Misconduct Complaints Handling Policy

Objective and purpose of the Misconduct Complaints Handling Policy (the Policy)

MAST seeks to maintain its reputation for delivering high-quality professional services. MAST is also committed to maintaining its transparency and responsiveness to the needs and concerns of our employees, customers and the public.

This Policy is designed to provide guidance on the manner in which misconduct complaints or allegations against MAST and its employees are received and handled.

The objective of this Policy is to minimise damage to MAST's reputation and to protect employees, the public, and public monies by resolving complaints from customers, employees, members of the public, or other organisations in an efficient, effective, consistent, and professional manner.

Background

In preparing this Policy, MAST has endeavoured to align its procedures with the contents of the Integrity Commission's Guide to Managing Misconduct in the Tasmanian Public Sector.

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 blatant failure to perform a duty.

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.
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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.

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.

Since the above may overlap, multiple MAST policies may apply simultaneously.
If there is uncertainty about whether a matter involves alleged misconduct, advice should be sought from the Chief Executive, provided the Chief Executive is not potentially involved in the matter. Advice may also be sought from the Integrity Commission.

Is the source a whistleblower?

If the matter is internally raised, consideration should be given to whether the source is a 'whistleblower' under the Public Interest Disclosure Act 2002 and determine if there are specific procedures to be followed in accordance with MAST's Public Interest Disclosure Procedures. This should occur before any other concrete steps are taken to address the matter.

It is not necessary for the source to state that they are making a disclosure under the *Public Interest Disclosure Act 2002.* MAST must 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 this Act. The definition of improper conduct under the Public Interest Disclosure Act 2002 differs from the definition of misconduct under the *Integrity Commission Act 2009* (Tas).

If the matter does amount to a protected disclosure under the Public Interest Disclosure Act 2009, strict processes must be followed under this Act. The discloser is protected under the Act, and advice may need to be sought on how provisions of the Act impact the ability to:

- Suspend the employee against whom the disclosure was made; and
- Commence a disciplinary process.

Making a misconduct complaint or allegation

Complaints may be submitted verbally or in writing to the Chief Executive. If the Chief Executive is the subject of a complaint, the complaint may be submitted to the Chair of the Board.

Guiding principles of effective complaints handling

Visibility – MAST's Misconduct Complaints Handling Policy is available on the MAST website and internally in TKO.

Accessibility- MAST's Misconduct Complaints Handling Policy is readily accessible to all employees and clients. The Policy is easy to understand and includes details on making and resolving complaints.

Responsiveness - Receipt of each complaint is acknowledged to the complainant within a specified timeframe and will be handled in an efficient and effective manner. Complainants will be handled courteously and kept informed on the progress of their complaint throughout the complaint handling process.

Objectivity - Each complaint is addressed in an equitable, objective and unbiased manner throughout the complaint handling process.

Confidentiality - Personally identifiable information concerning the complainant is actively protected from disclosure unless the complainant expressly consents to its disclosure.

Completeness - All available information and evidence have been collected from both sides.

Customer and employee-focused - All MAST employees, including the Chief Executive, Managers and Board members, are committed to efficient and fair resolution of complaints. MAST will actively solicit feedback from our customers and employees on a regular basis and acknowledge a client's right to complain.

Accountability - All MAST employees accept responsibility for handling complaints effectively. The Chief Executive will ensure that, where appropriate, issues raised in the complaints handling process are reflected in employee performance evaluations.

Sensitivity - Each case is to be considered on its merits, paying due care to individual differences and needs.

Continual - MAST's complaints-handling process will be reviewed annually.

Improvement – MAST will aim to enhance its efficient delivery of effective outcomes.

Recording complaints

All complaints, whether verbal or written, will be recorded at the time the complaint or allegation is made, or as soon as possible afterwards, on a central register. The complainant will receive an acknowledgement letter confirming receipt of the complaint within 7 working days.

The complaint should be recorded by the staff member who took the details and emailed to the Chief Executive, and the email will also be required to be recorded on the relevant Content Manager file and locked for privacy reasons. The complete record should show:

- Date of complaint;
- Complainant's name;
- Description of alleged misconduct;
- Name of the person who is the subject of the complaint;
- How the complaint was dealt with (eg, investigation, mediation, performance management);
- Outcomes, and
- Date finalised.

The Content Manager record must be retained for a period of seven years following the resolution date.

Complainant’s personal details or details of their complaint will not be divulged to third parties unless written consent is provided.

Recorded complaints will also be monitored for any ongoing trends by management, and efforts will be made to resolve any ongoing issues.

Responding to complaints

1. Preliminary Assessment

A preliminary assessment is required before deciding whether to investigate or resolve the alleged misconduct by other means. This assessment should be undertaken within 3 working days of the matter being raised.

The purpose of a preliminary assessment is to quickly collect information so that the Chief Executive or Board can decide:

- whether there is a reasonable suspicion of misconduct and
- the most appropriate way to deal with the matter.

No conclusions should be reached at the preliminary assessment stage.

The process would involve conducting a desktop assessment of the situation and determining the best course of action to proceed. Through this process, additional information may be sought through inquiry. All inquiries must be kept confidential where possible. If inquiries are required, they should not be conducted by the decision maker or the person who subsequently investigates the matter.

Anyone other than the source should not be interviewed at this stage, and inquiries should be kept confidential.

Timeframes should be short. Preliminary assessments should be completed within 3 working days. The decision at the end of the preliminary assessment process should be documented.

Contact with the respondent should not be made before or during the preliminary assessment. However, at the end of the assessment, it may be decided that there is possibly a plausible explanation for the conduct. In this case, the matter may be put to the respondent for response before deciding whether to conduct an investigation. This should be in writing and made clear to the respondent that:

- The disciplinary process has not commenced
- This is an attempt to ascertain the facts of a situation and
- Anything the respondent states can be taken into account in the event that a disciplinary process is undertaken.

The matter should not be put to the respondent at this stage if the matter may involve serious misconduct or criminal conduct, there is a risk of evidence being destroyed, or if there is a risk of victimisation.

Depending on the circumstances and the seriousness of the allegations, necessary immediate actions may be taken during or after the preliminary assessment, such as:

- reporting the allegations to the police or other external bodies
- offering support to one or more affected parties
- imposing a suspension or a stand-down
- moving or altering the duties or physical location of involved parties in the short term
- blocking or restricting access to data
- ensuring the safety of others and
- securing evidence.

Examples of matters that require immediate action include alleged assault and alleged misuse of information.

Action may also include the need to stand down or suspend an employee before or during an investigation. Procedural fairness principles should be applied when suspending an employee. If a matter is a protected or public interest disclosure under the Public Interest Disclosures Act 2002,

2. Deciding whether to investigate

Once all material has been collected as part of the preliminary assessment, a decision must be made on whether to conduct an investigation. The decision should be made as quickly as possible. Ideally, this should be made within three working days of receiving all the necessary information.

A risk assessment of the situation should be undertaken by considering risks to all affected parties – including the source, the respondent, other employees, the organisation, customers and clients, the tax or rate payer, and the public.

On the basis of the information, it may be determined that the matter is:

- not related to misconduct and needs to be dealt with through other avenues e.g. performance management, or referral to an external body for investigation or consideration, or
- alleged misconduct that requires an investigation

Responses to allegations should be proportionate to the nature of the allegations and the possible outcomes. The extent of the investigation should also be proportionate to the allegations and possible outcomes.

Factors to consider when deciding whether to investigate:

- Severity of the matter – the more serious the matter, the more likely it will require an investigation.
- Potential severity of the outcome for the respondent – the more serious the potential outcome, the higher the requirements for a thorough, evidence-based investigation.
- Whether the allegations are easily proven or disproven – even serious misconduct, if easily proven and dealt with appropriately in terms of procedural fairness, may be resolved relatively quickly.
- The complexity of the matter and the potential for an investigation to uncover further misconduct.
- When the alleged misconduct took place – if it is a matter that occurred some time ago, it may not be worthwhile, or even possible, to investigate it.
- Apparent veracity of the allegations/ suspicions.
- If the matter has already been dealt with or investigated.
- Whether there is likely to be any evidence either substantiating or disproving the allegations.
- Number of employees that may have been involved.
- Whether there has been a pattern of similar complaints.
- Potential deterrent and education effects of an investigation, both for the respondent and generally across the organisation.
- Whether a lack of action would negatively affect morale in the workplace.
- If an investigation is necessary to clear the air.
- Seniority of the respondent – relatively minor allegations should be taken more seriously if they are against a more senior employee.
- Whether the alleged conduct would warrant a disciplinary sanction that could only be imposed after an investigation.
- Past conduct of the respondent – for instance, it may be worthwhile escalating the seriousness of a matter if the employee has ignored previous warnings or if performance management efforts have had little effect.
- Scale of any monetary amounts or benefits involved in the alleged misconduct.
- Whether there are possible systemic issues at play that the organisation needs to deal with.
- Public confidence – would a member of the public consider that the allegations required investigation?

The Chief Executive will make the final decision to investigate or not. If the Chief Executive is the respondent, the Board will make this decision.

If a decision is not to investigate, it needs to be accountable, defensible, and documented. Where relevant, the source should be confidentially advised of the decision and the reasons for it. The source should also be informed of the process for reviewing this decision.

In making the decision to investigate, internal and external communication strategies may need to be developed.

Investigation

After a decision is made to investigate, the Chief Executive or Board will:
- set the terms of reference for the investigation (including defining the allegations)
- make misconduct findings; and
- decide on outcomes (including sanctions)

The Chief Executive or Board will appoint an investigator. This investigator will:
- write the investigation plan
- conduct the investigation
- write the investigation report
- make findings of fact

The investigator and decision maker should not be the same person.

The Board, Chief Executive and investigator should be impartial and independent. They should not have been involved in the alleged misconduct.

Procedural fairness should be a primary consideration throughout the investigation process. The Integrity Commission's Guide to Managing Misconduct in the Tasmanian Public Sector provides detailed information on the conduct of investigations that should be followed. This includes:
- the "hearing" rule – telling the respondent
- planning an investigation
- collecting evidence
- interviews
- making factual findings; and
- writing an investigation report.

Once finalised, the investigator will provide the Investigation Report to the Chief Executive or Board.

The Chief Executive or Board will:
- independently examine the findings of fact and endorse or disagree with each and
- decide whether each substantiated factual allegation amounts to misconduct.

Once a determination has been made about whether misconduct occurred, the Chief Executive or Board will need to decide on the investigation outcomes. These may include:
- outcomes for the respondent (eg. sanctions, professional development measures, management action)
- outcomes for the source/complainant (eg. apology, conciliation, procedural changes)
- outcomes for the organisation (e.g areas for improvement)

The decision must be communicated to the respondent in writing. This correspondence must include:
- the findings of fact, including the evidence used to come to these findings and the reasons

- the misconduct findings, including what factors were taken into account in making those findings and the reasons
- the outcomes for the respondent (sanctions, professional development measures, management actions), including what factors were taken into account in deciding on those outcomes and the reasons
- if adverse findings have been made:
    - appeal and review rights both internally (if applicable) and externally, and
    - that the findings and outcomes may be relied on in the event of future misconduct.

The respondent's welfare should be checked, and support options should be offered.

The source/complainant should also be advised when the investigation is completed. It may not be possible to advise exactly what action was taken, but the source should be provided with assurance that MAST:

- has responded adequately to the allegations,
- does not tolerate misconduct and
- has taken any steps necessary to remedy organisational deficiencies.

The source/complainant must also be advised that the decision can be reviewed by MAST or by external organisations such as the Ombudsman, the Integrity Commission, or Equal Opportunity Tasmania.

Consideration should be given to whether the misconduct warrants a communication to all or sections of MAST.

Copies of all final, signed correspondence to both the source and the respondent should be kept and stored in accordance with legislation and policies. This includes the *Archives Act 1983* (Tas).

Alternatives to Investigating

The preliminary assessment may reveal workplace issues that need to be addressed, but do not require a misconduct investigation.

It may also reveal conduct that falls short of misconduct, but which should be dealt with through professional development measures such as training.

Alleged misconduct that does not require an investigation may include:

- lower-level misconduct, for instance, swearing in the workplace
- self-reported non-serious misconduct
- alleged misconduct that is quickly proven or disproven and
- where the respondent has already made admissions.

Alternatives to investigation (which may also be the outcomes of an investigation) include:

- performance management, such as a performance improvement plan
- mediation or conciliation
- an apology to the source, or some kind of amendment or reparation action
- referral to an external body
- training
- lawful direction
- advice and guidance and/or
- variation of duties. It is important that the response, whatever it may be, is proportionate to the allegations.

Timeframes

Misconduct matters should be addressed as promptly as possible. This is important for all parties. An unreasonable delay may result in the decision being overturned.

MAST will aim to meet the following timeframes:

Initial handling	Three working days up to 7 working days
Preliminary assessment and decision on whether to investigate	Up to 2 weeks (including approximately three working days for the preliminary assessment, and approximately three working days for the decision on whether to investigate).
Simple investigation	Up to 3 months
More serious or complex investigation	Between 3 to 12 months - ideally not longer than 6 months
Decision-making and finalising the matter	Up to 2 months, depending on the seriousness and nature of the outcomes, and the number of parties involved.

If there are delays, the source and respondent should be regularly advised that the matter is still under consideration.