



### Misconduct in the public sector

What is public sector misconduct in Tasmania, why do we need to be aware of it, and how can it be prevented?

#### What is public sector misconduct?

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

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

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

#### What is serious misconduct?

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 consistent with the contract of employment.

Any misconduct can undermine or destroy the relationship of trust and confidence between a public sector organisation and an employee. Serious misconduct can waste millions of dollars and even endanger lives, and lead to loss of public confidence and trust in government.

## What is ‘the public sector’, and who is ‘a public officer’?

The Act covers the Tasmanian public sector, which consists of a wide range of organisations and people, including:

- ▼ Local Government, including:
  - ▽ Elected officials (councillors and alderman)
  - ▽ Council employees
  - ▽ Council-owned companies
- ▼ Tasmanian State Service, including:
  - ▽ Departments and agencies
  - ▽ Public hospitals and health care services
  - ▽ State schools
  - ▽ Public sector employees
- ▼ Statutory Authorities, including:
  - ▽ Forest Practices Authority
  - ▽ Marine and Safety Tasmania
  - ▽ Wellington Park Management Trust
- ▼ Government Business Enterprises, including:
  - ▽ Hydro Tasmania
  - ▽ Sustainable Timber Tasmania
  - ▽ Port Arthur Historic Site Management Authority
- ▼ State-Owned Companies, including:
  - ▽ Aurora Energy
  - ▽ Metro Tasmania
  - ▽ TasNetworks
  - ▽ TasRail
- ▼ Tasmania Police
- ▼ Tasmanian Parliament
  - ▽ Members of Parliament
  - ▽ Parliamentary staff
  - ▽ Elected officers
  - ▽ Ministerial advisors
- ▼ Higher Education, including:
  - ▽ University of Tasmania (UTAS)
  - ▽ TasTAFE

## Public officers are public sector employees

A public officer, or public sector employee, is someone employed by a public sector organisation.

The Act covers people who volunteer for public sector organisations. It also includes people who may have left the public sector but who were public officers at the time of any misconduct.

## Who is not covered by the Act?

The Act does not cover the following persons:

- ▼ the Governor of Tasmania
- ▼ a judge or Associate Judge of the Supreme Court
- ▼ a magistrate of the Magistrates Court
- ▼ a court
- ▼ members of a tribunal
- ▼ members of the Tasmanian Industrial Commission
- ▼ employees of the Integrity Commission

Also, while Members of Parliament are public officers, conduct or an attempt to engage in conduct relating to a proceeding in Parliament cannot be considered by the Commission.

## Misconduct risk areas

Our primary roles are to prevent and educate the public sector about misconduct, and to handle complaints and ensure that misconduct is appropriately investigated.

We provide education and training around different misconduct risk areas, including:

- ▼ conflicts of interest
- ▼ gifts and benefits
- ▼ use of work information
- ▼ use of public resources
- ▼ use of power and authority, and
- ▼ outside employment

Fact sheets and resources on misconduct risk areas are available via the Integrity Commission website: [www.integrity.tas.gov.au](http://www.integrity.tas.gov.au)

## Why does misconduct happen?

In many cases, misconduct happens because employees do not understand their organisation's policies and procedures, possibly due to inadequate training or miscommunication.

In some cases, misconduct can result from an organisation's culture of entitlement or taking advantage of inadequate procedures. It may be that there is poor management and oversight.

In some cases, a dishonest employee commits intentional fraud or theft, which can be defined as dishonestly obtaining a benefit, or causing a loss, by deception and other means.

## Procedures and controls to prevent misconduct

While an organisation may not eliminate the risk of intentional fraud or theft, it can make it difficult to commit or go unnoticed.

Good training and communication are the foundations of misconduct prevention. All employees need to understand their obligations under their employment framework.

Your framework includes your employment contract, code of conduct and the Act(s) under which you perform your duties and the policies, processes and procedures you must follow.

If you are unsure about your obligations and responsibilities, speak with your manager or Human Resources in your organisation.



### 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](mailto:prevention@integrity.tas.gov.au) or 1300 720 289.

For more Misconduct Prevention resources go to [www.integrity.tas.gov.au/resources](http://www.integrity.tas.gov.au/resources).