

Dealing with misconduct allegations policy

1 Purpose

- (1) As a public sector agency – and especially as an integrity agency – the NSW Ombudsman (the office) is committed to the highest standards of lawful, ethical, professional and honest conduct.
- (2) Any alleged misconduct involving officers of the NSW Ombudsman will be treated seriously.
- (3) This policy outlines the office’s approach to managing allegations of misconduct. It also outlines your responsibilities to support the office in the process of dealing with misconduct allegations.

2 Scope

- (4) This policy applies to ‘officers’ of the NSW Ombudsman, including:
 - a. ongoing, temporary and casual employees, and employees on secondment
 - b. statutory officers appointed under the *Ombudsman Act 1974* (NSW)
 - c. contractors and agency staff engaged to perform work for us or on our behalf
 - d. students, interns and volunteers on work experience or engaged in any other capacity, and
 - e. consultants and other people with whom we have a business relationship, where the engagement requires that they follow our policies.
- (5) This policy covers conduct that occurs while an officer is working for the NSW Ombudsman. This includes when physically on office premises, working from home, and when undertaking work for the office in the community.
- (6) It can also cover conduct that occurs outside of working hours, or when an officer is not working or carrying out duties for the NSW Ombudsman. It can also cover conduct that occurred before a person was employed by the NSW Ombudsman.¹
- (7) Similarly, this policy applies regardless of whether an officer is still employed by the NSW Ombudsman when the misconduct allegation is made or is being managed by the office.

3 Definition

- (8) Broadly, ‘misconduct’ involves deliberate, improper, or unacceptable behaviour that breaches rules, ethics, or laws. However, there is no exhaustive list of the actions or behaviour that can be classified as misconduct.
- (9) Some conduct is so serious and detrimental that it will almost always constitute misconduct. In other cases, whether actions or behaviour will be deemed misconduct will depend on the particular facts and circumstances.
- (10) For example, misconduct can include:

¹ *Government Sector Employment Act 2013*, section 69.

- a. breach of the office's [Code of Conduct](#) or [NSW Public Sector Commission Code of Conduct](#) or other office policy
- b. refusing to comply with a lawful and reasonable direction from the Ombudsman or a delegate, after having been cautioned that the failure to comply may constitute misconduct
- c. making of vexatious, false or misleading allegations against another officer
- d. wilful breach of the privacy and non-disclosure obligations imposed on officers under the [Ombudsman Act 1974 \(NSW\)](#) or other legislation
- e. 'serious wrongdoing' that could be the subject of a public interest disclosure under the [Public Interest Disclosures Act 2022 \(NSW\)](#) (PID Act). This includes corrupt conduct; serious maladministration; contravention of privacy, government information, or local government pecuniary interest; or a serious and substantial waste of public money.²
- f. 'corrupt conduct' as defined in the [Independent Commission Against Corruption Act 1988 \(NSW\)](#)³
- g. 'reportable conduct' under the [Children's Guardian Act 2019 \(NSW\)](#). This includes a sexual offence; sexual misconduct; ill-treatment, neglect or assault of a child; behaviour that causes significant emotional or psychological harm to a child; and various offences under the *Crimes Act 1900* (NSW).⁴

(11) Similarly, under the [Government Sector Employment Act 2013 \(NSW\)](#) (GSE Act), misconduct can include:

- a. a conviction or finding of guilt for an offence punishable by 12 months imprisonment or more⁵
- b. breach of the GSE Act or an instrument made under the GSE Act
- c. taking 'detrimental action' against another officer, substantially in reprisal for disclosing or proposing to disclose alleged misconduct. This includes intimidation, bullying or harassment; injury; damage to reputation or personal property; unfavourable treatment affecting the officer's career, profession or employment; discrimination, prejudice or adverse treatment outside of an employment context; and disciplinary proceedings or disciplinary action.⁶
- d. a 'detrimental action offence' under the PID Act, meaning detrimental action taken against another officer substantially in reprisal for making or intending to make a public interest disclosure.⁷

4 Duties and responsibilities

(12) The Ombudsman is responsible for dealing with misconduct allegations, including making findings and other relevant decisions.⁸ However, they can delegate these functions to another

² *Public Interest Disclosures Act 2022*, section 13.

³ *Independent Commission Against Corruption Act 1988*, section 7–9.

⁴ *Children's Guardian Act 2019*, section 20.

⁵ Defined as a 'serious offence': *Government Sector Employment Act 2013*, section 69. This includes an offence committed outside NSW that would be punishable by imprisonment for 12 months or more if it had been committed in NSW.

⁶ *Public Interest Disclosures Act 2022*, section 32.

⁷ *Public Interest Disclosures Act 2022*, section 33.

⁸ *Government Sector Employment Act 2013*, sections 31, 69(2).

statutory officer or member of the Executive Team.⁹ An external investigator may also be engaged to assist with managing aspects of the process, at the discretion of the Ombudsman or delegate.¹⁰

(13) The Ombudsman or a delegate will manage misconduct allegations:

- a. without delay and as promptly as the circumstances allow
- b. as confidentially as is reasonably practicable
- c. with regard for any impact on the officers involved, and the continued operation of the office
- d. in accordance with the principles of procedural fairness.

(14) If you are the subject of a misconduct allegation (the respondent), you can expect:

- a. to be informed of the allegations against you
- b. to be given adequate opportunity to respond to the allegations
- c. the Ombudsman or a delegate will remain impartial, and that any decisions made will be free from actual or apparent bias
- d. that findings will be based on evidence that is relevant and logically capable of supporting the findings made
- e. to be given adequate opportunity to make submissions regarding any proposed action to be taken against you.

(15) Similarly, if you are the officer making an allegation (the complainant) or the respondent to the allegation, you can expect:

- a. to be advised of your right to be assisted by a support person
- b. that any interviews scheduled or requests for written statements will reasonably accommodate your circumstances.

(16) Whether you are the complainant, respondent, or an officer who holds knowledge or information that may be relevant to an allegation, you are responsible for:

- a. supporting the Ombudsman or a delegate with their inquiries. This includes providing documents, participating in interviews, or producing a written statement or response to questions.
- b. following and maintaining privacy and confidentiality
- c. following any other lawful and reasonable direction from the Ombudsman or a delegate as part of dealing with the misconduct allegation.

⁹ *Government Sector Employment Act 2013*, section 32.

¹⁰ Though the Ombudsman may engage an external investigator or other third party, or another officer, to assist with managing aspects of the process, the Ombudsman or a delegate will remain responsible for making findings and other relevant decisions relating to a misconduct allegation.

5 Consequences of breach

(17) A breach of this policy – including a failure to respond honestly or comply with the office’s procedure for managing a misconduct allegation – may itself amount to misconduct and may result in disciplinary action being taken against you.

6 Related documents

(18) This policy forms one part of the office’s program to manage bullying, grievance and misconduct in the workplace. It should be read along with associated documents including:

- a. Dealing with misconduct allegations procedure
- b. Grievance Management Policy
- c. Bullying Harassment and Discrimination Policy and procedure



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