



Frequently Asked Questions

1. What is 'misuse of position'?

Misuse of position refers to a public officer acting in a manner inconsistent with their duties and obligations. It may also refer to a public officer acting beyond their power. The misuse can benefit themselves, harm others or bring the organisation into disrepute.

2. Isn't all misconduct really just a misuse of position?

Technically, yes. All forms of misconduct could be categorised as a misuse of position by the public sector employee.

However, 'misuse of position' is usually applied where the misconduct includes:

- ▽ use of office for personal gain
- ▽ abuse of power
- ▽ endorsements
- ▽ violating professional boundaries
- ▽ nepotism and favouritism, or
- ▽ exceeding delegations.

3. What are my legal and work duties in relation to misuse of position?

Your duties and obligations are contained in a few different areas:

- ▽ **Codes of conduct** (misuse of position): require that you do not, broadly, misuse your position, authority and power – the exact requirements will vary slightly for each public sector organisation
- ▽ [Anti-Discrimination Act](#)¹ (section 16): requires that you do not discriminate (which can include favouritism) against a person based on a list of potential characteristics
- ▽ [Anti-Discrimination Act](#)² (section 17): requires that you do not offend, humiliate, intimidate, or sexually harass another person
- ▽ [Integrity Commission Act](#)³ (section 4): defines misconduct as including a misuse of position, and
- ▽ **your employment framework**: may include provisions requiring you to maintain the integrity of your office, fulfil your responsibilities, and act in a professional manner when conducting official business.

As a public sector employee, you have many different legal obligations to use your position appropriately. The best course of action is to be diligent in the way you use your position and ensure that you comply with your legal and professional obligations.

4. Why is it important that I maintain positive relationships with stakeholders?

All government roles require you to maintain positive relationships with the people you interact with. This includes your colleagues, contractors, clients, customers and other stakeholders.

You develop positive and productive working relationships with others when you conduct your work professionally, not by misusing your position to do favours for others. Professionalism means being competent, reliable and acting with integrity.

Misusing your position may stop the efficient and effective running of government and reduce public trust in the public service.

5. Are people who misuse their position punished seriously, or is it more likely to be an internal warning or sanction?

The punishment for misuse of position is dependent on the seriousness of the misuse and whether it has occurred before.

It is important to be aware that there can be very serious consequences for misuse of position. Sanctions can include fines, re-assignment of duties, termination of employment and, in some cases, lead to criminal charges and convictions.

6. How is it fair that normal actions could be seen as misconduct simply because of the job I have?

As a person who has authority and perhaps privileges of a leadership role, it is your responsibility to understand how your role affects other people. This is because your role can create a power imbalance.

Suppose you are not aware of how your actions may be perceived. In that case, junior employees may be put in uncomfortable situations where they feel they don't have the power to remove themselves or maintain boundaries. This can lead to allegations of workplace harassment, bullying or inappropriate relationships.

While it may be difficult for you to constantly monitor how your role affects your actions, it is unfair to put an employee in a situation where they do not feel safe and respected.

7. How can I tell when professional boundaries are becoming blurred?

Professional boundaries can become blurred whenever you act or talk as your personal self in a professional capacity. This can include discussing your personal life, enquiring into another's personal life, developing familiar and friendly relationships, or spending time together outside of work.

A good check is to ask yourself: 'Am I acting solely in my professional capacity? Is this what any other public officer in my shoes would do?' If the answer is yes, you can be confident that your professional boundaries have not blurred.

8. What are nepotism, favouritism and cronyism?

Favouritism refers to the practice of favouring someone or some group in the workplace for reasons outside of their job performance.

Nepotism and cronyism are both forms of favouritism and are quite similar. Nepotism refers to the practice of favouring friends and family in the workplace. Cronyism refers to the practice of appointing friends and associates to positions of authority, without proper regard for their qualifications.

Favouritism, nepotism and cronyism are all forms of misconduct.

9. Is it nepotism if I hire suitably qualified people I know because I know they would fit in with the team?

It is not nepotism if the best and most qualified people for the job happen to be people that you know.

It *will* be nepotism, however, if you let your personal knowledge and feelings about them influence what should be impartial hiring practices. Therefore, you still need to advertise the job properly, have an interview panel and declare your conflict of interest. This conflict of interest should be properly managed.

10. What do I do if I believe that I need more powers than I have been delegated to perform my assigned task?

It is important to remember that you can only exercise the exact powers that you have been delegated. Just because the power may be connected to your delegated powers, or even necessary to perform your task, that does not authorise you to exercise that power.

In this situation you should alert the delegator of your problem. They will either authorise the delegation of this power, assist you to perform your task without that power, or determine that the task needs be performed by another employee with that power.

¹ <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1998-046>

² <https://www.legislation.tas.gov.au/view/html/inforce/current/act-1998-046>

³ <https://www.legislation.tas.gov.au/view/html/inforce/current/act-2009-067>



The Commission can help

We are available to provide support and assistance with identifying, reporting, investigating, managing and preventing misconduct: prevention@integrity.tas.gov.au or 1300 720 289.

For more Misconduct Prevention resources go to www.integrity.tas.gov.au/resources