



## **Policy Statement**

This policy provides guidance on standards of conduct required across the public sector and how to identify and manage misconduct. The Public Sector Code of Conduct and Values are legislated in the Public Service Act 2009 and establish standards of behaviour required.

## **Scope**

This policy applies to Heads of Public Sector Agencies, Employees and Contractors of the public sector.

## **Principles**

The principles of: fairness, impartiality, integrity, professionalism, political neutrality, and zero tolerance to fraud apply.

## **Public Sector Code of Conduct**

- Behave with integrity and honesty
- Exercise care and diligence
- Be professional, courteous, and treat everyone with respect and without coercion or harassment
- Comply with all applicable laws & policies relating to their employment
- Comply with all lawful and reasonable instructions
- Take reasonable steps to disclose and avoid any real or apparent conflicts of interest in connection with their employment
- Ensure the proper and prudent use of government resources
- Use official information only for official purposes
- Not improperly use their status of authority to seek or obtain a benefit for themselves or any other person or body
- At all times act and behave in a manner that upholds and promotes the integrity, values, and good reputation of the Cook Islands Public Service; and
- Comply with any other conduct requirements as may be prescribed by regulations

## **Public Sector Values**

- Honesty – acting honestly, being truthful, and abiding by the laws of the Cook Islands
- Impartiality – providing impartial advice, acting without fear or favour, and making decisions on their merits
- Service – serving the people well through faithful service to the Government of the Cook Islands
- Respect – treating the people, the Government of the Cook Islands, and colleagues with courtesy and respect
- Transparency – taking actions and making decisions in an open way
- Accountability – being able to explain the reason for actions taken, and taking responsibility for those actions
- Efficiency and effectiveness – achieving good results for the Cook Islands in an economical way

## **Legislation and Regulations**

The Public Service Act 2009, Employment Relations Act 2012, Ministry of Finance and Economic Management Act 1995-96, and Public Expenditure and Review Committee and Audit Act 1995-96, and other relevant legislation apply.

## Definitions

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**Conflict of interest** is a situation where an individual or organisation is involved in multiple interests, one of which could possibly corrupt the motivation

**Constitutional posts** include: Queens Representative, House of Ariki, Speaker and Deputy Speaker of Parliament, Members of Parliament including Ministers of the Crown (Cabinet), Public Service Commissioner, Chief Justice, Ombudsman and Public Expenditure Review Committee

**Complainant** is any natural person who holds a constitutional post or is a current employer, employee or contractor of the public sector and the general public of the Cook Islands

**Department** means any ministry, department including any agency or instrument listed in the Public Service (Identification of Departments) Order 2008

**Employee** means any person who is an employee of the Public Sector

**Employer** means the Head of a Public Sector Department or Crown Agency, Ministerial Support Office or other agency or their delegated authority

**Frivolous** means not having any serious purpose, value or merit

**Natural Justice** promotes a fair hearing and rules against bias

**Political Neutrality** means individuals must perform their duties faithfully and loyally, regardless of their political beliefs or affiliations

**Public Service Appeal Board** established under Article 76 of the Constitution comprises of: the Chief Justice, a Public Service employee or former employee representative appointed by the Queens Representative on advice from the Prime Minister, and a Public Service employee or former employee nominated by the public service or an organisation of public service employees to hold office for a period of three years

**Public Service Commissioner** means the Public Service Commissioner appointed under Article 73 of the Constitution and Section 5 of the Public Service Act

**Public Sector** includes Public Service Departments, Island Governments, Crown Agencies, Offices of Parliament, Ministerial Support Offices, State Owned Enterprises, and other agencies

**Sexual Harassment** means unsolicited/unwelcomed/offensive verbal and or physical conduct of a sexual nature directed at a person of either sex

**Racial discrimination** means discrimination on an ethnic or cultural basis, independent of whether these differences are described or identified as racial

**Summary dismissal** means dismissal without notice. This can apply in circumstances where there is a serious breach of legislation, policy or employment contract or agreement

**Vexatious** is an action without sufficient grounds done to cause annoyance to another individual

## Misconduct

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Misconduct is defined as unacceptable behaviour, actions or inaction that is in breach of this policy, or negatively impacts on other employees or the Agency.

Examples of misconduct include but are not limited to the following actions:

- Non-compliance with Public Sector policies, Code of Conduct and Values
- Failure to perform employment related tasks to the standards specified
- Failure to report to work without notification to the respective manager or supervisor
- Failure to consistently report to work at the specified start time or after any break
- Failure to complete the stipulated hours of work required for the position

- Use of obscene or threatening language in the workplace
- Harassing behaviour of a sexual, racial or discriminatory nature
- Unprofessional behaviour in the workplace and publicly which brings the reputation of the agency into disrepute
- Active involvement in political activities which undermine the confidence of members of parliament in public servants
- Personal attacks on the character of other employees, employers, members of parliament, development partners and members of the general public
- Publicly criticising government policies and leaders
- Misuse of public-funded resources and assets: such as offices and school halls; equipment and supplies (phones); communication (emails); and motor vehicles

## **Serious Misconduct**

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Serious misconduct involves serious wrongdoing whereby the actions of an individual are unlawful and/or of such significance as to make the continuation of the employment relationship untenable, or undermines the confidence and trust of parties in the employment relationship. Persistent misconduct may be classified as serious misconduct. Serious misconduct may justify summary dismissal of the individual.

Serious misconduct includes but is not limited to the following actions:

- Breaches of legislation, specifically the Public Service Act 2009, Ministry of Finance and Economic Management Act 1995-96, and Public Expenditure and Review Committee and Audit Act 1995-96
- Serious breaches of Public Sector Policies, Code of Conduct and Values
- Improper use or unauthorised disclosure of official or confidential information
- Possession or consumption of illicit drugs on work premises
- Consumption of alcohol on work premises without the authority of management
- Arriving for work or being at work, under the influence of alcohol or illicit drugs
- Smoking in restricted areas and/or failing to abide with the agency's no-smoking policy
- Unauthorised possession of agency property or any other person's property
- Unauthorised absence from work
- Harassing behaviour of a sexual, racial or discriminatory nature
- Incurring liability for an agency outside approved authorisation parameters
- Any offence involving dishonesty or indictable actions
- Assault or violence in any form, impairing or harming, or threatening to impair or harm, directly or indirectly, any individual or agency or the property of an individual or agency
- Failure to carry out lawful instructions from an employer, a senior manager or their delegated authority
- Fraudulent practice which involves any act, or omission, or misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit, or to avoid an obligation
- Corrupt practice which involves offering, giving, receiving or soliciting, directly or indirectly, anything of value to improperly influence the actions of another party.
- Coercive practice which involves impairing or harming or threatening to impair or harm, directly or indirectly, any party or the property of the party to improperly influence their actions
- Collusive practice to achieve an improper purpose, including improperly influencing the actions of another party
- Intentional or reckless abuse leading to theft, waste or improper use of public sector assets
- Undeclared conflict of interest which leads to improper influence over a party's performance of official duties and responsibilities, contractual obligations, or compliance with applicable laws and regulations

- Obstructive practices which involve deliberately destroying, falsifying, altering, or concealing evidence material in an agency investigation; making false statements to materially impede an agency investigation; threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to an investigation, or from pursuing the investigation; or materially impeding the agency's contractual right to audit or access information
- Retaliation against whistle blowers or witnesses through any detrimental act, (direct or indirect), recommendation or threat, because of their actions or cooperation with an agency's investigation

## **Procedures and Processes**

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Employers are responsible for administering this policy. Individuals have a responsibility to read, understand and comply with this policy. Any person who knowingly breaches this policy may be considered to have committed an act of misconduct and shall be subject to disciplinary action and/or dismissal.

## **Managing misconduct and serious misconduct**

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Employers are responsible for managing the process for: receiving; investigating; and dealing with misconduct and serious misconduct in accordance with the principles of this policy.

### **Receiving allegations:**

Complainants must report alleged misconduct in writing within five working days of the circumstances or incident constituting misconduct or serious misconduct, to the:

- Head of Agency – where the allegation involves a public sector employee of that agency
- Public Service Commissioner – where the allegation involves a head of agency

Written complaints must include details of:

- All individuals directly or indirectly involved in the incident
- The location, date and time of the incident
- A description of the incident with relevant supporting documentation or evidence
- Any third parties involved

Complainants can remain anonymous, however complaints confirmed to be vexatious, frivolous, or deceitful can be considered misconduct and dealt under the provisions of this policy.

Heads of Agencies or the Public Service Commissioner must acknowledge the alleged misconduct within three working days of receiving the complaint.

- An employer may suspend an employee on pay while the investigation is in progress
- The period of the investigation up until the communication of the investigation recommendations must not exceed one month

### **Investigation:**

All allegations must be investigated to confirm whether the allegation/s constitute misconduct or serious misconduct.

### **Criteria for investigations to proceed:**

- The complaint must be laid by a natural person (ie: individual not a corporation)
- The complaint must relate to the conduct of a public sector employer, employee or contractor
- The individual has reasonable grounds to believe the alleged conduct has occurred

- There is a reasonable possibility that the conduct constitutes misconduct
- The complainant has provided their contact details
- The matter is important to justify an investigation and any remedial action

If the complaint does not meet all the above criteria, the complainant must be notified in writing within three working days of acknowledging the complaint.

If the complaint meets all the above criteria, an investigation is instigated and the complainant, accused and all relevant parties are notified of a pending investigation within five working days of acknowledging the complaint.

#### Guidelines:

- Every instance of alleged misconduct should be investigated and considered based on its facts and particular circumstances
- Individuals to be investigated must be advised of the specific matter causing concern and be given an opportunity to respond to the allegation
- Professional judgement must be exercised during all stages of the investigation and all aspects of the investigation must be recorded in writing and placed on the respective individual's personnel file
- Every effort must be made to maintain the complainant's privacy, including that of the individual under investigation and witnesses
- Individuals involved in investigations may be accompanied by an appointed representative in meetings
- If the employer cannot confirm the allegations of misconduct or serious misconduct, the employee should be reinstated to their former employment status

#### Objectives:

- To collate information regarding the allegation as quickly as possible
- To consider the information collected and draw reasonable, objective and impartial conclusions on the alleged conduct
- To maintain procedural fairness and confidentiality in the treatment of witnesses and the accused
- To make recommendations based on the conclusions drawn for remedial or appropriate action

Investigations must apply the principle of natural justice at all times during the investigation. This involves procedural fairness to ensure a fair decision is reached by an objective decision maker.

#### Conducting the investigation:

- All discussions, phone calls and interviews with witnesses and relevant parties must be recorded or documented
- Persons under investigation or witnesses do not need legal representation during the investigation process
- A final investigation report must be completed containing: a detailed outline of the allegation/(s); an account of all information received and rejected information, including the reasons for rejection; and recommendations arising from the conclusions

#### **Dealing with misconduct or serious misconduct:**

If the employer or investigating body concludes misconduct or serious misconduct has occurred, the following remedies are available and must be communicated in writing within five working days of the conduct being confirmed:

#### 1. Disciplinary action

A warning may be issued in instances where behavioural changes are required and must be authorised by the employer or their delegated authority:

- a first written warning (or verbal warning followed by a written warning); or
- a second and final written warning, stating any future breach or failure to perform required actions or standards may result in dismissal

The following must be included when issuing warnings:

- A clear description of the misconduct
- Employee response to the misconduct
- Outcome of investigations following the employee response
  - Where relevant include previous historical patterns
- Prescribed penalty and/or corrective action to be imposed on the employee
- Clear time frames for corrective action with consequences(if necessary) for not meeting corrective actions
- Confirmation in writing of outcomes after corrective actions have been completed

#### 2. Summary dismissal for serious misconduct

- Employees may be dismissed without notice where serious misconduct
- Dismissal after warnings is different from summary dismissal in that the misconduct has not been serious enough to warrant instant dismissal; and the employee has been given warnings and an opportunity to correct their behaviour before a termination decision is made

### **Appeals against remedies**

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Public Sector employees may lodge a complaint to the Public Service Commissioner if they dispute the findings and outcome of the investigation by the head of agency. The Commissioner will then investigate the complaint using the investigation process outlined in this policy and issue recommendations which become final.

Heads of the public sector who wish to dispute the findings and outcome of the investigation by the Public Service Commissioner may utilise the mediation process provided in the Employment Relations Act 2012, or put a case forward to the Public Service Appeal Board.

### **Other provisions**

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All records relating to the administration of this policy must be kept for at least seven years and only accessible by the employer and/or authorised staff. After the required seven year period, the department may destroy the documentation in adherence with government official information management policies.

### **Other information**

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For policy queries contact the Office of the Public Service Commissioner on phone (682) 29421 or email: [opscinfo@cookislands.gov.ck](mailto:opscinfo@cookislands.gov.ck)