



The Government of Tonga

Public Service Commission

SEXUAL HARASSMENT POLICY

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I. POLICY STATEMENT

(1) Premise

1. This Policy reflects and reinforces the following principles and practices and applies them to conduct in all Government workplaces:
2. Cultural Pillars – There are four golden pillars (faa’ikaveikoula) that underpin Tongan society:
 - i. respect
 - ii. humility
 - iii. reciprocity; and
 - iv. loyalty and commitment
3. Biblical Foundation – The basis for respect and reciprocity is founded on the biblical premise that we are all human beings created by God in His image, therefore having inherent value and worth.
4. *Constitution of Tonga* – The Constitution, Clause 1 - Declaration of Freedom states that “Since it appears to be the will of God that man should be free as He made all men of one blood...” If the author of the Constitution prioritised the freedom of all Tongans by virtue of the fact that men and women have the same rights, created by God, it is important for that truth to be embodied in this policy.
5. Statutory Obligation - The Public Service Commission has a responsibility to provide a safe workplace environment for all employees by virtue of the *Public Service Act 2010* section 4C (i) and its Regulations.
 - i. The Public Service Commission has a responsibility to ensure that employees uphold / comply with all Policies.
 - ii. The Code of Ethics and Conduct prescribes the type of behaviour expected of all employees.
 - iii. This Policy binds all employees.
 - iv. All employees have the right to work in a work environment that is free of all forms of sexual harassment.

6. It is hereby confirmed that a breach of this Policy by any employee is breach of the Code of Conduct 2010. Such employee shall be disciplined in accordance with the *Public Service (Disciplinary Procedures) Regulations*.

(2) Purpose

1. To ensure that employees are protected from sexual harassment.
2. To provide clear guidance to all employees in any Government Ministry regarding sexual harassment in the workplace.
3. To raise awareness among all employees about how to identify the behaviours, actions and circumstances known to be associated with sexual harassment.
4. To provide clear guidance for processing sexual harassment complaints within the Public Service.
5. To promote and maintain safe and healthy workplaces, where all employees, irrespective of sex or status, are treated with fairness, dignity and respect.

(3) Rationale

When sexual harassment is left unaddressed in the workplace, there will be significant impacts that affect not only the complainant but the overall workplace culture. These include the following:

1. Stress experienced by the complainant which may lead to poor work performance and/or absenteeism;
2. An intimidating hostile and offensive working environment negatively affecting the workplace and service delivery, including specifically increased physical risks and accidents;
3. Damaging and negative perception of the Public Service and Ministries by both employees and the general public;
4. Affects a person's psychological, physical and sexual health, dignity, and family and social environment;

5. Affects the quality of public services, and may prevent prospective employees from accessing the Public Service, and existing employees from remaining, and advancing in employment opportunities;
6. Impacts negatively on the organization of work, workplace relations, worker engagement, enterprise reputation, loss of employees, and overall productivity;
7. Affects women disproportionately, and recognizing that an inclusive, integrated and gender-responsive approach, which tackles underlying causes and risk factors, including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations, is essential to ending sexual harassment in the workplace;
8. Affects employment, productivity and health and safety, and that Government, employers' and workers' organizations and labour market institutions can help, as part of other measures, to recognize, respond to and address the impacts of sexual harassment, and a breakdown in communication, trust and transparency in work relationships thereby affecting productivity.

(4) Policy Statement on Sexual Harassment

1. Sexual harassment is not to be tolerated or condoned in any Government workplace.
2. The Commission has an obligation, both statutory and ethical to:
 - i. take all appropriate steps to prevent and respond to sexual harassment in the workplace of the Public Service.
 - ii. protect all employees from any act(s) of sexual harassment.
3. The Commission is committed to ensuring that all Ministries, contractors, suppliers, and partners maintain a 'zero-tolerance' position on sexual harassment.
4. All forms and expressions of sexual harassment are prohibited in the Public Service.

(5) Scope

1. This Policy will apply to all employees¹. Position and seniority will not confer impunity. Any employees who engages in sexual harassment will be subject to disciplinary sanctions up to and including criminal prosecution and dismissal.

2. This Policy:
 - i. supports those who have been affected by sexual harassment as well as those who report or witness it;
 - ii. ensures accountability of those who perpetrate sexual harassment;
 - iii. supports the creation of a safe, equal and inclusive working environment for employees.

(6) Prevention of Retaliation Against Complainants

The Government of Tonga has a ‘zero-tolerance’ of retaliation against and intimidation of those who speak up or report on sexual harassment in the workplace.² Any person found to be retaliating against or intimidating those who speak up or report sexual harassment will be dealt with in accordance with the law³ and the appropriate policies of the Commission.

1. Any evidence of retaliation or intimidation shall be considered a separate violation of this Policy.

2. Any person found to be in retaliation against or intimidating those who speak up or report sexual harassment will be dealt with accordingly.

¹CEOs and employees in a Government Ministry as listed in Schedule 1 of The Public Service (Amendment) Act 2010. Employees who are appointed under Schedule 2 of the Public Service (Amendment) Act 2010 who are alleged to have committed sexual harassment will be subject to action in accordance with the terms and conditions of any contract they may have with the PSC, and also any other rules regulations codes and policies regarding them.

²The Public Service (Amendment) Act 2010 s19A(4) prohibits retaliation and intimidation. ss(6) outlines the obligation of the CEO and the Commission to inform the person making a report (complaint) of the protections available to the them under this section.

³The Public Service (Amendment) Act 2010 s19A(4) protects employees who report serious breaches of discipline from victimization and discrimination by the employer. The provisions of s19A(4) (5) and (6) of the Public Service (Amendment) Act 2010 may apply to this situation as applicable.

II. SEXUAL HARASSMENT – DEFINITION

(1) Definition

1. “Sexual harassment” is unwelcome behaviour of a sexual nature that leads to a person feeling offended, humiliated or intimidated, where that person’s reaction is reasonable in the circumstances, and is between an employee with greater authority and one with lesser authority. This harassment is used as a basis for a decision which affects the employment and career advancement of that employee (For instance, a employee is pressured by a superior to engage in sexual activity to keep his or her job or advance his or her career e.g. a supervisor either offers improved terms and conditions of employment to the employee in exchange for sexual favours or threatens to take negative action in regard to the employees employment situation if the request for sexual favours is refused.) However, it should be noted that sexual harassment between an employee with greater authority and one with lesser authority can also create an intimidating, hostile or humiliating workplace environment, and /or
2. between co-workers and has the effect of unreasonably interfering with the victim’s work performance or creates an intimidating, hostile or humiliating workplace environment for other employees. (For instance, where one or more co-workers subject another co-worker / colleague to comments of a sexual nature that are offensive and that have a negative impact upon the colleague’s work performance or the working environment.)
3. “quid pro quo” (this for that) sexual harassment is committed when an employer, supervisor, manager or co-worker, undertakes or attempts to influence the process of recruitment, promotion, training, salary increment or other benefit of an employee in exchange for sexual favours, or to threaten to discipline or dismiss an employee if sexual favours are not given.

4. An employee is sexually harassed in the course of his employment if an employer, a representative of the employer, or another employee directly or indirectly;
 - (a) makes a request of the employee for sexual intercourse, sexual contact or subjects the employee to any other form of sexual activity which contains an implied or overt:
 - i. promise of preferential treatment in that employees employment;
 - ii. threat of detrimental treatment in that employees employment; or
 - iii. threat about the present or future employment status of that employee.
 - (b) uses words (whether written or spoken), engages in physical behaviour, shows visual material, or any other actions of a sexual nature, which is unwelcome or offensive to another employee, and that other employee's reaction is reasonable in the circumstances, and is either through repetition or of such a nature that it has a detrimental effect on an victim's employment, job performance, or job satisfaction.
5. Where a complaint of sexual harassment has been made by an employee, details of the complainant's previous sexual experience or sexual reputation must not be taken into account by the employer.

(2) WHERE SEXUAL HARASSMENT CAN OCCUR

1. For the purposes of this Policy, 'sexual harassment' includes behaviours that can take place including [but not limited to]:
 - (a) in the physical workspace within the Public Service
 - (b) in any workplace, regardless of its physical location, used by employees for work
 - (c) during any work-related travel
 - (d) unwanted behaviour where one employee targets another through any form of social media, email, mail or any other vehicle for the transmission of communications whether or not it originates in the actual place of work.

(3) FORMS OF SEXUAL HARASSMENT

1. Sexual harassment may take various forms including [but not limited to]:

(a) Verbal Conduct:

Sexually harassing verbal conduct may include the following:

- i. Aggressive, repetitious demands and requests for social engagements after it has been made clear that such requests are denied and not welcomed;
- ii. unwanted requests for sexual intercourse/intimacy, including unwelcome sexual advances;
- iii. inappropriate or sexually oriented comments about physical appearance;
- iv. jokes of a sexual nature, sexually offensive, flirtatious or lewd remarks;
- v. sexual innuendo, insults or taunts based on a person's sexual orientation;
- vi. inappropriate or intrusive questions about an employees private life or body or remarks of a sexual nature such as expressions of sexual interest that are addressed directly to the person.

Verbal conduct of a sexual nature do not necessarily need to be addressed directly to a person for sexual harassment to occur – e.g. an employee (A) who makes offensive remarks out loud to another employee (B) about another employee (C) while they are within earshot.

(b) Non-Verbal Conduct:

Sexually harassing non-verbal conduct may include the following:

- i. the display of sexually explicit (or suggestive) pictures, screen savers or posters;
- ii. the sending of sexually inappropriate or suggestive images or videos in any format;
- iii. sending sexually explicit emails, SMS messages, or any communication in visible or audible form.

(c) Physical Conduct

Sexually harassing physical conduct may include the following:

- i. Unwelcome touching, rubbing, patting, pinching, hugging and kissing,
- ii. Sexual gestures such as pelvic thrusts, and facial gestures,
- iii. Unwelcome physical familiarity, closeness,
- iv. or any other unsolicited physical contact of a sexual nature.

Sexually harassing physical conduct may also include any behaviour leading to an offence under the *Criminal Offences Act* such as indecent assault or rape, including any attempt. Such conduct must be reported to the Police for normal process of criminal investigation and separate criminal prosecution.

2. 'Sexual harassment' may be a single event, a series of events or an ongoing pattern of behaviour.
3. It is possible for sexual harassment to be directed against a person of the opposite or same sex as the alleged harasser, and against a person of any age.

III. ROLES AND RESPONSIBILITIES

(1) Public Service Commission

1. The Commission and all Ministries are committed to promoting and maintaining a safe working environment free of sexual harassment in which all employees and other individuals covered by this Policy are expected to comply with.
2. Commission shall ensure that the Policy is understood and enforced and that all employees are responsible and accountable for their conduct.
3. Commission will undertake diligent reference checks during recruitment processes to ensure that individuals who have violated this Policy are identified, and may not be considered for hiring, depending on the seriousness of the violation.

4. The Commission will provide targeted training for employees designated to provide support on issues involving sexual harassment, building the skills necessary to effectively communicate and respond appropriately to sexual harassment.
5. The Commission will provide information and training to employees to ensure a full understanding of this Policy and procedures through awareness-raising programmes supporting gender mainstreaming and the prevention of sexual harassment.
6. The Commission and all Government Ministries responsible for implementing this Policy shall provide to victims of sexual harassment effective access to gender-responsive, safe and effective complaint and dispute resolution mechanisms, support, services and remedies.

(2) Chief Executive Officers and Senior Managers of Individual Ministries

1. The Chief Executive Officer (CEO) of a Ministry shall inform all staff of the existence of this Policy, make it available for them to read and ensure that they understand it and to take immediate action where sexual harassment is observed.
2. Senior officers in Ministries shall demonstrate their commitment to the prevention of and response to sexual harassment incidences:
 - i. by educating themselves about sexual harassment issues,
 - ii. treating all employees with professionalism, courtesy and respect, and
 - iii. as far as is reasonably possible, ensuring confidentiality in all matters relating to the reporting and investigation of sexual harassment incidences and cases.
3. Senior leaders and senior managers must ensure that there is a workplace culture in which employee feel free to express concerns about inappropriate behaviours and they must encourage employee to use, without fear of reprisal, the mechanisms available to them through the Public Service.

(3) Employee

1. All employees must comply with this Policy.
2. All employees shall be responsible to assist in the prevention of sexual harassment by:
 - i. refraining from knowingly participating in or encouragement of acts that could reasonably be perceived as sexual harassment,
 - ii. reporting observed acts of sexual harassment to a supervisor, and assisting in the provision of information they are aware of, for cases where allegations of sexual harassment have been made,
 - iii. encouraging any employee who confides that he or she is being harassed to report the situation to a supervisor.
3. Employees shall familiarise themselves with the Policy and attend awareness programmes and training provided by their Ministries or the Commission.
4. Employees may contribute to the development and revision of this Policy by providing information, and comments.

IV. FORMAL PROCEDURES

(1) Process

1. A complaint of sexual harassment can be made by any employee who, in accordance with this Policy, believes that he or she has been sexually harassed. Such complaint shall be treated as a possible breach of the *Code of Conduct*, and be processed according to the procedures of the *Public Service (Disciplinary Procedures) Regulations 2010*.
2. In cases where the complainant and/or alleged sexual harasser is not subject to the *Public Service (Disciplinary Procedures) Regulations 2010*, the complaint may be processed in accordance with the informal procedures outlined below or through a Court of Law's civil and criminal process.
3. A complaint should be:
 - i. taken seriously,
 - ii. treated confidentially,

- iii. investigated thoroughly,
 - iv. handled quickly.
4. Employees are encouraged to inform an alleged sexual harasser that his or her actions are unwelcome, and offensive.
5. The employee wishing to lodge a complaint is encouraged to make written notes, recorded audio, or video of relevant events. These should be made as soon as possible after the incident has occurred, noting the identity of the alleged sexual harasser, dates, locations, a short description of what happened and the names of any witnesses and/or of any third parties to whom the incident might have been mentioned.
6. A complaint of sexual harassment will not be dismissed simply because the complainant failed to inform the alleged harasser that the conduct was not welcome at the time that it occurred.
7. A complainant of sexual harassment, who knowingly lodges a false report or is found to be in fabrication of such an event shall be disciplined according to the *Public Service (Disciplinary Procedures) Regulations 2010*.

(2) Independent Investigations for Formal Complaints

1. If the complainant has been unable to reach a satisfactory resolution through the informal process outlined below or does not wish to pursue informal resolution, he or she should submit a formal complaint under this Policy per the *Public Service (Disciplinary Procedures) Regulations 2010*.
2. The complaint should be submitted to the Commission through the Chief Executive Officer of the Ministry concerned. In the case where the alleged harasser is the CEO the complaint may be made directly to the Commission by the alleged victim.

3. Because of the sensitive nature of sexual harassment, all formal complaints made in terms of this Policy must be promptly and thoroughly investigated, subject to the time requirements of the *Public Service (Disciplinary Procedures) Regulations 2010*.
4. All investigations of formal complaints may be conducted by an independent investigator appointed by the Commission in accordance with the *Public Service (Disciplinary Procedures) Regulations 2010*. Investigators engaged by the Commission must be well suited to conduct a sexual harassment investigation.
5. The investigator must draw up a report which must contain the following information;
 - i. a summary of the allegations against the harasser;
 - ii. any complaint made against the employee;
 - iii. the investigative measures undertaken;
 - iv. the facts gathered from the investigation;
 - v. official records or documents relevant to the investigation;
 - vi. any statements from witnesses;
 - vii. any record of previous offenses committed by harasser;
 - viii. any other evidence in any form or format, that is relevant to the investigation;
and
 - ix. the findings and recommendations on the allegations.
6. During the formal investigation period, the CEO may need to make a decision regarding the work placement of the alleged harasser and/or the complainant in order to reduce the likelihood of any increased tension in the workplace.
7. The investigator must complete the report within 1 month from receiving the instruction from the Commission to investigate.
8. Based on the investigation report, the Commission, in close consultation with the concerned Ministry, must make a decision on the appropriate actions to be undertaken within 30 days of having received the independent investigator's report.

9. The decision of the Ministry or the Commission must be transmitted to the complainant and to any other party directly implicated in the complaint, together with a copy of the report, subject to the deletion of any confidential information necessary to protect third parties as directed by the Ministry or the Commission.
10. The Ministry or Commission must establish a mechanism for monitoring the progress of the complaint so that at any time, the complainant may be able to enquire as to the progress of the investigation.

V. INFORMAL PROCEDURES

(1) Process

1. The Commission encourages employees to first attempt to resolve harassment-related issues through informal consultation and conflict resolution.
2. The complainant may wish to write a letter describing the inappropriate behaviour and its effect, that it is unwelcome, unacceptable and must stop. A third party such as HR advisor / counsellor may assist a complainant with planning what to say or write in the letter to the alleged harasser.
3. The alleged harasser should cease the objectionable conduct immediately.
4. If the situation permits, employees should attempt to resolve sexual harassment-related issues through informal consultation and conflict resolution.
5. This includes the complainant writing a letter describing the inappropriate behaviour and its effect, that it is unwelcome, unacceptable and must stop, to the harasser.
6. The alleged harasser should cease the objectionable conduct immediately. Continued sexual harassment should result in the matter being processed formally.

(2) Ways for Ministry Management to Assist Procedures and Provide Effective Intervention

1. If the complainant does not feel comfortable addressing the alleged harasser directly (e.g. because the complainant does not feel safe having such a conversation or the

alleged harasser is a senior official), the complainant may consult informally with the CEO, or senior officer, or any relevant officer who has been designated to oversee and deal with issues related to sexual harassment in the Ministry.

2. The complainant may wish to ask questions to the CEO, or senior officer, or any relevant officer about sexual harassment or have issues clarified before proceeding with any direct report of alleged sexual harassment. A complainant should be able to discuss questions or clarifications in confidence.
3. If it emerges from the discussion that sexual harassment has occurred, the CEO, senior officer or any relevant officer has an obligation to inform the complainant that information, advice and assistance is available from the appropriate Division in the Ministry and the Commission.
4. Depending on the circumstances, third party intervention may be attempted. Third parties may be:
 - i. the HR manager/supervisor
 - ii. other Ministry officials trained in addressing sexual harassment
 - iii. specifically professionally trained Commission staff
5. They should meet privately with each person involved, understand each party's view on the alleged incident, clarify perceptions⁴ and develop an acceptable and appropriate way forward for resolving the complaint.
6. The intervention should allow for the matter to be addressed promptly at the managerial level or via submission to the Commission.
7. A written record must be maintained about the discussions and any managerial involvement.

8. If a manager/supervisor cannot perform this role for any reason, the manager/supervisor, must, in consultation with the Human Resources Division, or PSC, refer the affected individuals to another trained and trusted point of contact for assistance.
9. The CEO, senior officer or any relevant officer must also inform the complainant of the options available under the Commission's legal framework to address the alleged sexual harassment and provide the information in a timely, sensitive and impartial manner.

VI. SANCTIONS AND SUPPORT

1. Once the Commission has made a decision that the alleged sexual harasser breached this Policy, the harasser will be sanctioned in line with the provisions of the *Public Service (Disciplinary Procedures) Regulations 2010*.
2. If it appears from the investigation that a criminal offence may have been committed, the CEO or the Commission shall report the matter to the Police.⁵
3. Intentionally making a false complaint of sexual harassment or providing false information in relation to an allegation of sexual harassment is grounds for discipline.
4. Employees found to have committed sexual harassment may also be referred to appropriate counselling and support in order to address the root causes that led to the sanctioned conduct.

VII. DATA AND MONITORING

- (1) Data and information for internal monitoring and analysis of sexual harassment complaints shall be maintained within the responsible Division in Ministries and the Commission.

⁵ Regulation 5 (4). Public Service (Disciplinary Procedures) (Amendment) Regulations 2010

- (2) Ongoing monitoring should be undertaken on an annual basis. It should include: analysing data collected through formal and informal mechanisms, undertaking surveys of officials/staff on sexual harassment, conducting interviews, monitoring staff absenteeism, with the aim of seeking to better understand the workplace culture and the employee's responses to sexual harassment.

- (3) The Policy should be reviewed regularly every 3 years. Reviews should involve consultation with employees and take into account the impacts of changes in legislation and other policies that may affect this Policy.

VIII. OTHER DEFINITIONS

“Chief Executive Officer” means any person in charge of the administration of a Ministry, who is employed under a fixed contract of employment under this Act

“Commission” means the Public Service Commission established under this Act;

“daily paid worker” means a person who is employed on a daily basis

“employee” or **“public servant”** means all persons employed by the Public Service, including interns and/or volunteers

“employer” means the Public Service or all persons employed in any Ministry listed in Schedule I of the Public Service Act

“Ministry” means any ministry, department or office as listed in Schedule I of the Public Service Act

“workplace” means not only the specific location where work is being performed, such as an office, but also to locations where work-related business may be conducted. These could include, but are not limited to: Work related social activities, including, receptions, social gatherings organized by the Office for staff; Conferences and training sessions; Official business travel; Business meals; Work related telephone conversations or messages; and Work related communications through electronic media.