**Management of Misconduct -**

**Sample Letters**

The following sample letters are to be used in conjunction with the Commissioner’s Guideline: Management of Misconduct.

These sample letters are not templates. They demonstrate one way of writing these types of documents. They are based on hypothetical situations, for illustrative purposes only.

Decision makers and persons assisting them must consider the individual facts and circumstances of a matter when drafting correspondence and seek specialist advice as necessary. Any timeframes for responses must also reflect what is reasonable in the circumstances, noting that employees may request extensions of time.

Samples relate to employment under Part 7 of the *Public Sector Act 2009* but may help in drafting correspondence relating to other employment types.

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# **SAMPLE LETTER A**

### Notifying of intent to suspend from duty with remuneration

**PERSONAL AND CONFIDENTIAL**

8 February 2022

[Name]
[Address]

[delivery options – delivered in person, by email, by post, by registered post, by courier etc]

Dear [Name]

**Suspected Misconduct – Notice of Intention to Suspend from Duty with Remuneration – Managerial Directions**

I suspect that in January and February 2022 you improperly accessed confidential patient information of Ms R Gyatso and her newborn baby, and subsequently disclosed this information to her estranged partner without authority or any proper basis connected with the performance by you of the duties of your role.

If proven on the balance of probabilities, your suspected conduct may amount to a breach of your obligations under the Professional Conduct Standards in the Code of Ethics for the South Australian Public Sector and amount to misconduct as defined in the *Public Sector Act 2009* (**PS Act**).

In view of the seriousness of your suspected misconduct, I intend to suspend you from duty with remuneration under section 57 of the PS Act. I intend the suspension to be until further notice, pending the completion of an investigation of your suspected misconduct and any processes arising from that investigation (for example, any processes to make findings as to whether you have in fact committed misconduct, and to determine what if any disciplinary sanctions or other adverse actions to impose).

I now provide you with an opportunity to respond as to why I should not suspend you from duty with remuneration. Any response you wish to provide must be in writing and received by me no later than close of business on **15 February 2022** [seven days has been given in this example from the date of letter]. Should you fail or choose not to provide a response, I will act on the basis of the information and advice available to me.

I **direct** you to remain absent from the workplace pending my decision on whether you should be suspended from duty with remuneration. In addition to this direction to remain absent, I give the following directions to you. Until further notice, and **except with my prior written permission**:

* you are not to attend any workplaces of the [name of agency]
* you are not to discuss your suspected misconduct, the investigation or related processes, with any person apart from me, [agency contact person/people], your spouse or partner, medical practitioners, professional counsellors, union or legal advisers, or otherwise as required by law
* you are not to contact or attempt to contact any potential witnesses to your suspected misconduct, including R Gyatso and T Jablon
* you are to remain contactable during normal working hours.

Should you contravene or fail to comply with these directions you may be liable to disciplinary action.

Please contact [name and details of contact person] should you require further information.

Enclosed is a copy of section 57 of the PS Act.

I remind you that the Department’s Employee Assistance Program is available by contacting [name of provider and contact details].

I wish to clarify that at this time, no allegations of misconduct have been put to you and I have not asked for any response to any possible misconduct by you. Instead, you have been invited to respond to my intention to suspend you from duty with remuneration.

In due course, following an investigation, I (or another decision maker) may decide to commence a process for the purpose of determining whether you have in fact committed misconduct, and if so, what if any disciplinary sanctions or other adverse actions to take in response. I assure you that before I (or another decision maker) make any findings of misconduct against you, you will be provided with detailed and particularised allegations of misconduct, provided with copies of or access to any evidence or other documents relied upon in relation to the allegations, and given a reasonable opportunity to respond. Similarly, if you are found to have committed misconduct, no sanctions or other adverse actions will be taken against you until you have been notified of the intended action and given a reasonable opportunity to respond to that intended action.

Yours sincerely,

[signature bloc, chief executive or delegate]

# **SAMPLE LETTER B**

### Notifying of suspension from duty with remuneration

**PERSONAL AND CONFIDENTIAL**

17 February 2022

[Name]
[Address]

[delivery options – delivered in person, by email, by post, by registered post, by courier etc]

Dear [Name]

**Suspected Misconduct – Notice of Suspension from Duty With Remuneration – Managerial Directions**

I refer to my letter dated 8 February 2022 by which I put you on notice of my intention to suspend you from duty in view of the seriousness of your suspected misconduct. I also refer to your response of 14 February 2022.

In summary you have submitted that I should not suspend you from duty, as you entirely deny the basis of my suspicion. You have asked to be permitted to return to the workplace and your usual duties, or at least placed in an alternative role pending the completion of the investigation and processes arising.

I have carefully considered your submissions however I am not persuaded to alter my intended course. While you deny the basis of my suspicion, I continue to suspect that you have committed misconduct based on the preliminary evidence obtained to date. This matter will continue to be investigated, and as indicated in previous correspondence, I can assure you that before I (or another decision maker) make any findings as to whether you have in fact committed misconduct, you will be provided with detailed and particularised allegations of misconduct, provided with copies of or access to any evidence or other documents relied upon in relation to the allegations, and given a reasonable opportunity to respond.

Before forming the intention to suspend you from duty, I did consider whether it would be appropriate to transfer you to other duties or place of work. However, I formed the view that suspension was the appropriate action, given the nature and seriousness of your suspected misconduct. I have considered this issue further, however I am not persuaded that it is appropriate for you to perform any duties at this time.

I now suspend you from duty with remuneration under section 57 of the *Public Sector Act 2009*. Your suspension is with immediate effect and until further notice, pending the completion of the investigation of your suspected misconduct and any processes arising from that investigation.

**Managerial Directions**

The managerial directions previously issued to you remain in force. These are that until further notice, and **except with my prior written permission**:

* you are not to attend any workplaces of the [name of agency]
* you are not to discuss your suspected misconduct, the investigation or related processes, with any person apart from me, [agency contact person/people], your spouse or partner, medical practitioners, professional counsellors, union or legal advisers, or otherwise as required by law
* you are not to contact or attempt to contact any potential witnesses to your suspected misconduct, including R Gyatso and T Jablon
* you are to remain contactable during normal working hours.

Should you contravene or fail to comply with these directions you may be liable to disciplinary action.

Please contact [name and details of contact person] should you require further information.

I remind you that the Department’s Employee Assistance Program is available by contacting [name of provider and contact details].

Yours sincerely,

[signature bloc, chief executive or delegate]

# **SAMPLE LETTER C**

### Allegation of misconduct – opportunity to respond – managerial directions

**PERSONAL AND CONFIDENTIAL**

12 April 2022

[Name]
[Address]

[delivery options – delivered in person, by email, by post, by registered post, by courier etc]

Dear [Name]

**Allegation of Misconduct – Opportunity to Respond – Managerial Directions**

I suspect you have committed misconduct and are accordingly liable to disciplinary action. I intend to decide if you have in fact committed misconduct and are liable to disciplinary action.

My suspicion is based on the following allegation and detailed alleged particulars.

**Allegation**

1. On 12 occasions between 4 January 2022 and 5 February 2022 you accessed confidential patient information of Ms R Gyatso and her newborn baby on the METRON Electronic Patient Record System, and subsequently disclosed some of this confidential patient information to her estranged partner (including the current location of Ms Gyatso and the baby). You did this without authority or any proper basis connected with the performance by you of the duties of your role, and placed Ms Gyatso and the baby at risk by your conduct.

Particulars

1. At all material times you were employed on a part-time basis within [agency] to perform an ASO4 Records Officer role based at the Highland Maternity Hospital.
2. On 3 February 2022 Ms Gyatso gave birth to a baby (**Baby Gyatso**) at the Highland Maternity Hospital.
3. You are friends with a Mr T Melvin, who is an estranged partner of Ms Gyatso and biological father of Baby Gyatso. You knew that Ms Gyatso had a restraining order against Mr Melvin.
4. On 12 occasions between 4 January 2022 and 5 February 2022 you accessed confidential patient information of Ms Gyatso and her newborn baby on the METRON Electronic Patient Record System, using your own user log-in credentials. You specifically accessed records concerning:
	* 1. personal details of Ms Gyatso
		2. the progress of Ms Gyatso’s pregnancy
		3. Ms Gyatso’s appointments at the Highland Maternity Hospital
		4. Ms Gyatso’s labour
		5. personal details of Baby Gyatso
		6. whether Ms Gyatso and Baby Gyatso were still at the Highland Maternity Hospital (and which Ward), or whether they had been discharged.
5. A reasonable person in the circumstances would know that patient information recorded on the METRON Electronic Patient Record System is confidential and needs to be treated as confidential. You also knew this.
6. You did not have authority, or any proper basis connected with the performance by you of the duties of your role, to access patient records of Ms Gyatso or Baby Gyatso.
7. On or about 5 February 2022, you disclosed to Mr Melvin information about the birth of Baby Gyatso, specifically the date of birth, weight and sex of the baby. You also disclosed to Mr Melvin that Ms Gyatso and Baby Gyatso remained in the Women’s and Babies’ Ward at Highland Maternity Hospital. You ascertained all this information from the METRON Electronic Patient Record System.
8. You did not have authority, or any proper basis connected with the performance by you of the duties of your role, to disclose to Mr Melvin information about the birth of Baby Gyatso and location of Ms Gyatso and Baby Gyatso.
9. At all material times you were required to observe the Code of Ethics for the South Australian Public Sector (**Code of Ethics**) in accordance with section 6 of the *Public Sector Act 2009* (**PS Act**), and in particular the Professional Conduct Standards which are the disciplinary provisions of the Code of Ethics. Contravention of the Professional Conduct Standards amounts to misconduct.
10. Your conduct in accessing confidential patient information of Ms Gyatso and Baby Gyatso was contrary to the following provision of the Professional Conduct Standards in the Code of Ethics:

*Public sector employees will not access or attempt to access official information other than in connection with the performance by them of their duties and/or as authorised.*

1. Your conduct in disclosing confidential patient information of Ms Gyatso and Baby Gyatso to Mr Melvin was contrary to the following provision of the Professional Conduct Standards in the Code of Ethics:

*Public sector employees will not disclose official information acquired through the course of their employment other than is required by law or where appropriately authorised in the agency concerned.*

1. Your conduct of accessing and disclosing confidential information of Ms Gyatso and Baby Gyatso was improper and disgraceful and a reasonable person would view that conduct as bringing you, the agency in which you work, and the public sector into disrepute – including because you knew Ms Gyatso had a restraining order against Mr Melvin and your disclosure of information placed Ms Gyatso and Baby Gyatso at risk. You accordingly failed to comply with the following provision of the Professional Conduct Standards in the Code of Ethics:

*Public sector employees will not at any time act in a manner that a reasonable person would view as bringing them, the agency in which they work, the public sector or Government into disrepute; or that is otherwise improper or disgraceful.*

1. By contravening the Professional Conduct Standards in the Code of Ethics, you have committed misconduct.

**Opportunity to Respond to Allegation**

I now provide you with an opportunity to respond to the above allegation (and particulars), before I decide if it is proven on the balance of probabilities.

Any response you wish to provide must be in writing and received by me no later than close of business on **26 April 2022** [14 days has been given in this example from the date of letter]. Should you choose not to or fail to provide a response, I will decide if the allegation against you is proven on the balance of probabilities based on the information and advice available to me.

**Documentation**

Copies of the following documents are enclosed:

1. Witness Statement of Ms R Gyatso – dated 25 March 2022, enclosing:
	* Restraining Order against Mr Melvin
	* Text messages received by Ms Gyatso from Mr Melvin on 5 and 6 February 2022.
2. Witness Statement of T Jablon (Records Manager) – dated 30 March 2022, enclosing:
	* User access logs of folders and files on the METRON Electronic Patient Record System concerning Ms Gyatso and Baby Gyatso which were accessed between 4 January 2022 and 5 February 2022
	* Records accessed with your user log-in credentials on the METRON Electronic Patient Record System concerning Ms Gyatso and Baby Gyatso [*not enclosed, but available for inspection*]
	* Your electronic timesheets between 4 January 2022 and 5 February 2022
	* Your signed role description for the ASO4 role of Records Officer.
3. Code of Ethics – version in force from January 2022.

You or your representative, or both, may inspect copies of the records you are alleged to have accessed on the METRON Electronic Patient Record System concerning Ms Gyatso and Baby Gyatso. Should you or your representative wish to inspect these documents, please contact [name and contact details of contact person] to make necessary arrangements.

**Continuation of Suspension and Managerial Directions**

You remain suspend from duty with remuneration. The managerial directions previously issued to remain in force, with minor amendments as follows. Until further notice, and **except with my prior written permission**:

* you are not to attend any workplaces of the [name of agency]
* you are not to discuss your alleged misconduct, the investigation or related processes, with any person apart from me, [agency contact person/people], your spouse or partner, medical practitioners, professional counsellors, union or legal advisers, or otherwise as required by law
* you are not to contact or attempt to contact any potential witnesses to your alleged misconduct, including Ms R Gyatso and Ms T Jablon
* you are to remain contactable during normal working hours.

I must warn you that should you contravene or fail to comply with these directions, you may be liable to disciplinary action.

In the event that you consider that further relevant evidence should be obtained, or you or your representative wish to speak with a witness for the purposes of responding to the allegation of misconduct, it is important that you seek my written permission beforehand. In that situation, I will consider whether it is appropriate for me to vary the above managerial directions, or whether the Department will conduct further investigations.

Please contact [name and details of contact person] should you require further information.

I remind you that the Department’s Employee Assistance Program is available by contacting [name of provider and contact details].

Yours sincerely,

[signature bloc, chief executive or delegate]

# **SAMPLE LETTER D**

### Notifying of findings of fact and intended disciplinary sanction

**PERSONAL AND CONFIDENTIAL**

10 May 2022

[Name]
[Address]

[delivery options – delivered in person, by email, by post, by registered post, by courier etc]

Dear [Name]

**Notice of Findings of Fact – Intended Disciplinary Sanction – Opportunity to Respond – Managerial Directions**

I refer to my letter of 12 April 2022 in which I set out an allegation of misconduct against you and provided you with an opportunity to respond. I now advise my findings of fact on the allegation and the disciplinary sanction I intend to impose.

Without repeating the detailed particulars, the allegation against you is that:

1. On 12 occasions between 4 January 2022 and 5 February 2022 you accessed confidential patient information of Ms T Gyatso and her newborn baby on the METRON Electronic Patient Record System, and subsequently disclosed some of this confidential patient information to her estranged partner (including the current location of Ms Gyatso and the baby). You did this without authority or any proper basis connected with the performance by you of the duties of your role, and placed Ms Gyatso and the baby at risk by your conduct.

I have carefully considered the evidence and other documentation enclosed with my letter dated 12 April 2022. I have also carefully considered the response you provided on 26 April 2022. In summary, you have:

* admitted that you are friends with Mr Melvin
* denied accessing the records of Ms Gyatso and Baby Gyatso, and denied disclosing information about them to Mr Melvin
* conceded the user access logs indicate the records were accessed using your log-in credentials, however you have claimed that someone else must have used your log-in credentials to view the records. You did not say who you think might have known and used your log-in credentials
* claimed that you do not know why Mr Melvin, in his text message to Ms Gyatso (as attached to her witness statement) would have said that you told him about the birth of Baby Gyatso.

While you have denied the allegation, I do not consider that your denial is plausible in light of the strong evidence in support of the allegation. While I accept it is not impossible for another employee to have known and used your log-in credentials, I believe it is far more likely than not that you were the person who accessed the records having regard to:

* the evidence from Ms T Jablon that:
	+ as part of your duties, you would need to be logged into the METRON Electronic Patient Records System during most of the time you are at work
	+ a user can only be logged onto the METRON Electronic Patient Records System with one device at a time. If another person had logged in on a different device, using your credentials, this would have resulted in you being logged out of the system on the device you were using (and a pop-up message would have appeared to say you have been logged out due to logging in on a different device)
	+ the Records Office, in which you work, is only accessible with a swipe card. During the relevant period, only you and your manager Ms Jablon worked in the Records Office. The only other persons with access to the Office was building maintenance employees
	+ the access of records of Ms Gyatso and Baby Gyatso, under your user credentials, occurred on days and at times you were at work.
* your admission that you are friends with Mr Melvin
* the evidence from Ms Gyatso that Mr Melvin identified you as the source of his information about the birth of Baby Gyatso – in particular the text message from Mr Melvin dated 6 February 2022.

I advise that I find the allegation of misconduct against you proven on the balance of probabilities, including all of the particulars of the allegation. I find that your proven conduct amounts to a contravention of the provisions of the Professional Conduct Standards in the Code of Ethics for the South Australian Public Sector that were cited in the particulars of the allegation. I accordingly find that you have committed misconduct as alleged.

In my view, your proven misconduct is serious and significantly inconsistent with the ethical obligations upon, and trust placed in, public sector employees. It is also significantly inconsistent with the trust placed in you as a Records Officer – noting that as part of this role you have the capability to access a large range of confidential records but must only do so for a proper purpose connected with the performance of the duties of your role. While you have been employed within the South Australian Public Service for 6 years and have not previously been found to have committed misconduct, I consider that your now proven misconduct is so serious as to be incompatible with your continued employment in [agency name] and the South Australian Public Sector.

Accordingly, I believe that the appropriate disciplinary sanction for your proven misconduct is termination of your employment under section 54(1)(d) of the *Public Sector Act 2009*. If I decide to terminate your employment, I intend for the termination to take effect from close of business on the date I notify you of my decision.

The managerial directions previously imposed upon you remain in force. I must again warn you that should you contravene or fail to comply with such directions, you may be liable to disciplinary action.

I now provide you with an opportunity to respond to my intention to terminate your employment. Any response you wish to provide must be in writing and received no later than close of business on **17 May 2022** [seven days given in this example from date of letter]. Should you fail or choose not to provide a response, I will make a decision based on the information and advice available to me.

Please contact [name and details of contact person] should you require further information.

I remind you that the Department’s Employee Assistance Program is available by contacting [name of provider and contact details].

Yours sincerely,

[signature bloc, chief executive or delegate]

# **SAMPLE LETTER E**

### Notice of disciplinary sanction – termination of employment

**PERSONAL AND CONFIDENTIAL**

3 June 2022

[Name]
[Address]

[delivery options – delivered in person, by email, by post, by registered post, by courier etc]

Dear [Name]

**Misconduct – Notice of Disciplinary Sanction – Termination of Employment**

I refer to my letter dated 10 May 2022 in which I advised you of my findings of fact on the allegation of misconduct set out against you in my letter of 12 April 2022, put you on notice of the disciplinary sanction I intended to impose, and provided you with an opportunity to respond to the intended sanction.

I specifically advised you:

* I believe the appropriate sanction for your proven misconduct is termination of your employment under section 54(1)(d) of the *Public Sector Act 2009*.
* If I decide to terminate your employment, I intend for the termination to take effect from close of business on the date I notify you of my decision.

I have given careful consideration to the matters raised in your response of 17 May 2022. In summary, you have continued to deny that you committed misconduct, but have not raised anything new from your previous response on this topic. You have not otherwise raised any matters in mitigation, as again you continue to assert that you were not the person who accessed and disclosed the information. I have already made findings on the allegation – as communicated in my letter of 10 May 2022, and believe those findings are strongly supported by the evidence despite your assertions to the contrary.

I am not persuaded to change my intended course. I accordingly now terminate your employment under section 54(1)(d) of the *Public Sector Act 2009*, as at close of business on the date of this letter.

You may lodge an application to challenge the termination of your employment with the South Australian Employment Tribunal under the *Fair Work Act 1994* (SA) within 21 days of the date of the termination of your employment.

You will receive any final salary payments, and monies in respect of your accrued entitlements to recreation and long service leave, in the near future.

Yours sincerely,

[signature bloc, chief executive or delegate]

# **SAMPLE LETTER F**

### Combined allegation of misconduct and notice of potential disciplinary sanction if allegation proven

**PERSONAL AND CONFIDENTIAL**

6 October 2022

[Name]
[Address]

[delivery options – delivered in person, by email, by post, by registered post, by courier etc]

Dear [Name]

**Allegation of Misconduct and Potential Disciplinary Sanction if Allegation Proven – Opportunity to Respond – Managerial Directions**

I suspect you have committed misconduct and are accordingly liable to disciplinary action. I intend to decide if you have in fact committed misconduct and are liable to disciplinary action.

My suspicion is based on the following allegation and detailed alleged particulars.

**Allegation**

1. On or about [date] [or between about [date] and [date]] (the **said date** [or the **said period**]) during working hours and when you were supposed to be performing the duties of your role, you used government information technology infrastructure to access numerous internet sites unconnected with the performance by you of the duties of your role; including sites which contained images of a pornographic, obscene or sexually explicit nature.

Particulars

* 1. At all material times you were an employee in [name of agency] performing the role of [title of role] at the [i.e. ASO5 classification level].

* 1. On the said date [or during the said period] during working hours you accessed a large number of internet sites that were unconnected with the performance by you of the duties of your role.
	2. A number of the internet sites you accessed contained images of a pornographic, obscene or sexually explicit nature.
	3. Your conduct in accessing the internet sites mentioned above occurred over substantial periods of time and when you were supposed to be performing your official duties.
	4. Your conduct was contrary to the Department’s Policy on Internet Usage, in particular clause X which relates to reasonable personal usage of Government computer assets by employees to access internet sites and which strictly forbids access to certain sites including those containing information or images of a pornographic, obscene or sexually explicit nature.
	5. At all material times you were required to observe the Code of Ethics for the South Australian Public Sector (**Code of Ethics**) in accordance with section 6 of the Public Sector Act 2009 (**PS Act**), and in particular the Professional Conduct Standards which are the disciplinary provisions of the Code. Contravention of the Professional Conduct Standards amounts to misconduct.
	6. Your conduct, as set out in particulars (b) to (d), was contrary to the following provision of the Professional Conduct Standards in the Code:

*public sector employees shall use work resources and equipment efficiently and only for appropriate purposes as authorised*

* 1. Your conduct, as set out in particulars (b) to (e), was improper and disgraceful and a reasonable person would view that conduct as bringing you, the agency in which you work, and the public sector into disrepute. You accordingly failed to comply with the following provision of the Professional Conduct Standards in the Code of Ethics:

*Public sector employees will not at any time act in a manner that a reasonable person would view as bringing them, the agency in which they work, the public sector or Government into disrepute; or that is otherwise improper or disgraceful.*

* 1. By contravening the Professional Conduct Standards in the Code of Ethics, you have committed misconduct.

**Opportunity to Respond to Allegation**

I now provide you with an opportunity to respond to the above allegation (and particulars), before I decide if it is proven on the balance of probabilities.

Any response you wish to provide must be in writing and received by me no later than close of business on **20 October 2022** [14 days provided in this example from date of letter]. Should you choose not to or fail to provide a response, I will decide if the allegation against you is proven on the balance of probabilities based on the information and advice available to me.

**Opportunity to Respond to Potential Disciplinary Sanctions if Allegation Found Proven**

In the event that I find all or some of the allegation of misconduct against you proven on the balance of probabilities, and while I retain an open mind on the issue, at this stage I believe the following disciplinary sanctions would be appropriate:

* the imposition of a reprimand under section 55(1)(a) of the PS Act, and
* the reduction in your remuneration level by the equivalent of one classification level for a period of 12 months, under section 53(1)(d) of the PS Act.

I also invite you to respond to these potential sanctions, which I may decide to impose if I find the allegation proven on the balance of probabilities. Any response you wish to provide should be in writing, and also provided no later than close of business on **20 October 2022.**

**Documentation**

Copies of the following documents are enclosed:

* a list of the names and URLs of the internet sites accessed by on the said day [or during the said period]
* the Department’s Policy on Internet Usage.

You or your representative, or both, may inspect copies of samples of images downloaded from the internet sites you are alleged to have accessed during working hours. Should you or your representative wish to inspect these documents, please contact [name and contact details of contact person] to make necessary arrangements.

**Continuation of Managerial Directions**

The managerial directions previously issued to remain in force, with minor amendments as follows. Until further notice, and **except with my prior written permission**:

* you are not to discuss your alleged misconduct or related processes with any person apart from me, [agency contact person/people], your spouse or partner, medical practitioners, professional counsellors, union or legal advisers, or otherwise as required by law.

I must warn you that should you contravene or fail to comply with my directions, you may be liable to disciplinary action.

In the event that you consider that further relevant evidence should be obtained, or you or your representative wish to speak with a witness for the purposes of responding to the allegation of misconduct, it is important that you seek my written permission beforehand. In that situation, I will consider whether it is appropriate for me to vary the above managerial directions, or whether the Department will conduct further investigations.

Please contact [name and details of contact person] should you require further information.

I remind you that the Department’s Employee Assistance Program is available by contacting [name of provider and contact details].

Yours sincerely,

[signature bloc, chief executive or delegate]

# **SAMPLE LETTER G**

### Notifying of findings of fact and notice of disciplinary sanctions

**PERSONAL AND CONFIDENTIAL**

[DATE]

[Name]
[Address]

[delivery options – delivered in person, by email, by post, by registered post, by courier etc]

Dear [Name]

**Notice of Findings of Fact – Notice of Disciplinary Sanctions – Managerial Directions**

I refer to my letter of 6 October 2022 in which I set out an allegation of misconduct against you, notified of the potential disciplinary sanctions I may impose if I find the allegation proven, and provided you with an opportunity to respond. I now advise my findings of fact on the allegation and the sanctions I have decided to impose.

Without repeating the detailed particulars, the allegation against you is that:

1. On or about [date] [or between about [date] and [date]]) during working hours and when you were supposed to be performing the duties of your role, you used government information technology infrastructure to access numerous internet sites unconnected with the performance by you of the duties of your role; including sites which contained images of a pornographic, obscene or sexually explicit nature.

I have carefully considered the evidence and other documentation enclosed with my letter dated 6 October 2022. I have also carefully considered the response you provided on 19 October 2022. In summary, you have admitted the misconduct as alleged, and are contrite for your conduct.

I advise that I find the allegation of misconduct against you proven on the balance of probabilities, including all of particulars of the allegation. I find that your proven conduct amounts to a contravention of the provisions of the Professional Conduct Standards in the Code of Ethics for the South Australian Public Sector that were cited in the particulars of the allegation. I accordingly find that you have committed misconduct as alleged.

I advised you in my letter of 6 October 2022 that I considered the following sanctions would be appropriate in the event I found the allegation against you proven on the balance of probabilities:

* a reprimand under section 55(1)(a) of the *Public Sector Act 2009* (**PS Act**), and
* a reduction in your remuneration level by the equivalent of one classification level for a period of 12 months, under section 53(1)(d) of the PS Act.

In addition to the information relating to your proven misconduct, I have had serious regard to your response of 19 October 2022 concerning these potential sanctions. I note that you accept that these sanctions are appropriate in response to your proven misconduct. I have also taken into account the fact you admitted the misconduct, and your lengthy period of service and lack of previous proven misconduct in the South Australian Public Sector.

I advise that I have decided to impose both of the following sanctions against you in response to your proven misconduct:

* a reprimand under section 55(1)(a) of the PS Act*.* This letter will serve as a record of the imposition of this reprimand, and
* a reduction in your remuneration level by the equivalent of one classification level for a period of 12 months, under section 53(1)(d) of the PS Act, effective from [date].

The managerial directions previously imposed upon you remain in force. I must again warn you that should you contravene or fail to comply with such directions, you may be liable to disciplinary action.

Please contact [name and details of contact person] should you require further information.

I remind you that the Department’s Employee Assistance Program is available by contacting [name of provider and contact details].

Yours sincerely,

[signature bloc, chief executive or delegate]

# **SAMPLE LETTER H**

### Notifying of intent to suspend from duty without remuneration

**PERSONAL AND CONFIDENTIAL**

[date]

[Name]
[Address]

[delivery options – delivered in person, by email, by post, by registered post, by courier etc]

Dear [Name]

**Suspected Misconduct – Notice of Intention to Suspend from Duty Without Remuneration**

I am informed that you have been charged with the criminal offence of [offence name], an offence contrary to section [section number] of the [title of legislation]. This is an offence punishable by imprisonment. If you are convicted of this or another offence punishable by imprisonment while employed in the South Australian Public Sector, you will have committed misconduct as defined in the *Public Sector Act 2009* (**PS Act**). I accordingly suspect that you have committed misconduct.

I note that you are currently suspended from duty with remuneration. I also note that your solicitor has indicated to the criminal court that you intend to plead guilty to the charge mentioned above.

I am of the view that it is appropriate to suspend you from duty without remuneration – having regard to the seriousness of the criminal allegations against you, your foreshadowed plea of guilty, and the probability that termination of your employment will likely be a disciplinary sanction reasonably open for a decision maker to impose should you be convicted of the criminal offence you are charged with.

Accordingly, it is my intention to suspend you from duty without remuneration under section 57(3)(a) of the PS Act.

I now provide you with an opportunity to respond as to I should not act to suspend you from duty without remuneration. Any submission you wish to provide must be in writing and received by me no later than close of business on [date – for example a date seven calendar days from the date of the letter]. Should you fail or choose not to provide a response I will act on the basis of the information and advice available to me.

You remain suspended from duty with remuneration until further notice. The managerial directions previously issued to remain in force. Namely, until further notice, and **except with my prior written permission**:

* you are not to attend any workplaces of the [name of agency]
* you are not to contact other employees during or outside of working hours with the exception of [name and details of contact person]
* you are not to discuss your suspected misconduct or related processes with any person apart from me, [agency contact person/people], your spouse or partner, medical practitioners, professional counsellors, union or legal advisers, or otherwise as required by law
* you are to remain contactable during normal working hours.

I must warn you that should you contravene or fail to comply with my directions, you may be liable to disciplinary action.

Please contact [name and details of contact person] should you require further information.

Enclosed is a copy of section 57 of the Act.

I remind you that the Department’s Employee Assistance Program is available by contacting [name of provider and contact details].

Yours sincerely,

[signature bloc, chief executive or delegate]

# **SAMPLE LETTER I**

### Confirming suspension from duty without remuneration

**PERSONAL AND CONFIDENTIAL**

[date]

[Name]
[Address]

[delivery options – delivered in person, by email, by post, by registered post, by courier etc]

Dear [Name]

**Suspension from Duty Without Remuneration and Managerial Directions**

I refer to my correspondence of [date] where I put you on notice as to my intention to suspend you from duty without remuneration in light of the fact you have been charged with a serious criminal offence punishable by imprisonment and your solicitor has indicated to the criminal court that you intend to plead guilty to the charges.

I have carefully considered the matters set out in your correspondence and am not persuaded to alter my intended course. Accordingly, I suspend you from duty under section 57(3)(a) of the *Public Sector Act 2009* (**PS Act**), effective close of business the date of this letter.

The managerial directions previously issued to you remain in force. Namely, until further notice, and **except with my prior written permission**:

* you are not to attend any workplaces of the [name of agency]
* you are not to contact other employees during or outside of working hours with the exception of [name and details of contact person]
* you are not to discuss your suspected misconduct or related processes with any person apart from me, [agency contact person/people], your spouse or partner, medical practitioners, professional counsellors, union or legal advisers, or otherwise as required by law
* you are to remain contactable during normal working hours.

I must again warn you that should you contravene or fail to comply with my directions you may be liable to disciplinary action.

I advise that I will favourably consider any application by you to engage in outside remunerative employment or other activity providing that it is appropriate including that it does not give rise to any conflict of interest between your personal interests and role as a public sector employee and it being otherwise appropriate for a public sector employee to engage in. I also advise that I will approve any application by you for access to your accrued entitlements to recreation or long service leave.

You are entitled to seek an Internal Review of my decision under section 61 of the PS Act and if you remain aggrieved following that review, you may seek an External Review by the South Australian Employment Tribunal under section 62 of the PS Act.

Enclosed is a copy of the following:

* sections 57, 61 and 62 of the PS Act, and
* application for leave.

Please contact [name and details of contact person] should you require further information.

I remind you that the Department’s Employee Assistance Program is available by contacting [name of provider and contact details].

Yours sincerely,

[signature bloc, chief executive or delegate]