



Australian Government
Australian Research Council

Staff Misconduct Policy and Guidelines

*Guidelines on the handling of suspected breaches of the Australian Public Service
Code of Conduct*

RESEARCH *for a creative, innovative and productive Australia*



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Revision History

This document will be reviewed in consultation with employees and it will be assessed in line with any changes to legislation or through employee consultation as covered therein.

VERSION	DATE	AUTHORISATION NAME	AUTHORISATION POSITION
1.0	July 2014	Lyndall Marshall	Assistant Director, Human Resources

Introduction

These Guidelines

The *Public Service Act 1999* (the Act) prescribes the standards of behaviour and conduct expected of all public service employees. These are expressed in the APS Code of Conduct (the Code), APS Values (the Values) and the APS Employment Principles (Employment Principles).

'Misconduct' is an umbrella term to describe behaviours or acts that *may* be in breach of the Code, or are inconsistent with the Values or Employment Principles. Not all acts of misconduct are considered breaches of the Code.

The purpose of these Guidelines is to assist ARC employees and managers to understand how the agency handles allegations of misconduct, how it determines whether there has been a breach of the Code and how it addresses a breach.

The *Public Service Amendment Act 2013* amended the Public Service Act 1999 to introduce new APS Values, the APS Employment Principles and to amend the APS Code of Conduct.

Misconduct matters that were reported on or before 30 June 2013 will be managed under the previous *Public Service Act 1999* and in accordance with the Agency's section 15(3) Procedures that were in place at that time.

Employee Responsibility

As APS employees, all ARC staff are encouraged to be familiar with the Code of Conduct and the APS Values and are required to comply with them. This obligation should form part of every employee's performance agreement.

The APS code of conduct and you

In this section:

- *The APS Code of Conduct, Values and Employment Principles*
- *When does the Code of Conduct apply?*
- *The Code of Conduct and criminal offences*
- *Employment Principles*

The Code of Conduct

The APS Values, the Code and the Employment Principles, which are set out in the *Public Service Act 1999* (the Act), prescribe the standards of behaviour and conduct expected of all employees.

The Code of Conduct requires that an APS employee must:

1. behave honestly and with integrity in connection with APS employment
2. act with care and diligence in connection with APS employment
3. when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment
4. when acting in connection with APS employment, comply with all applicable Australian laws. For this purpose, **Australian law** means:
 - a) any Act (including this Act), or any instrument made under an Act; or
 - b) any law of a State or Territory, including any instrument made under such a law.
5. comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction
6. maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff
7. disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment
8. use Commonwealth resources in a proper manner
9. not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment;
10. not make improper use of:
 - a) inside information
 - b) the employee's duties, status, power or authority
 - c) in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.
11. at all times behave in a way that upholds:
 - a) the APS Values and APS Employment Principles
 - b) the integrity and good reputation of the employee's Agency and the APS.
12. while on duty overseas, at all times behave in a way that upholds the good reputation of Australia
13. comply with any other conduct requirement that is prescribed by the regulations.

Probationary employees must abide by the Code. In the first instance, allegations of misconduct by probationers should be addressed by managers/supervisors in the Probation Assessment Report.

Former employees may still be investigated for suspected misconduct. Where an employee has transferred to another agency the details of the alleged misconduct are provided to the new employer. Where an employee has resigned from the agency an investigation can continue or commence, however sanctions cannot be imposed.

APS Values and APS Employment Principles

The APS Values and APS Employment Principles underpin the relationships and behaviours and articulate the culture and operating ethos of the Australian Public Service. Together the Values and Employment Principles shape the organisational culture of the APS and are core components to positive cultural change, building stewardship, high performance, and leadership—and fostering 'one APS'.

APS Values

The Values are easily remembered with the pneumonic ICARE:

- **Impartial:** The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.
- **Committed to service:** The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.
- **Accountable:** The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.
- **Respectful:** The APS respects all people, including their rights and their heritage.
- **Ethical:** The APS demonstrates leadership, is trustworthy, and acts with integrity in all that it does.

APS Employment Principles

The Employment Principles deal with employment and workplace relationships in the APS.

The APS is a career-based public service that:

- Makes fair employment decisions with a fair system of review
- recognises that the usual basis for engagement is as an ongoing APS employee
- makes decisions relating to engagement and promotion that are based on merit
- requires effective performance from each employee
- provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued
- provides workplaces that are free from discrimination, patronage and favouritism
- recognises the diversity of the Australian community and fosters diversity in the workplace.

When does the Code of Conduct apply?

An individual's standard of conduct and their employment are connected in the following ways:

- inside and outside the workplace
- within and outside working hours
- at work locations in Australia or overseas.

The Code of Conduct may apply whenever there is a connection between the employee's behaviour and its effect on the workplace, other employees or agency clients and/or stakeholders, the reputation of the agency, the APS or the Commonwealth.

This can occur in three (3) ways:

- *in the course of employment* – conduct directly associated with, and expected of, an employee at work and in the course of their duties. This includes travelling for work purposes
- *in connection with APS employment* – addresses situations where an employee's actions or behaviour may affect the operations of the workplace more generally, or public perceptions of the public service. This includes employment-related functions such as a Christmas Party
- *at all times* – concerns conduct which occurs both inside and outside work hours and may impact the workplace, the reputation of the public service or the employment relationship.

The Code requires employees to behave at all times in a way that upholds (a) the APS Values and APS Employment Principles and (b) the integrity and good reputation of the employee's Agency and the APS. This does not mean APS employees are not entitled to a private life, however APS

employees should be mindful and aware that any conduct at any time that has the potential to bring the agency into disrepute or affect the employee's position in the workplace, may be assessed and treated as suspected misconduct.

The Code of Conduct and criminal offences

Where an employee has been charged with, or found guilty of, committing a criminal offence, the Delegate will consider whether the facts and circumstances that give rise to the offence might also constitute a breach of the Code.

For instance, where the criminal charge relates to behaviour that could have an impact on the person's ability to maintain honesty and integrity in connection with their APS employment (e.g. fraudulent use of documents to gain or seek to gain a benefit for the employee), or if the behaviour is likely to damage the good reputation of the APS (e.g. being charged with driving under the influence of alcohol and the employee is employed as a driver of the agency), it is appropriate to consider whether an investigation is warranted.

The employee may be suspended until the decision of the court is known. Once the criminal charge has been heard, the Delegate may continue to have allegations investigated in order to determine the effect the misconduct may have on the employee's status or the workplace more generally. The involvement of employees in criminal proceedings will not necessarily result in an investigation of whether there has been a breach of the Code.

The evidence from any court proceedings may negate the need for the agency to undertake an investigation into whether or not a breach has occurred. However, if this is the case the employee concerned will be advised.

Possible breaches of the Code of Conduct

Examples of unacceptable workplace behaviour

Behaviour which would be considered unacceptable includes (but is not limited to) the following:

- aggressive or abusive behaviour such as threatening gestures or actual violence or assault
- verbal abuse (for example, yelling, screaming, abusive or offensive language)
- being under the influence of illicit drugs or impaired by alcohol
- unsafe work practices or behaviour which may harm the staff member or others
- bullying, harassment or intimidation
- stalking
- unwelcome physical contact including that of a sexual, intimate or threatening nature
- teasing, name calling or ridicule or making someone the brunt of pranks or practical jokes
- withholding approval for or denial of requests maliciously, discriminatorily, unfairly or without basis
- excluding or isolating individuals
- undermining performance, reputation or professionalism of others by deliberately withholding information, resources or authorisation or supplying incorrect information
- malicious or mischievous gossip or complaint
- abusive or harassing notes, emails, telephone calls, text messages, etc during or after working hours
- belittling opinions or unreasonable and unconstructive criticism
- offensive gestures and behaviour

- stealing or misuse of ARC resources
- viewing inappropriate images or pornography in hard copy or electronically.

Falsifying your Attendance Record (Flex Sheet)

All ARC Employees are required to maintain their own Attendance Records. Knowingly submitting an attendance record that is incorrect is a breach of the code of conduct.

Scenario: A staff member takes an extended lunch break of 1 hour and 30 minutes and only records it as 30 minutes. They have claimed an additional hour's work. Are they correct?

Answer: No. The staff member should enter the actual break of 1 hour and 30 minutes.

Scenario: A staff member records that they have completed work at 6.30pm but they actually stopped work at 5.30pm. They have claimed an additional hour's work. Are they correct?

Answer: No. The staff member should enter the actual time that they ceased work. Both of these scenarios are taking advantage of the flexible working arrangements of the ARC. If you are unsure of the time that you ceased work you can always ask for an access report to be provided.

Misuse of the Fleet Vehicle

The ARC pool vehicle is for government use only and not to be used for private purposes. Private use of the vehicle will be deemed a breach of the Code of Conduct.

Drivers must be mindful that the pool vehicle is a Government vehicle and should only be used for ARC business.

Inappropriate internet usage

The ARC acknowledges that, generally, activities carried on outside of your employment are your own affair. However, activities that impact on or affect your job performance, the performance of others, or ARC's business interests or reputation or those of its customers or clients are a proper focus for ARC policy. Accordingly, in your personal use of social media you must follow these guidelines:

- You must not refer to the ARC or its employees, agents or volunteers, in a derogatory or negative manner.
- If you cite the ARC in your employment or professional profiles you must ensure that the information is accurate and up to date.
- You must not 'tag' or identify as relating to the ARC any images or videos taken at the ARC events and social occasions, without prior written approval from the Communications Team. This will include, for example, photographs of client events in which the ARC's logo is visible.
- If you have a personal blog and wish to post content referring to the ARC or from which the ARC could reasonably be identified, you must ensure that the Communications Team has approved the content before you post it.
- You must not represent any social media posts as being the views of the ARC without consent from the Communications Team.
- You must not engage in conduct online that is likely to bring the ARC into disrepute or otherwise damage its interests.
- You must not engage in conduct that would breach any policy of the ARC including but not limited to policies proscribing discrimination, harassment and bullying.

Principles

Informal

The agency takes the view that not all cases of suspected misconduct need to be dealt with by a formal investigation to determine whether a breach of the Code of Conduct has occurred. That is, the Code of Conduct is one of a number of people management practices that the agency uses to encourage effective performance and workplace relationships.

The agency is committed to dealing with misconduct in the most appropriate way possible. Depending on the circumstances, the Delegate may determine that an informal solution, such as counselling, training or action in accordance with the performance management guidelines, is the best option at the time.

The agency endeavours to address misconduct as quickly and informally as the circumstances allow, and generally prefers to resolve matters without the need for legal representation.

Allegations of misconduct will be considered by an independent and unbiased authority

A number of decisions are made in the process of handling allegations of misconduct, including:

- The initial decision about how to handle the report of suspected misconduct
- deciding whether to suspend an employee during the investigation of suspected misconduct
- deciding whether misconduct has occurred and whether that misconduct is a breach of the APS Code of Conduct
- imposing a sanction for breaches of the Code.

The Agency Head can make these decisions under the following delegations:

- Suspending an employee is made under s3.10 of the Public Service Regulations 1999
- determining a breach of the APS Code of Conduct is made under s 15 (3) of the Public Service Act 1999
- imposing a sanction for a breach of the APS Code of Conduct is made under s 15 (1) of the Public Service Act 1999

The Director, People and Services is responsible for collating and coordinating information for the Delegate to make these decisions, and for managing investigations into allegations of misconduct, in keeping with the principles outlined in these Guidelines.

Procedural fairness

Procedural fairness embraces three key 'rules':

1. the 'hearing' rule – which requires that persons whose interests or rights may be adversely affected by a decision will be given an opportunity to be heard;
2. the 'no bias' rule – which requires a decision maker to act without bias or self-interest; and
3. the 'evidence' rule – which requires that a decision be based upon compelling evidence that is relevant to the matter being determined.

In practical terms, procedural fairness means that the person whose interest may be adversely affected by a decision will:

- be informed by the Delegate (in writing) of the allegations against them in as much detail as possible to enable them to understand what the allegation is
- be provided with reasonable time (usually 7 days) to respond in writing
- have their response taken into account in the decision-making process.

Wherever possible, the Delegate who determines that an employee has breached the Code of Conduct will not be the Delegate who determines what the sanction will be for that breach. This

approach helps to ensure the facts determining the appropriate sanction are considered in an unbiased way.

An employee's privacy is observed, and the matter is treated confidentially

All reports of suspected breaches of the Code will be dealt with in a private and confidential manner in keeping with the agency's obligations under the *Privacy Act 1988*.

Disclosures

Only people with a genuine 'need to know' are made aware of a report of a suspected breach of the Code. These people include:

- the employee against whom the complaint has been made and his/her advisers or support persons (in accordance with procedural fairness requirements)
- the employee's supervisor, Director, People and Services, if necessary for the management of the work or relationships of the team
- witnesses to the alleged breach (if applicable)
- the independent investigator (if engaged)
- the Delegated decision-maker in the matter

Misconduct figures are provided for the following reporting:

- annual state of the service data;
- quarterly senate estimates; and
- parliamentary enquiries.

Record keeping

Records which relate to misconduct action are not placed on an employee's personnel file. A separate file classified 'Sensitive: Personal' is maintained in a secure facility by the Director, People and Services or the Ethics Contact Officer. Access to these files is strictly on a 'need-to-know' basis.

When a misconduct case is finalised, and the respondent is found to have breached the Code, the Director, People and Services or the Ethics Contact Officer will place a file note in a sealed envelope on the respondent's Personnel file. The file note includes whether or not breaches of the Code of Conduct occurred, when the matter occurred, and the Delegate in the matter.

Parties with a need for more information need to contact the Director, People and Services or the Ethics Contact Officer for access to the file.

Records disposal

In accordance with the National Archives of Australia *Administrative Functions Disposal Authority*, the agency is required to destroy records relating to misconduct cases after a certain period of time, as follows:

CONTENT OF THE RECORD	DISPOSAL/DESTRUCTION REQUIREMENTS
Records relating to investigations of misconduct which result in disciplinary action	5 years after completion of the case
Records documenting allegations, but the allegations were not investigated	18 months after the completion of the case

CONTENT OF THE RECORD	DISPOSAL/DESTRUCTION REQUIREMENTS
Records relating to allegations that were investigated and proven to be unfounded and the employee has requested retention of the records	75 years after the date of birth of the employee, or 7 years after the last action, whichever is later, or when requested by the employee
Records relating to allegations which were investigated, the allegations proven to be unfounded and the employee has not requested the retention of the records	18 months after the investigation is completed

Duty of care to all employees

Managers and supervisors have a duty to protect the health, safety and welfare of employees. If they suspect misconduct, or misconduct has been brought to their notice, a manager needs to take action, regardless of whether the complainant has requested that the matter remain confidential.

All complaints are treated seriously and dealt with in a professional manner.

Reporting Misconduct

In this section:

- *Who can report misconduct?*
- *Protections for reporting misconduct*
- *Frivolous or vexatious claims*
- *Reporting misconduct anonymously*
- *Public Interest Disclosure Act 2013*

Who can report misconduct?

All employees are expected to report instances of suspected misconduct. As public servants we are required to act with integrity in all that we do and this imposes on each of us an obligation to report suspected misconduct.

In the first instance suspected misconduct may be discussed with or reported to any of the following people:

- Harassment Contact Officer (HCO)
- Ethics Contact Officer
- Human Resources Team
- Direct Supervisors/Managers
- Director, People and Services
- Executive General Manager, Corporate Services

Reports of misconduct can be made verbally and/or in writing.

Protections for reporting misconduct

The Code of Conduct contains a general duty to treat everyone with respect and courtesy and without harassment. If you believe you are being punished as a result of reporting misconduct, you should advise the Ethics Contact Officer immediately.

Frivolous or vexatious claims

Frivolous claims are those that are unsustainable, such as minor matters that are not motivated by any serious concerns.

Vexatious claims are those that are made as a means of obtaining an advantage for which the agency's complaint handling procedures are not designed, such as a desire to annoy and harass another person.

Employees should be mindful that frivolous and vexatious complaints will not be tolerated and may subject the complainant to allegations of misconduct. It is the Delegate's role to make a decision about whether the allegations need to be investigated.

Anonymous reporting

Though it is possible to report suspected misconduct anonymously, employees are encouraged to come forward and report misconduct as this assists the Delegate to understand the allegations and/or decide whether to investigate them.

Confidentiality will be provided as far as the law allows. For example, where it becomes necessary in the course of an investigation to release the name of the complainant or witnesses then advance notification will be given to the employees that may be affected.

Typically this occurs through the application of and adherence to procedural fairness principles, that is, that the respondent is entitled to review and respond to any information that the Delegate uses to make their decision in relation to the employee's employment.

Public Interest Disclosure Act 2013

The PID Act builds on practices established to protect APS employees who 'blow the whistle' on suspected breaches of the APS Code of Conduct.

The PID Act replaces previous whistleblowing legislation.

The objects of the new PID Act are to:

- promote the integrity and accountability of the Commonwealth public sector;
- encourage and facilitate the making of public interest disclosures by public officials;
- ensure that public officials who make public interest disclosures are supported and are protected from adverse consequences relating to the disclosures; and
- ensure that disclosures by public officials are properly investigated and dealt with.

Disclosures of suspected wrongdoing made prior to 15 January 2014 are not covered by the PID Act. [See here for further information regarding the Public Interest Discloser Act.](#)

Protection from victimisation

The Public Service Act 1999 prohibits victimisation and discrimination of an employee who reports misconduct under the Public Interest Disclosure Act 2013. If you bring your concerns to the agency's attention, a risk assessment will be undertaken to determine the appropriate measures of protection to be put in place. This may include temporary reassignment of duties, or movement to another location.

Investigating Misconduct

In this section:

- Preliminary enquiries and formal misconduct action
- Right to respond
- Suspension and temporary reassignment
- Investigations: gathering proof and the standards of evidence
- Notifying the employee of the progress and outcome of the investigation

Preliminary Enquiries

On receiving allegations of misconduct, the Delegate firstly assesses the seriousness of the alleged misconduct and whether the allegations should be investigated. In less serious cases, the Delegate may decide that the misconduct is to be addressed informally. Informal options for addressing minor misconduct can include performance management, a warning, mediation, counselling or re-training.

Where the allegations are more serious in nature or if conduct has not improved using informal solutions, the Delegate may decide that a formal investigation to determine whether there has been a breach of the APS Code of Conduct is required. This is called 'formal misconduct action.'

Formal misconduct action

As soon as the decision to commence formal misconduct action has been taken, the employee suspected of misconduct (known as 'the respondent') will be notified in writing. The respondent will be advised of:

- the nature of the suspected misconduct
- the elements of the Code that they are suspected of breaching
- the possible sanctions that may apply for breaches of the Code
- who will be investigating the alleged misconduct
- who will be making the decision about whether there has been a breach of the Code
- how the process will be conducted.

If at any time the details of the suspected breach(es) change, including if additional documents or material are uncovered which the Delegate will rely upon in making a decision, the respondent will be informed and invited to make a further statement.

Right to respond

The respondent has three opportunities to provide input, or comment, on the investigation of the allegations against them. They may respond to the:

- i. specific allegations against them
- ii. evidence that emerges during the course of the investigation, and the Delegate's interpretation of that evidence
- iii. proposed sanction.

Suspension for possible misconduct

Suspension or temporary reassignment

In some cases, the Delegate will decide that the employee suspected of misconduct should either be assigned to other duties or suspended from duty while the alleged misconduct is investigated. This decision is not a punishment or a prejudgement that a breach of the Code of Conduct has occurred. Each case is considered according to its individual circumstances, but relevant factors may include:

- the seriousness of the suspected breach
- the integrity and good reputation of the employee's Agency and the APS
- the maintenance of a cohesive and effective workforce in the affected employee's particular workplace.

Normally the employee will be notified before a suspension/reassignment decision is taken, and given an opportunity to comment on the proposed action. The Delegate will have regard to the circumstances of the employee and, in some cases, the circumstances of his/her family.

Remuneration during suspension

Suspension can be with or without remuneration. If it is without remuneration, it will not be for more than 30 days, unless there are exceptional circumstances. Exceptional circumstances will be determined on a case-by-case basis and may include:

- the investigation of the allegations takes longer than 30 days
- where the employee has appealed against a conviction and is waiting to have the appeal heard

Depending on the particular circumstances, the Delegate may decide that particular allowances can continue to be paid, however generally allowances are not paid during a period of suspension, even when the suspension is with remuneration.

A suspended employee, who wishes to do so, should normally be permitted to access paid leave as an alternative to suspension (without remuneration). Requests to engage in outside employment during a period of suspension without pay will be considered on their merits.

Any period of suspension with remuneration will ordinarily count as service for all purposes.

Review of suspension

The suspension decision will normally be reviewed at 30 day intervals. The nature and timing of such reviews will normally be a matter for the Delegate. The timing is primarily a matter for their judgement, but any reasonable requests for review, by the affected employee, could be acted upon.

The Delegate will end a suspension when they no longer believe that the employee has, or may have, breached the Code, or the employee's suspension is not in the public or the agency's interest.

Where a suspension is lifted as a result of a finding that there has been no breach of the Code, and where some or all of the period of suspension was without remuneration, that remuneration will be restored and paid as a lump sum.

Investigations

The Delegate may engage an independent investigator to establish the facts concerning the allegations of misconduct. This usually involves interviews with the parties and witnesses, assessing any evidence, and providing an Investigation Report to the Delegate.

The Delegate can refer the matter to the The Merit Protection Commissioner, at the request of the agency and with the agreement of the affected employee or former employee, is now able to determine, whether an APS employee or former employee has breached the APS Code of Conduct.

Evidence may be collected from various sources.

In some cases the investigation will be based on physical evidence, such as computer records, in others it may be based on evidence gathered through interviews with the parties and witnesses.

Interviews

Interviews are usually undertaken by the investigator, guided by the following principles:

- Interviews can be in person, by telephone or by videoconference, or can be conducted as an exchange of written correspondence.
- An employee suspected of having breached the Code may bring a person to support him/her to any discussion/interview. The support person is not to answer on behalf of the employee being interviewed.
- Where necessary, the venue for the interview will be convenient to the employee, in private, or such that the conversation cannot be overheard by people in the vicinity.
- An official record of interview will be prepared as soon as practicable after the interview. The employee interviewed will be shown the record of interview and will be asked to sign it, indicating that it is a true and correct record of what was said. Any disputes over the content of the record should be noted and signed by the investigator and the employee interviewed.
- The investigator may conduct more than one interview with an employee. The procedures for each subsequent interview are the same as for the first interview.

Standard of proof

The standard of proof for determining whether a breach of the Code has occurred is on the 'balance of probabilities'. This means that the Delegate must be satisfied that a breach is more probable than not. This is called the civil standard of proof (the criminal law standard of proof is 'beyond reasonable doubt').

The Delegate must be satisfied that the investigation process has gathered enough evidence to enable them to make a fair, balanced and conscientious decision. Where a decision has to be made between competing interests, all parties to the matter must have been heard and all arguments considered.

The Delegate's level of satisfaction with the evidence needs to increase with the seriousness or importance of the misconduct under consideration. In other words, for allegations of misconduct where the sanction is likely to be severe, the Delegate needs to see strong supporting information that a breach occurred before making that decision.

Information during and after the investigation

The agency strives to finalise a complaint as quickly as proper consideration of the matter allows. In normal circumstances, complainants will not be kept informed of progress of an investigation. However, there may be occasions where delay cannot be avoided, or where the handling of a case takes a new direction. In such circumstances, the Director, People and Services may keep all parties informed of progress if appropriate.

In the normal course of events the respondent will be notified in writing of the outcome as soon as possible. If the Delegate determines there **has not been a breach of the Code**, the respondent will be notified in writing of the reasons for this conclusion.

If the Delegate determines there **has been a breach of the Code**, the respondent will be informed in writing of:

- the element(s) of the Code that have been breached
- the reasons for this conclusion
- the sanction (if any) that is being proposed for the breach.

The Delegate will invite the respondent to comment at the time a breach is determined and on the sanction that is being considered for the breach.

Implications of misconduct

In this section:

- *The sanctions*
- *The decision to apply a sanction*
- *Conclusions and advice on the outcomes*
- *Access to documents*
- *Right of review*

The sanctions

Applying sanctions for breaches of the APS Code of Conduct is primarily aimed at protecting the integrity of the APS and maintaining public confidence in public administration rather than to punish an individual.

Sanctions are intended to be proportionate to the nature of the breach, to provide a clear message to the relevant employee that their behaviour was not acceptable, to reduce or eliminate the likelihood of future similar behaviour, and to confirm that misconduct is not tolerated in our agency.

Wherever possible, the decision on which sanction to apply for a breach of the Code of Conduct is made by a different Delegate to the one who made the decision that the employee had breached the Code.

The possible sanctions for breaching the Code of Conduct are:

- termination of employment
- reduction in classification
- reassignment of duties
- reduction in salary;
- deductions from salary by way of fine (not be more than 2% of the employee's annual salary)
- a reprimand.

Termination of employment

Termination of employment is the most severe of sanctions. It is appropriate where:

- the Delegate has decided that the misconduct is so serious that it is no longer desirable that the employee should remain in the APS; and/or
- the employee, through their action, has rejected a basic element of the employment relationship (e.g. by indicating that they do not accept the need to follow lawful and reasonable directions from their managers).

The decision to apply a sanction

The Delegate is responsible for imposing a sanction. The Delegate, in consultation with senior management group where necessary, may decide that no sanction will be imposed and may decide to issue a warning, or recommend counselling, performance management, or retraining, as other options.

The Delegate will advise the respondent, in writing, of the proposed sanction and their reason/s for considering that sanction.

In deciding what sanction, if any, should be applied, the Delegate takes into consideration:

- previous employment and the general character of the employee
- the nature and seriousness of the breach and the type of conduct involved
- the degree of relevance of the misconduct to the employee's duties or to the reputation of the APS
- the circumstances of the breach, including whether it also entails a criminal offence
- the effect of the proposed sanction on the employee
- any loss of earnings already incurred by the employee as a result of suspension
- alternatives to sanctions in appropriate cases, which might include probation provisions, deferral of increments, or removal from temporary performance of higher duties
- any additional information that might be considered relevant.

The respondent will be given the opportunity to make a statement in response to the proposed sanction (usually 7 days).

Mitigating factors

Evidence of mitigating factors (that is, factors that may explain or justify the misconduct) may persuade the Delegate to apply a lesser sanction than might otherwise have been imposed.

Mitigating factors can include:

- the degree of responsibility for the breach and whether there was any provocation, persuasion or even coercion by other employees
- the intention of the employee to breach the Code and whether the breach was premeditated or involved a spur of the moment decision
- the extent to which the employee's disability, health or other factors may have influenced their conduct
- the age, experience and length of service of the employee
- the level of guidance provided by the agency in relation to the Code in general and explicit guidance or directions about the particular breach
- the extent to which the breach may have reflected a culture or common practice in the work area

- any procedural issues, for example, an unreasonable delay between the matter first coming to notice, and the sanction being imposed.

Applying multiple sanctions for one breach

It is possible for more than one sanction to be imposed on an employee found to have breached the Code. For example, an employee may be re-assigned duties *and* have a fine imposed.

Applying sanctions for multiple breaches

It is usually appropriate to reflect the existence of multiple related breaches in a more severe sanction rather than separate sanctions for each breach. Where the breaches are unrelated, for example a harassment incident and an unrelated theft, separate sanctions may be appropriate.

Conclusions and advice about the outcomes

The agency appreciates that employees who have made a complaint and/or have provided information to an investigation may have an interest in knowing that the agency has addressed the 'wrongs'.

Where possible, the agency will advise the complainant when the investigation has been finalised. However, when considering what information to provide to complainants, the agency is obliged to consider:

- individual employees' right to privacy, the protection of personal information about individual employees and the agency's obligations in regard to this information under the *Privacy Act 1988*
- the need to take reasonable steps to be transparent and accountable to other parties involved.

Personal information about the respondent, including details of any sanction imposed, will not be provided to complainants in line with the agency's obligation under the *Privacy Act 1988* to protect personal information about individual employees.

The complainant and witnesses do not receive a copy of the Investigation Report.

Access to documents

The details of a misconduct investigation are not part of the Personnel file of the complainant, or any other party involved in the investigation of a complaint.

If a breach of the Code of Conduct is established, the details of the breach, sanction and decision maker are placed in a sealed envelope on the Personnel file of the respondent. This information may need to be referred to in security assessment checks, pre-employment checks and salary or service audits, for example. Only the employee, the Director, People and Services and the employer (if the employee moves to another agency) has the right to access these details.

Information concerning the agency's investigation of a complaint is kept on a confidential Investigation file held securely by the Director, People and Services, access to which is via a formal Freedom of Information (FOI) request.

Right of Review

All APS employees are entitled to have an action or decision (by their employer) that relates to their employment reviewed by someone who is independent. Some decisions are reviewed by another officer of the agency, while other decisions are reviewed by the Merit Protection Commissioner.

In general, if the review concerns:

- an employment related decision, such as a refusal to grant leave. An internal primary review tries to establish whether the action/decision was reasonable in the circumstances.

- a decision that an employee has breached the APS Code of Conduct or a sanction that was imposed because of a breach of the Code. The request is for an external review and is made to the Merit Protection Commissioner through the Agency head as long as the Merit Protection Commissioner has not been involved in the investigation. More information is available at [Merit Protection Commissioner's website](#).

Not all actions are reviewable; more detail is available in the agency's Review of Action Guidelines (see People and Services Section on the Intranet).

When is a Review of Actions not available to an employee?

- If the Merit Protection Commissioner has investigated the suspected breach.
- A decision that there has been no breach of the Code of Conduct is not a reviewable action.
- Where the sanction applied is that APS employment will be terminated as a result of breaching the Code of Conduct, in this instance an employee may appeal to [Fair Work Australia](#).

A decision that the Code of Conduct has been breached, and that a sanction will be imposed, will not be put on hold because the employee who will be affected by this decision has requested an independent review of this decision.

Time limits

The Public Service Regulations 1999 has set time limits on making applications for both primary and secondary review.

TYPE OF REVIEW	TIME PERIOD TO APPLY FOR REVIEW
Primary review of a breach of the Code of Conduct	60 days from the determination of the breach
Primary review of a sanction imposed for breaching the Code	60 days from the imposition of the sanction
Other applications for primary review made to the MPC (e.g., where the agency head was involved in the decision)	60 days from the date of the action
Secondary review	60 days from the date the agency advises the employee of either the outcomes of the primary review, or that the matter is not reviewable.

Other References

This guideline complements and expands on the agency's existing material on misconduct matters, including:

ARC Links

- *Determining Breaches of the APS Code of Conduct Procedures*
- *Discrimination and Harassment –free Workplace Policy*
- *Public Interest Disclosure Guidelines*
- *Email and Internet Code of Conduct Policy*

These documents are available under People & Services on the Intranet.

The **Australian Public Service Commission** (APSC) also provides information and advice about the Code of Conduct and how it applies in the workplace.

The following resources are available at the [APSC Website](#).

- *Handling Misconduct:* [A good practice guide](#)
- *APS Values and Code of Conduct in practice:* [Guide to official conduct for APS employees and Agency Heads](#)
- *In whose interests:* [preventing and managing conflicts of interest in the public sector](#)
- *Respect:* [Promoting a culture free from bullying and harassment in the APS](#)

Sources of Support

Situations involving misconduct and conflict at work can be distressing. If you are affected, you are encouraged to draw on the confidential counselling services of the **Employee Assistance Program (EAP)**. EAP is available free of charge 24 hours a day, 7 days a week to agency employees and their families.

Website: www.eapdirect.com.au
Phone: 1300 360 364

Harassment Contact Officers (HCOs)

A network of employees across the agency who have been trained to provide information and support in regard to workplace harassment. Their contact details are available under People and Services/ Bullying and Harassment Free Workplace/Discrimination and Harassment Free Workplace on the Intranet.

The Australian Public Service Commission (APSC) provides an **Ethics Advisory Service** which is available to all APS employees who want advice on ethical issues in the workplace and on how to make sound decisions around these issues.

Enquiries: Monday – Friday from 8.30 am to 5.00 pm AEST
Phone: 02 6202 3737
Email: ethics@apsc.gov.au

Ethics Contact Officers (ECOs)

ECOs provide a point of contact in agencies on ethics matters, and share information, experience and good practice advice on ethical decision making.

The ECOs in the ARC is Lyndall Marshall, Assistant Director, Human Resources:

Phone: (02) 6287 6744
Email: Lyndall.marshall@arc.gov.au

Additional Information

Questions about these Guidelines and all matters concerning the agency's handling of misconduct matters can be addressed to the Director, People & Services via email at lesley.nelson@arc.gov.au or by phone on (02) 6287 6668.