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INITIAL HANDLING

The purpose of managing misconduct is to protect employees, the public, public monies, and public sector organisations.

Misconduct complaints can also be a learning opportunity, both personally and organisationally. Good complaint handling processes can help to resolve issues, and to enhance public confidence.

The frontline – facilitating misconduct allegations

Misconduct allegations may arise in a number of ways. They may be submitted in the form of a complaint or report. This can be from an employee, a member of the public or client, or through another organisation. Misconduct allegations may also arise through the suspicions of colleagues.

An external source may mistakenly complain to you about another organisation.

You should quickly inform the source of the correct place to direct their complaint. You could also ask their permission to forward it on for them.

Frontline workers who often receive complaints should be appropriately trained. This includes in the areas of communication, managing unreasonable complainant conduct, and stress management.

Employees and managers should take appropriate action when they receive a complaint or report, or witness or have a reasonable suspicion of misconduct.

Look to your organisation's policies or a senior employee if you are unsure of the correct process.

Unless required by legislation or policy, you should not require a source to put their allegations in writing. This is consistent with better practice complaint handling. The system should be flexible and accessible for complainants. You should also be aware that, under the [Public Interest Disclosures Act 2002 \(Tas\)](#), disclosures can be made both orally and in writing.

Remember:

- failure to report misconduct may amount to misconduct
- anonymous complaints should be handled like any other complaint [\[FS3\]](#)
- the motivations of the complainant are irrelevant to whether misconduct has been committed [\[FS3\]](#)
- victimisation may amount to misconduct
- submission of a vexatious complaint may amount to misconduct and [\[FS3\]](#)
- a complainant may withdraw their complaint, but this does not necessarily negate your organisation's obligations to manage the subject matter of the complaint. [\[FS25\]](#)

You should try to obtain additional details if there is not enough information to proceed because, for example, the complaint is not in writing. If this is not possible, then you have no other option but to finalise the matter. [\[FS3\]](#) [\[FS8\]](#)

There is extensive material available online about good practice complaint handling, and a relevant Australian Standard (AS/ NZS 10002:2014 Guidelines for complaint management in organizations). [\[FS4\]](#)

Is it alleged misconduct?

What is misconduct?

Generally, misconduct is behaviour that threatens or has a negative impact on the employment relationship. It is sometimes motivated by an improper purpose, and may include a blatant failure to perform a duty.

There may be specific definitions of misconduct that apply to your organisation.

Under the [Integrity Commission Act 2009 \(Tas\)](#), **misconduct** means conduct, or an attempt to engage in conduct, that is or involves:

- a breach of a code of conduct
- the performance of functions or the exercise of powers in a way that is dishonest or improper
- a misuse of information or material acquired in or in connection with the performance of functions or the exercise of powers or
- a misuse of public resources in connection with the performance of functions or the exercise of powers.

It may also be conduct, or an attempt to engage in conduct, that adversely affects, or could adversely affect, directly or indirectly, the honest and proper performance of functions or exercise of powers of another public officer.

Serious misconduct is misconduct that could, if proved, be a crime or an offence of a serious nature, or that could provide reasonable grounds for terminating employment. Examples include theft, fraud, assault, being intoxicated at work, and refusing to carry out a lawful and reasonable instruction that is consistent with the contract of employment.

Fraud and corruption are types of misconduct. Not all misconduct amounts to fraud or corruption.

Distinguishing alleged misconduct from other matters

Alleged misconduct may be hard to distinguish from, and may overlap with, other matters such as:

- performance issues
- complaints
- grievances
- organisational issues
- criminal and other offences and
- whistleblower disclosures.

Because the above may overlap, there may be several policies that apply at the same time.

If you are unsure about whether a matter involves alleged misconduct, you should consult someone else in your organisation, such as a human resources manager or lawyer. Make sure the person you consult is not a person who is potentially involved in the matter.

You may also contact the Integrity Commission for advice. [\[FS6\]](#)

Is the source a whistle-blower?

If the matter is internally raised, you should consider whether the source is a 'whistle-blower' under relevant legislation and determine if there are particular ways in which you are obliged to handle the matter.

This should happen before you take any other concrete steps to deal with the matter. If the matter is a whistle-blower disclosure, this may affect whether and when you can deal with it under other potentially relevant legislation and policies. For example, it may take precedence over your complaint, disciplinary and suspension policies.

Relevant whistle-blower legislation includes, for organisations registered under the [Corporations Act 2001 \(Cth\)](#), the provisions in ss 1317AA-1317AE of that Act.

The [Public Interest Disclosures Act 2002 \(Tas\)](#) (PID Act) is the main piece of whistle-blower legislation that applies to all Tasmanian public sector organisations. All internal

complaints of alleged misconduct should be assessed to determine if they are a protected disclosure under the PID Act. Under the PID Act, disclosures can be made both orally and in writing.

Contractors can make disclosures about public bodies (not public officers) to the Ombudsman or the Integrity Commission.

Under section 7A of the PID Act, the Ombudsman or the Integrity Commission may choose to treat a member of the public as a contractor for the purposes of the PID Act. This decision may be made if it is in the public interest to do so.

If you think this may be warranted, or if a member of the public or a contractor wants to make a PID Act disclosure, you should refer them to Ombudsman Tasmania.

It is not necessary for the source to state that they are making a disclosure under the PID Act. It is up to each public body to determine if the matter relates to 'improper conduct' that is serious or significant and, if so, it is to be dealt with as a disclosure under the PID Act. The definition of improper conduct under the PID Act is different to the definition of misconduct under the [Integrity Commission Act 2009 \(Tas\)](#).

If the matter does amount to a protected disclosure under the PID Act, [there are strict processes that must be followed under that Act](#). The discloser will be protected under the PID Act, and where relevant you must comply with the confidentiality provisions in section 23 of the PID Act. Depending on your governance framework, you may need to seek advice on how PID Act processes impact on your ability to:

- suspend the employee against whom the disclosure was made and
- commence a disciplinary process.

You can find further detailed information in your organisation's public interest disclosure procedures, and on the [Ombudsman Tasmania website](#). Every organisation has at least one PID

officer, and you can contact them for advice. You can also contact [Ombudsman Tasmania](#) for advice. [\[FS6\]](#)

Local government

A PID Act disclosure about a councillor is to be made to the Ombudsman. This means that a person cannot make a PID Act disclosure about a councillor to a council.

However, a council employee may make a PID Act disclosure about another council employee to a council.

Grievances and performance issues

It may be hard to differentiate between alleged misconduct and grievances or performance issues.

A grievance usually involves interpersonal issues between two colleagues that do not necessarily involve any alleged misconduct. Performance issues relate to how an employee does their job.

Generally, if proved, misconduct allegations warrant sanction. This is not necessarily the case with grievances or normal performance issues.

However, both grievances and performance issues may amount to misconduct in some circumstances. For instance, if there have been repeated performance discussions without improvement, or if the failure in duty was blatant. Similarly, a grievance may involve allegations of discrimination, victimisation or harassment that do amount to alleged misconduct.

Once you have determined that the matter involves alleged misconduct, make sure that you adhere to any relevant legislation, industrial instruments, contracts of employment, policies and/or procedures. Make sure you document all actions and decisions. This will be important if any decisions or processes are challenged at a later date.