



# Procedures for determining a breach of the Code of Conduct (Staff Misconduct)

---

Policy Name:	Procedures for determining a breach of the Code of Conduct (Staff Misconduct)		
Policy Owner:	Director, People & Services		
Effective from:	30/05/2023	Version number:	1.0
Date for revision:	30/05/2028		

## Table of Contents

The Australian Research Council.....	4
Introduction .....	4
The APS Conduct Framework .....	5
APS Values.....	6
APS Employment Principles .....	6
APS Code of Conduct .....	6
Application of the Code .....	7
When does the Code of Conduct apply? .....	7
When applying for employment in the APS and the ARC.....	8
The Code of Conduct and criminal offences.....	8
Examples of unacceptable workplace behaviour .....	8
Social media and internet usage.....	9
Reporting a suspected breach .....	9
Who can report a suspected breach of the Code? .....	9
Protections for reporting a suspected breach .....	10
F frivolous or vexatious claims .....	11
Health conditions and disability.....	11
Roles in determining a breach of the Code .....	12
Investigating a suspected breach of the Code.....	12
Procedural fairness .....	12
Investigation into a suspected breach of the Code .....	13
Privacy.....	14
Suspension during investigation .....	14
Suspension or temporary reassignment.....	14
Remuneration during suspension.....	14
Review of suspension.....	15
Making a determination .....	15
Notification of a decision .....	15
The decision to apply a sanction.....	15
Sanctions .....	16
Informing complainants of the progress and outcome of their complaint .....	17
Right of Review .....	18
Record keeping .....	18

Procedures for determining a breach of the Code of Conduct (Staff Misconduct)

Additional information.....	19
Other References .....	19
Sources of Support.....	19
Contact details .....	<b>Error! Bookmark not defined.</b>
Contact details .....	20
Document control .....	20

# The Australian Research Council

---

The Australian Research Council (ARC) is a Commonwealth entity within the Australian Government. The ARC's purpose is to grow knowledge and innovation for the benefit of the Australian community through funding the highest quality research, assessing the quality, engagement and impact of research and providing advice on research matters.

The ARC funds research and researchers under the National Competitive Grants Program (NCGP). The NCGP consists of two elements – Discovery and Linkage. Within these elements are a range of schemes structured to provide a pathway of incentives for researchers to build the scope and scale of their work and collaborative partnerships. The majority of funding decisions under the NCGP are made on the basis of peer review.

The ARC evaluates the quality of research undertaken in higher education institutions through the Excellence in Research for Australia (ERA) program. ERA is an established evaluation framework that identifies research excellence in Australian higher education institutions by comparing Australia's research effort against international benchmarks. ERA assesses quality using a combination of indicators and expert review by research evaluation committees.

The ARC is also responsible for developing and implementing an Engagement and Impact (EI) assessment, which assesses the engagement of researchers with end-users, and shows how universities are translating their research into economic, social, environmental and other impacts.

## Introduction

---

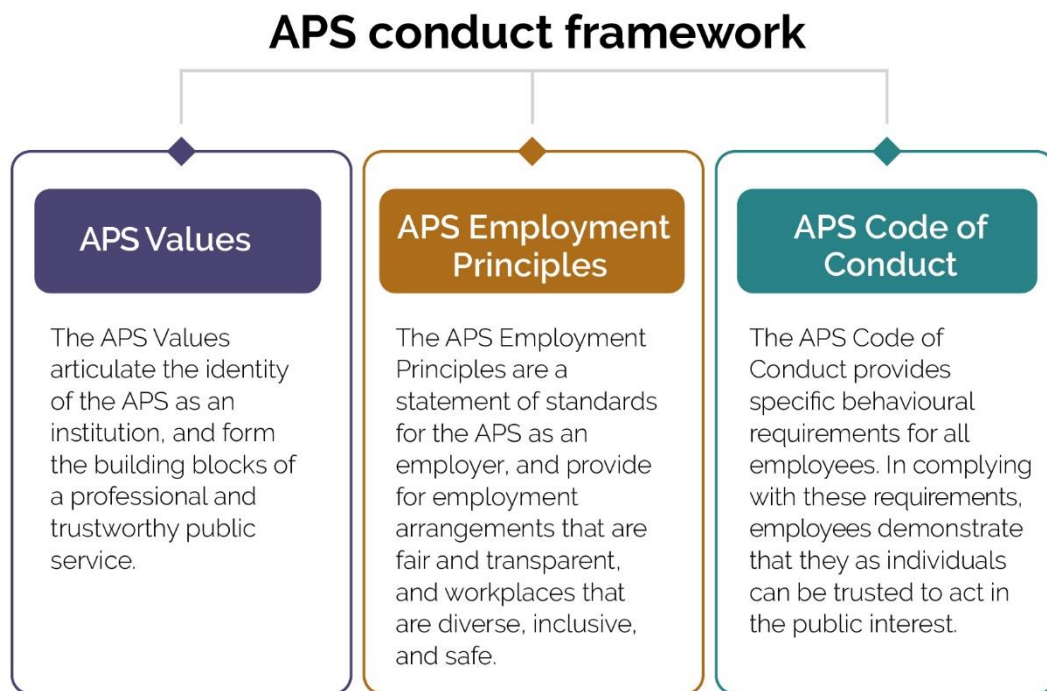
The *Public Service Act 1999* (the PS Act) prescribes the standards of behaviour and conduct expected of all public service employees. These are expressed in the APS Code of Conduct (the Code), APS Values (the Values) and the APS Employment Principles (Employment Principles).

'Misconduct' is an umbrella term used 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. In accordance with s.15(3) of the PS Act the CEO of the ARC, as the agency head, has established procedures for determining whether an APS employee, or former employee, has breached the Code, and for determining sanctions. These procedures are made publicly available in accordance with s.15(7) of the PS Act.

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

# The APS Conduct Framework

---



Source: *Handling Misconduct: A human resource manager's guide*, APSC 2021, p15

## ***APS Values***

The Values are easily remembered with the acronym 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.

## ***APS Code of Conduct***

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

The Code requires that an APS employee must:

- behave honestly and with integrity in connection with APS employment
- act with care and diligence in connection with APS employment
- when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment
- when acting in connection with APS employment, comply with all applicable Australian laws. For this purpose, Australian law means:
  - any Act (including this Act), or any instrument made under an Act; or
  - any law of a State or Territory, including any instrument made under such a law.
- comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction
- maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff

Procedures for determining a breach of the Code of Conduct (Staff Misconduct)

- disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment
- use Commonwealth resources in a proper manner
- 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.
- not make improper use of:
  - inside information
  - the employee's duties, status, power or authority
 in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.
- at all times behave in a way that upholds:
  - the APS Values and APS Employment Principles
  - the integrity and good reputation of the employee's Agency and the APS.
- while on duty overseas, at all times behave in a way that upholds the good reputation of Australia
- comply with any other conduct requirement that is prescribed by the regulations.

## Application of the Code

---

### ***When does the Code of Conduct apply?***

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

This can occur in 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 – 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 life outside of work; however, APS employees should be mindful and aware that any conduct at any time that has the potential to bring the ARC into disrepute or affect the employee's position in the workplace, may be assessed and treated as a suspected breach of the Code.

More resources on integrity in the APS are available on the [Australian Public Service Commission's \(APSC\) website](#).

## ***When applying for employment in the APS and the ARC***

Under s.15(2A) of the PS Act, an employee can be found to have breached the Code if they provided false or misleading information, wilfully failed to disclose relevant information, or otherwise failed to act with honesty and integrity in connection with their engagement.

### **Probationary employees**

Probationary employees must abide by the Code. In the first instance, allegations of a suspected breach of the Code by probationary employees should be addressed by managers/supervisors in the probation assessment meetings.

### **Former employees**

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

## ***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 ARC), 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 criminal charge 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 ARC to undertake an investigation into whether or not a breach has occurred. However, if this is the case the employee concerned will be advised.

## **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
- falsifying a timesheet

Procedures for determining a breach of the Code of Conduct (Staff Misconduct)



- 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.

## Social media and internet usage

---

In upholding the Code's requirement to *at all times* behave in a way that upholds the APS Values and APS Employment Principles and the integrity and good reputation of the ARC and the APS, employees should also consider their private social media and internet usage.

For more guidance on how to balance an employee's right to personal and political expression with the obligations of APS employment, and the need to be seen as trusted and impartial public servants, refer to the ARC's [Social Media Policy](#) and the APSC's [Social media: Guidance for Australian Public Service Employees and Agencies](#). The Guidance provides a practical framework to help employees and agencies strike that balance in a reasonable and proportionate way.

## Reporting a suspected breach

---

### ***Who can report a suspected breach of the Code?***

All employees are expected to report instances of a suspected breach. As public servants we are required to act with integrity, and this imposes an obligation to report a suspected breach of the Code.

In the first instance a suspected breach may be discussed with any of the following people:

- Harassment Contact Officers (HCO)
- Ethics Contact Officers
- Human Resources Team
- Direct Supervisors/Managers
- Director, People and Services
- Reports of suspected breaches can be made verbally and/or in writing.

Managers and supervisors have a duty to protect the health, safety and welfare of employees. If they

Procedures for determining a breach of the Code of Conduct (Staff Misconduct)

suspect a breach has occurred, or one has been brought to their notice, a manager needs to take action regardless of whether the complainant has requested that the matter remain confidential.

### **Anonymous reporting**

Though it is possible to report a suspected breach anonymously, employees are encouraged not to make reports anonymously 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. Where it becomes legally 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 employee suspected of the breach is entitled to review and respond to any information that the delegate uses to make their decision in relation to the employee's employment.

### ***Protections for reporting a suspected breach***

Employees who make allegations of a suspected breach in good faith, and witnesses to the incident, are protected from reprisal. Retaliation against someone who has made a complaint in good faith could be a potential breach of a number of elements of the Code, including the requirements to:

- behave with integrity in connection with employment
- comply with all applicable Australian laws
- treat everyone with respect and courtesy, and without harassment.

If a person believes they are being punished as a result of reporting a suspected breach of the Code, they should advise an Ethics Contact Officer immediately.

The PS Act prohibits victimisation and discrimination of an employee who reports a suspected breach under the *Public Interest Disclosure Act 2013* (PID Act). If a person brings their concerns to the ARC's attention, a risk assessment will be conducted by a Principal or Authorised PID Officer to determine the appropriate measures of protection to be put in place. This may include temporary reassignment of duties, or movement to another location.

The ARC will notify complainants and individuals who provide witness statements that the ARC will seek to keep their identity confidential as far as practicable but cannot give any guarantee of confidentiality.

The ARC will advise complainants at the outset of how information about their complaint and their identity will be dealt with, and of any potential limitations on the ability to keep their identity confidential. Limits may apply, for example, if the recipient of the information is subject to reporting obligations, or if information needs to be provided to the person under investigation if an investigation is pursued.

### **Public Interest Disclosure**

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

The objects of the 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

Procedures for determining a breach of the Code of Conduct (Staff Misconduct)

- 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 the ARC [Policy and Procedures for dealing with Public Interest Disclosure](#) for further information.

Disclosures can be made confidentially to [PID@arc.gov.au](mailto:PID@arc.gov.au)

### ***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 ARC'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 a suspected breach of the Code. It is the delegate's role to make a decision about whether the allegations need to be investigated.

### ***Health conditions and disability***

A health condition or disability does not exempt an employee from the requirements of the APS Conduct Framework. At the same time, where a health condition or disability is, or appears to be, affecting an employee's behaviour, the ARC will exercise sensitivity and care in the response.

Different considerations may apply depending on the interaction between a health condition or disability and an employee's conduct—for example:

- where behaviour is caused or exacerbated by a health condition or disability
- where a manager notices unusual patterns of behaviour in an employee who has not disclosed a health condition or disability
- where an employee has disclosed a health condition or disability, but there is no apparent causal link between the disclosed condition and their conduct
- where a health condition or disability may affect the employee's capacity to change their behaviour, engage constructively with management action, or participate in a misconduct process.

Wherever possible, these situations will be addressed in the first instance through a sensitive conversation between the employee and their manager. The ARC will ensure managers have the capability and support to do this well. Such conversations should seek to clarify the situation, identify the employee's needs and the support the ARC can provide (including reasonable adjustments), and confirm the employee's understanding of the behavioural standards expected of them.

Depending on the circumstances, the ARC may seek the employee's consent to engage with their treating healthcare professional to inform an appropriate and safe approach to ensuring behaviour meets the expected standard. There may be cases where the most effective and suitable response is to work with the employee and their treating doctors to assist the employee to manage the impact of their condition or disability on the workplace.

In some circumstances, it may be appropriate for the ARC to refer an employee for an independent medical assessment, consistent with regulation 3.2 of the *Public Service Regulations*. This can help ensure the ARC has a clear understanding of the nature of the condition, and its impact on an employee's behaviour, in order to inform an appropriate response.

# Roles in determining a breach of the Code

---

A number of decisions are made by the CEO or delegates in the process of handling suspected breaches of the Code, including:

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

Wherever possible, the delegate who determines an employee has breached the Code 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.

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 a suspected breach of the Code, in keeping with the principles outlined in these procedures.

## Investigating a suspected breach of the Code

---

On receiving allegations of a suspected breach of the Code, the delegate may firstly conduct a preliminary assessment to determine the legitimacy of the suspected breach and the most appropriate course of action.

The delegate may decide that the suspected breach is to be addressed by an alternate people management strategy such as performance management, a warning, mediation, counselling, training or adjusting agency systems, practices or norms.

Where the delegate decides that the suspected breach requires further investigation, an official investigation to determine whether there has been a breach of the Code will commence.

### ***Procedural fairness***

All investigations into suspected breaches of the Code must be consistent with the principles of procedural fairness:

- 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;
- the 'no bias' rule – which requires a decision maker to act without bias or self-interest; and
- the 'evidence' rule – which requires that a decision be based upon compelling evidence that is relevant to the matter being determined.

In line with Division 2 of the *Australian Public Service Commissioner's Directions 2022*, the following basic procedural requirements must be met in relation to a suspected breach of the Code:

- the employee must 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, and be provided with reasonable time (usually 7 days) to respond in writing
- the employee must be informed by the delegate (in writing) of the determination of whether they have breached the Code, the sanction or sanctions that are under consideration, and the factors that are under consideration in determining any sanction to be imposed. The employee must be provided with reasonable time (usually 7 days) to respond in writing

Procedures for determining a breach of the Code of Conduct (Staff Misconduct)

- the CEO must take reasonable steps to ensure that the person making the determination on the breach and the person imposing the sanctions are independent and unbiased
- the process for determining whether an APS employee has breached the Code must be carried out with as little formality and as much expedition as a proper consideration of the matter allows
- a written record must be made of the suspected breach, the determination of whether a breach has occurred, any sanctions imposed as a result of the determination and the statement of reasons given to the employee (if applicable).

## ***Investigation into a suspected breach of the Code***

### **Notification to the employee suspected of the breach**

As soon as the decision has been made to commence an investigation into a suspected breach of the Code, the employee suspected of a breach will be notified in writing of:

- the nature of the suspected breach
- 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 suspected breach
- 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 employee suspected of the breach will be informed and invited to make a further statement.

### **Investigator**

The investigation into a suspected breach of the Code may be undertaken by:

- a delegate
- an independent investigator
- the Merit Protection Commissioner (at the request of the ARC and with the agreement of the affected employee or former employee).

### **Investigation**

As part of the investigation, the investigator will establish the facts of the suspected breach of the Code which could involve interviews with the parties and witnesses, assessing any evidence (such as computer records), and providing an investigation report to the delegate.

An employee suspected of having breached the Code may bring a person to support them to any discussion/interview. The support person is not to answer on behalf of the employee being interviewed.

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.

### **Right to respond**

The employee suspected of the breach has 3 opportunities to provide input, or comment, on the Procedures for determining a breach of the Code of Conduct (Staff Misconduct)

investigation of the allegations against them. They may respond to the:

- specific allegations against them
- evidence that emerges during the course of the investigation and the delegate's interpretation of that evidence
- any proposed sanctions.

## ***Privacy***

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

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 their advisers or support persons (in accordance with procedural fairness requirements)
- the employee's supervisor, and the 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.

Deidentified misconduct data is provided for the following reporting:

- annual state of the service data
- quarterly senate estimates briefing and questions on notice
- parliamentary enquiries.

# Suspension during investigation

---

## ***Suspension or temporary reassignment***

In some cases, the delegate will decide that the employee suspected of a breach of the Code should either be assigned to other duties or suspended from duty while the suspected breach is investigated. This decision is not a punishment or a prejudgement that a breach of the Code 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 ARC 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 made 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 their 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:

Procedures for determining a breach of the Code of Conduct (Staff Misconduct)

- 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 (for example Healthy Lifestyle allowance) 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 however, the nature and timing of such reviews will be decided by the delegate.

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 ARC'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.

## **Making a determination**

---

The process of determining a breach of the Code requires the delegate to decide, after weighing the evidence, whether or not on the balance of probabilities the employee has done what they were alleged to have done and decide whether or not that constituted a breach of the Code.

### ***Notification of a decision***

In the normal course of events the employee suspected of the breach 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 employee suspected of the breach will be notified in writing of the reasons for this conclusion.

If the delegate determines there **has been a breach of the Code**, the employee suspected of the breach 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 employee suspected of the breach to comment at the time a breach is determined and on the sanction that is being considered for the breach.

## **The decision to apply a sanction**

---

The delegate responsible for imposing a sanction is a different delegate to the one that determined a breach of the Code occurred. The delegate, in consultation with ARC Leadership Group (ALG) where necessary, may decide no sanction will be imposed and may decide to issue a warning, or recommend counselling, performance management, or retraining, as other options. This decision will be made taking into consideration the complaint, information determined from investigations and the response of

Procedures for determining a breach of the Code of Conduct (Staff Misconduct)



employee suspected of the breach, to the breach.

The delegate will advise the employee suspected of the breach, in writing, of the proposed sanction and their reason/s for considering that sanction, and the date of effect of the sanction.

In deciding what sanction should be applied (if any) the delegate takes into consideration:

- the 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 breach 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 employee suspected of the breach 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 may explain or justify the breach) 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 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 ARC 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.

### ***Sanctions***

Applying sanctions for breaches of the Code is primarily aimed at protecting the integrity of the ARC, 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 breaches of the Code are not tolerated in the ARC.

The possible sanctions for breaching the Code are:

Procedures for determining a breach of the Code of Conduct (Staff Misconduct)



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

A sanction cannot be imposed on a former employee.

### **Termination of employment**

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

- the delegate has decided that the breach of the Code 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).

### **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.

## **Informing complainants of the progress and outcome of their complaint**

---

The ARC understands that employees who have made a complaint and/or have provided information as part of an investigation may have an interest in knowing that the ARC has addressed the issues.

The ARC strives to finalise a complaint as quickly as proper consideration of the matter allows. In normal circumstances, complainants will not be kept informed of the 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.

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

- individual employees' right to privacy, the protection of personal information about individual employees and the ARC'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 employee suspected of the breach, including details of any sanction imposed, will not be provided to complainants in line with the ARC's obligation under the *Privacy Act*

Procedures for determining a breach of the Code of Conduct (Staff Misconduct)

1988 to protect personal information about individual employees.

The complainant and witnesses do not receive a copy of the investigation report.

## Right of Review

---

Under s33 of the PS Act, 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 ARC, 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 Code 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 CEO (as long as the Merit Protection Commissioner has not been involved in the investigation). More information is available on the Merit Protection Commissioner's website.

Not all actions are reviewable. The *Public Service Regulations 1999* set out which actions are reviewable and when certain timeframes apply.

## Record keeping

---

The details of an investigation into a suspected breach of the Code are not part of the personnel file of the employee suspected of the breach, the person reporting the suspected breach, or any other party involved in the investigation of a complaint. Records which relate to a breach of the Code are maintained in a separate file by the Director, People and Services and classified 'Sensitive: Personal'. Access to these files is strictly on a 'need-to-know' basis.

When an investigation into a suspected breach of the Code is finalised, and the employee suspected of the breach is found to have breached the Code, the Director, People and Services will place a file note on the personnel file of the employee suspected of the breach which includes that a breach of the Code occurred, when the matter occurred, and the delegate in the matter.

This information may need to be referred to in security assessment checks, pre-employment checks and salary or service audits. Only the employee, the Director, People and Services and the employer (if the employee moves to another agency) have the right to access these details.

Information concerning the ARC'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.

Records will be disposed of in accordance with the relevant records authority issued by the National Archives of Australia.

# Additional information

---

## ***Other References***

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

- [Respectful Workplace Policy](#)
- [Public Interest Disclosure Policy](#)
- [Social Media Policy](#)
- [Conflict of Interest and Confidentiality Policy](#)

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](#):

- [APS Values and Code of Conduct in practice](#)
- [Declaration of Interest](#)
- [Handling Misconduct](#)
- [Social Media: Guidance for Australian Public Service Employees and Agencies](#)

More information is available on the Commonwealth Ombudsman website about [Public Interest Disclosure](#).

## ***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 ARC employees and their families.

### **Our EAP is Benestar**

<https://www.benestar.com/>

1300 360 364

### **Harassment Contact Officers (HCOs)**

A network of employees across the ARC who have been trained to provide information and support about workplace harassment. Their contact details are available on the [ARC Intranet](#).

### **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.

ECO contact details are available on the [ARC Intranet](#).

The 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 9.00 am to 5.00 pm AEST

**Phone:** 02 6202 3737

**Email:** [ethics@apsc.gov.au](mailto:ethics@apsc.gov.au)

Procedures for determining a breach of the Code of Conduct (Staff Misconduct)

# Contact details

---

## Stakeholder Relations

Australian Research Council

Phone: 02 6287 6600

[communications@arc.gov.au](mailto:communications@arc.gov.au)

[www.arc.gov.au](http://www.arc.gov.au)

Level 2, 11 Lancaster Place, Canberra Airport ACT 2609

GPO Box 2702, Canberra ACT 2601

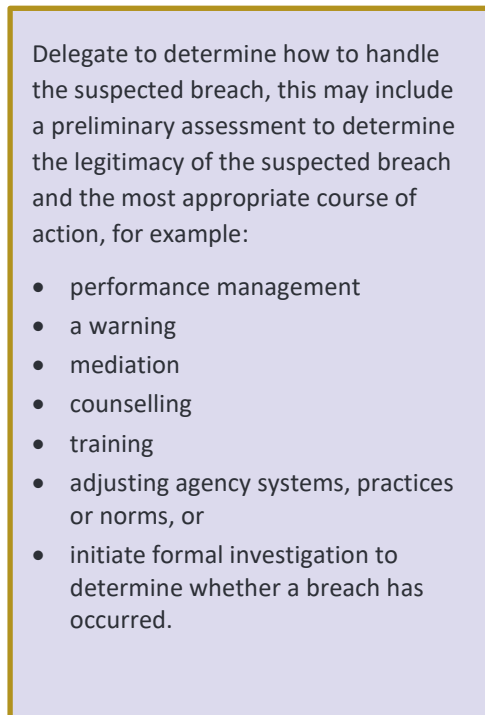
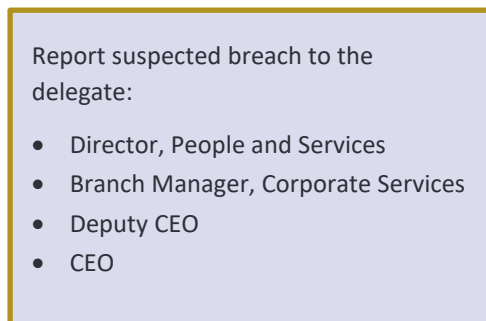
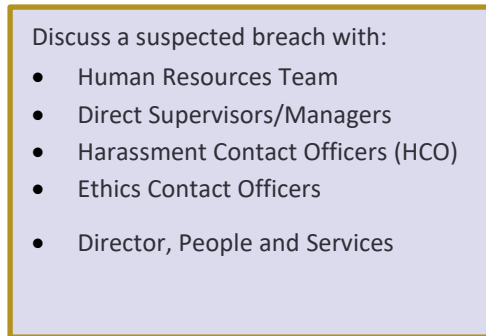
# Document control

---

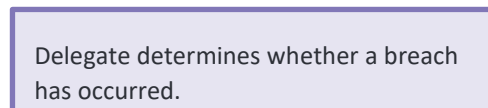
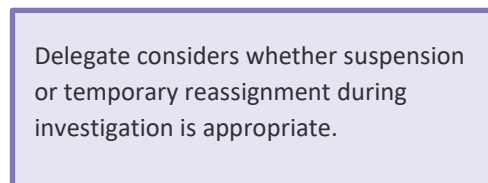
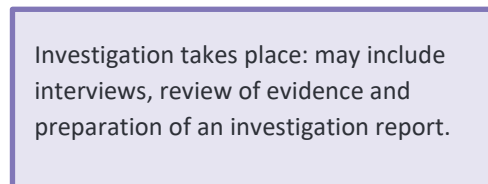
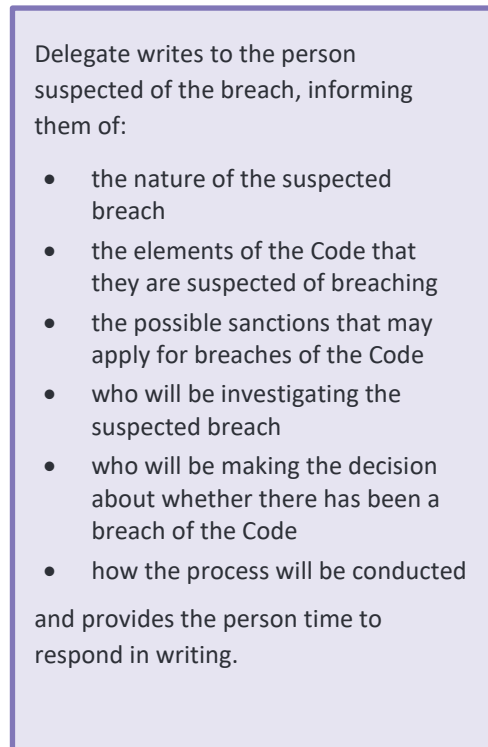
Number	Date Approved	Approved By	Brief Description
1.0	30/05/2023	Chair, PMDC	Completely revised Staff Misconduct Policy

# Attachment A

## Reporting a suspected breach



## Investigating a suspected breach



the Code of Conduct (Staff Misconduct)

