



# Employment Disputes Policy

## GOVERNMENT OF THE COOK ISLANDS

Effective: August 2018

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### Policy Statement

This Policy provides guidance on the management of employment disputes within the Public Service to ensure good employer practices are employed to resolve employment disputes.

### Scope

This Policy applies to all employees of Public Service Departments, Island Governments and Crown Agencies.

This Policy does not cover:

- Disputes over job evaluations or job sizing - refer to the Job Evaluations Policy
- Alleged breaches of the Code of Conduct - refer to the Code of Conduct Policy
- Disputes over contracts for services - refer to the Contracting for Services Policy

If you are unsure about which Policy or Policies apply to your situation, please discuss this matter with your Employer or call the Office of the Public Service Commissioner.

### Principles

The Public Service Act 2009 identifies the following values for Public Servants to adhere to:

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Honesty	acting honestly, being truthful, and abiding by the laws of the Cook Islands
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 of the Cook Islands
Transparency	taking actions and making decisions in an open way
Accountability	being able to explain the reason for actions taken, and taking responsibility for those actions
Respect	treating the people, the Government of the Cook Islands and colleagues with courtesy and respect
Efficiency and Effectiveness	achieving good results for the Cook Islands in an economical way

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The duty to act as a good Employer requires Employers to develop and implement Personnel Policies which ensures fair and proper treatment of Employees during employment, including the impartial recruitment of Employees, employee capability development opportunities and good and safe working conditions.

### Legislation and Regulations

The Public Service Act 2009, Employment Relations Act 2012 and other relevant legislation apply.

### Definitions

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**Appeal** is a request to reconsider a prior decision or finding

**Employee** means any person who is an employee of the Public Sector

**Employer** means the Public Service Commissioner or Heads of the Public Service, Crown Agencies, Island Governments or their delegated authority

**Employment disputes** include disagreements between an employer and employee, or collective representative over employment terms and conditions, or disputes between employees

**Good Employer** is one who operates a personnel policy for the fair and proper treatment of employees

**Natural Justice** promotes a fair hearing and rules against bias

**Public Service** includes Public Service Departments, Crown Agencies and Island Governments

**Public Service Board of Appeal** considers appeals against recommendations by the Public Service Commissioner or any other decision in respect of a right of appeal in the Public Service Act. The Board is made up of three members with the Chief Justice of the High Court as Chair. The Board Secretariat is the Registrar of the High Court.

**Public Service Commissioner** means the Public Service Commissioner appointed under Article 73 of the Constitution and Section 5 of the Public Service Act

## **Procedures**

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Employers are responsible for administering this Policy. The Employer is responsible for ensuring all policies are easily accessible to employees however, the onus lies with the Employee to read, understand and comply with this and any relevant Government policies. Breaches of this Policy may be considered misconduct and subject to disciplinary action and/or dismissal.

## **Employment Disputes**

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Employment disputes can be between:

- An employer and employee or;
- An employer and a collective agreement representative, where the employee is a member of a 'collective' (e.g. Workers Association) or;
- Employees over employment terms and conditions.

Employment disputes over employment terms and conditions include but are not limited to:

- Recruitment
- Remuneration
- Hours of work
- Benefits and welfare
- Meal and rest breaks
- Training and Development
- Safe and Healthy workplace (including mental and physical wellbeing)
- Performance
- Termination (not done in accordance with PS Act)
- Leave entitlements

Collective bargaining between a collective representative and the Public Service Commissioner over terms and conditions of employment is permitted under law.

## **Managing Employment Disputes**

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Employers are responsible for managing disputes within the Agency according to the procedures provided below (diagram attached in Annex 1):

- Employers must keep the Public Service Commissioner aware of their management of employment disputes at all times

- An Employer is responsible for managing and resolving employment disputes with employees, in a fair and speedy manner and ideally within 14 days of receiving a written complaint from an employee
- Unresolved employment disputes between employers and employees after the period outlined above, must be referred in writing to the Public Service Commissioner for independent review
- The Public Service Commissioner will conduct an investigation into the dispute and issue recommendations

In the event that the dispute is with the Head of Agency, the Public Service Commissioner is responsible for managing this.

### **Reporting Disputes:**

Recognising that speedy resolutions are important for all parties, employees must report a dispute to the relevant Head of Agency in writing using the disputes form provided (Annex 2) within 14 working days of the circumstances or incident giving rise to the dispute:

- Heads of Agencies must endeavour to use good employer principles to resolve disputes with employees within their department before referring these to the Public Service Commissioner for an independent review.
- The Public Service Commissioner must endeavour to resolve disputes with Heads of Departments before disputes are taken to the Public Service Appeal Board.

### Conditions for reporting an employment dispute:

- The dispute must be submitted in writing by an individual (i.e. former/current employee, or collective representative)
- The dispute is between the employer and employee of the same Agency
- The employee considers there is a breach of employment terms and conditions
- The employee should provide their preferred contact details for the purposes of managing the dispute.

### Written employment disputes must include details of:

- The individual/s impacted by the dispute
- The incident/disagreement causing the dispute with relevant supporting documentation
- Any third parties involved (if any)

Reported disputes found to be unwarranted or deceitful can be considered misconduct and addressed through the Code of Conduct Policy.

### **Resolving Disputes:**

Employers must endeavour to resolve reported disputes fairly within 14 working days of receiving the complaint.

### Guidelines:

- Disputes must be considered based on facts and specific circumstances
- Discussions between the parties to the dispute and relevant witnesses must be recorded in writing and kept confidential
- Natural justice should be followed to reach the best and mutually exclusive outcome for both parties
- Employers may seek legal advice from Crown Law during the dispute resolution process
- Employees may seek independent legal advice during the dispute resolution process

## Remedies:

The following remedies may be available, but are not limited to:

- Amend the employment terms and conditions
- Reinstatement of a terminated or suspended employee
- Pay compensation
- Issue a formal apology
- Agree on specific actions to be taken by either/both parties
- Propose system or process improvements
- Propose changes to Human Resource-related policies and legislation
- Facilitate a mediation process (similar to that provided in the Employment Relations Act)
- Refer unresolved disputes to the Public Service Commissioner for review

Before offering any possible remedies to an employee, it is advised that employers seek legal advice from the Crown Law Office.

## **Appeals**

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If an agreement or a satisfactory solution cannot be reached, the aggrieved person can lodge a written complaint directly to the Public Service Commissioner. The Commissioner after reviewing the complaint may issue a recommendation or act as a mediator. However, if the Commissioner deems the dispute to be irreconcilable, there will be no investigation and the aggrieved person can seek legal advice to whether or not to put forward a case with the Registrar of the High Court of the Cook Islands.

Heads of Agencies can appeal the decision regarding their respective employment disputes using Schedule 3 of the Public Service Act 2009.

If the Commissioner performs an independent review of the dispute, the recommendations issued must be complied with by both parties. If not complied by either parties, or one of the parties, the Commissioner can take disciplinary measures to enforce compliance to the recommendations.

## **Other Provisions**

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All records relating to the administration of this Policy must be kept for at least seven years and are only accessible by the Employer and/or authorised staff in order to protect the privacy of complainants and related parties.

After the required seven year period, the Agency may destroy the documentation in adherence with Government official information management policies.

The Office of the Public Service Commissioner is responsible for reviewing and updating this Policy and associated documents from time to time.

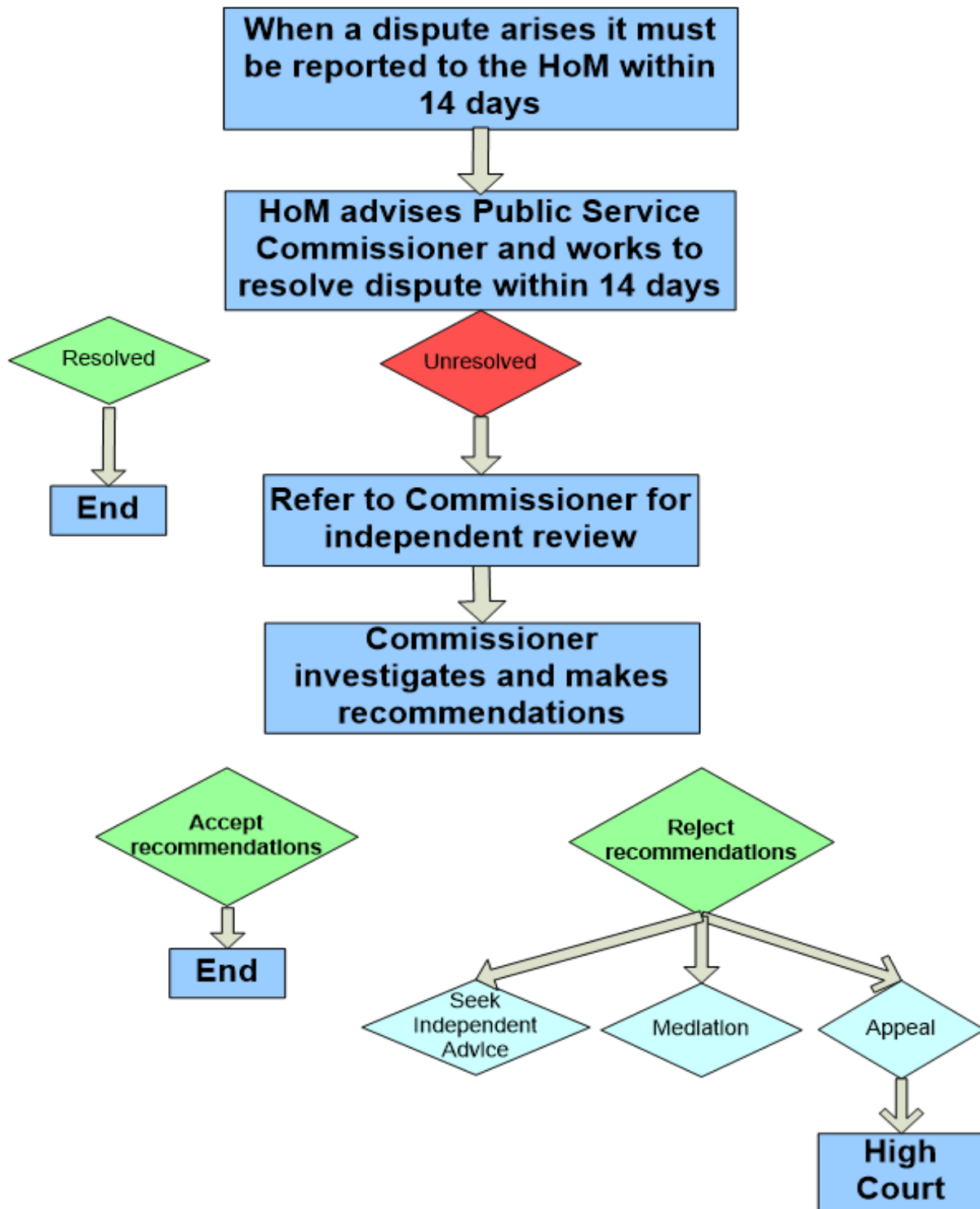
## **Associated Documents**

Employment Disputes Form  
Code of Conduct Policy

## **Other information**

For Policy queries contact the Office of the Public Service Commissioner on phone (682) 29421 or email: [pscinfo@cookislands.gov.ck](mailto:pscinfo@cookislands.gov.ck)

**Annex 01 - Employment Dispute Resolution Process**



**Annex 02 - Forms**



**Employment Disputes Form**  
GOVERNMENT OF THE COOK ISLANDS

**Purpose:** This form can be used to raise an employment dispute with your Employer OR the Office of the Public Service Commissioner – if you are unable to resolve the dispute with your Employer.

<b>To:</b>	
<b>Complainant:</b>	
<b>Contact details: Phone or email</b>	

<b>Current Employer:</b>	
<b>Date:</b>	

**Details of the dispute** What is the nature of the employment dispute? What is the issue? What legislation or Policy has been breached (if any)? What actions contributed to the dispute?

**What is your proposed resolution to the dispute?** Refer to the Employment Disputes Policy for guidance

**Evidence to support your claim/s:** number and names of attachments

**FOR OFFICE USE ONLY**

<b>Dispute registration reference:</b>		<b>Name of Receiving Officer and date received</b>		<b>Name of Investigation Officer and date received</b>	
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