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NSW Police Force

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Suspension Procedures for Police Officers

Professional Standards Command

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Suspension Procedures for Police Officers

Essential Summary

This document explains the NSW Police Force Suspension Policy and provides clear procedures on:

- why, when and how an officer should be suspended from duty.
- the rights, entitlements and obligations a suspended officer has.
- the responsibilities and obligations the NSW Police Force has in considering and administering suspension.

These procedures incorporate the provisions of clause 52 of the *Police Regulation 2015* and the principles contained in Premier's Memorandum 94-35 (Appendix 1).

Commanders / Managers are responsible for monitoring the welfare and well-being of officers who are suspended from office or subject to consideration of suspension. Where necessary, resources such as the Employee Assistance Program, Peer Support Officers, Safety Command and Police Chaplains should be used.

Document Control Sheet

Document Properties

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1	March 2013	Professional Standards Command	<p>Introduction of new P994 (an amalgamation of current P994 and P995).</p> <p>Removal of information pertaining to Police Residences (Pg 13) while review of this aspect is being conducted.</p> <p>Addition of paragraph regarding the suspended officer's responsibility to cooperate in the facilitation of regular welfare checks.</p> <p>Addition of paragraph regarding the termination of temporary appointments upon suspension of an officer.</p> <p>Addition of paragraph regarding the attendance of a suspended officer at police functions.</p>
2	June 2013	Professional Standards Command	<ul style="list-style-type: none"> • When officers must be considered for suspension (pg 9) • Police residences – considering suspension (p 10) • Attending police stations when suspended (p 23) • Temporary appointments (p 29)
3	October 2015	Professional Standards Commands	<p>Changes to <i>Police Regulation 2008</i> to reflect update to <i>Police Regulation 2015</i>.</p> <p>Transfer to corporate template</p>

4	July 2016	Professional Standards Command	Updates to correspond with electronic system – Management Action, Suspension and Actions (MASC), introduced July 2016.
5	March 2017	Professional Standards Command	Update regarding annual leave entitlements relating to income protection.
6	July 2017	Professional Standards Command	Updates to reflect changes in the <i>Police Act 1990</i>
7	December 2017	Professional Standards Command	Update document classification under GIPA Act 2009
8	August 2020	Professional Standards Command	Review and update to align with changes to the <i>Police Act 1990</i> and <i>Police Regulations 2015</i>
9	8 January 2021	Professional Standards Command	Update security classification
10	April 2022	Professional Standards Command	Complete review and update, all associated policies, legislation, MASC Deletion paragraphs 6.10 Overstrength Positions and 11.3 Temporary Appointments Addition paragraph 12.3 Resignations Update to command names Minor technical changes
11	November 2023	Professional Standards Command	Update to command names Change of wording in secondary employment

Table of Contents

Professional Standards Command.....	1
Document Control Sheet.....	3
Table of Contents	5
1. Scope.....	7
2. Authority and Delegation to Suspend	7
2.1 Authority to suspend a police officer.....	7
2.2 Delegation of the Commissioner’s power to suspend.....	7
2.3 When officers must be considered for suspension	8
2.4 Suspension with pay	8
2.5 Suspension without pay.....	8
3. Electronic Forms	9
4. Considering Suspension.....	9
4.1 Responsibilities of Commanders/Managers.....	9
4.2 Responsibilities of Region Commanders.....	9
4.3 Professional Standards Command	10
4.4 When suspension takes effect	10
5. Administration of suspended officers.....	10
5.1 Responsibilities of Commanders - when to inform the officer.....	10
5.2 Officer welfare	11
5.3 Court and other work commitments of the officer	11
5.4 Contact person.....	11
5.5 Appointments, warrant cards and other identification	11
6. Reviewing the suspension.....	12
6.1 Contact the person.....	12
6.2 Record contact	12
6.3 Submit records	13
6.4 When to consider a change in suspension.....	13
6.5 Changes to suspension status	13
6.6 Officer tenders resignation	13
6.7 Concluding a suspension.....	15
6.8 Process	15
6.9 Advising the officer	15
7. Managing a suspended officer who returns to work.....	15
7.1 Risk assessment.....	15
7.2 Suitable workplace.....	16
7.3 Incremental progression	16
7.4 Promotion to Senior Constable.....	16
7.5 Leading Senior Constables	16
7.6 Excess annual leave.....	16
7.7 Record keeping	17

7.8 Other employment..... 17

8. Suspended officers' rights obligations and entitlements 17

8.1 Responsibilities of suspended officers 17

8.2 Recalls to duty 18

8.3 Court..... 18

8.4 Attire 18

8.5 Entitlements 18

8.6 Overtime 18

8.7 Attending police stations whilst suspended 18

9. Leave 19

9.1 Annual and extended leave 19

9.2 Sick leave..... 19

9.3 Other types of leave 19

9.4 Pay..... 20

9.5 Workers' compensation 20

10. Secondary and other employment 20

10.1 Secondary employment 20

10.2 Other employment..... 20

10.3 Process 20

10.4 Defence Forces..... 21

11. Hardship payments..... 21

11.1 Process 21

11.2 Payment of allowances 22

12. Entitlements on separation from the NSW Police Force..... 22

12.1 Suspended with pay 22

12.2 Suspended without pay 23

12.3 Resignation..... 23

Appendix 1 – Premier’s Memorandum No 94-35 24

Appendix 2 – Clause 8 Police Regulation 26

Appendix 3 – Clause 16 Police Regulation 26

Appendix 4 – Clause 17 Police Regulation 26

Appendix 5 – Section 94D, Police Act 26

Appendix 6 – Section 80, Police Act..... 27

Appendix 7 – Section 181D, Police Act 27

1. Scope

This document applies to all non-executive police officers, including non-executive commissioned police officers and Probationary Constables. This policy and procedures do not apply to administrative officers, ministerial appointees or temporary employees.

This document is based on the *Suspension of a Police Officer Policy Statement*. Misconduct and Management Support (MMS), Professional Standards Command (PSC) has corporate responsibility for this policy.

Any inquiries regarding the operation of this policy should be directed to MMS on 9355 8260 / EN 48260. Alternatively refer to the Local Command User Manual under Documentation within the Management Action, Suspension and Charges (MASC) system for processes relating to submissions. The MASC system is located within NSWPF Systems accessed via the SAP portal.

2. Authority and Delegation to Suspend

Throughout these procedures, the *Crown Employees (Police Officers – 2021) Award* will be referred to as '**the Award**' and includes subsequent amendments or variations, or if the Award has been rescinded, to the Award replacing it.

2.1 Authority to suspend a police officer

Clause 52 of the *Police Regulation 2015* provides:

- 1) *If the Commissioner has reasonable cause to believe that the conduct of a police officer has been such as to justify:*
 - a) *the taking of section 80 dismissal action or the making of a section 181D order with respect of the officer, or,*
 - b) *the institution of criminal proceedings against the officer, the Commissioner may suspend the officer from office (with or without pay) pending further investigation and decision as to the action to be taken.*
- 2) *If it is established to the satisfaction of the Commissioner that a police officer under suspension from office without pay is suffering undue hardship, the Commissioner may approve of the officer obtaining other employment for such period as the Commissioner may direct.*
- 3) *If it is established to the satisfaction of the Commissioner that the officer or the officer's family will suffer undue hardship because of the suspension from pay, the Commissioner may approve hardship payments of not more than 100% of the salary of the officer at the time of the suspension.*

2.2 Delegation of the Commissioner's power to suspend

Section 31 of the *Police Act 1990* enables some of the powers and functions conferred on the Commissioner to be delegated to other employees of the NSW Police Force by the Commissioner.

The Commissioner has delegated the exercise of powers under clause 52 of the *Police Regulation* to officers holding the positions of:

- Each Deputy Commissioner
- Assistant Commissioner, Professional Standards Command.

2.3 When officers must be considered for suspension

Consideration must be given to suspending an officer if there is reasonable cause to believe their conduct has been such as to justify:

- section 181D removal
- section 80(3) dismissal
- the institution of criminal proceedings.¹¹

Whenever one or more of these circumstances exist in relation to an officer a suspension questionnaire must be completed within the MASC System, unless already created due to section 139 proceedings. A suspension questionnaire must be forwarded electronically via the MASC system. The suspension questionnaire will automatically workflow in the MASC system.
(See *Local Command User Manual under Documentation within the MASC system.*)

2.4 Suspension with pay

Suspension from office is a risk minimisation strategy used while a matter is being investigated and a decision made as to what management action is to be taken. It is not a penalty or management action.

Generally, officers should be suspended with pay.

2.5 Suspension without pay

In line with *Premier's Memorandum 94-35* suspension from office should be approved with pay unless exceptional circumstances exist. These include but are not limited to when the subject officer:

- has been remanded in custody.
- has admitted to behaviour which makes them unfit to continue in paid employment with the NSW Police Force.
- has been convicted of a serious criminal offence.
- there is significant and compelling evidence establishing their corruption or serious misconduct.

The fact that exceptional circumstances exist does not preclude suspension with pay being approved.

¹ It is not intended to include such trivial matters as minor traffic or parking Court Attendance Notices.

3. Electronic Forms

All forms referred to in this document relating to the suspension process are electronic and located within the MASC system accessed via the SAP portal within NSW Police Force systems.

4. Considering Suspension

Suspension is a risk minimisation strategy and should only be contemplated when other risk minimisation strategies are not reasonably viable. A decision to suspend an officer from 'office as a police officer' is a serious consideration.

4.1 Responsibilities of Commanders/Managers

Complete the recommendation to 'Suspend a Police Officer from Office ([P994](#))' within the MASC system. The questionnaire covers all aspects of risk and ensures other risk minimisation strategies are considered and documented prior to suspension. In all instances whether or not recommending suspension, appropriate supporting documents (fact sheets, investigator's reports, etc) must be imported into the MASC system prior to forwarding electronically via workflow to the Region Commander or equivalent.

- Consider whether interim risk minimisation strategies are required while the recommendation is being considered. This may include directing the officer not to complete a shift or not report for duty for a 72-hour period. Officers who are subject to directions not to report for duty or to not complete a shift shall receive payment for the full shift.
- Ensure the necessary adjustment is made to an officer's pay if they are suspended.
- Review any existing secondary employment approvals for officers who are suspended from office. Such reviews should be conducted in line with the provisions contained within the NSW Police Force *Secondary Employment Policy and Guidelines*.

Also refer to *section 10* within these procedures.

- Ensure all part time leave without pay work agreements of officers suspended from office are in writing and have a clear start and end date as well as review periods.
- Once an electronic signature has been provided by the Commander the questionnaire will workflow to the Region Commander for consideration and comment.

4.2 Responsibilities of Region Commanders

- Review the questionnaire and the reasons for recommending suspension. The Region Commander, or PSM in consultation with the Region Commander, may make comments if required.
- Electronically forward the 'Suspend a Police Officer from Office ([P994](#))' within the MASC system. This will workflow to PSC for processing.

4.3 Professional Standards Command

In some instances where an officer comes to notice through an external agency inquiry or covert investigation, PSC may complete the 'Suspend a Police Officer from Office ([P994](#))' within the MASC system. This will be forwarded electronically to the relevant delegate.

In these cases, the officer's Commander/Manager will be notified of the outcome of the application by PSC. The officer's Commander/Manager will remain responsible for the management of the suspended officer in consultation with the Assistant Commissioner, Professional Standards Command. The suspended officer's Commander will undertake the 28-day review in respect of their suspended officers.

4.4 When suspension takes effect

The suspension from office takes effect from the time it is approved by the delegate. The delegate may also give other directions regarding the management of the officer, particularly when suspension has not been approved.

5. Administration of suspended officers

5.1 Responsibilities of Commanders - when to inform the officer.

Notify officers (in person where practicable) of their suspension from office as soon as possible after approval. Where distance or other factors make personal notification impractical, ensure another suitable officer notifies the suspended officer. Prior to meeting the suspended officer ensure welfare strategies are in place.

During office hours advice and assistance is available from Workforce Safety on 9285 3899 / EN53899 regarding these arrangements. Contacts for 24 hour critical/traumatic incident response are available through the Workforce Safety intranet site. Wherever possible and if appropriate arrange to meet the suspended officer during business hours at a police station or other police premises.

Confirm notification in writing by providing the suspended officer with the completed 'Notice/Information for Officers Suspended from Office ([P993](#))'. This should occur when the officer is informed that they are suspended, or as soon as practical afterwards. The suspended officer should be asked to sign the bottom of the notice indicating they have received a copy.

Ensure the officer understands why the action is being taken and reinforce that suspension is a risk minimisation strategy only and not a determination of guilt or mandatory prelude to loss of employment.

If the officer has performed duty in the interim period between the time of their suspension from office being approved and the time they are notified of their suspension status, they are entitled to receive pay inclusive of the 11.5% loading (for non-commissioned police officers) as well as any other allowances normally applicable to them for the period of such duty.

Import the signed copy of the completed notice into the MASC system under the relevant notification number for the officer.

5.2 Officer welfare

The welfare of a suspended officer is paramount and an appropriate contact person should be appointed immediately. The name and details of the contact person should be endorsed on the 'Notice/Information for Officers Suspended from Office ([P993](#))' that is served on the suspended officer. Consideration should also be given to reminding the officer of the welfare support available to them such as the Employee Assistance Program, Peer Support Officers and Police Chaplains.

5.3 Court and other work commitments of the officer

At the time an officer is suspended from office their Commander/Manager should review their outstanding court and other work commitments. Responsibility for court matters or other tasks should be reassigned.

In court proceedings the suspended officer will assume the status of a witness and should be informed of their obligation to appear at court when required. In some circumstances consideration may also be given to issuing a direction, pursuant to Clause 8 of the Police Regulation, or a subpoena to ensure the officer attends court if their evidence is vital and there is indication they may fail to attend.

5.4 Contact person

- Provide the officer with the name and contact details of a contact person for issues related to their work.
- Record the contact person's details on the 'Notice/Information for Officers Suspended from Office ([P993](#))'.
- The contact person will generally be the officer's Commander/Manager, but another suitable person may be allocated if appropriate.
- The contact person should inform the suspended officer that they carry a duty and responsibility to assist in maintaining contact with the workplace. The suspended officer must fully cooperate in the maintenance of regular welfare contacts.

5.5 Appointments, warrant cards and other identification

- Collect all appointments, warrant card and badge, travel pass, building access cards and other police identification at the time of notifying the officer of their suspension (if this has not already been done).
- If the officer is recalled to duty to attend court, some items, such as a travel pass, may be returned at the discretion of their Commander/Manager for the period of the recall to duty. Do not return appointments, warrant card or badge.
- Suspended officers who are recalled to duty must not perform duty in uniform.

6. Reviewing the suspension

Suspensions must be reviewed at least every 28 days by the Commander/Manager or sooner if there has been a significant change in circumstances. The following review process must be followed.

6.1 Contact the person

The Commander/Manager or contact persons must make contact with the suspended officer prior to the review date. Wherever possible this contact should be made in person either face to face or via phone call. Matters that should be canvassed include:

- the welfare of the officer.
- any change in the officer's circumstances.
- the status or outcome of any internal investigations for which the officer is a subject officer.
- the status or result of any criminal proceedings against the officer.
- the progress of any management action against the officer, such as section 181D removal or section 80(3) dismissal action under the Police Act.
Commanders/Managers can contact the applicable case officer from Panel Operations, Misconduct and Management Support to check the current status of any section 181D proceedings.
- any court matters the officer is required to attend as the informant or as a witness.

6.2 Record contact

- The contact is recorded in the Employee Welfare Contact system.
- Commanders/Managers must then complete and submit a Suspension Review electronically through the MASC system by the 28-day review date.
- The first review date falls 28 days after the officer is notified of their suspension.
- Each subsequent review falls 28 days after the last review.
- Methods of contact are not limited to phone/in person contact. Text message, email, welfare contact through EML, treating doctor, legal representative are all acceptable.
- A suspension review where contact has not been made with the officer will not be accepted and will be returned to the Command to complete the review.

Commanders/Managers should ensure that Suspension Review include:

- the status or result of any criminal charges against the officer including upcoming court dates.
- the status of any management action being taken against the officer such as section 181D removal or section 80(3) dismissal.
- details of the last contact with the officer such as the date of the contact and method used.
- relevant information gained as a result of the contact and an assessment of the officer's welfare.

- any change in the officer's circumstances.
- the recommendation regarding whether the officer's suspension status should be altered (to with or without pay) or withdrawn.
- documents which support any recommendation to alter or withdraw the officer's suspension status.

6.3 Submit records

Completed Suspension Reviews must be electronically forwarded to the PSC through the MASC system.

MMS are responsible for processing the Suspension Review. The determination by the delegate will be either:

- suspension status to remain unchanged
- suspension status to change to suspended from office without pay
- suspension status to change to suspended from office with pay, or
- suspension to be withdrawn.

6.4 When to consider a change in suspension

If a Commander/Manager becomes aware of new information or a significant change in the officer's circumstances that may alter the officer's suspension status in between reviews (for example, where there has been an outcome of criminal proceedings since the last review), they must inform PSC. This should be done as soon as possible by submitting a Suspension Review electronically through the MASC system to PSC. For further advice contact the Manager, Panel Operations, MMS.

6.5 Changes to suspension status

- Commanders/Managers are responsible for advising suspended officers within their Command or business unit if their suspension status is altered or withdrawn.
- Commanders/Managers are responsible for ensuring that the necessary adjustment is made to an officer's pay if they are suspended from office without pay.
- Notification should occur as soon as possible after approval and wherever practicable should be done personally.
- Advice regarding any change to suspension status will be communicated to the Commander/Manager via the MASC System.

6.6 Officer tenders resignation

As per Resignation and Retirement Procedures:

Commanders/Managers may accept the resignation of a non executive police officer, or a nonexecutive administrative employee at any time except in the following circumstances:

- when the employee is suspended, or
- when there is overwhelming evidence made known during a judicial hearing or an inquiry conducted by the Law Enforcement Conduct Commission that discloses the employee's involvement in serious misconduct, or
- when the employee is subject of an investigation for serious misconduct.

After that, the decision is one for the Commissioner (see *Commissioner's Policy Notice 18/01: Non-acceptance of retirement or resignation*).

In these circumstances, the resignations of confirmed non executive police officers are to be forwarded through the following chain of command:

- the officer's Commander (or equivalent)
- Region Commander (or equivalent)
- Manager, IRC Operations, Misconduct and Management Services
- Commander, Misconduct and Management Services
- Assistant Commissioner, Professional Standards Command

In such circumstances, the resignations of Constables appointed on probation are to be forwarded through the following chain of command:

- The officer's Commander (or equivalent)
- Region Commander (or equivalent)
- Office of Professional Standards, Corporate Services
- Commander, People & Capability Command

Once the resignation of a Probationary Constable under suspension is accepted the Commander is responsible for forwarding notification of acceptance to Panel Operations, PSC so the MASC record pertaining to the suspension can be finalised.

Section 94C of the *Police Act 1990* provides, inter alia:

- (1) A member of the NSW Police Force may resign from the NSW Police Force by written notice to the Commissioner.*
- (2) The resignation of a member of the NSW Police Force does not take effect until:*
 - (a) the Commissioner accepts the resignation, or*
 - (b) the member has given the Commissioner at least 4 weeks' notice in writing of the day on which the member intends to resign and the member is not under suspension from duty on that day.*
- (3) In this section, resignation includes retirement and member of the NSW Police Force does not include the Commissioner.*

Accordingly, the Commissioner may decline to accept a resignation tendered by an officer who is under suspension from office on the date on which the proposed resignation is intended to take effect. Upon receiving a resignation tendered by an officer who is under suspension from office, the officer's Commander/Manager must bring it to the Commissioner's notice through the chain of command, including the Manager, IRC Operations, MMS, PSC and the Commander, MMS, PSC.

Commanders/Managers must not provide any advice to suspended officers concerning the acceptance or otherwise of their resignation until a direction from the Commissioner has been provided. Refer to Commissioners Instruction 18/01.

6.7 Concluding a suspension

A suspension will be concluded when:

1. Removal / dismissal

The officer is:

- removed from the NSW Police Force under section 181D
- dismissed under section 80(3)
- permitted to resign, or
- medically discharged.

In these instances, the suspension is concluded by virtue of the officer exiting the NSW Police Force and no further action in respect of the suspension is required.

2. Suspension status withdrawn

The officer's suspension status is withdrawn by a delegate. This generally occurs when the suspended officer is no longer facing consideration of section 181D removal, section 80(3) dismissal or criminal proceedings. However, it may also occur under other circumstances.

6.8 Process

An officer's suspension does not cease until a delegate has withdrawn the suspension.

- To request that a delegate withdraw an officer's suspension the Commander/Manager must submit an electronic Suspension Review through the MASC system outlining the reasons.
- MMS are responsible for processing the review.
- The Commander/Manager is responsible for ensuring the necessary adjustment is made to an officer's pay.

6.9 Advising the officer

Where an officer's suspension status is withdrawn the officer is advised by their Commander/Manager. This advice must indicate the date the suspension was withdrawn and the date and place the officer will be required to commence duty.

7. Managing a suspended officer who returns to work

7.1 Risk assessment

When an officer's suspension status is withdrawn, the officer's command should immediately conduct a risk assessment on the officer to identify any risks associated with the officer returning to the workplace. Following the risk assessment, it may be necessary to implement workplace strategies to manage the risks that are identified. This may include identifying an alternate suitable workplace. Panel Operations, PSC can assist developing an appropriate Interim Risk Management Plan.

7.2 Suitable workplace

When an officer's suspension status is withdrawn they must be returned to a suitable workplace location pending completion of any internal investigation and/or subsequent management action.

7.3 Incremental progression

Officers returning from suspension without pay will be paid for the period of suspension at the officer's pay level which applied at the commencement of their suspension, less any hardship payments.

Upon return to duty, officers will have six months to comply with the requirements of clause 64.13.4 of the Award and achieve the increment the officer would have been eligible for but for the suspension. When the requirements of this clause are met the officer will be paid increment entitlements from the officer's normal increment date or dates and be eligible for their next increment on that date.

If an officer remains unable to meet the requirements of incremental progression the officer will remain at the officer's then level until they achieve the requirements as required by clause 64 of the Award (in the case of non-commissioned officers) and clause 73 of the Award (in the case of commissioned officers). An officer who ultimately progresses under the terms of clauses 64.13.4 or 73.10.5 will not be entitled to incremental back pay.

Periods of suspension are to be included when determining length of service.

7.4 Promotion to Senior Constable

Clauses 16 and 17 of the Police Regulation require that a satisfactory fitness report with respect to the officer's competence, integrity, performance and conduct be provided prior to the officer being promoted to Senior Constable. Until the matter leading to an officer being suspended is resolved, the fitness report cannot be completed and a promotion cannot occur.

If the officer is later returned to duty, consideration may be given to backdating the increment date to the date the promotion to Senior Constable would have fallen had the officer not been suspended from office. However, the promotion date must remain as the actual date the promotion is effected.

Further advice can be obtained from Employee Relations and HR Policy by contacting 8835 9523 / EN29523.

7.5 Leading Senior Constables

Leading Senior Constables who are suspended from office will have their appointment as a Leading Senior Constable withdrawn immediately in accordance with the provisions of the NSW Police Force *Leading Senior Constable Guidelines*.

7.6 Excess annual leave

Officers with excess accrued annual leave cannot be directed to take leave during periods of suspension from office.

Upon the officer returning to work excess annual leave should be managed in

accordance with clause 17 of the Award. Generally the officer would be required to take any excess leave accrued during the period of suspension in the same timeframe in which it was accrued or a timeframe negotiated between the officer and their Commander/Manager.

7.7 Record keeping

All records are electronically kept and managed in the MASC system.

7.8 Other employment

Officers returning to the workplace after a period of suspension from office during which they were granted approval to undertake 'other employment' pursuant to clause 52(2) of the Police Regulation are required to submit an application for secondary employment in accordance with the NSW Police Force Secondary Employment Policy and Guidelines if they wish to continue such employment. Commanders/Managers are responsible for ensuring that these provisions are adhered to.

8. Suspended officers' rights obligations and entitlements

8.1 Responsibilities of suspended officers

Regular welfare contact with the suspended officer

The suspended officer has an obligation to cooperate with and support the facilitation of regular welfare contacts. The employee and employer have a responsibility under the *Work Health and Safety Act 2011* to maintain the safety of the officer. Welfare contacts are considered an important component of an officer's safety while suspended from duty. It is the responsibility of the officer to cooperate with this process.

Clause 9 of the Police Regulation provides:

- 1) *A police officer who is off-duty (whether rostered off-duty, on annual leave, suspended or otherwise absent):*
 - a) *is subject to the provisions of this Regulation and the Police Code of Conduct, and*
 - b) *will be held responsible for any misconduct by the officer while off-duty, and*
 - c) *unless on sick leave, may be recalled to duty as if the officer were on duty.*
- 2) *If directed to do so by his or her supervising officer, a police officer who is off-duty must give notice to the supervising officer (or such other police officer or administrative officer as the supervising officer may nominate) if the off-duty officer is to be absent from his or her usual place of residence for more than 24 hours.*
- 3) *The notice must indicate where the police officer intends to be, and how the police officer may be contacted, during that absence.*

The implications of clause 9 of the Police Regulation are that officers who are suspended from office:

- may be recalled to duty to attend court or for other reasons.
- must comply with the requirements of section 94D 'Approval to engage in other paid employment' of the Police Act and the NSW Police Force *Secondary Employment Policy and Guidelines*.

8.2 Recalls to duty

Suspended officers may be recalled to duty by their Commander/Manager.

8.3 Court

Unless otherwise advised, officers suspended from office must attend court in matters where they are the informant or required as a witness. Failure to attend court when required may result in costs being awarded against the informant.

8.4 Attire

Suspended officers who are recalled to duty must perform that duty in appropriate plain clothes. Neither police uniform nor appointments are to be worn during periods of suspension.

8.5 Entitlements

Suspended officers who are recalled to duty are entitled to receive any entitlement that they would have otherwise been entitled to had they not been suspended from office. Pay is to be inclusive of the 11.5% loading (for non-commissioned police officers) and any allowances normally applicable to the officer.

8.6 Overtime

Claims for overtime associated with recalls to duty by suspended officers are to be referred to Human Resources.

8.7 Attending police stations whilst suspended

Suspended officers are to obtain approval from their Commander/Manager before visiting any police station or other police premises. Commanders/Managers of suspended officers must liaise with the Commander/Manager of the police premises the suspended officer wishes to visit to obtain their approval and to ensure appropriate security measures are in place.

This provision does not apply to instances where urgent police assistance is required in emergency or life-threatening situations. Suspended officers must report the circumstances of any attendances as a result of emergency or life-threatening situations to their Commander/Manager as soon as practicable after the incident.

Commander/Manager approval must be sought if a suspended officer is considering attending a formal police function where a large number of serving police will be present, regardless whether the function is on police premises or elsewhere.

9. Leave

9.1 Annual and extended leave

Annual and extended leave continue to accrue as normal during periods of suspension with pay. Any officer who is suspended without pay will not accrue annual leave for that period of suspension (if the officer is subsequently terminated under section 181D of the Police Act).

Where an officer ceases to be suspended without pay and is not terminated pursuant to section 181D of the Police Act (ie reinstated to duty), the annual leave that would have been accrued during the period of suspension without pay will be credited to the officer's leave balance.

For the purposes of this provision, pay does not include maintenance payments made under *Police Regulation clause 52(3) – Hardship Payments*.

Officers who are suspended from office cannot be granted annual or extended leave during the period of suspension, with the exception of accessing annual or extended leave for the purpose of 'topping' up their salary in accordance with income protection guidelines and procedures. If an officer's suspension from office is approved during a period of annual or extended leave, such leave will cease and the suspension will commence effective from the time and date the suspension was approved by the delegate.

9.2 Sick leave

Suspended officers continue to accrue sick leave during periods of suspension from office.

Suspended officers cannot take sick leave during periods of suspension. As sick leave is provided to cover an officer unable to attend work due to illness it does not apply when that officer is suspended from duty.

If an officer's suspension from office is approved during a period of sick leave, such leave will cease and the suspension will commence effective from the time and date the suspension was approved by the delegate.

If a suspended officer believes an injury or illness occurring during their suspension is a direct result of their employment they may submit a Hurt on Duty claim.

Consideration of the officer's circumstances, including those that might have given rise to them being on sick leave should be taken into account by the delegate when considering whether to suspend the officer with or without pay and applications for approval of hardship payments.

9.3 Other types of leave

Officers who are suspended from office cannot be granted maternity leave, parental leave, adoption leave, family and community services leave, military leave, special leave or leave without pay during the period of suspension.

If an officer's suspension from office is approved during a period of these other types of leave, the leave will cease, and the suspension will commence effective from the time and date the suspension was approved by the delegate.

Consideration of the officer's circumstances, including being on maternity leave, parental leave, adoption leave or family and community services leave should be taken into account when considering whether it is necessary to suspend the officer.

9.4 Pay

Officers who are suspended with pay are entitled to receive their normal rate of pay. In the case of non-commissioned police officers this includes payment of the 11.5% loading.

Officers who are subject to a part time work agreement and are suspended with pay are to continue to receive their salary on a pro rata basis in accordance with their part time agreement for the term of the agreement.

If the part time work agreement period expires while the officer is suspended from office and they have not made application to continue the agreement, the officer will revert to full-time status. Such officers from that point will receive the full-time rate of pay.

9.5 Workers' compensation

The suspension of a police officer does not affect any workers' compensation entitlements.

10. Secondary and other employment

10.1 Secondary employment

Secondary employment is governed by the NSW Police Force Secondary Employment Policy and Guidelines. Commanders/Managers are to refer to that policy in instances where suspended officers make application for secondary employment or when an officer with existing secondary employment is suspended from office.

As a general rule, if an officer has approved secondary employment and consideration is being given to suspending that officer, their secondary employment will be subject to review. Approval for secondary employment can only be made where an officer is suspended without pay and where undue hardship can be established. In all other circumstances a suspended officer can not have secondary employment approved.

10.2 Other employment

Clause 52(2) of the Police Regulation gives the Commissioner the power to approve other employment for an officer suspended from office without pay for such period as the Commissioner may direct, if it is established to the satisfaction of the Commissioner that the officer is suffering undue hardship as a result of being suspended without pay. This power has been delegated to certain officers. See HR Delegations HR16 Secondary Employment for all Members of the NSW Police Force.

Employment may be full time but can only be for the period the officer is suspended from office. If the officer were to later return to the workplace and wished to continue with the employment they would need to apply for approval under the NSW Police Force Secondary Employment Policy & Guidelines.

10.3 Process

Applications for approval of other employment must be submitted through the officer's Commander/Manager by way of manuscript report.

As a minimum, applications must contain:

- details of the officer's personal circumstances.
- number and age of any children or other dependents.
- any other income they receive including investment properties or secondary

employment.

- details of the hardship that they or their family are suffering as a result of being suspended without pay.
- full details of the employment they are seeking approval for.

The Commander/Manager must provide comment on the application prior to forwarding it to the PSC.

MMS are responsible for forwarding the application to the appropriate delegate.

Commanders/Managers will be notified of the result of the delegate's determination by MMS. The officer's Commander/Manager is responsible for advising the officer of the outcome of their application.

10.4 Defence Forces

If an officer who is a member of the Australian Defence Force has been charged with a criminal offence or has been suspended from office without pay, their suitability for employment with the Australian Defence Force may be affected. The officer is required to report these circumstances to their commanding officer within 24 hours of return to defence force duty.

11. Hardship payments

Officers who are suspended from office without pay may be granted hardship payments pursuant to clause 52(3) of the Police Regulation if it is established to the satisfaction of the Commissioner that the officer, or the officer's family is suffering undue hardship as a result of being suspended without pay. Any salary received from secondary or other employment will be taken into consideration in an application for hardship payments. As a general rule an officer receiving workers' compensation payments will not also receive hardship payments.

11.1 Process

Officers suspended from office without pay wishing to apply for hardship payments must submit their application through their Commander/Manager. As a minimum all applications must include the following:

- an itemised breakdown of the officer's fortnightly basic living expenses. This includes expenses such as food, shelter (rent, board or mortgage), vehicle expenses for one vehicle, telephone expenses for one telephone, household utilities and essential medicines or medical treatments as well as any other documented general expenses.
- their partner's income and core living expenses (should the officer be in a dual income situation), which will be taken into consideration. Pay advices pertaining to the partner's income need to be supplied.
- copies of bills, invoices or receipts covering all expenses claimed, including partner's core living expenses (unless there is a reasonable explanation as to why they cannot be provided). The documents provided must be recent, legible and complete, clearly showing the nature and amount of the expense as well as the date and/or frequency of payment as well as the person to whom the bill, invoice or receipt was issued.

- other expenses may be claimed but must be substantiated and supported by copies of bills, invoices, or receipts.
- details of any other income the officer receives such as income from investment properties or secondary employment.

Failure to include the required information or supporting documents may prevent or delay the application being considered by the delegate.

The officer's Commander/Manager must provide comment on their knowledge of the officer's circumstances and indication of their support or otherwise for the application. Advice concerning the officer's salary increment level and any approved secondary employment must also be provided. Completed hardship applications should then be electronically forwarded through the MASC system.

MMS are responsible for electronically forwarding completed applications onto the appropriate delegate for a determination to be made via the MASC system.

Each application is assessed on its own merit and expense claims that have not been supported by sufficient detail or supporting documentation may be rejected. Expense claims that are believed to be excessive may also be rejected. An officer should not be forced to use their accrued annual or extended leave entitlements as a prerequisite for approval of hardship payments.

The Commander/Manager will be notified of the result via the MASC system and is responsible for advising the officer of the outcome of their application.

11.2 Payment of allowances

Officers who receive the allowances listed below will continue to receive the allowance when they are suspended with pay but will not receive the allowance if they are suspended without pay.

- Remote area living allowance
- Special duties allowance
- Professional/academic qualification allowance.

Allowances not paid during suspension are listed below.

- Plain clothes allowance
- On call allowance.

12. Entitlements on separation from the NSW Police Force

12.1 Suspended with pay

Entitlements are calculated up to the date of separation. If the officer had an increment or promotion to Senior Constable due during the suspension period, the payment is not made, as the officer has not returned to work to complete the requirements under clause 64 (in the case of non-commissioned police officers) or clause 73 (in the case of commissioned police officers) of the Award relating to competency based incremental progression.

12.2 Suspended without pay

Entitlements are calculated up to the date of separation. Salary payments for the period of suspension without pay are not included. If the officer had an increment or promotion to Senior Constable due during the suspension period, the payment is not made, as the officer has not returned to work to complete the requirements under clause 64 (in the case of non-commissioned officers) or clause 73 (in the case of commissioned officers) of the Award relating to competency based incremental progression.

12.3 Resignation

The Commissioner of Police may accept a resignation under section 94C(2)(a) of the *Police Act 1990* should an officer decide that is the best course of action.

Some matters that an officer may like to consider regarding whether or not to resign are:

- whether or not there would be a loss of non-renewable benefits accrued.
- whether or not they would be prohibited from owning certain licences such as under the *Security Industry Act 1997* or *Casino Control Act 1992*.
- whether they would suffer a financial disadvantage as a result of leave forfeited on termination under section 107 of the *Police Regulation 2015*.

An officer should seek advice on their rights should they choose to resign.

Appendix 1 – Premier’s Memorandum No 94-35

(Memorandum to all Ministers)

SUSPENSION OF PUBLIC EMPLOYEES FROM DUTY

This memorandum amends the previous guidelines on suspension of public employees from duty and supersedes memorandum 94-21.

Following implementation of the previous guidelines, it is apparent that some operational difficulties have been experienced by agencies. Accordingly the policy has been amended.

Under the revised guidelines attached, Chief Executives may suspend an employee without pay before criminal or disciplinary charges have been finalised, in exceptional circumstances.

Agencies should continue to give priority to the option of placing employees facing criminal charges or disciplinary proceedings on alternative duties, or duties at another location. The Chief Executive, where they believe it is necessary, may suspend the employee from duty without pay. In all suspension cases the decision should be reviewed at least every 30 days.

The Premier’s Department will monitor the implementation of these guidelines in agencies.

Could you please advise the Chief Executives in your portfolio of these revised arrangements.

John Fahey,
Premier.

Issue: Personnel Policy Division, Premier’s Department
Contact: Tim Nice on 228 5744
Date: 7 October 1994

Suspension of public employees

Review Point	Procedure	Criteria for decision
Criminal or internal investigation	Where an employee is under criminal or internal investigation, and it is inappropriate for the employee to continue in their usual duties, the first option is for the Chief Executive* to place the employee on alternative duties or duties at another location.	<ul style="list-style-type: none"> • Nature of allegation. • Nature and location of current / proposed duties. • Public interest.
Criminal charge Disciplinary charge Committal for trial or sentence	<p>Where an employee is facing a criminal or disciplinary charge or is committed for trial or sentencing, and it is inappropriate for the employee to continue in their usual duties, the first option is for the Chief Executive* to place the employee on alternative duties or duties at another location, pending the outcome of the disciplinary process or criminal proceedings. However, the Chief Executive* may suspend the employee from duty with pay, where it is considered that the charges are serious enough, or having the employee remain at work would be detrimental to the effective running of the agency. This decision should be reviewed at least every 30 days.</p> <p>Where the option to suspend from duty with pay is not available, the Chief Executive* may consider the alternative of directing the employee to not attend work, meaning that the employee would remain on full pay, pending the outcome of the disciplinary process or criminal proceedings. This decision should be reviewed at least every 30 days.</p> <p>In exceptional circumstances the Chief Executive* may suspend the employee from duty without pay. Without limiting the generality of this term, such circumstances would include where an employee has been remanded in custody, or has admitted to behaviour that under the circumstances renders the employee unfit to continue in paid employment with the agency. This decision should be reviewed at least every 30 days.</p>	<ul style="list-style-type: none"> • Nature of crime / conviction. • Efficient operation of the agency. • Maintenance of good order and discipline.
Conviction for a crime notwithstanding appeal on conviction	<p>Where an employee is convicted of a crime notwithstanding the availability of an avenue of appeal against conviction, the Chief Executive* (pending final decisions on whether the employee is retained or dismissed) will suspend the employee from duty without pay, if the nature of the offence is such that this action is warranted in the public interest, having regard to the efficient operation of the agency or the maintenance of good order and / or discipline. The suspension decision should be reviewed at least every 30 days.</p> <p>If the option to suspend without pay is not available, then suspension with pay should apply.</p>	

* Or the Chief Executive's delegate where appropriate.

Appendix 2 – Clause 8 Police Regulation

- (1) *Police officers are to comply strictly with the Act and this Regulation and promptly comply with all lawful orders from those in authority over them.*
- (2) *In particular, a police officer is required:*
 - (a) *to serve wherever the officer is duly directed, and*
 - (b) *to perform such police duty as may be duly directed, whether or not during the officer's rostered hours of duty.*

Appendix 3 – Clause 16 Police Regulation

- (1) *Promotion to the grade of Senior Constable is subject to:*
 - (a) *the successful completion of internal or external qualifications as determined by the Commissioner, and*
 - (b) *the completion of 4 years' service:*
 - (i) *from the date on which the Constable's appointment was confirmed, or*
 - (ii) *if the Constable's seniority runs from an earlier day, from that earlier day, and*
 - (c) *a satisfactory fitness report, and*
 - (d) *the other requirements of this Division.*

Appendix 4 – Clause 17 Police Regulation

- (1) *A Constable is not to be promoted to the grade of Senior Constable unless a police officer designated by the Commissioner has reported that the Constable is fit to discharge satisfactorily the duties of Senior Constable.*
- (2) *Any such report is to deal with the Constable's:*
 - (a) *aptitude for the discharge of the duties of Senior Constable, and*
 - (b) *competence, integrity, performance and conduct.*

Appendix 5 – Section 94D, Police Act

A member of the NSW Police Force (other than the Commissioner) must not engage in any paid employment outside his or her duties as such a member without the approval of the Commissioner.

Appendix 6 – Section 80, Police Act

- (1) *The Commissioner may, subject to this Act and the regulations, appoint any person of good character and with satisfactory educational qualifications as a police officer of the rank of Constable.*
- (2) *A person when first appointed as such a police officer is to be appointed on probation in accordance with the regulations.*
- (3) *The Commissioner may dismiss any such probationary police officer from the NSW Police Force at any time and without giving any reason.*
- (4) *The promotion of police officers within the rank of Constable is subject to the regulations.*

Appendix 7 – Section 181D, Police Act

- (1) *The Commissioner may, by order in writing, remove a police officer from NSW Police Force if the Commissioner does not have confidence in the police officer's suitability to continue as a police officer, having regard to the police officer's competence, integrity, performance or conduct.*
- (2) *Action may not be taken under subsection (1) in relation to a Deputy Commissioner or Assistant Commissioner except with the approval of the Minister.*
- (3) *Before making an order under this section, the Commissioner:*
 - (a) *must give the police officer a notice setting out the grounds on which the Commissioner does not have confidence in the officer's suitability to continue as a police officer, and*
 - (b) *must give the police officer at least 21 days within which to make written submissions to the Commissioner in relation to the proposed action, and*
 - (c) *must take into consideration any written submissions received from the police officer during that period.*
- (4) *The order must set out the reasons for which the Commissioner has decided to remove the police officer from the NSW Police Force.*
- (5) *The removal takes effect when the order is made.*
- (6) **(Repealed)**
- (7) *Except as provided by Division 1C:*
 - (a) *no tribunal has jurisdiction or power to review or consider any decision or order of the Commissioner under this section, and*
 - (b) *no appeal lies to any tribunal in connection with any decision or order of the Commissioner under this section.*

*In this subsection, **tribunal** means a court, tribunal or administrative review body, and (without*

limitation) includes GREAT and the Industrial Relations Commission.

(7A) Nothing in this section limits or otherwise affects the jurisdiction of the Supreme Court to review administrative action.

(7B) Nothing in Division 1C limits or otherwise affects the Commissioner's power to vary or revoke an order in force under this section.

(8) For the purposes of this Act, removal of a police officer from the NSW Police Force under this section has the same effect as if the police officer had resigned (or, in the case of a police officer who is of or above the age of 55 years, had retired) from the NSW Police Force.

(9) The Commissioner may take action under this section despite any action with respect to the removal or dismissal of the police officer that is in progress under some other provision of this Act and despite the decision of any court with respect to any such action.