

Ministerial Staff

Misconduct Policy and Procedure

July 2022

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1. Introduction

- 1.1. This policy outlines how the employer will institute an investigation of suspected misconduct fairly, impartially, and promptly.
- 1.2. The Premier's Office is committed to applying the principles of procedural fairness and natural justice when managing any issues under this policy. The Premier's Office owns and will oversee all procedures arising under this policy.
- 1.3. All employees are required to ensure that their conduct exemplifies the values of integrity, accountability, and respect and does not have a serious negative impact on working relationships or the working environment.

2. Purpose and application of this policy

- 2.1. This policy applies to all Ministerial Staff (**Ministerial Staff**).
- 2.2. This policy reflects the values of integrity, accountability, and respect with the aim of ensuring that employees are treated fairly and reasonably in the circumstances.
- 2.3. The Premier's Office promotes a positive work environment that aims for all employees to be treated according to the principles of natural justice.
- 2.4. All allegations and investigations will be treated promptly and fairly.
- 2.5. All allegations of misconduct and serious misconduct will be treated on a case-by-case basis.

3. Which behaviour constitutes 'misconduct'

- 3.1. The following are actions and conduct that may constitute misconduct or serious misconduct:
 - (a) corrupt conduct and or other conduct including mismanagement of public resources or conduct that causes a substantial OHS risk
 - (b) a contravention, without reasonable excuse, of a lawful and reasonable direction given to the Ministerial Staffer by a person authorised to give that direction
 - (c) contravention of any policy, procedure, guideline or other document applicable to a Ministerial Staffer
 - (d) a Ministerial Staffer making improper use of their position for personal gain
 - (e) a Ministerial Staffer making improper use of information acquired by them by virtue their position to:
 - gain personally or for anyone else
 - financially, or
 - gain other benefits or
 - to cause detriment to the public service or the public sector.

- (f) breach of the Code of Conduct
- (g) corruption
- (h) stealing
- (i) sexual and other forms of harassment
- (j) violence
- (k) criminal offences
- (l) neglect of duty
- (m) breach of trust or confidentiality
- (n) breach of safety procedures
- (o) being under the influence of alcohol or illegal substances
- (p) wilful failure to reveal a conflict of interest
- (q) wilful damage
- (r) wilful or deliberate behaviour by an employee that is inconsistent with the contract of employment
- (s) conduct that causes serious and imminent risk to the health and safety of a person
- (t) conduct that negatively impacts the reputation, integrity or working environment of the Government refusal to carry out a reasonable and lawful instruction consistent with the employee's contract of work.

Note: This list is not exhaustive and will depend on the specific circumstances

3.2. Misconduct may result in immediate termination of employment.

4. Allegations

Principles of Natural Justice

4.1. The following principles of natural justice underpin this policy:

- (a) Decision makers must act fairly
- (b) A person should not judge in their own case
- (c) A person should be informed of the alleged case against them, as soon as it is practicable
- (d) Persons about whom adverse findings may be made should have an opportunity to put their case
- (e) Relevant information should be considered before a decision is made
- (f) All persons should be informed of the reasons, or provided a summary of the reasons, for a decision that affects them.

Procedural fairness

- 4.2. The process for managing Ministerial Staff misconduct should be consistent with the principles of procedural fairness.
- 4.3. The Premier's Office, including the General Counsel, or Ministerial Office will:
 - (a) advise the staffer of the purpose of any meetings; and
 - (b) provide the staffer with a copy of the process to be followed; and
 - (c) provide a reasonable opportunity for the staffer to seek advice from the Union or a representative of their choice at any stage of the misconduct process; and
 - (d) allow the staffer a reasonable opportunity to provide details of any mitigating circumstances.
- 4.4. The General Counsel must consult with the Premier's Chief of Staff and take into consideration any reasonable explanation of any failure by the staffer to participate in the process.

Making an allegation of misconduct

- 4.5. Allegations of misconduct may arise through direct observation of possible misconduct by managers, a formal complaint made against the employee, or through information provided by other people, including other employees, stakeholders or public servants.
- 4.6. The following principles will underpin all handling of allegations of misconduct by the Premier's Office:
 - (a) Allegations or incidents of misconduct will be given due consideration and treated confidentially.
 - (b) All instances and allegations of misconduct will be assessed and appropriate investigations and/or management responses initiated.
 - (c) Not all allegations and instances of misconduct will result in an investigation or in a sanction for the employee, and each will be assessed on a case-by-case basis.
 - (d) Where appropriate impartial and external third parties can be engaged to conduct investigations and make recommendations.
 - (e) All allegations and instances of misconduct will be treated with procedural fairness and result in appropriate outcomes that are aligned with the circumstances and severity.
- 4.7. To make a formal allegation of misconduct against another person, the details of the allegation must be put in writing in accordance with the Ministerial Staff Complaint Resolution Policy and Procedure.

5. Misconduct Procedure and steps

Initial assessment

- 5.1. All allegations will be initially assessed to determine the most appropriate course of action. When allegations of misconduct and serious misconduct have been raised, all employees involved in the process can expect to be treated with integrity and their allegations to be managed sensitively.
- 5.2. Where employee misconduct is alleged, the relevant manager with assistance from the General Counsel will:
 - (a) make an initial assessment by evaluating the evidence, facts and determining if there are any witnesses of the alleged misconduct before commencing a formal process
 - (b) determine if an investigation is required or if the matter can be managed informally
 - (c) determine if the staff member needs to be directed to perform alternative duties or work at an alternative place of work or be suspended with pay.

Suspension from duty

- 5.3. If it is determined that a staff member should be suspended from duty while allegations of misconduct are being reviewed and/or investigated the relevant manager with assistance from the General Counsel will:
 - (a) direct the Employee not to speak to other Employees of the Employer or other persons about the matter or not to visit certain places of work;
 - (b) reasonably direct the Employee to undertake alternate duties and/or work from home or a different location; and/or
 - (c) suspend the Employee with pay.

Advising the Employee

- 5.4. As soon as practicable after an allegation of misconduct has been made and the Premier's Chief of Staff and General Counsel have determined that an investigation is required, the Premier's Office will advise the staff member of the alleged misconduct in writing (letter of allegation).
- 5.5. The written advice will contain the allegation/s of misconduct made about the staff member. Relevant information may be withheld where it is necessary to protect the personal privacy or welfare of a person or to maintain confidentiality of sensitive or secret information.
- 5.6. In the event that a staff member undergoing a Misconduct Process admits to the alleged misconduct, or in the event that the Chief of Staff determines on the material available that a person has engaged in serious misconduct, the Premier's Office may:
 - (a) determine that further investigation is not required (for example to investigate partial admissions, mitigating circumstances or other relevant issues); or

- (b) proceed immediately to the determination of the misconduct by advising the Employee of the proposed discipline outcome and giving the Employee a reasonable opportunity to respond.

Investigation

- 5.7. Any person against whom adverse findings may be made will be given an opportunity to respond to allegations and to participate in an investigation (if one is conducted). If an employee decides not to participate, an investigation may be conducted without their input and a decision will be made accordingly.
- 5.8. Depending on the seriousness or sensitive nature of the investigation, an external party may be engaged to undertake the investigation.
- 5.9. Where an investigation is required, the Employer will appoint a person to conduct an investigation into the alleged misconduct. The appointed person must not have any prior personal involvement in the matter that may compromise their actual or perceived impartiality. The appointed person may be the General Counsel in the Premier's Office.
- 5.10. The Employer will provide the Employee with a reasonable opportunity to speak to the investigator if the Employee wishes to do so.
- 5.11. The investigation may include:
 - (a) collecting any relevant materials; and
 - (b) speaking with the Employee; and
 - (c) speaking with any relevant witnesses; and
 - (d) providing the Employee with specific particulars to allow the Employee to properly respond to the alleged misconduct; and
 - (e) seeking an explanation from the Employee; and
 - (f) investigating any explanation made by the Employee for the purposes of verifying the explanation so far as possible, necessary and appropriate.
- 5.12. In relation to each allegation of misconduct that is investigated, the investigator will make findings as to whether:
 - (a) the allegation is substantiated; or
 - (b) the allegation is not substantiated.
- 5.13. Where the investigator makes a finding that an allegation is not substantiated, which is accepted by the Employer, the misconduct process will conclude in relation to any such allegation and the Employee will be informed accordingly.
- 5.14. Where the investigator makes a finding that the allegation is substantiated, the Employer will consider this information and propose a discipline outcome (see Clause 6).

Opportunity for response by Employee

- 5.15. As soon as practicable after the investigator has made a finding that any allegation of misconduct is substantiated, or after a determination under clause 5.6(b) above, the Employee will be provided with the findings of the investigator and/or a summary of those findings, or a summary of the determination under clause 5.6(b) above, and the proposed

discipline outcome. The Employee will be provided with sufficient time and information to allow them a reasonable ability to respond to the findings/determination and the proposed discipline outcome.

- 5.16. Any response must be provided within the above reasonable time.

6. Disciplinary Action and Outcome

Disciplinary Action

- 6.1. Any allegations that are substantiated may result in disciplinary action.

- 6.2. The Employer will consider:

- (a) the findings of the investigator (if any)
- (b) any response of the Employee (including any admission of misconduct)
- (c) any recommendations as to the appropriate disciplinary outcome
- (d) any prior disciplinary outcomes

and then determine the discipline outcome that is to apply to the Employee. The discipline outcome must not be disproportionate to the seriousness of the matter.

- 6.3. The possible discipline outcomes are:

- (a) no action
- (b) performance management
- (c) formal counselling
- (d) formal warning
- (e) final warning
- (f) first and final warning
- (g) assignment of the Employee with or without their agreement to a role at a classification level or Value Range lower than the Employee's current classification level or Value Range
- (h) where no suitable positions are available at the Employee's existing work location, the disciplinary outcome may also include a transfer of the Employee with or without their agreement to a different work location
- (i) transfer of the Employee with or without their agreement to a different work location at the Employee's current classification level
- (j) termination of employment.

7. Support for employees and managers

- 7.1. A range of options are available to provide support. Ministerial Staff are encouraged to contact the General Counsel or their delegate as the primary contact.

Employee Assistance Program (EAP)

- 7.2. All Ministerial Staff (and their immediate family) have access to the EAP, which provides for a limited number of counselling sessions at no cost to the employee and can be provided over the phone or face-to-face.
- 7.3. Managers and supervisors can access Manager Assist through the EAP, to help with workplace issues.
- 7.4. The EAP provider is Converge International and can be contacted on 1300 687 327.

External support

- 7.5. Complaints of discrimination and harassment can also be lodged with the Victorian Equal Opportunity and Human Rights Commission, the Victorian Civil and Administrative Tribunal and in some circumstances, WorkSafe Victoria, the Fair Work Commission, or the Australian Human Rights Commission.
- 7.6. If the complaint appears to be a criminal offence, the complainant and/or the Premier's Office may report the matter to Victoria Police.
- 7.7. Ministerial Staff may also wish to access other support services, such as The Centres Against Sexual Assault.
- 7.8. Ministerial Staff may also wish to contact their union for representation and support.

8. Expected standards of behaviour

- 8.1. Ministerial Staff are expected to observe the following minimum standards of behaviour, including:
 - (a) being polite and courteous to others
 - (b) being respectful of the differences between people and their circumstances
 - (c) compliance with the Ministerial Staff Code of Conduct and other applicable policies
 - (d) ensuring they do not engage in harassment, discrimination, workplace bullying or occupational violence. This standard of behaviour is expected of Ministerial Staff whether they are dealing with colleagues, supervisors, managers, other stakeholders or any other individual in connection with their duties
 - (e) ensuring they do not assist or encourage others in, or in connection with, the workplace to engage in harassment, discrimination, workplace bullying or occupational violence
 - (f) reporting any harassment, discrimination, workplace bullying or occupational violence, whether experienced personally or witnessed against others in, or in connection with, the workplace in line with the Ministerial Staff Complaint Resolution Policy and Procedure
 - (g) participating in any complaint resolution process (where requested to do so), which may include an investigation, undertaken in accordance with the

Ministerial Staff Complaint Resolution Policy and Procedure or otherwise taken in response to, or connection with, allegations of harassment, discrimination, workplace bullying or occupational violence

- (h) keeping information confidential, or otherwise treating information as directed, arising from any complaint resolution process undertaken in relation to allegations of harassment, discrimination, workplace bullying or occupational violence.

8.2. To avoid doubt, failing to meet the minimum standards of behaviour set out above may constitute misconduct.

9. Further information

Related legislative and regulatory instruments

- Occupational Health & Safety Act 2004 (Vic)
- Ministerial Staff Collective Agreement (Vic) 2019
- Ministerial Staff Code of Conduct
- Ministerial Staff Complaint Resolution Policy and Procedure
- Ministerial Staff Workplace Bullying and Occupational Violence Prevention Policy
- Ministerial Staff Prevention of Sexual Harassment in the Workplace Policy

10. Policy management details

Title and version number	Ministerial Staff Misconduct Policy and Procedure
Date of approval	6 July 2022
Effective date	15 July 2022

For further information, or if you have any queries, please contact your Minister’s Chief of Staff or the General Counsel.

Ministerial Staff are required to comply with the policies and procedures applicable to Ministerial Staff. Failure to do so may result in disciplinary action including termination.