

**Managing misconduct in the Tasmanian public sector: Model preliminary assessment process**

**December 2017**

**Model process for preliminary assessments of alleged or suspected misconduct**

**Purpose**

1. The purpose of a preliminary assessment (PA) is to quickly gather information about a matter that may involve misconduct.
2. The information gathered in a PA will be used to determine:
   1. whether there is a reasonable suspicion of misconduct and
   2. the most appropriate way/s to deal with the matter.

**When to conduct a preliminary assessment**

1. This process is to be used for any alleged or suspected misconduct that arises in [organisation]. This includes allegations of serious misconduct.
2. A PA is not an investigation. It is not designed to uncover the facts of a matter. A PA should not make findings or arrive at conclusions.
3. You should strive to meet the timeframes in this document. It is better for each step to take no longer than one week, and ideally not longer than three working days. However, there may be mitigating circumstances that mean it is not possible to meet these timeframes. Any delays may need to be documented and communicated to relevant parties.

**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 conduct that could, if proved, be a crime or an offence of a serious nature, or that could provide reasonable grounds for terminating employment.

Allegations or suspicions of misconduct could arise through:

* external, internal and anonymous complaints
* protected and/or public interest disclosures
* criminal allegations
* grievances and workplace safety issues that contain allegations of misconduct
* alleged fraud and corruption and
* alleged breaches of the Code of Conduct or policies and procedures.

**Step 1: Initial handling**

**Where possible, to be completed in three working days of the allegation or suspicion of misconduct being reported to the [decision maker].**

1. When allegations or suspicions that may involve alleged misconduct arise, they should be reported to [decision maker] as soon as practicable. If the allegations somehow involve [decision maker], the report should go to [secondary decision maker].

Other than [decision maker], the alleged misconduct should be kept confidential.

1. If necessary, the [decision maker] should immediately take steps to ensure the safety of any person at risk.
2. The [decision maker] should then determine whether:

* the matter is a whistle-blower complaint that needs to be dealt with under relevant legislation before it is dealt with as alleged misconduct
* immediate action needs to be taken, for example contacting an external body such as the police and/or suspending the respondent
* the matter involves alleged misconduct and
* a formal PA should be undertaken (see *Step 2: Formal preliminary assessment process*).

Case conferencing may be used to make this decision. It may not be necessary to conduct a formal PA if, for example, it is evident that the matter should go straight to investigation, or that it would be best dealt with in another way. The decision on what to do should be documented.

1. If the matter does not require a formal PA, the [decision maker] should move to *Step 3: Deciding what action to take.*
2. If the matter requires a formal PA, the [decision maker] should direct somebody else to undertake the PA (‘the assessor’) under *Step 2: Formal preliminary assessment process*.

* The assessor should not have a conflict of interest.
* The direction should be given in writing using *Attachment A – template for formal preliminary assessment direction*.

**Step 2: Formal preliminary assessment process**

**Where possible, to be completed in three working days of receipt of the direction to complete a PA.**

1. During the assessment, the assessor should:

* maintain but not guarantee confidentiality
* be alert to conflicts of interest and
* not contact the respondent/s.

1. The first step taken should be to confidentially secure and store information that may be lost or destroyed.

***Contacting the source***

1. Contact the source if more information is required. Before contacting the source, prepare for the meeting and consider:

* what information is needed and what information the source may have
* asking how the source came by the information
* asking if they have any other relevant information or contacts and
* how to manage the source’s expectations of the PA and any subsequent process used to address the matter.

1. At the meeting, tell the source:

* the purpose of the PA – a fact finding exercise to help determine how to deal with the allegations
* that any information they give may be used in evidence
* that their information may be provided to others, including the respondent, if required e.g. for the purposes of procedural fairness and
* that the matter is confidential – a formal direction to maintain confidentiality may be given to internal sources if necessary.

1. After the meeting, make a formal record of the meeting and the information given. If possible, obtain the source’s agreement in writing that the record is true and correct.
2. If the source refuses to speak to the assessor, this should be noted in the report.

***Collecting other information***

1. Collect any and all other relevant information which can be obtained quickly and confidentially. There needs to be enough information for the [decision maker] to make an informed decision about how to deal with the matter.

* Some sources of information are listed in *Attachment B – template for formal preliminary assessment report.*
* You should not contact any witnesses (other than the source) or the respondent.

***Writing the preliminary assessment report***

1. Write a short report using *Attachment B – template for formal preliminary assessment report*. The report:

* should be a maximum of five pages and
* where possible, should be delivered to the [decision maker] within three working days of the assessor receiving the direction to conduct the assessment. This timeframe may be extended by the [decision maker] if required.

**Step 3: Deciding what action to take**

**Where possible, to be completed in three working days of receipt of the formal PA report/decision not to conduct a formal PA.**

1. The [decision maker] should use the information to [decide/recommend to the principal officer]:

* whether there is a reasonable suspicion of misconduct and
* what action/s to take – including whether to investigate the matter.

1. This decision may be made by:

* subject to confidentiality, case conferencing and discussions with other staff and/or
* performing a risk assessment of the entire situation, including potential risks to the source, the respondent, other employees, the organisation, clients, and the community.

1. Examples of [decisions/recommendations] that may be made by the [decision maker] include one or more of the following:

* proceeding to a formal misconduct investigation
* contacting an external body for advice or to report the matter e.g. Tasmania Police, Integrity Commission, Ombudsman Tasmania, Equal Opportunity Tasmania, Department of Health and Human Services, [relevant professional body e.g. AHPRA, TRB], WorkSafe Tasmania
* contacting the respondent for response
* dealing with the matter by alternative dispute resolution, performance management etc.
* dealing with the matter under the [fraud and corruption policy]
* dealing with the matter under another policy e.g. [grievance policy], [bullying and harassment policy], [workplace health and safety policy]
* stand down/suspension/reassignment of the respondent and/or other employees
* welfare protection steps, including for the source, the respondent, and any other relevant person
* taking action in regard to systemic or organisational issues raised by the matter
* taking steps in regard to the potential for victimisation, rumors or office innuendo
* blocking or restricting access to data
* undertaking further inquiries
* seeking further advice e.g. legal advice and/or
* no further action is necessary.

**Step 4: Documenting the decision and record keeping**

1. Whether the [decision maker] decides to investigate or not, the decision needs to be accountable, defensible and documented. The decision should be documented – with reasons – and dated, signed and stored. [insert record keeping practices specific to your organisation here]
2. The source should confidentially be advised of the decision and the reasons for it. If relevant, they may be told where they can take the matter (e.g. an external body) if they are not satisfied with the decision.
3. If the matter involves alleged misconduct, it should be reported to [relevant area/person/email address] for recording on the register of misconduct allegations.
4. If the matter involves alleged fraud or corruption, it should be reported to [relevant area/person/email address] for recording on the fraud incident register.
5. The [decision maker] should ensure that any identified organisational improvements are reported to the necessary areas for action.

**Authority**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Revision number: | |  | Approved date: |  |
| Approved by: | |  | Next review date: |  |
| Policy owner: | |  | | |
| Definitions: | **Assessor –** A person directed to conduct a preliminary assessment by the decision maker.  **Case conferencing –** A meeting of relevant senior employees that discusses the matter and determines the best path forward.  **Decision maker –** The person authorised/delegated to make a decision on how to handle allegations of misconduct. [*List specific person/people e.g. secretary, general manager AND/OR state that:* This can include a person authorised/delegated to make a decision on whether a matter goes to the [principal officer] for consideration.]  **Misconduct –** See the first page of this procedure for a definition of misconduct and serious misconduct.  **Preliminary assessment (PA) –** An assessment, conducted under this procedure, of possible alleged or suspected misconduct.  **Respondent –** A person against whom there are allegations or suspicion of misconduct.  **Source –** A person who has made a complaint or raised a suspicion about misconduct. Also known as a complainant. | | | |
| Related documents: | [List relevant policies/procedures specific to the organisation, including:   * misconduct/disciplinary/behaviour * Code of Conduct * grievance * bullying, harassment and discrimination * fraud and corruption control * public interest disclosure * performance management.]   Legislation:   * [relevant governing legislation for the organisation, including relevant industrial relations legislation and industrial instruments] * *Criminal Code Act 1924* (Tas) * *Public Interest Disclosures Act 2002* (Tas) * *Archives Act 1983* (Tas) * *Personal Information Protection Act 2004* (Tas)/*Privacy Act 1988* (Cth). | | | |

**Attachment A – template for formal preliminary assessment direction**

[security classification e.g. IN-CONFIDENCE]

[date]

[reference number or name, where applicable]

**Direction to conduct formal preliminary assessment**

1. I am directing you to undertake a preliminary assessment of:

[explain the matter; if possible, give the assessor all relevant material and information, in an attachment if necessary]

1. You are to undertake the preliminary assessment in accordance with Step 2 of the *Model process for preliminary assessments of alleged or suspected misconduct*, a copy of which is attached/can be located at …
2. As far as possible, this matter is to remain confidential.
3. You are to report to me in writing within three working days of receiving this direction.

[name]

[title]

**Attachment B – template for formal preliminary assessment report**

[security classification e.g. IN-CONFIDENCE]

[date]

[reference number or name, where applicable]

**Formal preliminary assessment report**

This is a preliminary assessment report completed in compliance with the [organisation] *Model process for preliminary assessments of alleged or suspected misconduct*. This report is completed at the direction of [decision maker name and title], which was given on [date of direction to complete preliminary assessment].

**Background**

*[Outline the nature of the allegations or suspicions, who it involves and who is likely to be a witness; include names, titles, dates and locations. List who is or is likely to be aware of the alleged misconduct e.g. media, police, members of the public.]*

**Actions taken**

*[Outline actions taken to date, including:*

* *steps taken as part of the preliminary assessment*
* *management actions such as stand downs and welfare support*
* *contact with external bodies e.g. police and*
* *advice sought, both internally and externally.]*

**Information collected**

*[List and explain the information collected during and before the preliminary assessment.*

*List and explain other possible sources of information, such as witnesses.*

*In collecting information, consider:*

* *accessing records such as rosters and timesheets e.g. to verify if someone was at work on a particular date, or who approved a contract*
* *accessing other records such as CCTV footage, emails, personnel records, and phone logs*
* *obtaining the respondent’s position description*
* *reviewing audit logs e.g. logs of who accessed records on an internal database*
* *obtaining policies, guidelines and procedures e.g. to verify what policy was applicable at a particular date*
* *obtaining internal documents such as meeting records, memorandums and file notes*
* *legislation and regulations and*
* *seeking advice e.g. human resources, legal or information technology.]*

**Attachments**

*[Attach copies of all information collected to date. Where necessary, the documents should be marked ‘IN-CONFIDENCE’.]*