

AMBULANCE SERVICES ACT 1990—REGULATION

(Ambulance Services (Staff) Regulation 1995)

NEW SOUTH WALES



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HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Ambulance Services Act 1990, has been pleased to make the Regulation set forth hereunder.

ANDREW JOHN REFSHAUGE, M.P.,
Deputy Premier and Minister for Health.

Citation

1. This Regulation may be cited as the Ambulance Services (Staff) Regulation 1995.

Commencement

2. This Regulation commences on 1 September 1995.

Definitions

3. In this Regulation:

“**employee**” means a person appointed and employed by the Ambulance Service under section 13 of the Act;

“**officer**” means an officer or employee appointed under and subject to the Public Sector Management Act 1988;

“**supervisor**” means a person under whose control or supervision an employee is placed;

“**the Act**” means the Ambulance Services Act 1990.

Lawful instructions to be obeyed

4. (1) An employee must obey promptly a lawful instruction that is:

- (a) consistent with the Protocols and Procedures issued by the Ambulance Service from time to time; and
- (b) given to the employee by the employee's supervisor.

(2) An employee may appeal in writing to the Ambulance Service against an instruction given to the employee. The appeal must be made through the supervisor who gave the instruction. However, the employee must, pending the determination of the appeal, comply with subclause (1) in relation to the instruction.

Uniform when on duty

5. An employee must, when performing his or her duties, wear the uniform (if any) that the Ambulance Service determines from time to time for the class of employee to which the employee belongs.

Uniform outside hours of duty

6. An employee must not wear a uniform issued by the Ambulance Service except when on duty or when travelling to or from duty or with the permission of the Service.

Absence from duty

7. (1) An employee must not absent himself or herself from duty without the permission of the Ambulance Service or an officer or employee who is superior to the employee, being an officer or employee authorised by the Service to grant leave.

(2) An employee who is absent from duty without leave must, as soon as practicable, furnish the employee's supervisor with an explanation of the reason for the employee's absence together with:

- (a) if the absence exceeds 2 working days (or such shorter period as the Ambulance Service may determine in a particular case) and is due to illness, a certificate signed by a medical practitioner certifying that the employee is, because of that illness, unfit to perform the employee's duties; or
- (b) if the absence is due to a pressing necessity requiring the employee's absence from duties, such evidence (if any) relating to the necessity as the Service directs, either generally or in any particular case or class of cases.

(3) Subclause (2) is subject to any award, or industrial agreement or enterprise agreement, that applies to the employee as an employee of the Service.

Other employment

8. (1) An employee must not, except with the written permission of the Ambulance Service, engage in any employment (whether or not for remuneration) otherwise than in connection with his or her employment by the Service.

(2) If an employee is the holder of any office or is engaged in any employment otherwise than in connection with his or her employment by the Service, the employee must at once notify the Service of that fact.

(3) The Service may require that employee to resign that office or abstain from engaging in that employment.

(4) Permission given for the purposes of subclause (1) may be withdrawn by the Service at any time. The withdrawal must be in writing given or sent to the employee.

Entitlements as witness in official capacity

9. (1) An employee who, in his or her official capacity, is subpoenaed or called as a witness must pay any money received by the employee as a witness to the Ambulance Service.

(2) However, the employee is entitled to be paid in full by the Service for any time spent as a witness and, in addition, to be paid such travelling and out-of-pocket expenses as the Service may determine.

Entitlements as witness in private capacity

10. (1) An employee who, in his or her private capacity, is subpoenaed or called as a witness by the Crown (whether in right of a State or of the Commonwealth):

- (a) must be granted special leave of absence with pay for the period during which the employee is necessarily absent from duty; and
- (b) must pay to the Ambulance Service any money paid to the employee as a witness (other than money paid to the employee on account of travelling and out-of-pocket expenses).

(2) An employee who, in his or her private capacity, is subpoenaed or called as a witness, but not by the Crown (whether in right of a State or of the Commonwealth):

- (a) is entitled to be granted leave of absence for the period during which the employee is necessarily absent from duty; and
- (b) may retain any money paid to the employee as a witness.

Medical examination

11. (1) The Ambulance Service may direct that an employee undergo medical examination for the purpose of ascertaining the employee's fitness to perform his or her duties. An employee given such a direction must submit himself or herself to examination by a medical practitioner approved by the Service.

(2) The Ambulance Service may direct an employee to undergo such medical examination as the Service considers necessary if there is reason to believe that the health of the employee:

- (a) may mean that the employee is a danger to other employees or to the public; or
- (b) is likely to be seriously affected by that employee's remaining on duty (or, if the employee is absent from duty, by the employee's resuming duty).

(3) If the Ambulance Service has given a direction to an employee under subclause (2) and has made it clear to the employee that the direction is given under that subclause, the employee (if on duty) must cease duty immediately and (in any case) must not resume duty until the completion of the medical examination.

Payment of increment

12. (1) The payment of any increment to an employee is subject to the Ambulance Service being satisfied that the conduct of the employee and the manner in which the employee discharges his or her duties warrants that payment.

(2) This clause is subject to any award, or industrial agreement or enterprise agreement, that applies to the employee as an employee of the Ambulance Service.

Offences to be reported

13. (1) An employee who is charged with having committed, or is convicted of, a serious offence must immediately report that fact in writing to the Ambulance Service.

(2) An employee who is required to drive a motor vehicle in his or her employment with the Ambulance Service and who is charged with having committed, or is convicted of, a traffic offence must immediately report that fact in writing to the Service.

(3) An employee's supervisor who has reason to believe that an employee has been charged with having committed, or has been

convicted of, a serious offence or traffic offence but has not reported that fact in accordance with subclause (1) or (2) must immediately report that fact to the Ambulance Service.

(4) In this clause:

“serious offence” means an offence (whether or not committed in New South Wales) which, if committed in New South Wales, would be punishable by imprisonment or penal servitude for 12 months or more (whether or not in addition to a fine) in New South Wales;

“traffic offence” means any of the following offences:

- (a) the offence under section 4 of the Traffic Act 1909 relating to driving a motor vehicle upon a public street furiously or recklessly or at a speed or in a manner which is dangerous to the public;
- (b) the offence under section 4 of that Act relating to driving a motor vehicle upon a public street negligently;
- (c) the offence under section 4AA of that Act (Menacing driving);
- (d) the offences under section 4E of that Act (Prescribed concentration of alcohol in person’s blood);
- (e) the offences under section 5 (1) of that Act (which relate to refusing to produce a motor vehicle driver’s licence when required or to state a name and place of abode, or stating a false name and place of abode);
- (f) the offences under section 5 (2) of that Act (which relate to driving etc. while under the influence of alcohol or any other drug);
- (g) the offences under section 7A (2) (a), (b) and (c) of that Act (which relate to driving while unlicensed);
- (h) the offences under section 8 of that Act (which relate to failing to stop after an accident and give assistance or particulars).

Driving disqualification to be reported

14. An employee who is required to drive a motor vehicle in his or her employment with the Ambulance Service and who is disqualified from holding a driver’s licence or whose licence is cancelled or suspended must immediately report the disqualification, cancellation or suspension to the Service.

Breaches of discipline

- 15.** An employee is guilty of a breach of discipline if the employee:
- (a) contravenes this Regulation; or
 - (b) uses intoxicating beverages or drugs to excess; or
 - (c) wilfully disobeys or disregards any order or direction relating to his or her employment given by a supervisor; or
 - (d) is negligent, careless, inefficient or incompetent in the discharge of his or her duties; or
 - (e) misconducts himself or herself, or conducts himself or herself in a disgraceful or improper manner, in the course of his or her employment by the Service; or
 - (f) is convicted of a serious offence (within the meaning of clause 13).

Action on occurrence of breach

16. (1) If it appears to the Ambulance Service that an employee has committed a breach of discipline, the Service may:

- (a) charge the employee with the breach; or
- (b) institute an inquiry into the breach, without charging the employee; or
- (c) take no action under this Regulation.

(2) A charge may be made orally or in writing. If made orally, it must be confirmed by notice in writing served on the employee within 10 days after the charge is made.

Consequences of charging employee

17. (1) If an employee has been charged with a breach of discipline, the Ambulance Service must institute an inquiry into the breach.

(2) If an employee has been charged with a breach of discipline, the Ambulance Service may suspend his or her employment with or without pay until the charge has been dealt with.

Conduct of inquiry

18. (1) An inquiry is to be conducted by a committee consisting of 1 or more persons appointed by the Service.

(2) An inquiry is to be conducted without legal formality in accordance with the directions of the Service.

(3) The committee is to give the employee under investigation an opportunity to make written representations or, if the committee approves, oral representations with respect to the matter that is the subject of the inquiry.

(4) The committee is to provide a report on the inquiry setting out the committee's findings of fact to the Ambulance Service within the time specified by the Service or within such further time as the Service may from time to time allow.

Copy of report to employee

19. The Ambulance Service must, within 14 days after receiving the report, provide a copy of the report to the employee.

Action on report

20. (1) The Ambulance Service may, after considering the report (but without being bound by the findings contained in the report):

- (a) dismiss the charge or decide that the employee should not be charged (as the case requires); or
- (b) institute one or more other inquiries into the relevant breach, being inquiries in accordance with clause 18; or
- (c) decide to proceed further with the inquiry (and for that purpose must charge the employee if the employee has not yet been charged or may, if the employee has already been charged, amend the charge or make further charges).

(2) If the Ambulance Service decides to proceed further with the inquiry, it must:

- (a) notify the employee in writing of the charge (including any amended or further charge) and of the particulars of that charge; and
- (b) invite the employee to deny or admit the truth of the alleged breach of discipline and to show cause why the employee should not be penalised for that breach of discipline.

(3) The notice must inform the employee:

- (a) that the employee may, in the employee's reply to the notice, request an interview to discuss the matter in person; and
- (b) that the reply must be in writing and be made to the Ambulance Service within the time specified in the notice by the Service to the employee.

Action after notice given to employee

21. (1) If a reply is not received by the Ambulance Service within the time specified in the notice, the Service may determine the charge in the absence of a reply and without discussing the matter with the employee.

(2) If a reply is received by the Service within the time specified in the notice but the employee does not request an interview, the Service may determine the charge without discussing the matter with the employee.

(3) If a reply is received by the Service within the time specified in the notice and the employee requests an interview, the Service may determine the charge after making arrangements for the interview and, if the employee comes to the interview, after the matter has been discussed with the employee at the interview.

(4) The Service, in determining whether an employee has or has not committed a breach of discipline, may take into consideration only those matters disclosed in the report on the inquiry, in the reply (if any) made by the employee to the subsequent notice, at the interview (if any) and in the reports on further inquiries (if any).

(5) Subclause (4) does not prevent the Service taking into consideration any matter of which a court is entitled to take judicial notice.

Interview

22. (1) The Ambulance Service must give an employee at least 14 days' notice of the time and place at which an interview will be held to discuss the charge against the employee. Though notice must always be given, the period of notice may be reduced by the employee by notice in writing to the Service.

(2) The interview is to be conducted without legal formality, in accordance with the directions of the Service.

(3) However, the Service may, because of any matter arising at an interview, institute further inquiries into the matter and consider further reports on those inquiries.

(4) If further inquiries are instituted:

- (a) clause 18 applies to the further inquiries in the same way as it does to an original inquiry; and
- (b) the Service may determine the charge without providing a copy of any report on the further inquiries to the employee and without further interview with the employee.

(5) A person cannot take part in the interview if the person was a member of any committee of inquiry that conducted an inquiry under clause 18 into the matter that is the basis of the charge.

Representation

23. (1) During an interview (or at an inquiry), the employee under investigation or charged may, with the consent of the Service, be represented by a solicitor, barrister or agent.

(2) The Service is not responsible for the costs of that representation.

Final action

24. (1) If the charge against an employee is admitted or established to the satisfaction of the Ambulance Service, it may decide to do any one or more of the following:

- (a) caution the employee;
- (b) reprimand the employee;
- (c) reduce the employee's classification or position;
- (d) direct that the employee resign, or be allowed to resign, within such period as is specified in the direction.

(2) A decision under this clause may be given effect to at any time (subject to the Government and Related Employees Appeal Tribunal Act 1980).

(3) This clause does not affect the power of the Ambulance Service to dismiss an employee.

Repeal

25. (1) The Ambulance Services (Staff) Regulation 1990 is repealed.

(2) Any act, matter or thing that was done, or immediately before that repeal had effect, under that Regulation is taken to have been done, or to have effect, under this Regulation.

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EXPLANATORY NOTE

The object of this Regulation is to repeal the Ambulance Services (Staff) Regulation 1990 and to remake that Regulation with significant revision.

The new Regulation sets out a number of provisions relating to the conduct and discipline of staff of the Ambulance Service of New South Wales. However, some provisions of the 1990 Regulation have been omitted because they are now the subject of a code of conduct, or because they are no longer necessary or appropriate.

On the other hand, the Regulation contains a new requirement that a staff member who is required to drive a motor vehicle for the Ambulance Service and who is disqualified from driving or whose licence is cancelled or suspended must report that fact to the Ambulance Service. (The 1990 Regulation required all staff members to report such a fact but only when it was the result of a conviction, or action by the Roads and Traffic Authority, and only when it did not relate to a parking offence.)

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Furthermore, the provisions relating to Ambulance Service disciplinary proceedings have been reworded to follow more closely those in the Public Sector Management (General) Regulation 1988.

This Regulation is made under section 30 (Regulations) of the Ambulance Services Act 1990 (and in particular section 30 (1) (c)).

This Regulation is made in connection with the staged repeal of subordinate legislation under the Subordinate Legislation Act 1989.
