



FOREWORD

All employees of the Samoa Public Service (SPS) are expected to comply with the Code of Conduct and uphold the values and principles of the Public Service. If an employee acts or behaves in a way contrary to the Code of Conduct they have committed a breach of the Code of Conduct.

This Manual is designed to assist Ministries in managing breaches of the Code of Conduct in the SPS. In particular, it aims to provide Human Resource Coordinators (HRCs) with the information they require to assist with:

- ❑ Advice to their Chief Executive Officers (CEOs) generally on the policy and procedure for managing breaches of the Code of Conduct and the related responsibilities;
- ❑ Advice to the relevant Line Manager regarding their specific role in the procedure; and
- ❑ Advice to officers who have been alleged to have breached the Code of Conduct on their rights and responsibilities in the procedure.

Section 19 of the *Public Service Act 2004* outlines the Code of Conduct and *Part XA of the Public Service Regulations 1979* provides an outline of the procedure for managing breaches of the Code of Conduct.

The principles underpinning the procedure for managing breaches of the Code of Conduct are;

- ❑ All Chief Executive Officers and employees of the SPS must comply with the SPS Code of Conduct and uphold the SPS Values;
- ❑ Taking action in cases of a suspected breach of the Code of Conduct is primarily aimed at protecting the integrity of the SPS and thereby maintaining public confidence in public administration; and
- ❑ The procedure for the management of a breach of the Code of Conduct are designed to be fair and reasonable, striking a balance between the needs of officers, the needs of the Ministry and the public interest, while at the same time complying with relevant legal requirements.

This manual contains the following elements:

- Employment Instruction – B - Managing Breaches of the Code of Conduct;
- Legal Principles that must be adhered to during the procedure;
- Detailed outline of the Code of Conduct and How to Determine a Breach;
- Detailed outline of the roles, responsibilities and accountabilities of the CEO, Charging Officer and Investigating Officer;
- Related Information including the issue of poor performance; and
- Template Documents that must be used as outlined in the Procedure.

The management of such cases will quite often prove to be difficult and stressful and should be handled with sensitivity and confidentiality.

**Chairman
Public Service Commission**



TABLE OF CONTENTS

GLOSSARY OF TERMS.....	5
PART 1: EMPLOYMENT INSTRUCTION – B- MANAGING BREACHES OF THE CODE OF CONDUCT.....	6
PROCEDURE	7
STAGE ONE	7
1. Report of alleged breach of the Code of Conduct.....	7
2. Is the alleged misconduct a potential breach of the Code of Conduct?.....	7
STAGE TWO	8
3. CEO appoints Charging Officer	8
4. CEO considers Temporary Assignment or Suspension of the Officer	8
5. Charging Officer undertakes Preliminary Consideration of the Matter	9
6. Charging Officer prepares outcome of Preliminary Consideration	9
7. Officer Charged	10
8. CEO considers Temporary Assignment or Suspension of the Charged Officer	11
STAGE THREE	11
9. CEO appoints an Investigating Officer (IO)	11
10. Investigation by Investigating Officer	12
11. IO submits report to CEO.....	13
STAGE FOUR	13
12. CEO considers the Report and supporting Materials and prepares notice of Determination	13
13. Recovery of Loss.....	14
14. Implementation of Penalty	14
PART 2: IMPORTANT LEGAL PRINCIPLES RELEVANT TO MANAGING BREACHES OF THE CODE OF CONDUCT	15
1. PROCEDURAL FAIRNESS.....	15
PROCEDURAL FAIRNESS AND MANAGING BREACHES OF THE CODE OF CONDUCT	15
I. THE HEARING RULE	15
II. THE BIAS RULE	16
2. GENERAL PRINCIPLES RELATING TO THE PROPER EXERCISE OF STATUTORY POWERS AND FUNCTIONS.....	16
I. REASONABLENESS	16
II. RELEVANCE	17
III. IMPROPER PURPOSE	17
3. STANDARD OF PROOF REQUIRED	17
4. PRESUMPTION OF INNOCENCE.....	17
5. CONFLICT OF INTEREST	18
PART 3: THE CODE OF CONDUCT AND HOW TO DETERMINE A BREACH HAS OCCURED.....	19
THE SAMOA PUBLIC SERVICE CODE OF CONDUCT	19
HOW TO DETERMINE A BREACH HAS OCCURRED	22
PART 4: ROLES, RESPONSIBILITIES & ACCOUNTABILITIES OF CEO, CHARGING OFFICER AND INVESTIGATING OFFICER.....	26
CHIEF EXECUTIVE OFFICER	26
CHARGING OFFICER	31
INVESTIGATING OFFICER (IO)	34
PART 5: RELATED INFORMATION.....	36
5.1. CRIMINAL PROCEEDINGS:.....	36
5.2. RESIGNATION DURING MISCONDUCT INVESTIGATIONS.....	36
5.3. LEGAL REPRESENTATION	37
5.4. FURTHER INFORMATION:	37
PART 6: APPENDICIES	38
APPENDIX A: WARRANT OF APPOINTMENT OF CHARGING OFFICER.....	38
APPENDIX B: NOTICE OF TEMPORARY ASSIGNMENT / SUSPENSION HEARING	39



APPENDIX C: TEMPORARY ASSIGNMENT / SUSPENSION CHECKLIST.....	40
APPENDIX D: NOTICE OF TEMPORARY ASSIGNMENT	41
APPENDIX E: NOTICE OF SUSPENSION	43
APPENDIX F: NOTICE OF REVOCATION OF TEMPORARY ASSIGNMENT	45
APPENDIX G: NOTICE OF REVOCATION OF SUSPENSION	46
APPENDIX H: NOTICE OF NO FURTHER ACTION FROM THE CHARGING OFFICER.....	47
APPENDIX I: NOTICE OF WARNING FROM THE CHARGING OFFICER.....	48
APPENDIX J: CHARGE SHEET	49
APPENDIX K: NOTICE ACCOMPANYING CHARGE(S) (REGULATION 49A NOTICE).....	51
APPENDIX L: PROOF OF CHARGES SERVED	52
APPENDIX M: WARRANT OF APPOINTMENT OF INVESTIGATING OFFICER	53
APPENDIX N: LETTER FOR CEO OF INVESTIGATING OFFICER’S MINISTRY	54
APPENDIX O: REPORT TEMPLATE FOR INVESTIGATING OFFICER TO GIVE CHARGED OFFICER	55
APPENDIX P: NOTICE ACCOMPANYING PRELIMINARY REPORT (REGULATION 49F NOTICE).....	56
APPENDIX Q: FINAL REPORT TEMPLATE FOR INVESTIGATING OFFICER	57
APPENDIX R: NOTICE OF DECISION.....	59
APPENDIX S: NOTICE OF TEMPORARY ASSIGNMENT WHEN CHARGED WITH CRIMINAL OFFENCE	61
APPENDIX T: NOTICE OF SUSPENSION WHEN CHARGED WITH CRIMINAL OFFENCE.....	62
APPENDIX U: NOTICE OF HEARING ONCE CONVICTED BY POLICE.....	63
APPENDIX V: NOTICE OF PENALTY ONCE CONVICTED BY POLICE.....	64
APPENDIX W: NOTICE OF REINSTATEMENT ONCE ACQUITTED BY POLICE	65
REFERENCES:.....	66

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GLOSSARY OF TERMS

Act	Public Service Act 2004
CEO	The Head of Department or a Ministry and includes the Head of a Constitutional Authority.
Charging Officer	An officer or a contract employee appointed for the purposes of subsection 44(1) of the Act.
Charged Officer	An officer who has been served charges under the <i>Public Service Act 2004</i> .
Code of Conduct	The Code of Conduct set out in section 19 of the <i>Public Service Act 2004</i> .
Commission	Public Service Commission
Investigating Officer (IO)	An officer appointed under subsection 44(2) of the <i>Public Service Act 2004</i> to investigate charges.
Officer	An employee who is not: (a) a contract employee; or (b) a temporary employee.
Regulations	The Public Service Regulations 1979 (includes all the Amendments)
SPS	Samoa Public Service as constituted under Article 83 of the Constitution of Independent State of Western Samoa



PART 1: EMPLOYMENT INSTRUCTION – B- MANAGING BREACHES OF THE CODE OF CONDUCT

- 1. TITLE:** MANAGING BREACHES OF THE CODE OF CONDUCT
- 2. SUPERSEDES:** All previous policies and procedures in relation to managing breaches of the Code of Conduct.
- 3. REFERENCES:** Public Service Act 2004, Sections 43 to 48
Public Service Regulations 1979
- 4. EFFECTIVE DATE:** 1 December 2004
- 5. APPLICATION:**
CEOs and Employees as per section 8 of the Public Service Act 2004

This Employment Instruction is **only** applicable to the management of breaches of the Code of Conduct under the Act, which commenced on 1 December 2004. The acts or omission of an officer prior to 1 December 2004 which may constitute a breach of the Code of Conduct must generally be dealt with under the relevant legislation existing at the time of the said act or omission. At the time of writing, the Regulations, which were made under the Public Service Act 1977 (“the 1977 Act”), still apply for the purposes of the Act as if they had been made under the Act. It is intended that a new set of regulations will be made in due course.

For cases where the alleged breach of the Code of Conduct of the officer occurred prior to 1 December 2004, the relevant CEO is advised to contact the Commission and the Office of the Attorney General for further advice on how to proceed.

Poor performance may also be a breach of the Code of Conduct. It is imperative for Ministries to make a determination as to whether or not it would be more appropriate to refer to section 48 of the Act “Dealing with Poor Work Performance”. The relevant CEO is advised to contact the Commission if they require advice on how to proceed.

Purpose

The purpose of this Employment Instruction is to ensure that the management of breaches of the Code of Conduct are fair and effective, striking a balance between the needs of the officers, the needs of the Ministry and the public interest, while at the same time complying with all relevant legal requirements.

It is therefore imperative that those involved in the procedure of managing breaches of the Code of Conduct take all appropriate measures to ensure that they adhere to the legal principles outlined in this Manual. All steps in the procedure below must be strictly adhered to. If compelling reasons exist that may require deviation from this procedure, the Commission should be contacted immediately to determine the approach to be taken. Any



deviation from the procedure could ultimately result in a determination being overturned on appeal.

Definitions

Please refer to Glossary of Terms

Procedure

This section establishes the procedure to be followed in responding to a possible breach of the Code of Conduct by an officer of the SPS and, if necessary, deciding on appropriate disciplinary action. The procedure ensures that officers are accorded procedural fairness and it is the responsibility of those involved to ensure that it is done with integrity and honesty. This procedure is aimed at maintaining optimal standards of conduct and as such should be treated as a remedial rather than as a punitive process.

Documentation: All documents and records relating to this procedure should not be placed on the personnel file of the officer concerned but rather on a separate file which is labelled accordingly. It should be classified as **CONFIDENTIAL**, held in secure storage and accessed on a need-to-know basis only. A file note should be placed on the officer's personnel file indicating the existence of the separate file. If at any stage there is a discontinuation of the procedure the file must still be kept with all records up to that point.

STAGE ONE

1. Report of alleged breach of the Code of Conduct

When allegations of misconduct are reported that **may** constitute a breach of the Code of Conduct they should be reviewed by the CEO (with assistance from the Manager or the HRC) while referring to the:

- Code of Conduct (Section 19 of the Act)
- Values of the Public Service (Section 17 of the Act)
- Additional Conduct Requirements (Part X of the Regulations)

More details on the **Role of the CEO** are set out in Part 4 and details on the Code of Conduct are set out in Part 3.

2. Is the alleged misconduct a potential breach of the Code of Conduct?

The CEO is required to determine whether or not the alleged misconduct is potentially a breach of the Code of Conduct.

- **No:** - the CEO should consider whether a counselling session is necessary. If the CEO feels that the issue is one of poor performance they should refer to section 48 of the Act "Dealing with Poor Work Performance". If they opt for this path they need to ensure that the officer is aware that it is not part of the procedure for managing breaches of the Code of Conduct.
- **Yes:** - the CEO needs to appoint a Charging Officer (see Stage 2). The CEO also needs to consider whether or not the breach is a **criminal offence** and if so, report it to the Police (please refer to 5.1 Criminal Proceedings). If the CEO requires assistance with this matter they should seek the advice of the Commission or the Attorney General.

Please refer to Part 3 (The Code of Conduct and How to Determine a Breach of the Code of Conduct) for assistance with this question.



STAGE TWO

3. CEO appoints Charging Officer

As per subsection 44(1) of the Act the CEO should appoint a Charging Officer from within their Ministry to consider the allegation(s).

The CEO needs to complete a *Warrant of Appointment of Charging Officer* (Appendix A). A copy of the Warrant must be sent to the Commission.

In selecting and appointing the Charging Officer, the CEO **must** ensure the Charging Officer is:

- an officer or contract employee (ie. Not an employee on probation, a Temporary Employee or a Wage Worker);
- from the same Ministry as the CEO and the officer who has allegedly breached the Code of Conduct;
- an officer or contract employee who has attended a training session on how to be a Charging Officer; and
- a person who is and is seen to be independent and impartial.

Please Note: - the final point is the most important because if the Charging Officer is deemed not to be independent or impartial, it could be grounds for an appeal against **any** decision made throughout the whole procedure.

More details on the **Role of the Charging Officer** are set out in Part 4.

Template:

Appendix A: Warrant of Appointment of Charging Officer

4. CEO considers Temporary Assignment or Suspension of the Officer

Pursuant to paragraph 47(1)(a) of the Act at this stage of the procedure a CEO may decide to either **suspend** or **assign the officer temporarily to other duties** within the Ministry.

The CEO **must** give the officer the opportunity to be heard on the issue of suspension or temporary assignment. This is done by completing the *Notice of Temporary Assignment / Suspension Hearing* (Appendix B) and providing the Notice to the officer in question. The officer's response can either be in writing or in person and must be done within 7 days from receipt of the Notice and provided to the CEO. The officer must be clear that their response is on the issue of suspension or temporary assignment to other duties.

In undertaking this decision the CEO needs to consider a number of questions in the Temporary Assignment / Suspension Checklist (Appendix C).

The date of the suspension or temporary assignment to other duties is determined by the CEO. If the officer is suspended it is **with pay**. A *Notice of Temporary Assignment* (Appendix D) or *Notice of Suspension* (Appendix E) **must** be issued to the officer and copied to the Commission. It should clearly state the:

- Reasons for the temporary assignment or suspension;
- Conditions of the temporary assignment or suspension; and
- Any other relevant matters.

The suspension or temporary assignment must be revoked if the officer is **not charged** under subsection 44(2) of the Act within **21 days** of the suspension becoming effective (*Notice of Revocation of Temporary Assignment*, Appendix F and *Notice of Revocation of Suspension*,



Appendix G). If they are charged the suspension or temporary assignment will remain in place pending the determination of the charge(s).

Templates:

Appendix B: Notice of Temporary Assignment / Suspension Hearing

Appendix C: Temporary Assignment / Suspension Checklist

Appendix D: Notice of Temporary Assignment

Appendix E: Notice of Suspension

Appendix F: Notice of Revocation of Temporary Assignment

Appendix G: Notice of Revocation of Suspension

5. Charging Officer undertakes Preliminary Consideration of the Matter

The Charging Officer assesses the evidence available and determines whether or not sufficient evidence exists to lay charge(s) against the relevant officer. This decision is for the Charging Officer alone to make. Please refer to Part 3 (How to determine a Breach) and Part 4 (Role of the Charging Officer) for assistance.

This part must be carried out as quickly and efficiently as is practicable to determine which of the following three options is the most appropriate.

Option 1: No Further Action

This is the option the Charging Officer should select if there is insufficient evidence or they have determined that the allegations are unfounded.

Option 2: Provide the Officer with a Warning

This is the option the Charging Officer should select if there is sufficient evidence to substantiate the charge(s) but the actual misconduct does not warrant a charge(s) being laid against the officer.

Option 3: Charge the Officer

This is the option the Charging Officer should select if there is sufficient evidence to substantiate the charge(s) and the misconduct of the officer concerned warrant charge(s) being laid.

6. Charging Officer prepares outcome of Preliminary Consideration

The Charging Officer prepares the outcome of the Preliminary Consideration as outlined below.

Option 1: No Further Action

A Notice (Appendix H) should be provided by the Charging Officer to the officer concerned stating that **no further action** will be taken. **A copy should be provided to the CEO and the Commission.**

Option 2: Provide the Officer with a Warning

A written warning (Appendix I) should be issued by the Charging Officer to the concerned officer and will **end the procedure**. **A copy should be provided to the CEO and the Commission.**

If it is deemed necessary by the CEO, a performance management intervention may be implemented for the officer concerned at this stage. If this is required, the CEO **must** ensure that the officer is aware that it is not part of the formal procedure for Managing Breaches of the Code of Conduct.

Option 3: Charge the Officer



Formal charge(s) must be prepared in writing and served on the officer and he / she must sign the Proof of Charges Served (Appendix M). Charges are to be clearly stated on the Charge Sheet (Appendix J).

If the officer has committed an act which may potentially be a breach of multiple subsections of the Code of Conduct the Charging Officer must select the most appropriate subsection to charge the officer under. One act is equivalent to one charge but an officer can receive multiple charges for the same act that occurred at a different time or on a different day.

The charge(s) need to be as detailed as possible given that they provide the sole terms of reference for the investigation. **If there are any gaps in the information contained in the charge(s) it could ultimately jeopardise the whole procedure.**

Please Note: If the Charging Officer has taken Option 1 or Option 2 and the officer has been suspended or temporarily assigned to other duties they must be reinstated. The reinstatement will occur by issuing a Notice of Revocation of Temporary Assignment (Appendix F) or Notice of Revocation of Suspension (Appendix G) with a copy to the CEO and the Commission.

Templates:

Appendix F: Notice of Revocation of Temporary Assignment
Appendix G: Notice of Revocation of Suspension
Appendix H: Notice of No Further Action from the Charging Officer
Appendix I: Notice of Warning from the Charging Officer
Appendix J: Charge Sheet

7. Officer Charged

Once the charge(s) are completed they are served on the Charged Officer in person. The Charged Officer must receive the following documentation:

- Charge Sheet (Appendix J);
- Notice Accompanying Charges – which provides the Charged Officer with details on how to respond to the charge(s) (Appendix K);
- Proof of Charges Served – the Charging Officer should ensure that the Charged Officer signs this when the charge(s) are served (Appendix L); and
- Copies of any written material forming the basis for the charge(s).

The Charged Officer has **7 days** to respond to the charge(s). The Charged Officer may respond in the following ways:

1. **Admits** the charge(s) and makes a written submission to the relevant CEO on the issue of penalty; OR
2. **Denies** the charge(s) and makes a written submission to the relevant CEO by way of a response; OR
3. **Denies** the charge(s) in a written submission and says nothing further.

Please Note: Under regulation 49D of the Regulations, a Charged Officer has the right to remain **Silent** subject to Regulation 47B. If they remain silent with respect to the charge(s) it is deemed that they have admitted the truth of the charge(s) as per regulation 47B.

A copy of the above listed documentation must be supplied to the Commission.

Templates:

Appendix J: Charge Sheet
Appendix K: Notice Accompanying Charges
Appendix L: Proof of Charges Served



8. CEO considers Temporary Assignment or Suspension of the Charged Officer

Note: If the CEO has already taken action under Step 4 move to Stage Three

Pursuant to subsection 47(b) of the *Public Service Act 2004* at this stage of the procedure a CEO can decide to either **suspend** or **assign the Charged Officer temporarily to other duties** within the Ministry.

The CEO **must** give the officer the opportunity to be heard on the issue of suspension or temporary assignment. This is done by completing the *Notice of Temporary Assignment / Suspension Hearing* (Appendix B) and providing the Notice to the officer in question. The officer's response can either be in writing or in person and must be done within 7 days from receipt of the Notice and provided to the CEO. The officer must be clear that their response is on the issue of suspension or temporary assignment to other duties.

In undertaking this decision the CEO needs to consider a number of questions in the Temporary Assignment / Suspension Checklist (Appendix C).

The date of the suspension or temporary assignment to other duties is determined by the CEO. If the officer is suspended it is **with pay**. A *Notice of Temporary Assignment* (Appendix D) or *Notice of Suspension* (Appendix E) **must** be issued to the officer and copied to the Commission. It should clearly state the:

- Reasons for the temporary assignment or suspension;
- Conditions of the temporary assignment or suspension; and
- Any other relevant matters.

The suspension or temporary assignment will remain in place pending the determination of the charge(s).

Templates

Appendix B: Notice of Temporary Assignment / Suspension Hearing

Appendix C: Temporary Assignment / Suspension Checklist

Appendix D: Notice of Temporary Assignment

Appendix E: Notice of Suspension

STAGE THREE

9. CEO appoints an Investigating Officer (IO)

Whilst a CEO is waiting for the Charged Officer to respond to the charge(s) they are able to appoint an Investigating Officer (IO). This is done by preparing a *Warrant of Appointment* (Appendix N). The original warrant is given to the IO with copies to the:

- Charged Officer; and
- Commission.

A letter should also be provided to the CEO of the IO's Ministry confirming that they are undertaking the investigation (Appendix N).

The IO **must**:

- Be an officer or contract employee from a Ministry other than the Ministry that the Charged Officer works in;
- Be a Certified Investigator of the Samoa Public Service; and
- Be a person who is and is seen to be independent and impartial.



The final point is the most important because if the IO is deemed not to be independent or impartial, it could be grounds for an appeal against **any** decision made throughout the whole procedure.

Please Note: Prior to appointing the IO, the CEO should get the agreement of the intended IO and the CEO of their Ministry. This is to ensure that the IO will have sufficient time to carry out the investigation and identify any conflict of interest issues that may exist to disqualify them from the IO role.

Warrant of Appointment (Appendix M)

The Warrant of Appointment should set out the following:

- For the IO to investigate the charge(s);
- Report to the appointing CEO including recommendations on guilt or innocence of Charged Officer and recommend an appropriate penalty if required; and
- Submit the recommendations and relevant material to the CEO as soon as practicable.

More details on the **Role of the Investigating Officer** are set out in Part 4.

Templates:

Appendix M: Warrant of Appointment of Investigating Officer

Appendix N: Letter for CEO of Investigating Officer's Ministry

10. Investigation by Investigating Officer

Once the Warrant of Appointment has been issued the IO may begin their investigation. However, it is recommended that they wait for the response from the Charged Officer that is due 7 days following the receipt of the charge(s).

As soon as the CEO receives a response from the Charged Officer it **must** be forwarded to the Investigating Officer as soon as practicable. It should have one of the following outcomes.

Outcome 1: Charged Officer **denies** the Charge(s)

In this case the IO **must:**

- Begin a comprehensive investigation;
- At the conclusion of the investigation prepare a written report covering their findings and a summary of the evidence upon which the findings are based (Appendix O);
- Provide this report to the Charged Officer accompanied by a Notice of Preliminary Report and Findings (Appendix P), which would inform the officer they have 7 days to respond in writing to the IO;
- Following the receipt of the Charged Officer's response conduct any further investigations that may be required; and
- Prepare a report with recommendations for the relevant CEO on the guilt or innocence of the Charged Officer and as to penalty, having regard to any submissions made by the Charged Officer (Appendix Q).

Outcome 2: Charged Officer **admits** the Charge(s)

In this case the IO **must:**

- Prepare a report for the relevant CEO with recommendations on the penalty and accompanied by all available material relevant to the charge(s) (Appendix Q).

Outcome 3: Charged Officer is **silent** on the Charge(s)

In this case the Charged Officer is deemed to have admitted the truth of the charge(s) as per regulation 47B and the IO **must:**



- Prepare a report for the relevant CEO with recommendations on the penalty and accompanied by all available material relevant to the charge(s) (Appendix Q).

Please Note: Under regulation 49D of the Regulations, the Charged Officer has a right to remain silent subject to regulation 47B. This means that the Charged Officer can merely deny the charge(s) and say nothing further – this is Outcome 1. If the Charged Officer says nothing at all, it is Outcome 3.

Templates:

Appendix O: Report Template for Investigating Officer to give Charged Officer

Appendix P: Notice of Report and Findings

Appendix Q: Final Report Template for Investigating Officer

11. IO submits report to CEO

The IO must submit their final report with recommendations and all supporting materials to the relevant CEO. A copy of this report and materials must also be given to the Commission.

STAGE FOUR

12. CEO considers the Report and supporting Materials and prepares notice of Determination

The CEO must determine whether the charge(s) against the Charged Officer are true or not. This determination must be made as soon as possible following receipt of the report and supporting materials from the IO. In making this determination, the CEO must take into consideration the following:

- All the findings and evidence submitted by the IO;
- The recommendations made by the IO; and
- Any submissions made by the Charged Officer.

The two options to the CEO are:-

Option 1: Charge(s) are not true

If the CEO is not satisfied that the charge(s) are true on the weight of the evidence, the CEO must acquit the charged officer.

If the Charged Officer has been temporary assigned to other duties or suspended pending the determination of the charge(s), they should be reinstated to their original position immediately (Appendix F or G).

Option 2: Charge(s) are true

If the CEO is satisfied that the charge(s) are true on the weight of the evidence, the CEO may then decide the penalty to be imposed. The CEO may impose one or more of the following penalties as per section 49 of the Act having regard to the Investigating Officer's recommendations:

- a. Caution and reprimand the officer;
 - b. Order that a sum not exceeding \$1000 be deducted by way of penalty from the salary of the officer and paid to the Treasury fund;
 - c. Transfer the officer to other duties;
 - d. Reduce the classification and/or the grading of the officer;
 - e. Reduce the rate of salary of the officer (with or without a reduction in grading);
- or
- f. Terminate the employment of the officer.

Service Record



When determining the appropriate penalty, the CEO **may** take into account the service record of the Charged Officer. If assistance on this matter is required, the CEO should contact the Commission.

Determination

Once the CEO has made their determination they must inform the Charged Officer in writing via a Notice of Decision (Appendix R) of:

- The decision;
- The reasons for that decision;
- The penalty imposed, if any;
- The reasons for any penalty imposed;
- The officer's right to an appeal to the Public Service Board of Appeal;
- The availability of mediation with the Commission if the officer lodges an appeal; and
- Any other relevant matters.

A copy should also be sent to the Commission.

Templates:

Appendix F: Notice of Revocation of Temporary Assignment

Appendix G: Notice of Revocation of Suspension

Appendix R: Notice of Decision

13. Recovery of Loss

If the officer is found to have breached the code of conduct **and** the Commission is satisfied that the breach had resulted in an assessable loss to the Government, the Commission may direct that any amount up to the full extent of the loss be recovered through deductions from the officer's salary or entitlements.

14. Implementation of Penalty

Following the Charged Officer being informed of the CEO's determination and decision with regard to the penalty via the Notice of Decision (Appendix R) the penalty **must** be implemented.



PART 2: IMPORTANT LEGAL PRINCIPLES RELEVANT TO MANAGING BREACHES OF THE CODE OF CONDUCT

1. Procedural Fairness

Any administrative decision that may adversely affect an individual's rights or interests must comply with the two fundamental principles (rules) of procedural fairness:

- (1) A person directly affected by an impending decision must be afforded a fair hearing and be given the right to be heard prior to that decision being made; and
- (2) The decision maker needs to act without bias in exercising his/her responsibilities.

A constitutional right

The Constitution supports the principles of procedural fairness. Article 9(1) of the Constitution states that when a person has been charged with any offence a fair and public hearing by an independent and impartial tribunal should take place. It can be argued that if a charge(s) of a breach of the Code of Conduct is laid against an officer under the *Public Service Act 2004* it may be considered an offence and thus the officer is to be afforded their constitutional right as per Article 9(1).

Obligation under the Act

The principles of procedural fairness are also reflected in subsection 44(5) of the Act, under which the procedure for investigating and determining a charge(s) must provide that:

- (a) The Charged Officer is to be informed of the case against them;
- (b) The Charged Officer has a right to be heard on the question of their guilt or innocence and on the question of any penalty to be imposed on them; and
- (c) The person who investigates the charge(s) and the person who decides on the guilt or innocence of the Charged Officer and decides on any penalty to be imposed on the officer must not be biased in the matter.

Procedural Fairness and Managing Breaches of the Code of Conduct

I. THE HEARING RULE

- Officers who are charged with a breach of the Code of Conduct must be provided with:
 - All relevant information including the allegations so they are able to respond fully to the charge(s). This is facilitated by the Charging Officer ensuring that when the written charge(s) are prepared they include:
 - The Charged Officer's Name;
 - The Charged Officer's Ministry;
 - The actual part of the Code of the Conduct that is alleged to have been breached; and
 - The specific date, time, place and actual details of the alleged breach of the Code of Conduct to the extent they are known.
 - The opportunity to admit, deny or otherwise respond to the charge(s) laid against them within seven (7) days of receiving the notice.
 - A copy of the completed Investigating Officer's report including written details of the findings within seven (7) days of the conclusion of the investigation.
 - The opportunity to provide a written response to the Investigating Officer's findings.



- Adequate opportunity to be heard in relation to the truth of the charge(s) against them and any penalty that may be imposed in relation to the charge(s)
 - An opportunity to be heard prior to the CEO taking action to either suspend the officer or temporarily assign the officer to other duties.
- A Charged Officer's submissions on the charge(s) laid against them must be considered by:
- The Investigating Officer when making a recommendation on the charge(s) to the relevant CEO; and
 - The relevant CEO in determining the truth of the charge(s) and the penalty, if any are to be imposed.

II. THE BIAS RULE

For the management of breaches of the Code of Conduct there must not be any actual or apparent bias by those who have decision making roles namely the CEO, Charging Officer and Investigating Officer.

Actual bias can be described as when the decision maker unfairly accepts or rejects one side of the issue under consideration.

Apparent bias can be described as when considering the circumstances surrounding the making of the decision there is a real possibility that the decision maker might unfairly accept or reject one side of the issue under consideration. For example, this may be present where the decision maker has:

- a strong relationship (positive or negative) with the Charged Officer such as being a near relative;
- financial interests that will be directly affected by the outcome of the procedure;
- been previously concerned with the matter in some other capacity eg. the investigating officer is the officer who brought the issue to the attention of the relevant CEO.

The integrity of the process is the responsibility of the relevant CEO so they must ensure:

- they refrain from participating in determining the truth of the charge(s) if they have any actual or apparent bias; and
- the Charging Officer and Investigating Officer has no actual or apparent bias by making the necessary enquiries.

2. General principles relating to the proper exercise of statutory powers and functions

Under common law there are three principles aimed at ensuring the proper exercise of statutory power. If they are not adhered to the decision made may be found to be unlawful and revoked by the Court. It is therefore important that all those involved in managing breaches of the Code of Conduct are familiar with these principles which are not mutually exclusive and overlap with the principles of procedural fairness.

I. REASONABLENESS

The principle of reasonableness requires statutory powers not to be exercised unreasonably. The Court will only find that an exercise of power is 'unreasonable' if it is 'so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question' could have exercised the power in that manner.

This principle can be illustrated via other related concepts as follows:



- Uncertainty - It would be considered unreasonable to impose a legal requirement that is so uncertain that no one actually knows whether or not they are affected by it or not.
- Proportionality – It would be considered unreasonable to impose a penalty for a breach of the Code of Conduct that was disproportionate to the breach. Such as terminating the employment of an officer who had been discourteous to a member of the public.
- No Evidence – It would be considered unreasonable for the Investigating Officer to make findings and recommendations and for the relevant CEO to determine the truth of the charge(s) if there was no evidence available to justify their determinations.

II. RELEVANCE

Under this principle statutory powers can only be exercised on the basis of matters and information which is relevant and on an independent basis and not under the command or direction of another person.

This principle is particularly important for the:

- CEO – when considering the truth of the charge(s) and whether or not to penalise the Charged Officer only the Investigating Officer's final report and submissions by the Charged Officer should be considered.
- Investigating Officer – when conducting their investigation, the investigation must be done independently and address all relevant issues.
- ACEO – when the CEO delegates their power to say an ACEO as a result of a conflict of interest the ACEO must act independently of the CEO.
- Charging Officer – when considering whether or not to charge(s) the officer they must only consider relevant information and make the determination independently.

III. IMPROPER PURPOSE

Statutory power should only be exercised for the purpose(s) of the provision conferring the power. The Act enables the Commission and CEOs to institute action against an officer who has allegedly breached the Code for the purpose of upholding the Code of Conduct and maintaining the integrity of the Public Service. Instituting an action against an officer for the purpose of preventing the officer from being promoted would be an improper purpose.

3. Standard of proof required

The civil standard of proof applies to the determination of whether a charge(s) of a breach of the Code of Conduct is true. The decision-maker must make this determination **on the balance of probabilities**. This means that the decision-maker must be satisfied that it is more probable than not that the charge(s) is true, after weighing up the competing evidence available. The standard of proof required is affected by the seriousness of the charge(s) in question and as such the standard of proof is not absolute.

For example the standard of proof for an officer who has allegedly defrauded the Government of large sums of money would require more convincing evidence than for an officer who has allegedly been discourteous to a member of the public.

4. Presumption of Innocence

A Charged Officer is presumed to be innocent of the charge(s) brought against him, until those charge(s) have been determined to be true following the disciplinary procedure. This presumption



means that any action the CEO may take in respect of the Charged Officer pending the determination of the charge(s) cannot be based on the prejudged guilt of the Charged Officer.

For example, the CEO cannot suspend the Charged Officer or temporarily assign them to other duties under the Act on the basis that the officer is probably guilty of the charge(s).

5. Conflict of interest

In the context of employment in the SPS, a conflict of interest exists where an officer's private interests, both financial and personal, conflicts with their official duties such that an independent observer might reasonably question whether the professional actions or decisions of that person are influenced by their own interests. As with the bias principle discussed above it may be real or apparent.

The Code of Conduct requires all officers to declare and avoid all conflicts of interest, whether real or apparent, in the course of their employment. This requirement to disclose and avoid conflicts of interest is part of the duty of the SPS as a whole to be impartial and to be seen as impartial.

For the procedure of managing breaches of the Code of Conduct those that are involved in the procedure must declare and avoid any conflicts of interest in relation to their appointment namely the Charging Officer, Investigating Officer and CEO (final decision maker). If a conflict exists the officers concerned should declare it and request to be excused from carrying out their designated role.

For example, if the Investigating Officer is a near relative of the Charged Officer they would have a personal conflict of interest and as such should not carry out the investigation.



PART 3: THE CODE OF CONDUCT AND HOW TO DETERMINE A BREACH HAS OCCURED

The Samoa Public Service Code of Conduct

The Code of Conduct (section 19 of the Act) sets out the standards of behaviour required of every employee and every CEO in their capacity as a member of the SPS. It applies generally to conduct in the course of employment and outside the workplace except in relation to conflict of interest which is only in the course of employment. The obligations imposed are not mutually exclusive and an employee may breach more than one provision of the Code of Conduct at the same time.

The Code of Conduct consists of three (3) parts:

1. Ten (10) specific subsections of the **Code**, (section 19);
2. **SPS Values**, incorporated into the Code by subsection 19(j) (section 17); and
3. **Additional Conduct Requirements**, incorporated into the Code by subsection 19(k), but set out in the Part X of the Regulations.

The Code will now be described in detail below.

a. Be honest and impartial

This provision requires employees to be honest and truthful in their dealings with their fellow workers, members of the public, their CEO, their responsible Minister and the Government in general.

It also requires employees to act and provide advice without fear or favour of anyone and generally to make decisions on their merits alone. Employees should act apolitically and serve the Government with impartiality, regardless of which party is in power and which party they personally support.

b. Work carefully and diligently

This provision requires employees to work with care in their duties, and is especially important where those duties concern issues of public safety or public money. Further, it requires that employees are productive during work hours and do not shirk from their duties, for example, by taking sick leave when they are not sick or being absent without authorisation.

c. Treat everyone with respect and courtesy and without coercion or harassment

This provision requires that employees behave professionally and show respect and courtesy to their fellow workers and to members of the general public. It also requires that they do not harass or engage in intimidating or bullying behaviour towards their fellow workers or other members of the public. In this context, harassment includes physical, emotional and sexual harassment.

d. Comply with all laws that apply to them

This provision requires that employees abide by all the laws of Samoa that apply to them, e.g. the Crimes Ordinance 1961 or the Road Traffic Ordinance 1960. This is because a breach of a law by a member of the Public Service reflects badly on the Public Service as a whole.



Therefore, an employee who breaks a law breaches this provision, even if the unlawful act is not related to their employment in the SPS.

Individual Ministries may also have additional governing legislation that employees within those Ministries must comply with.

e. Comply with all lawful and reasonable directions given to them by persons who have authority to give those directions

This provision requires that all employees obey any lawful and reasonable directions given by authorised persons. These directions may be formal and in writing, or they may be informal and given orally. An example of a formal direction would be any Employment Instruction made by the Commission under the Act. An example of an informal direction would be a manager directing a employee via telephone to return to work when the employee has no reason to be absent.

In addition, individual Ministries may have developed internal policies that employees within those Ministries must comply. For example if an employee does not comply with a Ministries Internal Email Policy disciplinary action could be taken against that employee.

f. Disclose and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to their employment

This provision requires that employees avoid situations in which their private interests, whether pecuniary or otherwise, conflicts or might reasonably be thought to conflict with his public duty. Where employees possess, directly or indirectly, an interest that conflicts or might reasonably be thought to conflict with their public duty, or could improperly influence their conduct in the discharge of their responsibilities, they should disclose that interest to their supervisors. Should circumstances change after an initial disclosure has been made, so that new or additional facts become material, the relevant employee should disclose this new information.

g. Use government resources properly

This provision requires that employees use government resources at their disposal in a proper manner. Government resources are public property and should therefore be only used in connection with the provision of public services or for the public good. The use of government resources for personal gain or convenience would be a clear breach of this provision, as would the use of government resources in a wasteful manner. (eg. Using Government vehicles for personal use on weekends without permission)

h. Use official information only for official purposes

This provision relates to the use by employees of information that they obtain or have knowledge of in the course of their employment. It requires that the employees only use such information for the purposes of their employment in the SPS, and not for personal gain or any other purposes. (eg leaking information to the media)

i. Act with integrity and not misuse their status or authority to seek or obtain a benefit for themselves or any other person or body

This provision requires employees to exercise their powers responsibly and with integrity. For example, if a senior manager delegates all their work to their employees whilst surfing the internet during working hours.

j. Uphold the Values of the Public Service set out in Section 27 of this Act

This provision requires that employees act consistently with the Values of the Public Service set out in section 17 of the Act. Most of the Values are repeated in the Code of Conduct provisions and they are as follows:



Honesty: Acting honestly, being truthful and abiding by the laws of Samoa.

Impartiality: Providing impartial advice, acting without fear or favour, and making decisions on their merits.

Service: Serving the people well, through faithful service to the Government.

Respect: Treating the people, the Government and colleagues with courtesy and respect.

Transparency: Taking actions and making decisions in an open way.

Accountability: Being able to explain the reasons for actions taken, and taking responsibility for those actions.

Efficiency & Effectiveness: Achieving good results for Samoa in an economical way.

k. Comply with any other conduct requirements set out in the Regulations

This provision requires employees to follow any other additional conduct requirements set out in the Regulations. Currently, the additional requirements from the Regulations are as follows:

Regulation 40 - Use of official information : Each employee must within 14 days of commencing employment, complete a statutory declaration of the effect that their attention has been drawn to the provisions of the Act and these Regulations relating to the use of official information and that they will uphold the requirements of those provisions.

Regulation 41 - Authorised communications –An employee must not communicate any matter of policy affecting a department to the news media or to the public unless they have been expressly authorised to do so by the Commission or their Head of Department.

Regulation 42 - Outside Work – An employee must not engage in any paid employment or occupation outside the Public Service unless they have the written permission of the Commission.

Regulation 43 - No payment beyond official salary and allowances – An employee must not accept any remuneration, beyond their salary and allowances, for performing any service in connection with the Public Service for the Government or for any other person

Regulation 44 – Use of drugs or alcohol – An employee must not use drugs or alcohol in a way that adversely affects the performance of their duties or the performance of the duties of other employees

Regulation 45 - Absence from duty - An employee must not be absent from their official duties during hours of duty unless they have obtained official leave or unless in the case of illness or emergency they have taken all reasonable steps to inform their supervisor of their absence as soon as possible.

Regulation 46 - Attendance -

- (1) Employees must attend work during the hours of attendance specified by the Commission.



- (2) Each employee must enter their time of arrival and time of departure each day in the attendance record kept by their department.
- (3) An employee who reports late for duty may be required by their supervisor to make up the time lost.
- (4) Except in the case of illness or emergency an employee must not leave work during their hours of duty without the permission of their supervisor.

Regulation 47 - Near relatives in same department –

- (1) An employee who has a near relative working in the same department as the employee must immediately notify the Commission.
- (2) The Commission must consider whether it would be in the interests of the Public Service to take action in response to a notification under this regulation.
- (3) In this regulation, ‘near relative’ means a parent, child, brother, sister or spouse (including defacto spouse) whether by blood or marriage or adoption.
- (4) The Commission may in its absolute discretion, require an employee to transfer to another department where a near relative is working in the same department.

Regulation 48 - Acceptance of money or goods – (1) Subject to sub-regulation (2) an employee must not directly or indirectly ask for or accept money or goods or any other valuable from any person or entity concerned with any matter connected with the employee’s official duties.

An employee shall not directly or indirectly ask for but may accept customary gifts within the tradition of Fa’a Samoa provided that the employee discloses such gifts in writing to the Commission and the Employee’s CEO.

I. Uphold the good reputation of the Public Service

This provision requires employees to behave generally in a manner that is consistent with the good reputation of the Public Service. This requirement applies not only to employees’ conduct in the workplace, but also to employees’ conduct outside of the workplace.

How to Determine a Breach has Occurred

In broad terms, an employee of the SPS whose conduct does not comply with an element of the Code of Conduct can be found to have breached the Code.

It is important however to note the following:

- Where a provision of the Code contains more than one element, it may not be necessary for the employee to have breached all the elements in order for a breach of the Code to be established;



- Conduct, which is apparently unrelated to the performance of duties, may be subject to the Code - as long as there is a real connection between the conduct and its effect on the workplace (as indicated in the section above);
- If an employee's unsatisfactory performance is due to factors within their control that can be linked to the Code of Conduct, it can be dealt with as a possible breach of the Code. The question of whether or not something is within a person's control must be determined according to the circumstances of each case, having regard to the particular employee's capacity and capability. For example, under section 19(e), an employee's persistent failure to comply with instructions could be because they are simply incapable of following the instructions due to insufficient skills, or because they decide not to follow them.

If they are incapable or unable to follow instructions it should be dealt with as an underperformance or unsatisfactory performance issue as per section 48 of the Act.

The need for Consistency

When undertaking the procedure of handling breaches of the Code of Conduct it is important for there to be a consistent approach taken by those involved in the procedure. For example if minor breaches have been tolerated in the past and suddenly there is an enforcement of the rules against one employee in particular it may be unfair.

When considering whether or not to take action under the Managing Breaches of the Code of Conduct it is important to consider the following factors:

- The **nature and seriousness of the misconduct** e.g. the type of conduct, the standard of care and skill required of the person, the actual and potential consequences of the person's conduct
- The relevance of the misconduct to the person's role and the reputation of the SPS e.g. whether a breach of trust is involved, how senior the person's position is;
- The circumstances of the misconduct or criminal offence e.g. degree of participation by the person, external pressures on the person
- Mitigating factors, e.g. age, experience, cultural background, language difficulties (NB the presence of mitigating factors may be outweighed by the seriousness of the conduct concerned)

Checklist

The questions below should be used as a guide only to assist in determining whether or not an officer has breached the Code of Conduct:

(a) Be honest and impartial

- ✓ Can the actions of the employee be deemed as dishonest?
- ✓ When the employee made the decision in question were they being impartial?

(b) Work carefully and diligently

- ✓ Was care taken by the employee when they executed their duties?
- ✓ Was there a danger to the public as a result of the actions of the employee?
- ✓ Has the employee misused public monies?
- ✓ Has the employee been absent from work too often and for no apparent reason?



(c) *Treat everyone with respect and courtesy and without coercion or harassment*

- ✓ Has the employee been seriously disrespectful?
- ✓ Has the employee been seriously discourteous?
- ✓ Has the employee harassed another person either physically, emotionally or sexually?
- ✓ Has the employee engaged in intimidating or bullying behaviour?

(d) *Comply with all laws that apply to them*

- ✓ Has the employee broken the law?

(e) *Comply with all lawful and reasonable directions given to them by person who have authority to give those directions*

- ✓ Has the employee failed to follow an Employment Instruction issued by the Commission?
- ✓ Has the employee not followed a reasonable instruction given by their supervisor?
- ✓ Has the employee failed to follow an internal Ministry policy?

(f) *Disclose, and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to their employment*

- ✓ Does the employee have a financial or personal interest in a company which the Ministry deals with?
- ✓ Does the employee have a financial or personal interest in a company that may impact on their work in the Ministry?
- ✓ Would the actions of the employee be perceived as resulting from a conflict of interest by their colleagues?
- ✓ Did the employee make a personal profit from any Ministry property?
- ✓ Did the employee operate a private business using resources of the Ministry?
- ✓ Was the employee on a selection panel, where one of the persons interviewed was their spouse, relative or friend and did they influence the outcome in favour of that person?
- ✓ Did the employee make a decision that allowed themselves their, spouse or friend to obtain a benefit from the Ministry

(g) *Use Government resources properly*

- ✓ Has the employee used Government resources inappropriately?
- ✓ Has the employee been wasteful in their usage of Government resources?

(h) *Use official information only for official purposes*

- ✓ Has the employee used official information for their own personal gain?
- ✓ Has the employee disclosed official information that they should not have?

(i) *Act with integrity and not misuse their status or authority to seek or obtain a benefit for themselves or any other person or body*

- ✓ Has the employee failed to act with integrity in their dealings as an employee of the Ministry?
- ✓ Has the employee misused their positional power?
- ✓ Has the employee gained personal benefit from their actions?

(j) *Uphold the values of the public service set out in Section 17*



- ✓ Has the employee failed to uphold the values of the public service?

(k) Comply with any other conduct requirements set out in the regulations

- ✓ Has the employee failed to comply with any of the conduct requirements set out in the regulations?

(l) Uphold the good reputation of the public service.

- ✓ Has the employee brought the reputation of the public service into disrepute?



PART 4: ROLES, RESPONSIBILITIES & ACCOUNTABILITIES OF CEO, CHARGING OFFICER AND INVESTIGATING OFFICER

CHIEF EXECUTIVE OFFICER

As Head of the Ministry, the CEO is ultimately responsible for the management of the employees working in his or her Ministry. This responsibility includes promoting adherence to the Code of Conduct within his or her Ministry and managing the breaches of the Code of Conduct that may occur. The CEO has important roles to play throughout the managing breaches of the Code of Conduct procedure.

Preliminary considerations - Bias or conflict of interest

Before the relevant CEO carries out any of the functions in relation to the disciplinary procedure, the relevant CEO must first consider whether they have a personal interest in the matter that conflicts or may reasonably be seen to conflict with those functions. If such an interest exists, the relevant CEO should immediately declare the interest to the Commission and stop participating in the procedure. Following consultation with the Commission, the relevant CEO should then either request that the Commission take over the functions, or delegate the functions to one of the Assistant CEOs who has no such personal interest.

Starting the Disciplinary Procedure

When allegations of a breach of the Code of Conduct are first brought to the attention of the CEO, the CEO must make a preliminary determination on whether the allegations warrant commencing the formal disciplinary procedure. There are two questions relevant to this determination:

Question 1 - Does the relevant CEO believe that the officer **may** have breached the Code of Conduct?

There are two sub-issues that need to be considered here:

- Is there a possibility that the alleged misconduct breaches the requirements of the Code of Conduct?

First, the relevant CEO must consider the nature of the alleged misconduct and whether the alleged misconduct **may** breach at least one of the conduct requirements of the Code of Conduct. The Code of Conduct does not cover all forms of 'misconduct' in the workplace. Further, many requirements of the Code of Conduct do not apply to an officer's behaviour outside of his or her employment in the SPS. Where the alleged misconduct is totally unrelated to the employee's employment in the SPS or is not clearly covered by one of the provisions of the Code of Conduct, it may be that the misconduct in question is not a breach of the Code of Conduct.

Nonetheless, the relevant CEO does not have to be satisfied that the alleged misconduct breaches one of the conduct requirements, only that the alleged misconduct may do so.

- Is there a possibility that the allegations of misconduct are true?

Second, the CEO must consider the factual evidence underlying the allegations and whether there is sufficient evidence to justify a belief that the allegations against the employee **may** be true. As above, the relevant CEO does not have to believe that the allegations are true, only that the allegations may be true. There does not need to be highly compelling evidence for the CEO



to have such a belief though there must at least be some corroborating evidence in relation to the allegations.

Question 2 - If so, is it appropriate in the circumstances for the CEO to activate the disciplinary procedure by appointing a Charging Officer to consider the matter further?

This is where the CEO considers whether the conduct is serious or persistent enough that it should be dealt with under the formal disciplinary procedure.

(Please refer to Part 2 - Important Legal Principles relevant to Managing Breaches of the Code of Conduct)

If the answer to both questions is in the positive, then the relevant CEO should start the disciplinary procedure by appointing a Charging Officer from their Ministry to consider the matter further.

Appointment of Charging Officer

In appointing the Charging Officer, the relevant CEO should take all reasonable steps to ensure that the Charging Officer is not biased or seen to be biased against the Suspect Officer. Although the Act and Regulations do not require this to be done, doing so would ensure that the principles of procedural fairness are not breached. It is recommended that, before appointing an officer as a Charging Officer, the relevant CEO at least obtain a declaration from that officer that that officer has no personal interest in the matter.

Determining whether to suspend the officer or assign them to other duties

If the relevant CEO decides to appoint a charging officer, they can exercise their discretion to suspend or assign to other duties the officer under section 47 of the Act pending the determination of the charge(s). This determination can be made once a Charging Officer is appointed, or when the Charging Officer brings a charge(s) against the officer in question.

Reasons for suspension or assignment to other duties?

The effect of a suspension or a temporary assignment to other duties is to remove the Charged Officer from his or her current position while the charge(s) are being determined. The relevant CEO must be satisfied that, having regard to the relevant circumstances surrounding the charge(s) against the Charged Officer, it is necessary to remove that officer from their position while the charge(s) is being determined. In this respect, a decision to suspend or assign them to other duties would usually be made for one or more of the following reasons:

- To limit the risk of interference with or prejudice to the investigation of the Charged Officer

Where the charge(s) against the Charged Officer is closely related to his work duties, there may be a risk that the Charged Officer could interfere with or prejudice the investigation of the charge(s) if they remain in their current position while the charge(s) are being determined.

For example, the Charged Officer may potentially intimidate or otherwise influence work colleagues who may be potential informants or the Charged Officer may potentially use his position to tamper with physical and documentary evidence relevant to the charge(s). The risk of interference with the investigation of the charge(s) is higher where the Charged Officer occupies a supervisory position or is in a position of trust and responsibility.

Having regard to the nature of the charge(s) and the position of the Charged Officer, the relevant CEO may determine to remove the Charged Officer from his or her current position in order to limit the risk of interference with the investigation of the charge(s).



- To protect the interests of the public

Having regard to the nature of the charge(s) against the Charged Officer, it may be in the public interest that that officer be removed from his or her current workplace. For example, it may be in the public interest for the relevant CEO to suspend or assign to other duties an officer charged with the improper use of highly sensitive government information. The potentially severe consequences of such a breach may mean that the relevant CEO cannot afford to take the risk that the charge(s) is true and that the employee would continue his or her breach. Accordingly, the relevant CEO is obliged to remove the Charged Officer from his or her position by suspending that officer or transferring them to other duties, pending the determination of the charge(s).

- To protect the interests of the Ministry employing the Charged Officer

Similarly, if the nature of the misconduct or charge(s) means that the Charged Officer is unable to perform his or her work duties effectively, it may be in the interests of the relevant Ministry for the relevant CEO to suspend the officer or assign them to other duties.

For example, an officer responsible for awarding tenders is charged with using their position to award tenders to family members. It is likely that if that officer continues working in their position, it would create a perception that the tender procedure is not fair and impartial and render the tender process unworkable. In this instance, the relevant CEO would be justified in suspending or transferring that officer to protect the efficacy of the tender process for the Ministry.

- To protect the interests of the Public Service in general

Under the Code of Conduct, the relevant CEO is bound to uphold the good reputation of the Public Service. It is possible that the nature of the allegations against the Charged Officer are so serious that it would adversely affect the good reputation of the Public Service merely to have that officer continue working in their position. In such cases, the relevant CEO may be justified in suspending that officer to protect the good reputation of the Public Service.

- To protect the interests of the Charged Officer or their fellow employees

In some instances, it may be necessary to remove the Charged Officer from their position in order to protect that officer or their fellow employees. For example, if the Charged Officer is charged with the physical harassment of a fellow employee, then it may be in the interests of both that officer and his alleged victim that that officer be suspended or assigned to other duties.

The reasons given above are not exhaustive and the relevant CEO may exercise the discretion to suspend or assign to other duties for other reasons connected to the charge(s) against the Charged Officer. However, it is important here to stress that the decision to suspend or assign to other duties a Charged Officer should not be made on the basis that the charge(s) is true. Rather, the relevant CEO must consider the **risk** that the charge(s) is true, and whether the relevant CEO should assume that risk in light of the various interests affected by the charge(s).

Suspension or assignment to other duties

If the relevant CEO has decided that a suspect officer or a Charged Officer should be temporarily removed from their position while the charge(s) are being determined, the relevant CEO may either suspend or assign to other duties that officer.

The decision on whether to suspend or to assign to other duties the suspect officer depends on the consideration of the same interests discussed above. Generally, suspension should only be considered



if a temporary assignment to other duties is not possible (e.g. due to the lack of other possible duties) or inappropriate in the circumstances (e.g. if the allegations against the suspect employee are very serious). However, we note here that suspension under section 47 of the Act is with pay. Therefore, the effects of suspension on the employee in terms of remuneration would be limited.

Employee's right to be heard

Before the relevant CEO formally suspends or temporarily assigns to other duties an officer under section 47(1) of the Act, the relevant CEO must give the officer the opportunity to be heard on the matter. The relevant CEO may hear the suspect officer orally or may receive written submissions from the suspect officer on the matter.

The relevant CEO must take into account any submissions by the suspect officer before exercising his discretion to suspend or temporarily assign to other duties that officer.

Appointment of Investigating Officer

If the Charging Officer decides to charge(s) the officer with a breach of the Code of Conduct, the relevant CEO must, as soon as practicable, appoint an Investigating Officer from another Ministry to investigate the charge(s) and make recommendations.

Pursuant to paragraph 44(5)(c) of the Act, regulation 49J of the Regulations requires that the relevant CEO "take all reasonable steps to ensure that the Investigating Officer is, and appears to be, unbiased in the matter". This means that the relevant CEO must take reasonable steps to ensure that the Investigating Officer is free from any circumstance that may give rise to actual or apparent bias in his investigation of the charge(s) against the Charged Officer.

In practice, we recommend that the relevant CEO at least obtain a declaration from the intended appointee that he or she has no conflict of interest in investigating the Charged Officer before formally appointing the Investigating Officer.

In addition, if the relevant CEO becomes otherwise aware that the appointee or the intended appointee may have a conflict of interest, the relevant CEO should conduct further inquiries to ascertain if there is a conflict, and it may be necessary to seek further advice and assistance from the Commission at this point. If a conflict of interest is found to exist, the CEO should appoint another Investigating Officer.

Finally, if the relevant CEO receives any submission from a Charged Officer in relation to a charge(s), the relevant CEO must give a copy of that submission to the relevant Investigating Officer as soon as practicable.

Determining whether charge(s) against the Charged Officer is true

Where the officer is charged and denies the charge(s), the Investigating Officer will conduct an investigation and make recommendations to the relevant CEO on the guilt and innocence of the officer and any penalty to be imposed. The relevant CEO must then decide whether he or she is satisfied of the truth of the charge(s) against the employee.

In determining the charge(s), the relevant CEO must consider the available material relating to the charge(s) provided by the investigating officer, the recommendations made by the investigating officer in relation to the truth of the charge(s), and any submissions on the charge(s) made by the Charged Officer. The relevant CEO may not usually consider any other material.

The function of investigating the charge(s) lies with the Investigating Officer and not the relevant CEO. If, after receiving the investigating officer's recommendations and before making the decision, the relevant CEO is made aware of other relevant material that the Investigating Officer did not consider, the relevant CEO should refer that material immediately to the Investigating Officer for



further investigation. After the further investigation, the investigating officer should then reconsider the recommendations to the relevant CEO and revise the recommendations if appropriate to do so.

The relevant CEO must then decide, having regard to the necessary matters, whether the charge(s) against the Charged Officer is true **on the balance of probabilities**. This means the relevant CEO must decide whether it is more probable than not that the charge(s) against the employee is true given the weight of the evidence.

The severity of the charge(s) influences the degree of probability required to satisfy the relevant CEO that the charge(s) is true. The greater the seriousness of the charge(s) and the consequences for the employee if the charge(s) were true, the more compelling the evidence must be before the CEO can be satisfied that the charge(s) is true.

Determining the penalty to be imposed on the employee

Where a Charged Officer admits the truth of the charge(s), or where the relevant CEO is satisfied of the truth of the charge(s), the relevant CEO may then determine the penalty to be imposed on the officer. Under section 45 of the Act, the relevant CEO may impose one or more of the following officers:

- Caution and reprimand the Charged Officer
- Order that a sum not exceeding \$1000 be deducted by way of penalty from the salary of the Charged Officer and paid into the Treasury Fund
- Transfer the Charged Officer to other duties
- Reduce the classification and/or the grading of the Charged Officer
- Reduce the rate of salary of the Charged Officer (with or without reduction in grading)
- Terminate the employment of the Charged Officer

Before imposing the penalty or penalties, the relevant CEO may take into account the Charged Officer's service record and the Charged Officer's submissions in relation to the penalty. Importantly, the relevant CEO does not have an unconfined discretion to impose whatever penalty they choose. The penalty must be reasonable in the circumstances and cannot be disproportionate to the breach in question.

(Please refer to Section 2 – Important Legal Principles relevant to Managing Breaches of the Code of Conduct)



CHARGING OFFICER

The Charging Officer is appointed by the relevant CEO under section 44(1) of the Act to consider the charge(s) against the Charged Officer and do one of the following:

- A. Charge the Officer in writing ; OR
- B. Give the Officer a Warning ; OR
- C. Take no further action.

Preliminary considerations - bias and conflict of interest

The Charging Officer must be from the same Ministry as the Charged Officer. Where an officer or contract employee is requested by the relevant CEO to be appointed as the Charging Officer, they must first ensure that they do not have a personal interest in the matter that conflicts with the functions of being the Charging Officer, or could be reasonably be seen to do so. If such an interest exists, they should notify the CEO as soon as practicable of the conflict in interest.

'Consideration' of the Matter

The Charging Officer is required to 'consider' the matter before taking one of the three (3) options stated. The Charging Officer should consider the matter on the basis of the material in relation to the case available at the time. The Charging Officer is not required to carry out a thorough investigation of the charge(s), as that is the role of the Investigating Officer later on in the procedure.

In determining the appropriate action to take after considering the available material, several factors must be taken into account:

- Whether the alleged misconduct breaches the requirements of the Code of Conduct

First, the Charging Officer must consider the nature of the alleged misconduct and whether the alleged misconduct breaches at least one of the conduct requirements of the Code of Conduct. The Code of Conduct does not cover all forms of 'misconduct' in the workplace. Further, many requirements of the Code of Conduct do not apply to an employee's behaviour outside of his or her employment in the SPS. Where the alleged misconduct is totally unrelated to the employee's employment in the SPS or is not clearly covered by one of the provisions of the Code of Conduct, it may be that the misconduct in question is not a breach of the Code of Conduct.

The Charging Officer must be satisfied that the alleged misconduct breaches one of the conduct requirements and must be able to identify the pertinent requirement before the Charging Officer can charge(s) the officer under suspicion.

- The weight of the evidence indicating that the allegations of misconduct are true

Second, the Charging Officer must consider the available evidence relevant to the allegations. The greater the weight of the evidence supporting the truth of the allegations, the more the Charging Officer should consider charging the suspect officer. Generally, unless there is very little evidence to support the allegations or if the weight of the evidence against the truth of the allegations is overwhelming, the Charging Officer should consider charging the suspect officer so that the allegations can be fully investigated.



- The nature of the allegations of misconduct

Third, the Charging Officer should consider the seriousness and the frequency of the misconduct alleged. If the misconduct alleged is serious (e.g. sexual assault of a student by a teacher) or persistent (e.g. regular theft of small sums of public money), the Charging Officer should consider charging the suspect. Conversely, if the misconduct alleged is minor and not likely to occur again, the Charging Officer may consider giving the suspect officer a warning instead of charging them.

After considering these factors, the Charging Officer must determine which of the three (3) Options to take.

Charge the Officer

If the Charging Officer is satisfied that the alleged misconduct, if true, is a breach of the Code of Conduct and that the weight of evidence and/or seriousness of the misconduct warrant further investigation of the allegations, the Charging Officer should proceed to charge(s) the officer in writing.

Drafting charge(s)

The charge(s) against the officer should be drafted carefully as the charge(s) are the basis for the rest of the disciplinary procedure and for any subsequent action taken by the Investigating Officer and the relevant CEO. The other main purpose of the charge(s) is to properly inform the Charged Officer of the case against them, so that they are able to make full and proper submissions on the charge(s). It is recommended that the Charging Officer seek guidance on the preparation of charge(s) from either the Office of the Attorney General, an in-house solicitor of the Ministry, or the Commission if at all unsure of how to draft the charge(s).

The Regulations require that as *a minimum*, the charge(s) must set out the following;

- (a) The *Officer's name*;
- (b) The *Officer's Ministry*;
- (c) The *specific element of the Code of Conduct* that is *alleged to have been breached*;
and
- (d) The *date, times and places of the alleged breach* of the Code of Conduct, if available.

In addition, a copy of all available documentary evidence in relation to the charge(s) should be provided to the Charged Officer.

In drafting charge(s), the Charging Officer should note the following matters:

- Each charge(s) should only relate to a single incident of an alleged breach of the Code of Conduct. Therefore, if an officer is alleged to have improperly used the Ministry's resources on several occasions, there should be a charge(s) for each occasion.
- There should only be one charge(s) for each incident of an alleged breach of the Code of Conduct. Therefore, if a single incident (e.g. using his position to obtain money for his benefit from members of the public) could constitute a breach of several requirements of the Code of Conduct, the Charging Officer needs to pick the most appropriate requirement in the circumstances and charge(s) the suspect officer with a breach of that requirement.
- If uncertain, seek ADVICE from the Office of the Attorney General or the Commission.



Laying Charge(s)

After drafting the charge(s), the Charging Officer shall serve these charge(s) on the Charged Officer together with a *Regulation 49A Notice or Notice Accompanying Charges*. There should also be clear evidence of the charge(s) being received by the Officer (Appendix L: Proof of Charges Served).

The Notice essentially requires the Charged Officer to do the following;

- Respond to the charge(s) within 7 days of receipt of charge(s) and notice, and:
 1. Admit the charge(s) and make a written submission to the relevant CEO on the issue of penalty; OR
 2. Deny the charge(s) and make a written submission to the relevant CEO by way of response; OR
 3. Deny the charge(s) and say nothing further.

Please Note: Under regulation 49D of the Regulations, the Charged Officer has a right to remain silent subject to regulation 47B.

Warn the Employee

If after considering the matter, the Charging Officer determines that alleged misconduct, even if true, is not misconduct which is serious or grave enough to warrant charging the officer, the Charging Officer may warn the officer instead of charging the officer.

The Warning should be in writing and issued by the Charging Officer to the officer, with a copy to the relevant CEO and the Commission for information.

When the warning is given, this will end the procedure. However, the relevant CEO or manager as a management decision may determine that an alternative Performance Management Strategy is required for the officer concerned; for example, a capability building exercise or counseling etc.

Take no further action against the employee

If after considering the matter, the Charging Officer is not satisfied that the alleged misconduct, if true, is a breach of the Code of Conduct, the Charging Officer should take no further action against the officer. Further, if the evidence strongly suggests that the allegations are unfounded and/or there is little or no evidence to warrant charging or warning the officer, the Charging Officer should take no further action against the officer.

In that event, the Charging Officer should make a written record of his determination and provide it to the suspect employee, with a copy to the relevant CEO and the Commission for information.



INVESTIGATING OFFICER (IO)

When an officer is charged with a breach of the Code of Conduct, the relevant CEO must appoint an Investigating Officer under section 44(2) of the Act to investigate the charge(s) and to make recommendations to the relevant CEO. The IO is an officer or a contract employee from a Ministry other than the Ministry in which the Charged Officer works.

Preliminary considerations - bias and conflict of interest

Where an officer or contract employee is requested by the relevant CEO to be appointed as the IO, they must first ensure that they do not have a personal interest in the matter that conflicts with the functions of the IO, or could be reasonably be seen to do so. If such an interest exists, they should notify the relevant CEO as soon as practicable of the conflict in interest. The relevant CEO will then appoint another IO if this is appropriate in the circumstances.

The role of the IO in the procedure is determined by the Charged Officer's initial response to the charge(s).

Charged Officer admits or is deemed to have admitted the charge(s)

Where the Charged Officer responds to a charge(s) by admitting the charge(s), it will usually be unnecessary for the IO to investigate the charge(s) any further. The residual role of the IO here is to make a recommendation to the relevant CEO with regard to the penalty to be imposed, after considering any submission made by the Charged Officer. In this regard, the IO may choose to investigate further the veracity of the Charged Officer's submissions with regard to penalty if appropriate to do so in the circumstances.

Where the Charged Officer makes no response to a charge(s) within seven (7) days of receiving the charge(s), the Charged Officer will be deemed to have admitted the truth of the charge(s) under section 49B of the Act. In this event, the role of the IO is similarly to make a recommendation to the relevant CEO with regard to the penalty to be imposed.

In both cases, the IO must submit their recommendation and all relevant materials to the relevant CEO as soon as practicable.

Charged Officer denies the charge(s)

Where the Charged Officer denies a charge(s), the IO must do the following:

- Investigate the charge(s)

The IO must investigate the truth of the charge(s) against the Charged Officer, and not merely gather evidence supporting the truth of the charge(s). This means that the IO must seek and obtain all evidence that is relevant to the charge(s), whether or not it proves or disproves the truth of the charge(s). For example, where the Charged Officer has made submissions in denying the charge(s), the IO should investigate any relevant matter brought up in those submissions after receiving them from the relevant CEO.

- Give the employee written details of any findings and a summary of the evidence upon which those findings are based within seven (7) days of concluding the investigation and opportunity to respond;

The IO concludes the investigation after gathering all the evidence relevant to the charge(s). Following this, the IO must quickly consider the evidence obtained and make findings with respect to the truth of the charge(s). The IO should make the findings upon **the balance of probabilities**, having regard to the totality of the evidence before him or her. The IO must then prepare a report setting out the findings and a summary of the evidence on which the findings are



based, and provide the report to the Charged Officer within seven (7) days of concluding the investigation.

The IO must attach a written notice together with the report advising that the employee, within seven (7) days of receipt of the report, may provide the IO with a written submission concerning the employee's innocence and/or any penalty to be imposed in the event that the officer is found guilty.

- Make recommendations to the relevant CEO

When the time for the Charged Officer to make further submissions is past, the IO must then consider any submissions provided by the Charged Officer against the findings made in the initial report, and make any adjustments to the findings if appropriate. The IO may find it necessary to investigate further any relevant matter brought up by the Charged Officer's submissions. When the IO is satisfied all matters have been fully investigated, the IO should then make recommendations to the relevant CEO on the truth of the charge(s) against the officer and on the penalty to be imposed, based on the findings and the Charged Officer's submissions.

The IO should then submit the recommendations and all relevant material to the relevant CEO as soon as practicable.



PART 5: RELATED INFORMATION

5.1. Criminal Proceedings:

As stated under STEP 2, the CEO when he / she is aware of an incident and is deciding upon whether to take formal disciplinary action must refer the matter to the Ministry of Police if the actions of the Employee also constitutes criminal behaviour.

While the two processes can be pursued at the same time, care must be taken not to risk jeopardising the prosecution of the criminal charge(s). It is recommended that the CEO, in this situation, liaise closely with the Office of the Attorney General and/or the Ministry of Police.

Pursuant to paragraphs 43(1)(a) and 43(1)(b) of the Act where an employee is **charged** with a criminal offence (other than an offence under the Road Traffic Ordinance 1960 which is not punishable by imprisonment), the CEO may assign to other duties or suspend the employee. Suspension is **without pay**, unless otherwise stated.

Pursuant to subsection 43(3) of the Act where an employee is **convicted** of the offence, the CEO may after giving the employee an opportunity to be heard on the matter, impose on the employee any of the penalties set out in section 45 of the Act.

Pursuant to subsection 43(4) of the Act if the employee is **acquitted** of the charge(s), he/she is entitled to be reinstated without loss of any benefit or status and to be paid the salary he or she lost as a result of suspension from duty.

Templates:

Appendix S: Notice of Temporary Assignment when charged with Criminal Offence

Appendix T: Notice of Suspension when charged with Criminal Offence

Appendix U: Notice of Hearing once Convicted by the Police

Appendix V: Notice of Penalty once Convicted by the Police

Appendix W: Notice of Reinstatement once Acquitted by the Police

5.2. Resignation During Misconduct Investigations

Where the suspect officer resigns during the course of the procedure for investigating and determining breaches of the Code of Conduct, the officer's resignation must be accepted and the procedure discontinued.

The Code of Conduct and the disciplinary procedure applies only to current employees of the SPS. Disciplinary action cannot be taken against former employees under the *Public Service Act 2004*.

However, all documentation and records that have been obtained or created during the course of the investigation up to the date of the resignation should be retained by the Ministry and the Commission.

If the person later seeks re-employment in the Public Service, these records can be utilised in the relevant Recruitment and Selection procedure. However, those utilising the records for the Recruitment and Selection procedure should ensure that the principles of procedural fairness are complied with. This requires the decision makers in the Recruitment and Selection procedure to



advise the former officer that the decision maker was taking such records into account and giving him or her, the opportunity to respond. If the officer is reemployed the incomplete Managing Breaches of the Code of Conduct procedure will be resumed.

5.3. Legal Representation

While normally, an officer will seek legal representation at the Appeal stage, it may be possible that they seek and retain the services of legal counsel earlier.

In practice, this requires that where an officer has retained the services of a solicitor or legal counsel, all communications with the suspect officer in relation to the alleged misconduct needs to be through their legal counsel.

5.4. Further Information:

Please contact your Ministries Human Resource Co-ordinator in the first instance followed by the Human Resource Advisory Branch of the Office of the Public Service Commission on phone: 22123 or fax: 24215 or email: psc@samoa.ws.



PART 6: APPENDICIES

APPENDIX A: Warrant of Appointment of Charging Officer

LETTERHEAD of MINISTRY

[INSERT DATE]

WARRANT OF APPOINTMENT OF CHARGING OFFICER
UNDER SUBSECTION 44(1) PUBLIC SERVICE ACT 2004

Pursuant to subsection 44(1) of the *Public Service Act 2004*, I hereby appoint

[INSERT NAME OF CHARGING OFFICER APPOINTED]
[INSERT DESIGNATION]
[INSERT NAME OF MINISTRY]

to consider the allegations against [INSERT NAME OF SUSPECT OFFICER] and to do one of the following:

1. Charge the officer, OR
2. Warn the officer, OR
3. Take no further action.

[INSERT NAME OF CEO]
CHIEF EXECUTIVE OFFICER
MINISTRY OF [INSERT]

cc:
[INSERT NAME OF SUSPECT OFFICER]
CEO, Public Service Commission



APPENDIX B: Notice of Temporary Assignment / Suspension Hearing

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Temporary Assignment / Suspension Hearing

[INSERT NAME OF OFFICER]

[INSERT ADDRESS OF OFFICER]

Dear [INSERT NAME OF OFFICER]

I am writing to inform you that pursuant to paragraph [DELETE AS REQUIRED 47(1)(a) or 47(1)(b)] of the Public Service Act 2004 I am considering whether or not to [DELETE AS REQUIRED suspend you from duty or temporarily assign you to other duties.]

You have the right to be heard on this matter so I invite you to attend a formal interview with myself on [INSERT DATE] at [INSERT TIME and PLACE] for you to respond to this issue. If you would prefer to respond in writing please submit your response to me by [INSERT DATE].

Following this interview I will make a determination and notify you accordingly.

In considering whether I should temporarily assign you to other duties or suspend you I will have regard to:

- The nature and seriousness of the offence;
- The circumstances in which it was committed;
- Any statement(s) that you may make; and
- Any other relevant matters.

Fa'afetai

[INSERT NAME OF CEO]

[INSERT NAME OF MINISTRY]

cc. CEO, Public Service Commission



APPENDIX C: Temporary Assignment / Suspension Checklist

TEMPORARY ASSIGNMENT or SUSPENSION CHECKLIST

- ❑ ***Has the Officer been given the opportunity to be heard on the issue?***

Before making the decision on whether or not to suspend the officer or temporarily assign the officer to other duties, the CEO must inform the officer that they have an opportunity to be heard on the issue. The Officer's submission can either be in writing or in person.

It must be made clear to the Officer that their response is to be on the issue of suspension or temporary transfer to other duties NOT on their guilt or innocence re: the charge(s).

- ❑ ***Is the continued presence of the Officer at the workplace likely to interfere with or otherwise prejudice the investigation?***

Examples of 'likely interference' relevant here include the possibility of;

- the Suspect Officer intimidating or threatening potential witnesses,
- potential witnesses being reluctant to provide evidence due to presence of Suspect Officer;
- Is there potential evidence in the workplace, which the Suspect Officer could tamper with through continued presence in the workplace?

- ❑ ***Is it in the public interest or Ministry's interest or even the Suspect Officer's interest to remove him/her from the workplace?***

Example:

- Is it likely that the Suspect Officer would continue the alleged breach if present in the workplace;
- Is the safety of the Suspect Officer an issue?

- ❑ ***Has temporary assignment to other duties been considered as an option?***

It is advisable that the decision-maker (CEO) considers firstly whether the concerns (if any) raised under the previous questions cannot be adequately addressed by transferring the officer temporarily to other duties. If this is not the case then the officer may need to be suspended. If the officer is assigned to other duties, they are entitled to their usual salary and entitlements.

The CEO should ensure that proper arrangements are made to affect this so that the assignment to other duties does not unduly affect the Ministry's work or other employees.

- ❑ ***Is it clear that the decision-maker is not prejudging and is seen as not prejudging the guilt or innocence of the Officer?***

The CEO when deciding on whether or not to suspend should not consider or impose suspension as a defacto penalty. Therefore, care should be taken to ensure that the imposition of a suspension is imposed for the appropriate reasons and cannot be seen as a pre-determination of guilt of the suspect officer.

If the answers to the above questions are mainly in the positive, then suspension may be justified. However, as stated earlier, ultimately it will be a decision for the CEO to decide as deemed appropriate.



APPENDIX D: Notice of Temporary Assignment

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Temporary Assignment

[INSERT NAME OF OFFICER]
[INSERT ADDRESS OF OFFICER]

Dear [INSERT NAME OF OFFICER]

[DELETE ONE OF THE VERSIONS BELOW AS REQUIRED]

{Version 1 After Charging Officer appointed: I am writing to inform you that having considered your response in relation to the matter of being temporarily assigned to other duties, I am of the opinion that it is not in the best interests of [DELETE AS REQUIRED the Ministry, the public, your co-workers, or yourself] for you to remain performing your current duties.

I have therefore decided to exercise my power under paragraph 47(1)(a) of the *Public Service Act 2004* to temporarily assign you to other duties in the Ministry. I direct you to report for duty to [INSERT NAME OF SUPERVISOR] at [INSERT LOCATION] on [INSERT TIME AND DATE]. [INSERT NAME OF SUPERVISOR] will inform you of the duties that you will be required to perform.

This temporary assignment to other duties will remain in place pending a decision on whether or not you are to be charged with a breach of the Code of Conduct and the determination of the charge(s).

In making this decision to temporarily assign you to other duties, I am not anticipating the truth or otherwise of the allegations against you.

You will continue to be paid at your current salary level.

{Version 2 After Officer charged: I am writing to inform you that having considered your response in relation to the matter of being temporarily assigned to other duties, I am of the opinion that it is not in the best interests of [DELETE AS REQUIRED the Ministry, the public, your co-workers, or yourself] for you to remain performing your current duties.

I have therefore decided to exercise my power under paragraph 47(1)(b) of the *Public Service Act 2004* to temporarily assign you to other duties in the Ministry. I direct you to report for duty to [INSERT NAME OF SUPERVISOR] at [INSERT LOCATION] on [INSERT TIME AND DATE]. [INSERT NAME OF SUPERVISOR] will inform you of the duties that you will be required to perform.

This temporary assignment to other duties will remain in place pending the determination of the charge(s).



In making this decision to temporarily assign you to other duties, I am not anticipating the truth or otherwise of the charge(s) against you.

You will continue to be paid at your current salary level.

Fa'afetai

[INSERT NAME OF CEO]
[INSERT NAME OF MINISTRY]

cc. CEO, Public Service Commission



APPENDIX E: Notice of Suspension

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Suspension

[INSERT NAME OF OFFICER]
[INSERT ADDRESS OF OFFICER]

Dear [INSERT NAME OF OFFICER]

[DELETE ONE OF THE VERSIONS BELOW AS REQUIRED]

{Version 1 After Charging Officer appointed: I am writing to inform you that having considered your response in relation to the matter of being suspended, I am of the of the opinion that it is not in the best interests of [DELETE AS REQUIRED the Ministry, the public, your co-workers, and/or yourself] for you to remain at work in the Ministry.

I have therefore decided to exercise my power under paragraph 47(1)(a) of the *Public Service Act 2004* and suspend you from duty. The suspension takes effect from [INSERT DATE AND TIME].

Pursuant to section 47(3) of the *Public Service Act 2004* if you are not charged within 21 days of the imposition of your suspension the suspension will be revoked. Otherwise it will remain in place pending the determination of the charge(s).

In making this decision to suspend you from duty, I am not anticipating the truth or otherwise of the allegations against you.

Your suspension is with par as per section 47(2) of the *Public Service Act 2004* }

{Version 2 After Officer charged: I am writing to inform you that having considered your response in relation to the matter of being suspended, I am of the of the opinion that it is not in the best interests of [DELETE AS REQUIRED the Ministry, the public, your co-workers, and/or yourself] for you to remain at work in the Ministry pending the outcome of the investigation.

I have therefore decided to exercise my power under paragraph 47(1)(b) of the *Public Service Act 2004* and suspend you from duty. The suspension takes effect from [INSERT DATE AND TIME]

The suspension will remain in place pending the determination of the charge(s).

In making this decision to suspend you from duty, I am not anticipating the truth or otherwise of the charge(s) against you.

Your suspension is with pay as per section 47(2) of the *Public Service Act 2004* }



Fa'afetai

[INSERT NAME OF CEO]
[INSERT NAME OF MINISTRY]

cc. CEO, Public Service Commission



APPENDIX F: Notice of Revocation of Temporary Assignment

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Revocation of Temporary Assignment

[INSERT NAME OF OFFICER]
[INSERT ADDRESS OF OFFICER]

Dear [INSERT NAME OF OFFICER]

I am writing to inform you that as [DELETE AS REQUIRED no charge(s) are to be laid against you OR I have made my decision in relation to the charge(s)] I am revoking, with effect from the date of this notice, your temporary assignment to other duties.

You are required to resume your normal duties as the [INSERT NAME OF POSITION] by reporting to [INSERT SUPERVISOR] at [INSERT TIME] on [INSERT DATE].

Fa'afetai

[INSERT NAME OF CEO]
[INSERT NAME OF MINISTRY]

cc. CEO, Public Service Commission



APPENDIX G: Notice of Revocation of Suspension

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Revocation of Suspension

[INSERT NAME OF OFFICER]
[INSERT ADDRESS OF OFFICER]

Dear [INSERT NAME OF OFFICER]

I am writing to inform you that as [DELETE AS REQUIRED no charge(s) are to be laid against you OR you were not charged within 21 days of your suspension OR I have made my decision in relation the charges(s)] I am revoking, with effect from the date of this notice, your suspension from work.

You are required to resume your normal duties as the [INSERT NAME OF POSITION] by reporting to [INSERT SUPERVISOR] at [INSERT TIME] on [INSERT DATE].

Fa'afetai

[INSERT NAME OF CEO]
[INSERT NAME OF MINISTRY]

cc. CEO, Public Service Commission



APPENDIX H: Notice of No Further Action from the Charging Officer

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of No Further Action

[INSERT NAME OF OFFICER]
[INSERT ADDRESS OF OFFICER]

Dear [INSERT NAME OF OFFICER]

I have considered the allegations that you committed a breach of the Code of Conduct and I am advising that, under paragraph 44(1)(c) of the *Public Service Act 2004*, I will be taking no further action against you.

The issuing of this notice ends the Managing Breaches of the Code of Conduct procedure.

Fa'afetai

[INSERT NAME OF CHARGING OFFICER]
[INSERT NAME OF MINISTRY]

cc. [INSERT NAME OF CEO], [INSERT NAME OF MINISTRY]
CEO, Public Service Commission



APPENDIX I: Notice of Warning from the Charging Officer

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Warning

[INSERT NAME OF OFFICER]
[INSERT ADDRESS OF OFFICER]

Dear [INSERT NAME OF OFFICER]

I have considered the allegations that you committed a breach of the Code of Conduct. I have determined that whilst the evidence suggests that [INSERT A DESCRIPTION OF INCIDENT] took place on [INSERT DATE], the actual conduct does not warrant a charge(s) being laid against you. Nonetheless, the alleged conduct was unbecoming of a member of the Samoa Public Service. Accordingly, under paragraph 44(1)(b) of the Public Service Act 2004, I am issuing you a warning for the act(s) done.

In line with this warning the [INSERT NAME OF CEO] and / or [INSERT NAME OF MANAGER] may opt to provide you with a formal counselling session with direct reference to your current behaviour.

The issuing of this notice ends the Managing Breaches of the Code of Conduct procedure.

Fa'afetai

[INSERT NAME OF CHARGING OFFICER]
[INSERT NAME OF MINISTRY]

cc. [INSERT NAME OF CEO], [INSERT NAME OF MINISTRY]
CEO, Public Service Commission



APPENDIX J: Charge Sheet

LETTERHEAD of MINISTRY

[INSERT DATE]

Charge Sheet

Pursuant to paragraph 44(1)(a) of the *Public Service Act 2004*, I hereby charge:

[INSERT NAME OF OFFICER]
[INSERT DESIGNATION]
[INSERT NAME OF MINISTRY]

with a breach of subsection 19[INSERT SUBSECTION(S)] of the *Public Service Act 2004* in that, [USE ONE OR MORE OF THE FOLLOWING PARAGRAPHS AS APPROPRIATE AND DELETE THE REST]

[On or Between] the [INSERT TIME AND DATE(S)] you failed to act in an [honest and / or impartial] way. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR ACTION WHICH CONSTITUTES THE FAILURE TO BE HONEST AND IMPARTIAL].

[On or Between] the [INSERT TIME AND DATE(S)] you failed to work [carefully and / or diligently]. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR ACTION WHICH CONSTITUTES THE FAILURE TO WORK CAREFULLY OR DILIGENTLY].

[On or Between] the [INSERT TIME AND DATE(S)] you failed to treat [INSERT NAME OF PERSON(S)] with respect and courtesy and without coercion or harassment. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR ACTION WHICH CONSTITUTES THE FAILURE TO TREAT SOMEONE WITH RESPECT AND COURTESY AND WITHOUT COERCION OR HARASSMENT].

[On or Between] the [INSERT TIME AND DATE(S)] you failed to comply with [INSERT RELEVANT LAW]. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR ACTION WHICH CONSTITUTES THE FAILURE TO COMPLY WITH LAW].

[On or Between] the [INSERT TIME AND DATE(S)] you knowingly [disobeyed or disregarded] a lawful and reasonable direction given to you by [INSERT NAME] who has authority to give you directions. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR ACTION WHICH CONSTITUTES THE FAILURE TO FOLLOW DIRECTION].

[On or Between] the [INSERT TIME AND DATE(S)] you failed to disclose, and take all reasonable steps to avoid any real or apparent conflicts of interest in relation to your employment with the Samoa Public Service. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR ACTION WHICH CONSTITUTES THE FAILURE TO DISCLOSE A CONFLICT OF INTEREST].

[On or Between] the [INSERT TIME AND DATE(S)] you used Government resources improperly. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR



ACTION WHICH CONSTITUTES THE FAILURE TO USE GOVERNMENT RESOURCES PROPERLY].

[On or Between] the [INSERT TIME AND DATE(S)] you failed to use official information only for official purposes. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR ACTION WHICH CONSTITUTES THE FAILURE TO USE OFFICIAL INFORMATION FOR OFFICIAL PURPOSES ONLY].

[On or Between] the [INSERT TIME AND DATE(S)] you failed to act with integrity and misused your [status or authority] to [seek or obtain] a benefit for [yourself or insert name of person or insert name of body]. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR ACTION WHICH CONSTITUTES THE FAILURE TO NOT USE THEIR STATUS OR AUTHORITY PROPERLY].

[On or Between] the [INSERT TIME AND DATE(S)] you failed to uphold the values of the Public Service namely subsection 17 [INSERT SUBSECTION] of the *Public Service Act 2004*. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR ACTION WHICH CONSTITUTES THE FAILURE TO UPHOLD THE PARTICULAR VALUE REFERRED TO].

[On or Between] the [INSERT TIME AND DATE(S)] you failed to comply with [INSERT RELEVANT CONDUCT] set out in the Regulations. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR ACTION WHICH CONSTITUTES THE FAILURE TO COMPLY WITH THE CONDUCT IN THE REGULATIONS].

[On or Between] the [INSERT TIME AND DATE(S)] you failed to uphold the good reputation of the Public Service. Particulars of the charge are that you [OUTLINE THE ACTUAL DETAILS OF THE ACT OR ACTION WHICH CONSTITUTES THE FAILURE TO UPHOLD THE GOOD REPUTATION OF THE PUBLIC SERVICE].

PLEASE READ THE ACCOMPANYING NOTICE (Regulation 49A Notice) CAREFULLY AND FOLLOW THE INSTRUCTIONS THEREIN.

[INSERT NAME OF CHARGING OFFICER]
[INSERT NAME OF MINISTRY]

cc:
CEO, [INSERT NAME OF MINISTRY]
CEO, Public Service Commission



APPENDIX K: Notice Accompanying Charge(s) (Regulation 49A Notice)

REGULATION 49A NOTICE NOTICE ACCOMPANYING CHARGE

(This notice is to accompany charge(s) served upon an officer under the *Public Service Act 2004*)

You have been charged with a breach of the Code of Conduct

This notice tells you what steps you may take under the *Public Service Act 2004* if you are charged with a breach of the Code of Conduct.

- **The most important thing** to be aware of is that you have **7 days** from the receipt of this notice to admit or deny the charge(s).
- **If you admit the charge(s)**, you may make a written submission to the Chief Executive Officer about the circumstances of the breach of the Code of Conduct that might be relevant to any penalty the CEO might impose on you. The Chief Executive Officer should receive this written submission within 7 days from your receipt of the notice of charge(s).
- **If you deny the charge(s)**, you may make a submission to the CEO seeking to establish your innocence. The CEO should receive this written submission within 7 days from your receipt of the notice of charge(s).
- **If you do not respond to the charge(s)** in 7 days, it will be taken as admittance of the truth of the charge(s).
- **But you do have the right to remain silent** in relation to the charge(s), so you may, choose to deny the charge(s), and say nothing further about the matter (Regulation 49B).
- **If the charge(s) is found to be true** - if you are found to have breached the Code of Conduct - one or more of the following penalties may be imposed on you;
 - Caution and reprimand
 - Deduction from salary not exceeding SAT\$1000
 - Transfer to other duties
 - Reduction in classification and / or grading
 - Salary reduction (with or without reduction in grading)
 - Termination
- **If the charge(s) is found to be true**, you have the right of appeal to the Public Service Board of Appeal on the issue of your guilt, the penalty(ies) imposed and the order for recovery of loss if appropriate. The Notice of Appeal and Grounds of Appeal must be received by the Commission within **14 days** of your receipt of notice of the decision of the CEO. There will be the opportunity for mediation with the Commission if you lodge an appeal.

IF FURTHER INFORMATION IS REQUIRED PLEASE CONTACT THE CHARGING
OFFICER OR THE COMMISSION



APPENDIX L: Proof of Charges Served

LETTERHEAD of MINISTRY

PUBLIC SERVICE ACT 2004

PROOF OF CHARGE(S) SERVED

I, [insert name of Suspect / Charged Officer], acknowledge being personally served with charge(s) under the *Public Service Act 2004*.

Dated atthis..... day of [INSERT YEAR].

.....
Name and Signature of
Charged Officer

.....
Signature of Witness
/Person who served the Charge(s)



APPENDIX M: Warrant of Appointment of Investigating Officer

LETTERHEAD of MINISTRY

[INSERT DATE]

WARRANT OF APPOINTMENT OF INVESTIGATING OFFICER
UNDER SUBSECTION 44(2) PUBLIC SERVICE ACT 2004

Pursuant to subsection 44(2) of the *Public Service Act 2004*, I hereby appoint,

[INSERT NAME OF INVESTIGATING OFFICER APPOINTED]
[INSERT DESIGNATION]
[INSERT NAME OF MINISTRY]

to investigate the charge(s) against:

[INSERT NAME OF CHARGED OFFICER] ('charged officer') of
The Ministry of [INSERT NAME OF MINISTRY]

AND provide a final report to myself including detailed findings and recommendations as to the truth of the charge(s) and the charged officer's guilt or innocence and as to what penalty would be deemed appropriate.

AND submit the recommendations and relevant material to myself as soon as practicable.

Pursuant to subsection 44(4) you may amend the charge(s) but must inform the officer immediately and allow them the opportunity to respond to the amended charge(s) within 7 days.

[INSERT NAME OF CEO]
CHIEF EXECUTIVE OFFICER
MINISTRY OF [INSERT MINISTRY NAME]

cc: [INSERT NAME OF CHARGED OFFICER], [INSERT NAME OF MINISTRY]
CEO, Public Service Commission



APPENDIX N: Letter for CEO of Investigating Officer's Ministry

LETTERHEAD of MINISTRY

[INSERT DATE]

[INSERT NAME OF CEO OF MINISTRY WHERE INVESTIGATING OFFICER WORKS]
[CHIEF EXECUTIVE OFFICER]
[INSERT NAME OF MINISTRY]

Dear [INSERT NAME OF CEO]

Following our discussion and your agreement I am writing to inform you that I have appointed [NAME OF INVESTIGATING OFFICER] to undertake an investigation in my Ministry.

[INSERT NAME OF INVESTIGATING OFFICER] should begin the investigation as soon as possible and submit the recommendations and relevant material to myself as soon as practicable.

Thank you for allowing [NAME OF INVESTIGATING OFFICER] to carry out this work for me.

Fa'afetai

[INSERT NAME OF CEO]
CHIEF EXECUTIVE OFFICER
MINISTRY OF [INSERT MINISTRY NAME]



APPENDIX O: Report Template for Investigating Officer to give Charged Officer

INVESTIGATION REPORT **Into a Breach of the Code of Conduct by [INSERT CHARGED OFFICERS NAME]**

Prepared by: [INSERT NAME OF INVESTIGATING OFFICER]

[INSERT DATE]

I have undertaken a full and thorough investigation into the charge(s) against [INSERT NAME OF CHARGED OFFICER]. The charge(s) are outlined as, [INSERT CHARGE(S) DETAILS].

SUMMARY OF EVIDENCE

During the course of my investigation, I obtained the following evidence in relation to the charge(s):

[INSERT DETAILS OF EVIDENCE]

FINDINGS

Having considered the above evidence, I make the following findings in respect of the charge(s):

[INSET DETAILS OF FINDINGS]

RECOMMENDATIONS

On the basis of my findings above, I recommend that the charge(s) laid against [NAME OF CHARGED OFFICER] be found to be [true or not true] on the weight of the evidence.

Further, I recommend that the following penalty(ies) would be the most appropriate given the circumstances:

- Caution and reprimand
- Deduction from salary not exceeding SAT\$1000
- Transfer to other duties
- Reduction in classification and / or grading
- Salary reduction (with or without reduction in grading)
- Termination.

[DELETE AS REQUIRED]

[NAME OF INVESTIGATING OFFICER]

[NAME OF MINISTRY OF INVESTIGATING OFFICER]



APPENDIX P: Notice Accompanying Preliminary Report (Regulation 49F Notice)

REGULATION 49F NOTICE NOTICE ACCOMPANYING PRELIMINARY REPORT

(This Notice is to accompany the Preliminary Report submitted to the Charged Officer)

You have been charged with a breach of the Code of the Conduct and the Investigating Officer has completed the investigation.

Please find submitted herewith the;

1. Preliminary Findings of the investigation of the charge(s) against you for breach of the Code of Conduct ; and
2. Summary of Evidence upon which the preliminary findings are based.

READ these carefully, and in response you may write a written submission to the Investigating Officer concerning;

1. Your innocence, and
2. Any penalty to be imposed in the event that you are found guilty of the charge(s) against you.

IMPORTANT: The written submission must be received by the Investigating Officer **within 7 days** of your receipt of this Notice and the Preliminary Report.

PLEASE NOTE : if the charge(s) is found to be true, you have the right of appeal to the Public Service Board of Appeal on the issue of your guilt, the penalty(ies) imposed and the order for recovery of loss if appropriate. The Notice of Appeal and Grounds of Appeal must be received by the Commission within **14 days** of your receipt of notice of the decision of the CEO. There will be the opportunity for mediation with the Commission if you lodge an appeal.

**FOR FURTHER INFORMATION PLEASE CONTACT
THE INVESTIGATING OFFICER**

[NAME OF INVESTIGATING OFFICER]
[NAME OF MINISTRY OF INVESTIGATING OFFICER]



APPENDIX Q: Final Report Template for Investigating Officer

LETTERHEAD of MINISTRY

[INSERT DATE]

[INSERT NAME OF CEO]
[INSERT NAME OF MINISTRY]

Dear [INSERT NAME OF CEO]

I am writing to inform you that I have completed my role as Investigating Officer.

Please find enclosed is my final report with recommendations regarding the [DELETE AS REQUIRED guilt or innocence] of [INSERT NAME OF CHARGED EMPLOYEE]. [IF GUILTY INCLUDE THE FOLLOWING] I have also included my recommendation regarding an appropriate penalty.

Fa'afetai

[NAME OF INVESTIGATING OFFICER]
[NAME OF MINISTRY OF INVESTIGATING OFFICER]

Enc. Final Report

CC. CEO, Public Service Commission



FINAL REPORT OF A BREACH OF THE CODE OF CONDUCT

Prepared by: [INSERT NAME OF INVESTIGATING OFFICER]

[INSERT DATE]

I have undertaken a full and through investigation into the charge(s) against [INSERT NAME OF CHARGED OFFICER]. The charge(s) are outlined as, [INSERT CHARGE(S) DETAILS].

SUMMARY OF EVIDENCE

During the course of my investigation, I obtained the following evidence in relation to the charge(s):

[INSERT DETAILS OF EVIDENCE]

FINDINGS

Having considered the above evidence, I make the following findings in respect of the charge(s):

[INSERT DETAILS OF FINDINGS]

RECOMMENDATIONS

On the basis of my findings above, I recommend that the charge(s) laid against [NAME OF CHARGED OFFICER] be found to be [true or not true] on the weight of the evidence.

Further, I recommend that the following penalty(ies) would be the most appropriate given the circumstances:

- Caution and reprimand
- Deduction from salary not exceeding SAT\$1000
- Transfer to other duties
- Reduction in classification and / or grading
- Salary reduction (with or without reduction in grading)
- Termination.

[DELETE AS REQUIRED]

[NAME OF INVESTIGATING OFFICER]

[NAME OF MINISTRY OF INVESTIGATING OFFICER]



APPENDIX R: Notice of Decision

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Decision

[INSERT NAME OF CHARGED OFFICER]
[INSERT NAME OF MINISTRY]

Dear [INSERT NAME OF CHARGED OFFICER]

I am writing to inform you that in relation to the charge(s) of a breach of the Code of Conduct laid against you on [INSERT DATE] I have now considered the report provided by [INSERT NAME OF INVESTIGATING OFFICER] appointed by me to investigate the charge(s).

Having considered the [DELETE WHICHEVER IS NOT APPLICABLE findings, evidence and the recommendations by the Investigating Officer] and your submissions in relation to the charge(s), I am satisfied that [DELETE WHICHEVER IS NOT APPLICABLE you are guilty or you are innocent] in relation to the charge(s) laid against you.

IF INNOCENT INCLUDE THE FOLLOWING

You are therefore acquitted in relation to the charge(s).

IF GUILTY INCLUDE THE FOLLOWING

The reasons for your guilt are [INSERT REASONS].

Pursuant to Section 45 of the *Public Service Act 2004* I am imposing the following penalty(ies):

- Caution and reprimand
- Deduction from salary of up to SAT\$1000
- Transfer to other duties
- Reduction in classification and / or grading
- Salary reduction (with or without reduction in grading)
- Termination.

[DELETE AS REQUIRED]

The reasons for this penalty(ies) are [INSERT REASONS].

You have the right of appeal to the Public Service Board of Appeal on the issue of your guilt, the penalty(ies) imposed and [DELETE AS REQUIRED the order for recovery of loss]. The Notice of Appeal and Grounds of Appeal must be received by the Commission within **14 days** of receipt of this notice. There will be the opportunity for mediation with the Commission if you lodge an appeal.

Fa'afetai

[NAME OF CEO]



[NAME OF MINISTRY]
cc. CEO, Public Service Commission



APPENDIX S: Notice of Temporary Assignment when charged with Criminal Offence

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Temporary Assignment

[INSERT NAME OF OFFICER]
[INSERT ADDRESS OF OFFICER]

Dear [INSERT NAME OF OFFICER]

As a result of you being charged by the Police I am writing to inform you that I am exercising my power under paragraph 43(1)(a) of the *Public Service Act 2004* to temporarily assign you to other duties in the Ministry. I direct you to report for duty to [INSERT NAME OF SUPERVISOR] at [INSERT LOCATION] on [INSERT TIME AND DATE]. [INSERT NAME OF SUPERVISOR] will inform you of the duties that you will be required to perform.

This temporary assignment to other duties will remain in place pending the outcome of the criminal proceedings against you.

In making this decision to temporarily assign you to other duties, I am not anticipating the truth or otherwise of the allegations against you.

You will continue to be paid at your current salary level.

Fa'afetai

[INSERT NAME OF CEO]
[INSERT NAME OF MINISTRY]

cc. CEO, Public Service Commission



APPENDIX T: Notice of Suspension when charged with Criminal Offence

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Suspension

[INSERT NAME OF OFFICER]
[INSERT ADDRESS OF OFFICER]

Dear [INSERT NAME OF OFFICER]

As a result of you being charged by the Police I am writing to inform that I am exercising my power under paragraph 43(1)(b) of the *Public Service Act 2004* and suspend you from duty. The suspension takes effect from [INSERT DATE AND TIME].

This suspension will remain in place pending the outcome of the criminal proceedings against you.

In making this decision to suspend you from duty, I am not anticipating the truth or otherwise of the allegations against you.

This suspension will be without pay.

Fa'afetai

[INSERT NAME OF CEO]
[INSERT NAME OF MINISTRY]

cc. CEO, Public Service Commission



APPENDIX U: Notice of Hearing once convicted by Police

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Hearing following Conviction

[INSERT NAME OF OFFICER]
[INSERT ADDRESS OF OFFICER]

Dear [INSERT NAME OF OFFICER]

I am writing to inform you that pursuant to subsection 43(3) of the *Public Service Act 2004* I am considering whether or not to impose a penalty following your conviction by the Police.

You have the right to be heard on this matter so I invite you to attend a formal interview with myself on [INSERT DATE] at [INSERT TIME and PLACE] for you to respond to this issue. If you would prefer to respond in writing please submit your response to me by [INSERT DATE-ALLOW 7 DAYS].

Following this interview I will make a determination and notify you accordingly.

In considering whether or not I should penalise you and to what extent I will have regard to:

- The nature and seriousness of the offence;
- The circumstances in which it was committed;
- Any statement(s) that you may make;
- Any other relevant matters.

Fa'afetai

[INSERT NAME OF CEO]
[INSERT NAME OF MINISTRY]

cc. CEO, Public Service Commission



APPENDIX V: Notice of Penalty once Convicted by Police

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Penalty following Conviction

[INSERT NAME OF CHARGED OFFICER]
[INSERT NAME OF MINISTRY]

Dear [INSERT NAME OF CHARGED OFFICER]

I am writing to inform you that in relation to your conviction I have considered what you have said in relation to this issue. I have also considered the nature and seriousness of the offence and the circumstances in which it was committed.

Pursuant to Section 45 of the *Public Service Act 2004* I am imposing the following penalty on you:

- Caution and reprimand
- Deduction from salary of up to SAT\$1000
- Transfer to other duties
- Reduction in classification and / or grading
- Salary reduction (with or without reduction in grading)
- Termination.

[DELETE AS REQUIRED]

The reasons for this penalty(ies) are [INSERT REASONS].

You have the right of appeal to the Public Service Board of Appeal. The Notice of Appeal and Grounds of Appeal must be received by the Commission within **14 days** of receipt of this notice. There will be the opportunity for mediation with the Commission if you lodge an appeal.

Fa'afetai

[NAME OF CEO]
[NAME OF MINISTRY]

cc. CEO, Public Service Commission



APPENDIX W: Notice of Reinstatement once Acquitted by Police

LETTERHEAD of MINISTRY

[INSERT DATE]

Notice of Reinstatement

[INSERT NAME OF OFFICER]
[INSERT ADDRESS OF OFFICER]

Dear [INSERT NAME OF OFFICER]

I am writing to inform you that as you have been acquitted by the police you are being reinstated to your original position.

DELETE WHICH EVER VERSION IS NOT REQUIRED

{Version 1: This means that your temporary assignment to other duties will cease on [INSERT DATE] please report to your regular supervisor}.

{Version 2: This means that your suspension is revoked and you may return to regular duties from [INSERT DATE]. Please report to your regular supervisor. As per subsection 43(4) of the *Public Service Act 2004* the exact amount of salary lost as a result of the suspension will be paid to you in due course.}

I would like to take this opportunity to say that you are reinstated without loss of benefit or status and look forward to your continuing contribution to the Ministry.

Fa'afetai

[INSERT NAME OF CEO]
[INSERT NAME OF MINISTRY]

cc. CEO, Public Service Commission



REFERENCES:

1. Government of Samoa, Office of the Legislative Assembly ;
 - Public Service Act 2004
 - Public Service Regulations 1979
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5. Matautia Peni, Preparatory Notes for Discipline Manual, 2002
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7. Posthuma, Richard., *Procedural Due Process and Procedural Justice in the Workplace : A Comparison and Analysis*, Public Personnel Management Volume 23, No.2 Summer 2003
8. Ropeti Puni, Preparatory Notes & Editorial Comments by Richard Harding (PSCISP Legal Adviser) titled Disciplinary Process and Manual for Managers circa 2002.