

4450/428 AMR

SECTION 64 PRINCIPLESATTACHMENT B1. INTRODUCTION

- 1.1 Section 64 refers to a specific type of offence - a criminal offence which is punishable by imprisonment - which requires consideration by the Board of the continued employment of an officer who is convicted of this type of offence. In broad terms, criminal offences can be distinguished from civil and common law offences. In more specific terms criminal offences are those offences specified in the Crimes Act and a number of other Acts as being major offences of a criminal nature, where the offence constitutes an Act prejudicial to the community and legal action is instituted by the State not by an individual.
- 1.2 The Board's powers under S64(1) are invoked as a management response to an officer's conviction of a criminal offence punishable by imprisonment. Section 64 enables the Board to consider the effect that such a conviction has on the employment in the VPS of the officer concerned.
- 1.3 Section 64(1) refers to two specific forms of punishment - dismissal and reduction in classification or salary as well as providing for other forms of punishment as seem appropriate to the nature of the conviction.
- 1.4 In considering appropriate action under the provisions of Section 64 the implications of the officer's conviction on his/her status as a member of the Public Service must be considered. Does the fact that an officer of the Public Service is convicted of a criminal offence that is punishable by imprisonment:
- bring the Public Service into disrepute?
  - render the officer incapable of continuing to perform the duties of his office?
  - render the officer incapable of continuing to be employed in the administrative unit in which he is currently employed?
  - indicate a degree of untrustworthiness or unfitness to discharge the duties of a responsible position?
- An additional consideration is community attitudes to the offence which can bear directly on the officer's integrity as a member of the community and the Public Service.
- 1.5 A key issue in considering appropriate action is the relationship of the offence that the officer was convicted of with his official duties:
1. was the conviction for an offence directly connected with the official duties of the officer; or
  2. was the conviction for an offence not connected with the duties of the officer, but for an offence:
    - related to an act or series of acts that are similar to part or all of the duties of the officer;
    - that adversely affects the ability of the officer to continue to perform part or all of the duties of the office;
 or

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3. was the conviction for an offence not connected with the official duties of the officer or with acts similar to part or all of the duties of the officer or that adversely affects the ability of the officer to perform all or part of the duties of the office.

1.6 An additional issue bearing on the implications of the officer's conviction is consideration of the officer's work record whilst in the Public Service and the need to ensure equitable treatment of the officer including having regard to the effect on the officer's financial position, reputation and future employment prospects of any action under Section 64 to determine if these matters provide grounds for reducing the severity of any punishment being considered under Section 64.

## 2. PRINCIPLES

2.1 A number of key principles can be used to assist in assessing how a conviction for a criminal offence punishable by imprisonment impacts on the suitability of an officer so convicted to continue to be employed in the duties of the office occupied by the officer, in the administrative unit where the officer is employed or in the Public Service.

2.2 Principle 1: Consideration of community attitudes to the nature of the offence and the penalty imposed.

The nature of the offence is a major consideration as community attitudes to the type of offence can bear directly on the officer's integrity as a member of the community and the Public Service. Some offences, such as drug trafficking, are seen by the Community to be particularly abhorrent. Community attitudes to offences can change over time. The penalty imposed by the court will also be a major consideration as the penalty indicates the gravity of the offence with a penalty of imprisonment being an indicator of a serious offence.

2.3 Principle 2: Consideration of the impact that the offence has on the reputation of the Public Service and the maintenance of its integrity and standards.

The impact of public knowledge of the offence on the reputation and good standing of the Public Service as the administrative instrument of Government must be considered based on an assessment of community expectations of standards of conduct of public officials.

2.4 Principle 3: Consideration of the relationship of the offence to the duties of the office and the level of the office occupied by the officer and the administrative unit in which the officer is employed.

The relationship between the type of criminal offence that the officer was convicted of and the duties of the office occupied by the officer should be examined to ascertain whether the conviction renders the officer unfit to continue to perform all or part of the duties of the office. The relationship between the type of offence and the activities of the administrative unit should be examined to ascertain whether the conviction renders the officer unfit to continue to be employed in the administrative unit in which the officer is employed.

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2.5 Principle 4: Consideration of the officer's work record, and the need to ensure equitable treatment of the officer including having regard to the effect on the officer's financial position, reputation and future employment prospects of any action under Section 64.

The officer's work record - career history, work performance - as well as the officer's financial position, reputation and future employment prospects should be examined and the impact on these of action under Section 64 should be assessed to determine if these matters provide grounds for reducing the severity of any punishment being considered.