action to be taken (s.81(2) PSM Act).

## 5.2.6 Abandoning proceedings & recommencing proceedings

There may be circumstances that come to light during the disciplinary process that warrant the matter ceasing to be considered as disciplinary. At any time after the decision is made to treat a matter as disciplinary, and before a finding is made, the PSM Act allows the employing authority to cease proceedings and either:

* take improvement action; or
* take no further action

in relation to the employee (section 82A(2) PSM Act).

CI Discipline - General, 1.11 further directs that an employing authority may not recommence a discontinued discipline process unless substantial and material fresh evidence or information becomes available that in the employing authority’s view warrants fresh proceedings being commenced. If the employing authority decides to cease the disciplinary process, and the employee was aware that proceedings were underway, the employee must be notified of this decision within 14 days (CI Discipline – General ,1.10).

6. Findings and action

# 6.1 Advising the employee of the finding and any proposed action

If a finding is made that no breach of discipline has occurred, no disciplinary action may be taken by the employing authority, and the employee is to be notified in writing of the finding within 14 days (CI Discipline - General, 1.7).

If the finding is that a breach of discipline has occurred, the employee may request the reasons for that decision. CI Discipline - General, 1.9 states that, if requested by the employee, the employing authority shall provide reasons for the finding and/or disciplinary action taken. The reasons should be clear and help the employee understand why a particular decision was made. In the context of a disciplinary finding, the reasons for a decision will generally include the following, but will vary subject to the complexity and formality of proceedings:

* The sources of information relevant to the decision;
* A statement of the evidence relied upon (e.g. organisational policy and any witness statements);
* Findings of the facts that arose, including inferences drawn from those facts; and
* Whether, in relation to those facts, the evidence was accepted or rejected.

Where the evidence is conflicting, reference should be made to the available evidence and why certain evidence is preferred.

# 6.2 Determining if action will be taken and advising the employee

In some cases where no breach of discipline is found, management or performance issues relating to the employee may become apparent. The employing authority should deal with this in the same way as if the issue arose in a non disciplinary context and must make it clear in that any improvement actions taken in relation to the employee are not taken or imposed as a sanction resulting from a breach of discipline finding, but rather as a management action by the employing authority in relation to the management of the conduct or performance of the employee.

If a breach of discipline has been found, it is the discretion of the employing authority to determine the appropriate action, subject to the exceptions below (see section 6.2.3 of this guide). The possible courses of action under section 82A of the PSM Act are:

* disciplinary action; and/or
* improvement action; or
* no further action.

## 6.2.1 Considerations when determining if any action is to be taken

There may be some instances where despite a finding that a breach of discipline occurred, the employing authority considers it appropriate that only improvement action is taken, or no further action. A range of factors may be taken into account when considering if this is appropriate, which may include:

* correcting the employee’s behaviour rather than punishing the employee;
* encouraging employees to achieve, and maintain, standards of conduct consistent with the values of the agency and the broader public sector;
* protecting the integrity of, and public confidence in, the public sector; and
* striking an appropriate balance between the needs and rights of employees, the public sector body, and the public interest.

## 6.2.2 Choosing the most appropriate action to take

Disciplinary and improvement action are available to the employing authority when it is determined by the employing authority that action will be taken as a result of a breach of discipline finding. Multiple actions may be imposed, for example a fine and a reprimand.

Apart from taking the above principles into account, the following may be considered when determining the appropriate action:

* whether the incident is isolated;
* the nature and the seriousness of the incident, including the effect and circumstances;
* whether the employee is aware of the required standard of behaviour that has been breached, and the consequences of breaching it;
* any mitigating or extenuating circumstances;
* the employment history and general behaviour of the employee; the length of the employee’s service;
* the skill, experience and position of the employee; the reputation of the agency;
* the impact of the sanction on the employee;
* previous advice/counselling in relation to the same or other behaviour;
* how other employees have been treated in similar circumstances;
* whether there is any ongoing risk to the public or colleagues; and
* whether the employee has admitted the breach of discipline.

The employee’s past conduct may be a relevant consideration when deciding the most appropriate sanction to impose. Although an organisation should ordinarily only consider the incident in question, in some cases evidence of prior or similar facts, or evidence that shows a particular pattern of behaviour, may be relevant in determining the appropriate action. Whether the employee’s behaviour, or substantially similar behaviour, has previously been the subject of counselling or disciplinary action may be a relevant consideration when assessing the appropriate sanction following a finding.

Although cases vary, employing authorities should consider whether there have been any similar disciplinary cases in the past, and the actions that were taken. A failure to act in accordance with established precedents may be unfair and unreasonable, depending on the circumstances of the relevant cases. If an organisation deviates from a precedent, the test is normally whether there are any material differences in facts and circumstances. It is also important to remember that the employing authority’s decision may set a precedent for cases of a similar nature.

## 6.2.3 Findings and action – limitations on the employing authority’s discretion

### Ministerial officers

In relation to disciplinary proceedings where the employee is a ministerial officer, the employing authority (the Minister responsible for the administration of the PSM Act) is bound to accept the findings of the person directed to report on the matter (section 82A(4)(a) PSM Act). This employing authority must have regard to any recommended action in the report, but is not bound by it (s. 82A(4)(b) PSM Act).

### A breach of discipline finding relation to redeployment

In cases where a registered redeployee refuses to comply with a direction to accept an offer of suitable employment or obstructs the process (as outlined in section 94(2)(b) of the PSM Act, and the employing authority wishes to treat the matter as disciplinary, the full range of actions that may be taken against the employee are not available.

Should it be found in relation to these matters that a breach of discipline has occurred, section 82A(3) of the PSM Act directs that the only action available to the employing authority is to dismiss the employee.

# 6.3 Informing the employee of the proposed action & considering the response

CI Discipline - General requires that the employee is advised in writing of any action proposed to be taken as the result of a breach of discipline finding, is given a reasonable opportunity to make submissions in response, and that response is genuinely considered by the employing authority (CI Discipline - General, 1.7). Consistent with the requirements of procedural fairness, the advice should explain the basis for why the proposed action is considered appropriate, so the employee may respond in a meaningful way. The circumstances of the matter will inform what level of detail is sufficient to explain the proposed action and what constitutes a reasonable opportunity for the employee to respond. If the proposed action consists in part, or solely, as improvement action, then it should be made very clear to the employee that this action is not considered punitive.

Once the employee’s response is received, the employing authority needs to decide if the information provided by the employee warrants a reconsideration of the proposed action. Any amendment to the proposed action determined as a result of the employee’s response does not re-activate the notification process under CI Discipline - General, 1.7.

# 6.4 Taking of action and notification

The employee is required to be notified in writing of any action imposed as soon as is practicable, but in any event within 14 days of the action taken (CI Discipline - General, 1.8). It is not necessary that the employee „accept‟ or in any way „concur with the action imposed. The action taken should be given effect promptly by the employing authority. If requested by the employee, the employing authority is required to provide reasons for the disciplinary action taken (note that this does not include a mandatory requirement to provide reasons for the taking of improvement action, as it is not considered punitive action) (CI Discipline - General, 1.9).

7. Appeal

Section 78 of the PSM Act and the Industrial Relations Act 1979 provide appeal rights to certain disciplinary process decisions or findings made by the employing authority. There is no legislative requirement that an employee is informed of their avenue of appeal when a finding or decision is made. However it is considered good practice that the employee is made aware of any appeal rights that they may have. Any such notification does not need to be specific, but may instead advise the employee that:

* the right to appeal a decision is set out in s78 of the PSM Act;
* an appeal is made to the PSAB in the case of a Government Officer and to the WAIRC in the case of an employee who is not a Government Officer;
* the PSAB is part of the WAIRC which is at Level 16, 111 St Georges Tce and the WAIRC website address is www.wairc.wa.gov.au; and
* the employee may wish to seek independent advice (such as from their union or legal representative) as to whether they may appeal the decision or finding.

8. Disciplinary processes when the employee is seconded or leaves the organisation

# 8.1 Employees on secondment – delegation of disciplinary powers

There may be circumstances in which an employing authority determines that an alleged breach of discipline is better dealt with, in whole or in part, by a person external to the department or organisation. One such circumstance may include where the employee is on secondment.

## 8.1.1 Terminology

Secondment arrangements between public service officers and employing authorities are entered pursuant to section 66 of the PSM Act. Under a secondment arrangement, the officer remains the employee of the seconding employing authority (or “home employing authority”). The employing authority to whom the employee is seconded may be regarded as the “host employing authority”.

## 8.1.2 Delegation of disciplinary powers

If an employee engages in conduct whilst on secondment that gives rise to a suspected breach of discipline, it is the home employing authority that has power to carry out a disciplinary process in relation to the employee. However, circumstances may arise where the home employing authority determines that the suspected breach of discipline is better dealt with, either in whole or in part, by the host employing authority, or by some other person.

For instance, there may be a reluctance on the part of the home employing authority to initiate disciplinary proceedings because the employee was not in their service at the time that the alleged conduct occurred, and they might not have ease of access to the relevant evidence and witnesses regarding the suspected breach of discipline. It may be considered that the host employing authority is better placed to conduct any resulting disciplinary process.

In these circumstances, the home employing authority may wish to consider delegating to the host employing authority some or all of its disciplinary powers in respect of the employee. Section 33 of the PSM Act permits chief executive officers and chief employees to delegate their powers and duties under the PSM Act to the persons mentioned in the section[[1]](#footnote-1). This will include the powers under Division 3, Part 5 of the PSM Act to carry out a disciplinary process in relation to an employee. Pursuant to this section, the host employing authority, or some other person mentioned in section 33 of the PSM Act, can be delegated to deal with the alleged breach of discipline to the extent desired by the home employing authority.

There will also be circumstances where a home employing authority does not wish to delegate its disciplinary powers in relation to an employee on secondment, preferring to retain those powers for its own use. These might include, for instance, where the secondment is nearing an end, or where the home employing authority is aware of prior misconduct on the part of the employee. The discretion rests with the home employing authority.

## 8.1.3 Scope of the delegation

Where an employing authority wishes to delegate his or her disciplinary powers, the extent to which they desire the alleged breach of discipline to be dealt with by a delegate must be reflected in writing and must carefully describe the extent to which a delegate is authorised to deal with the alleged breach. For instance, a home employing authority may elect to delegate:

* all of the powers of an employing authority in relation to disciplinary matters contained in Division 3, Part 5 of the PSM Act and the Commissioner’s Instruction on Discipline; or
* the power to deal with a disciplinary matter in accordance with section 81, section 82A (1) and (2) of the PSM Act and the Commissioner’s instruction on Discipline, but not the powers set out in section 82A(3) to make a finding as to whether the employee has committed a breach of discipline or to take disciplinary action in relation to the employee.

The scope of the latter delegation would preserve to the home employing authority the decision whether to take disciplinary action in relation to the employee and the form that any such action may take. That is, only the home employing authority would be authorised to dismiss, demote, transfer, fine or reprimand the employee.

The home employing authority may at any time revoke the delegation, in which case they will be able to progress the alleged breach of discipline or make a new delegation to one of the persons mentioned in section 33 of the PSM Act.

A delegation can be issued at any time. For instance, the home employing authority may wish to delegate all or some of its disciplinary powers in relation to an employee on secondment at the time that the secondment arrangement is entered into. It is equally open to a home employing authority to only consider issuing a delegation if and when the need arises, such as when the host employing authority becomes aware of conduct on the part of the secondee that gives rise to a suspected breach of discipline.

Agencies considering delegating their disciplinary powers are encouraged to obtain advice from the State Solicitor’s Office if they are uncertain as to how to proceed, and in drafting the delegation.

# 8.2 Former employees

Section 76 of the PSM Act provides for a disciplinary process to be commenced or continued in relation to someone who is no longer employed by the employing authority originating that discipline process. The circumstances in which such action can be commenced or continued are subject to CI Discipline – Former employees.

## 8.2.1 Terminology

When the employment relationship between the employee and employing authority has ended, section 76 of the PSM Act allows a disciplinary process to be commenced or continued by deeming the relevant party a former employee or former employing authority, depending on the situation. This can be described as follows:

### Category 1: Person no longer employed in the public sector (section 76(4) PSM Act)

If a disciplinary process is continued or commenced when the person the subject of proceedings:

* has left the employing authority where the suspected breach of discipline occurred: and
* is not employed by another employing authority in a public sector body, that person is no longer an employee for the purposes of the PSM Act.

In these situations, section 76(4) of the PSM Act refers to this person as a ‘former employee’ and deems that for the purposes of discipline, in the circumstances specified in CI Discipline – former employees, the „former employee‟ is considered to be an employee of the employing authority where the suspected breach of discipline occurred.

### Category 2: Person now employed in another public sector body (section 76(7) PSM Act)

If a disciplinary process is continued or commenced when the person the subject of proceedings:

* has left the employing authority where the suspected breach of discipline occurred; but
* is employed by another employing authority elsewhere in the public sector that person is still an ‘employee’ for the purposes of the PSM Act.

In these situations, section 76(7) of the PSM Act refers to the employing authority where the breach occurred as the „former employing authority‟ and deems that for the purposes of discipline, in the circumstances specified in CI Discipline – Former employees, the „former employing authority‟ can act as if it is the actual employing authority of the employee.

## 8.2.2 Relevant circumstances

An employing authority can only commence or continue a discipline process in relation to a person that the employing authority no longer employs, subject to the circumstances contained in CI Discipline – former employees. The circumstances are that:

1. the suspected breach of discipline occurred when the person was an employee of the employing authority; and
2. the employing authority considers it appropriate to commence or continue a disciplinary process having regard to relevant factors, including:
3. the seriousness of the suspected breach of discipline;
4. whether it is an isolated incident;
5. the status of and position held by the employee;
6. the length of time that has elapsed since the suspected breach of discipline occurred;
7. the likely impact upon public confidence in the public sector or the relevant public sector body if the suspected breach of discipline is not dealt with as a disciplinary matter;
8. any mitigating factors relating to the personal circumstances of the person;
9. whether the person is, or is likely to be, re-employed in the public sector in the future; and
10. the likely cost and administrative burden involved in dealing with the suspected breach of discipline as a disciplinary matter.

Upon deciding to commence or continue a disciplinary matter, the process of determining whether a breach has occurred is no different to that for existing employees. For such situations, section 76 of the PSM Act deems that former employees and employing authorities be read as existing employees and employing authorities for the purposes of the disciplinary provisions in Part 5.

There are certain limitations on actions that can be taken against a former employee resulting from a finding that a breach of discipline occurred. CI Discipline – Former employees, 1.2 specifies that where the former employee is no longer employed in the public sector, the only actions available are that of a fine and/or reprimand. This is because it would not be meaningful in this context to impose other sanctions such as a transfer, reduction of classification, or dismissal. If the former employee is employed elsewhere in the public sector, the full range of actions are available, but the former employing authority is required to consult with the subsequent employing authority before the taking of any action.

## 8.2.3 Determining the status of the person the subject of a disciplinary process

Once it has been determined that a process will be commenced or continued in relation to someone no longer employed by the employing authority, it will need to be ascertained whether that person is employed elsewhere in the public sector.

In many cases, this may be simply ascertained by asking the person the subject of the disciplinary process to confirm if they are employed elsewhere in the public sector. If yes, then that person continues to be an employee for the purposes of the PSM Act, and the discipline process is carried out with the decision maker being the ‘former employing authority’.

However, the person subject to the discipline process may not be forthcoming with this information. This person cannot be compelled to provide this information, and unless the employing authority has ascertained the person’s status through other avenues, the process will need to be conducted under the ‘former employee’ provisions of the CI. This means that the full range of sanctions are not available.

9. Criminal offences – options available to employing authorities

# 9.1 Employee convicted of serious offence

Employing authorities are able to take disciplinary or improvement action against employees who have been convicted of a ‘serious offence’, a defined term in section 80A of the PSM Act. These offences may or may not relate to the employee’s job. Section 80A of the PSM Act and regulation 15 of the Public Sector Management (General) Regulations 1994 prescribe the type of offences that apply. Summarised, these offences are:

* offences capable of being tried before a jury (indictable offences); or offences that involve –
	+ fraud or dishonesty;
	+ wilful damage or destruction of property;
	+ offences committed against the person; and/or
	+ a maximum penalty of imprisonment of two years or more.

When the employing authority becomes aware of the employee’s conviction for an offence as listed above, section 92 of the PSM Act allows for action to be taken without commencing disciplinary proceedings. Any or multiple improvement or disciplinary actions may be taken against the employee. Before taking the action, the employing authority must give the employee the opportunity to make a submission relating to the proposed action.

# 9.2 Employee is charged with certain criminal offences

If an employee is charged with a criminal offence as provided for in section 80A of the PSM Act, the employing authority may utilize the suspension provisions provided in section 82 of the PSM Act. CI Discipline - General, as it pertains to suspension, applies. Further information on suspension can be found in section 5.1 of this guide.

1. If the CEO or Chief Employee is not the employing authority of the department or organisation concerned, a delegation of relevant disciplinary powers to them from the employing authority in accordance with section 100(3) of the *Public Sector Management Act 1994* will also be required. [↑](#footnote-ref-1)