

## Practices, Procedures and Standards No. 5

# REGISTER FOR TASMANIAN STATE SERVICE CODE OF CONDUCT BREACHES RESULTING IN OR THAT WOULD HAVE RESULTED IN TERMINATION

Operative date: 8 July 2022

Pursuant to s 15(1)(b) of the *State Service Act 2000*, I hereby direct that the arrangements and requirements, set out in this Practices, Procedures and Standards document apply.

 8/07/2022

Issued by the Director, State Service Management Office under delegation from the Head of the State Service

Date:

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## 1. Definitions

'The Act' means the *State Service Act 2000*.

## 2. Introduction and Purpose

- 2.1 This Practice, Procedure and Standard (PPS) provides for the creation of a register to record details where there has been a determination by a Head of Agency under Employment Direction No. 5 *Procedures for the Investigation and Determination of Whether an Employee has Breached the Code of Conduct* (ED5) that a breach of the Code of Conduct has occurred resulting in termination of employment in accordance with s44 *State Service Act* or a breach of the code of conduct where a sanction of termination would have been applied but for the employee leaving their employment prior to notification of the breach or notification of the breach and prior to any sanction being applied.
- 2.2 The purpose of this PPS is to outline the process for the inclusion of employee and former employee details on the register for Tasmanian State Service Code of Conduct breaches resulting in or that would have resulted in termination (the register).
- 2.3 This PPS also outlines the employment screening requirements to be undertaken by human resource/recruitment specialists prior to an offer of employment being made to a successful applicant.

## 3. Application

- 3.1 This PPS, issued under s 15(1)(b) of the *State Service Act 2000* (the Act), applies to all Tasmanian State Service agencies defined under Schedule 1 of the *State Service Act 2000*.
- 3.2 The register will record terminations or terminations that would have been applied as a sanction that have occurred from 1 July 2017.

## 4. Roles and Responsibilities

- 4.1 Agencies will manage communication with employees who are subject to an ED5 investigation including advising an employee of their potential inclusion on the register at the time a determination of a breach of the Code is made and potential sanctions are being considered.
- 4.2 Agencies are responsible for notifying the Director SSMO (or delegate) of the termination of an employee or where the sanction of termination would have been applied had the employee not left their employment, in accordance with this PPS.
- 4.3 The Director, SSMO (or delegate) is responsible for ensuring the register is updated in accordance with the ED5 notification of sanction of termination provided by agencies.

- 4.4 Agencies will be required to provide some additional employee information for inclusion on the register to enable a reasonable assessment of an individual during the employment screening process.
- 4.5 Agencies are responsible for ensuring employment screening of the register is undertaken in accordance with this PPS.

## 5. Entry on the Register

### 5.1 Consultation

- 5.1.1 In accordance with the limitation of delegation of ministerial powers relating to termination under the Act a Head of Agency is required to formally consult with the Director State Service Management Office (DSSMO) where the potential sanction of termination of employment is being considered following a determination of a breach of the Code of Conduct.
- 5.1.2 Following consultation with the DSSMO where a Head of Agency proceeds to termination a notification of the sanction of termination is to be provided to the DSSMO following the expiration of the 21 day time period for lodgement of an application for a hearing in respect of an industrial dispute in relation to termination of employment provided for in the *Industrial Relations Act 1984*.
- 5.1.3 Where an application for a hearing in respect of an industrial dispute in relation to termination of employment is lodged by a terminated employee the terminated employee's details will not be entered on the register if their application is successful.
- 5.1.4 Where an employee leaves an Agency prior to the completion of an ED5 investigation process the Head of Agency is to consider if the investigation should be continued. If the delegate determines to continue the investigation process and finds that a breach of the Code of Conduct occurred and that the sanction that would have applied would have been termination, then the Head of Agency should consult with DSSMO in the same way as an employee who is terminated in accordance with s44 of the Act. Procedural fairness still needs to be afforded to the former employee.

### 5.2 Register

- 5.2.1 SSMO will keep a register of employees or former employees who have been terminated or who would have been terminated but for leaving their employment prior to the completion of an ED5 investigation and procedure. The register will record the following details:
- Employee/former employee's full name
  - Date of birth
  - Last known address
  - Last known contact number
  - Agency at the time of termination
  - Position at the time of termination
  - Date of termination
  - Section/s of the Code breached

### 5.3 Notification of Entry on Register

- 5.3.1 Agencies are to advise employees at the time a determination of a breach of the Code of Conduct is made and potential sanctions are being considered that a potential outcome of the process may be termination of employment and the inclusion of their details on the register including the time period the information will remain on the register.

#### 5.4 Record Retention Period

- 5.4.1 Records will remain on the register for 70 years after which time they will be disposed of in accordance with the relevant disposal guidelines.

### 6. Register Check

- 6.1 Prior to an offer of employment being made to a successful applicant their name is to be cross referenced with the register by the employing agency.
- 6.2 Where a match appears between a successful applicant and a name on the register the matter is to be referred to the HR Manager/Director of the agency for discussion with the DSSMO(or delegate).
- 6.3 Where a match has occurred the DSSMO(or delegate) is to provide further details to the HR Manager/Director, to enable an assessment of the relevance of the prior disciplinary action to the new role.
- 6.4 When considering the relevance of the prior breach of the Code of Conduct and the potential risk of re-employment consideration may be given but not limited to:
- 6.4.1 The nature of the breach of the Code of Conduct
  - 6.4.2 The relevance of the breach of the Code of Conduct to the proposed position
  - 6.4.3 Any mitigating factors or additional information provided by the applicant
  - 6.4.4 The period of time since the breach of the Code of Conduct
  - 6.4.5 Any implications for child safety and that any risks to children is a paramount consideration in decision making regarding future employment with an agency.
- 6.5 Where a prior termination or terminations that would have been applied as a sanction may be relevant to the appointment of a successful applicant the matter is to be discussed with the successful applicant and an opportunity for them to provide additional explanatory information is to be provided.
- 6.6 The matter is to be referred to the Head of Agency for a determination on whether the appointment of the successful applicant is to proceed.
- 6.7 Where a prior termination or terminations that would have been applied as a sanction is not considered relevant to the appointment of the successful applicant the appointment can proceed.