



# CODE OF CONDUCT PROCEDURE

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Superseded Procedures	Breaches of the Code of Conduct
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Contents

Introduction ..... 4

    Purpose..... 4

    Scope ..... 4

    Principles ..... 5

The Code ..... 6

    The APS Code of Conduct ..... 6

    Consequences of breaching the Code..... 7

    Misconduct ..... 7

    Identification and reporting of misconduct ..... 8

    Public interest disclosure ..... 8

    Protection against reprisal ..... 9

    Confidentiality ..... 9

    Appointment ..... 9

Suspected breaches of the Code..... 11

    Preliminary investigation..... 11

    Notification to employee of suspected breach ..... 11

    Reassignment, or suspension from duty ..... 12

        Temporary reassignment..... 12

        Suspension ..... 13

Investigating misconduct ..... 14

    Investigations ..... 14

    External investigations ..... 15

        Timeframes ..... 15

        Request for work time to participate in investigations ..... 15

Determinations and sanctions ..... 17

    Determinations..... 17

    Consideration of sanction ..... 17

Other matters ..... 19

    Right to a support person..... 19

    Behaviour and conduct ..... 19

    Access to the Employee Assistance Program (EAP) ..... 20

    Privacy ..... 20

    Record keeping..... 20

    Right of review ..... 21

**OFFICIAL**

Supporting Information ..... 22

    Roles and responsibilities ..... 22

    Definitions..... 22

    Related legislation ..... 24

    Related Policy ..... 24

    Related procedure and guidelines..... 24

    Change history ..... 25

## INTRODUCTION

1. The *Public Service Act 1999* (the Act) prescribes the standards of behaviour and conduct expected of all Australian Public Service (APS) employees. These are expressed in the APS Code of Conduct (the Code), the APS Values (the Values) and the APS employment Principles (the Employment Principles).
2. The Values set out the standard and outcomes that are required of APS employment, while the Employment Principles broadly guide employment and workplace relationships. The Code provides the behaviours expected of individual APS employees. Together, these standards shape the culture of the APS, and that of an APS organisation.
3. Section 15(3) of the Act requires Agency Heads to develop and make readily available, written procedures for determining whether an APS employee (or former employee) of the organisation has breached the Code, and the sanction (if any) that is to be imposed on an employee where a breach has been determined. The procedure must also comply with basic procedural requirements set out in *Australian Public Service Commissioner's Directions 2022* (the Directions) and have due regard to procedural fairness.
4. The Chief Executive Officer (CEO) is the Agency Head for the purposes of the Act, and these procedures are made for the purpose of section 15(3) of the Act. The CEO has delegated the Agency Head powers in the delegation schedule.

## Purpose

5. These procedures define how the Respect, Conduct and Review Policy (the Policy) will be implemented in practice and assist APS managers and employees to understand their responsibilities under the Code. These procedures also contain the procedures established under s 15(3) of the Act for determining:
  - a. whether an APS employee in Comcare has breached the Code (including by engaging in conduct referred to in s 15(2A) of the Act); and
  - b. the sanction (if any) that is to be imposed under s 15(1) of the Act on an APS employee in Comcare who is found to have breached the Code (including by engaging in conduct referred to in s 15(2A) of the Act).

## Scope

6. This procedure applies to all employees covered by the *Comcare Enterprise Agreement* (EA) and to all Senior Executive Officers (SES).
7. Nothing in this procedure prevents an employee from using the dispute resolution procedures in the EA including referring a matter to the Fair Work Commission or to authorised Officers in accordance with the Public Interest Disclosure (PID) Procedures.
8. The Code, the Values and the Employment Principles may also apply to all persons who are considered 'workers' for the purposes of the *Work Health and Safety Act 2011* (Cth) (WHS Act). In addition to APS employees, this may include contractors, subcontractors, apprentices or trainees, work experience students and employees of a labour hire company placed within our organisation. Behaviours or actions that may be contrary to the Code, the Values and Employment Principles will be managed in accordance with the relevant employment contract provisions.

## **Principles**

9. This procedure is underpinned by the following principles:
  - a. We are committed to providing safe, supportive and respectful workplaces for all.
  - b. We do not accept or tolerate workplace discrimination, harassment (including sexual harassment) or bullying.
  - c. We value transparent, fair and accountable systems of management and decision-making.
  - d. We are committed to procedural fairness, ensuring employees are informed of their rights and responsibilities, and processes.
  - e. We are committed to maintaining the confidentiality of persons who raise complaints about inappropriate workplace behaviours, or who are the subject of a related investigation, so far as reasonably possible, having appropriate regard to the action that may need to be taken in response to any complaints.
  - f. Review processes are consistent with alternative dispute resolution methods.
  - g. Employee concerns are addressed impartially, fairly and in a timely manner.
  - h. We store, retain and manage all records relating to decisions, determinations and sanctions in accordance with relevant legislation.

## THE CODE

**Aim:** To inform employees on how all APS employees are required to behave in connection with their employment and outline the process of how a suspected breach of the Code is managed.

**Policy:**

- All managers and employees are expected to demonstrate the core behaviours of respect, fairness and courtesy.
- We will take timely and appropriate actions to consider alleged breaches of the Code, the Values and Employment Principles including considering whether a formal investigation into a suspected breach of the Code is required.
- Reasonable steps will be taken to ensure that breach decision makers appointed to consider suspected breaches of the Code will be, and will appear to be, independent and unbiased.

## The APS Code of Conduct

10. All managers and employees have a responsibility to adhere to the Code, the Values and Employment Principles at all times. An APS employee, or former APS employee, whose conduct does not comply with an element of the Code can be found to have breached the Code. This is known as 'misconduct'.
11. The primary aim of taking action in cases of suspected misconduct is protecting the integrity of the APS and maintaining public confidence in public administration. Sanctions are intended to be proportionate to the nature of the misconduct, to be a deterrent to others and confirm that misconduct is not tolerated in our organisation.
12. Section 13 of the Code provides the behaviours expected of APS employee. It requires that:
  - s13(1) An APS employee must behave honestly and with integrity in connection with APS employment.*
  - s13(2) An APS employee must act with care and diligence in connection with APS employment.*
  - s13(3) An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.*
  - s13(4) An APS employee, when acting in connection with APS employment, must 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.*
  - s13(5) An APS employee must comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction.*
  - s13(6) An APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff.*
  - s13(7) An APS employee must:
    - (a) take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment; and
    - (b) disclose details of any material personal interest of the employee in connection with the employee's APS employment.*
  - s13(8) An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.*

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- s13(9) An APS employee must 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.*
- s13(10) An APS employee must not improperly use inside information or the employee's duties, status, power or authority:*
- (a) to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or*
  - (b) to cause, or seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.*
- s13(11) An APS employee must at all times behave 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.*
- s13(12) An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.*
- s13(13) An APS employee must comply with any other conduct requirement that is prescribed by the regulations.*
13. Section 15(2A) of the Act further provides that a person who is, or was, an APS employee is taken to have breached the Code of Conduct if the person is found (under procedures established under s 15(3) of the Act) to have, before being engaged as an APS employee:
- a. knowingly provided false or misleading information to another APS employee, or to a person acting on behalf of the Commonwealth
  - b. wilfully failed to disclose to another APS employee, or to a person acting on behalf of the Commonwealth, information that the person knew, or ought reasonably to have known, was relevant, or
  - c. otherwise failed to behave honestly and with integrity
- in connection with the person's engagement as an APS employee.

## Consequences of breaching the Code

14. Where a breach or breaches of the Code have been determined, one or more sanctions may be imposed. Under section 15(1) of the Act, the available sanctions are:
- s15(1)(a) termination of employment
  - s15(1)(b) reduction in classification
  - s15(1)(c) re-assignment of duties
  - s15(1)(d) reduction in salary
  - s15(1)(e) deductions from salary, by way of fine
  - s15(1)(f) a reprimand.

## Misconduct

15. The reporting of behaviours and actions that may be contrary to the Code contribute to promoting the integrity of the APS. All employees are required to identify, and report conduct that is not consistent with the Code as soon as they become aware.

16. Misconduct is any action or behaviour by an employee that has been determined by a Breach Decision Maker to be contrary to the Code. The action or behaviour does not generally require intent to be considered a breach. It may arise out actions including but not limited to:
  - a. behaviours an employee exhibits in the course of their employment
  - b. providing false or misleading information
  - c. wilfully failing to disclose relevant information, or
  - d. failing to act with honesty and integrity in connection with engagement as an APS employee.
17. Misconduct is not a substitute for managing challenging behaviours that may be more appropriately managed as unsatisfactory performance in accordance with Comcare's Performance Development Policy.

## Identification and reporting of misconduct

18. Misconduct may be identified through a range of sources, including:
  - a. **Employees** must report potential or suspected misconduct. Failure to report this, particularly by a manager, may itself amount to a breach of the Code.
  - b. **Internal monitoring mechanisms** including audits and reviews.
  - c. **Complaints from clients and members of the public.**
19. Suspected misconduct may also be identified in relation to former employees of the organisation (who are suspected of breaching the Code while an APS employee in Comcare) consistent with section 42 of the Directions.
20. When a report has been made by an employee, client or member of the public that relates to suspected misconduct, the report is initially managed in accordance with the [Complaints Handling Framework](#), and if considered suspected misconduct, it will be referred to PPS for management in accordance with this procedure. The person who refers the matter is referred to as the 'complainant'.
21. Employees can report suspected misconduct via a range of avenues including their manager, a member of the People Property and Security team (PPS team) or the COO. A report can be made verbally or in writing.
22. Where the conduct issues include allegations of bullying and/or harassment, the Respect and Courtesy Procedure contains additional information. However, the Respect and Courtesy Procedure does not form part of this Code of Conduct Procedure (established under s 15(3) of the Act).

## Public interest disclosure

23. Employees reporting certain matters (including suspected corrupt conduct, maladministration, perverting the course of justice, wastage of public money or conduct that is a danger to health, safety and the environment) to authorised officers within Comcare may be subject to the protections offered by the *Public Interest Disclosure Act 2013* (PID Act).
24. A report made to a supervisor, authorised officer or the CEO of Comcare may be considered a disclosure in accordance with the PID Act.
25. More information on Public Interest Disclosures is available on the [intranet](#) and the [Commonwealth Ombudsman website](#).



## Protection against reprisal

26. Employees will be supported, to report any suspected breach of the Code to ensure wellbeing and safety in the workplace.
27. Employees who have reported breaches and/or made a statement in relation to suspected misconduct should report any detrimental action they consider has been taken as a consequence to their manager, the PPS team or an authorised official.
28. Internal disciplinary action may be taken against an employee who victimises or retaliates against other employees in response to making a complaint or participating in the consideration or investigation of that complaint.

## Confidentiality

29. The identity of the employee or persons reporting suspect misconduct, and the identity of an employee accused of the suspected misconduct will be treated confidentially as far as is reasonably practicable and consistent with a proper investigation and consideration of a matter.

## Appointment

30. If after becoming aware of misconduct allegations, there is enough information to consider the matter further, a delegate may be appointed by a member of management with the authority to do so in accordance with the delegations.
31. Decision makers and delegates that may be appointed during the process include:
  - a. Breach decision maker, responsible for considering the allegations and evidence and determining whether a breach of the Code has occurred (including by the person engaging in conduct referred to in s 15(2A) of the Act).
  - b. Suspension delegate, responsible for considering whether the employee should be suspended from duty due to the nature, severity and impact of the suspected misconduct.
  - c. Sanction delegate, responsible for determining what, if any, sanction should be imposed if the employee is found to have breached the Code (including by the employee engaging in conduct referred to in s 15(2A) of the Act).
32. In appointing the breach decision maker, sanction and suspension delegates, reasonable steps must be taken to ensure that the persons appointed are, and appear to be, independent and unbiased. They must also have the appropriate authority to make the relevant decisions.
33. There may be occasions where suitable delegates are not available within the organisation, including due to real or perceived conflict. In these circumstances:
  - a. a breach decision maker outside of the organisation may be appointed by the CEO
  - b. in accordance with subsections 78(7) and 78(8) of the Act, the CEO may delegate the power to impose a sanction under s 15(1) of the Act to a decision maker outside of the organisation with the written approval of the APS Commissioner
  - c. in accordance with reg 9.3(3) and 9.3(4) of the *Public Service Regulations 1999* (the Regulations), the CEO may delegate the power to suspend an APS under reg 3.10 of the Regulations to a decision maker outside of the organisation with the written approval of the APS Commissioner.

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34. The decision maker and delegates must not have made a report in relation to any of the matters suspected of constituting a breach by the person, and not have a real or apparent conflict of interest.
35. Where practicable, the breach decision maker and delegates (suspension and sanction) should be different persons to ensure impartiality, avoidance of bias and independence in their decisions. There may however be occasions when the breach decision maker, sanction delegate and suspension delegate may be the same person.
36. The employee will be informed of the appointment of the breach decision maker at the time of notification of suspected breach. Should a suspension and/or sanction delegate be required, the employee will be advised of additional delegates as soon as practicable so that they are able to raise any concerns regarding apprehension of bias if concerns exist, for consideration.

## **SUSPECTED BREACHES OF THE CODE**

**Aim:** To inform employees on the process of how a suspected breach of the Code is managed.

**Policy:**

- All managers and employees are expected to demonstrate the core behaviours of respect, fairness and courtesy.
- We will take timely and appropriate actions to consider alleged breaches of the Code, the Values and Employment Principles including considering whether a formal investigation into a suspected breach of the Code is required.
- Reasonable steps will be taken to ensure that breach decision makers appointed to consider suspected breaches of the Code will be, and will appear to be, independent and unbiased.
- The process for determining whether an APS employee in Comcare has breached the Code will be carried out with as little formality and as much expedition as proper consideration of the matter allows.
- Determination of a suspected breach will not be made unless reasonable steps have been taken to:
  - a. inform the employee of the details of the suspected breach (including any subsequent variation of those details) and the sanctions that may be imposed on the APS employee under s 15(1) of the Act, and
  - b. provide the employee with a reasonable opportunity to make a statement in relation to the suspected breach.

### **Preliminary investigation**

37. On appointment, the breach decision maker may conduct a preliminary investigation into the allegations to determine whether it is appropriate for the matter to proceed to a formal investigation, or whether an alternative course of action should be undertaken. This may include:
  - a. informal discussion and counselling including constructive feedback and suggestions for improvement
  - b. formal counselling where a written record of the counselling is made and sent to the employee via email and a copy placed on the relevant conduct file
  - c. issuing a formal written warning and placing a copy on the relevant conduct file, or
  - d. developing a strategy for improving performance using the Performance Development Policy.
38. Minor or isolated breaches of the Code may not warrant action, but if they form a pattern of behaviour, this may be viewed more seriously.
39. Where the breach decision maker considers that some alternative course of action should be undertaken, there will be no determination in relation to whether the employee has breached the Code and no further formal Code action will occur in that instance. A copy of all information relating to the suspected breach will be recorded and stored in the relevant conduct file.

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

40. If the breach decision maker considers that it is appropriate for the matter to proceed to a formal investigation, they will take reasonable steps to inform the employee of:

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- a. their appointment as breach decision maker and the details of the appointment of an investigator (if applicable)
  - b. the details of the suspected breach of the Code (including any subsequent variation of those details)
  - c. the sanctions that may be imposed (if a breach is determined) in accordance with section 15(1) of the Act
  - d. the employee's right to make a statement in relation to the suspected breach within seven calendar days (or longer period as agreed by the breach decision maker)
41. If an employee resigns from the APS after being notified of a suspected breach of the Code, the breach decision maker may choose to continue to investigate and make a determination on whether the employee had breached the Code, however no sanction will be applied. The breach decision is reviewable by the Merit Protection Commission (MPC).
42. A transfer or promotion (internally or externally) for an employee who is suspected of breaching the Code (and has been informed of the suspected breach and possible sanctions) will generally not take effect until the matter is resolved.
43. An external transfer or promotion within the APS may take effect if the CEO (or their delegate) and the Agency Head of the receiving organisation agree movement may take effect prior to the matter being resolved. The matter will be deemed resolved when a determination on breach is made, or it is decided that a determination is not required. If a finding of breach is made, the receiving organisation is responsible for determining whether a sanction should be applied.

## Reassignment, or suspension from duty

44. Consideration may need to be given to temporarily reassign an employee to an alternative work area or suspend them from duty in response to the suspected misconduct. Either of these actions may occur at any time prior to, or during the process of determining whether a breach has occurred.
45. Temporary reassignment of duties, or suspension from duty may also occur once a breach has been found, and while the sanction delegate considers whether to apply a sanction. Either of these actions does not constitute the sanction.
46. If required, a suspension delegate will be appointed to consider a range of issues when making a decision to temporarily reassign or suspend an employee from duty. This may include:
- a. the nature and seriousness of the allegation(s) and the nature of evidence available
  - b. any risks of the alleged misconduct being repeated, or the employee behaving inappropriately, thereby impacting the wellbeing of colleagues or others within the organisation
  - c. the potential risks to the reputation of Comcare, or the APS as a whole, if the alleged misconduct was to become known or continued.

## Temporary reassignment

47. A decision to temporarily reassign an employee suspected of misconduct to other duties can only be made by an appropriate delegate who must consult with the Director, People, Property and Security (PPS) or Assistant Director, Performance and Employee Relations, prior to making any decision.

## **Suspension**

48. An APS employee may be suspended from duties if a delegate believes, on reasonable grounds, they may have breached the Code and the employee's suspension is in the public or Comcare's interest. The suspension may be with, or without remuneration. A decision to suspend an employee, with or without remuneration, can be made by someone with the authority to do so within Comcare's Corporate Group Public Service Act delegations.
49. In making a decision to suspend an employee, the suspension delegate will generally have due regard to procedural fairness and inform the employee of the intention to suspend them, the reasons for that intention and provide an invitation to respond before the decision is finalised. This process may not be followed where the delegate is satisfied on reasonable grounds that, in the particular circumstances, it would not be appropriate to follow this process (or have due regard to procedural fairness when making a decision to suspend an employee).
50. In some circumstances it may not be appropriate to provide the employee with this information prior to suspending them. For example, it may not be appropriate if there is an imminent and serious threat to the safety of other employees, or a serious threat to the reputation of the organisation if the employee continues to act on behalf of the organisation. Where the suspension comes into immediate effect, the employee will be provided reasons for the suspension as soon as practicable and given the opportunity to respond. The suspension will be reviewed as soon as practicable after receipt of any response from the employee.
51. If an employee is suspended without remuneration, they may seek approval from the suspension delegate to access their accrued annual and long service leave entitlements.
52. The suspension delegate will review the suspension at reasonable intervals where the suspension is with remuneration and must immediately end the suspension if they no longer believe on reasonable grounds that the employee has or may have breached the Code or that the employee's suspension is in the public or Comcare's interest. Where the suspension is without remuneration, the period must not be more than 30 days, unless exceptional circumstances apply. If the suspension without remuneration is proposed for longer than 30 days, the suspension delegate should review the suspension without remuneration every 30 days, unless exceptional circumstances apply.
53. The suspension must be ended if a sanction has been imposed.

## INVESTIGATING MISCONDUCT

**Aim:** To inform employees on the process of how a suspected breach of the Code is investigated.

**Policy:**

- We will take timely and appropriate actions to consider alleged breaches of the Code, the Values and Employment Principles including considering whether a formal investigation into a suspected breach of the Code is required.
- Reasonable steps will be taken to ensure that breach decision makers appointed to consider suspected breaches of the Code will be, and will appear to be, independent and unbiased.
- The process for determining whether an APS employee in Comcare has breached the Code will be carried out with as little formality and as much expedition as proper consideration of the matter allows.

54. The process for determining whether an employee has breached the Code must be carried out with as little formality and as much expedition as proper consideration of the matter allows.
55. If the breach decision maker (including an external breach decision maker) determines an investigation is required, they may decide how to best conduct the investigation. This may either be internally by the breach decision maker or an internal investigator appointed by them, or externally by the breach decision maker or an external investigator appointed by them).

## Investigations

56. If the breach decision maker considers the matter appropriate to investigate, reasonable steps will be taken to provide the employee notification that includes:
  - a. purpose of the investigation (for example, details of the suspected breach)
  - b. contact details of the investigator (if any)
  - c. potential sanctions or actions that may be imposed if, following consideration of the evidence, a breach is found
  - d. terms of reference to ensure clarity on the scope and proposed approach to the investigation (if required)
  - e. offer for a support person to be identified within in any interviews or discussions
  - f. Employee Assistance Program (EAP) contact details.
57. Notification of these matters may be included in the notice of suspected breach (see paragraph 40 above) or otherwise in writing or verbally.
58. The breach decision maker may conduct the investigation with the assistance of other persons as required or may appoint an internal or external investigator to conduct it on their behalf.
59. During the course of the investigation, the breach decision maker (or the investigator) will obtain and collate information and evidence relevant to the matter.
60. Where an investigator is appointed to conduct the investigation on behalf of the breach decision maker, the breach decision maker may request the investigator to:
  - a. make recommended findings of fact and a recommended finding or findings on whether or not the employee has breached the Code, based on the evidence/information obtained in the investigation

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- b. report on any other matters relevant to the investigation, including:
  - the method undertaken in the investigation
  - relevant stakeholders (for example, employees involved, witnesses, additional sources of information)
  - evidence reviewed
  - findings and relationship to legislative or policy frameworks
  - any other recommendation that the external investor may have been asked to make
- c. include any of the above matters in a written report to the breach decision maker.

61. The reviewer report (if required) of findings will provide a recommendation as to whether, based on the evidence, a breach has likely occurred.

## External investigations

62. If the breach decision maker determines it appropriate to engage an external investigator, the breach decision maker will take reasonable steps to provide the employee notification that includes:
- a. purpose of the investigation (for example, details of a suspected breach of the Code)
  - b. external investigator details
  - c. terms of reference
  - d. option for a support person in any interviews or discussions
  - e. EAP contact details.
63. The method of the investigation will be agreed between the external investigator and the breach decision maker in advance of the investigation commencing and may be varied by agreement during the investigation as appropriate.
64. On completion of the investigation, the external investigator will prepare an investigation report and provide that to the breach decision maker. The investigation report will contain:
- a. the method undertaken in the investigation
  - b. relevant stakeholders (for example, employees involved, witnesses, additional sources of information)
  - c. evidence reviewed
  - d. findings and relationship to legislative or policy frameworks
  - e. any recommendation that the external investor may have been asked to make.

## Timeframes

65. Any investigation will be conducted with as much expedition as a proper consideration of the matter allows.

## Request for work time to participate in investigations

66. Any employee will be provided reasonable work time to participate in the investigation (for example, time to attend the interview).

## OFFICIAL

67. Should any employee wish to provide supporting evidence, and if the collation of the evidence is preferred to be completed in work time, a request for reasonable work time to do so is to be sent to [performance@comcare.gov.au](mailto:performance@comcare.gov.au). All reasonable requests will be considered.



## **DETERMINATIONS AND SANCTIONS**

**Aim:** To inform employees on the process undertaken by the delegate in making a determination and applying possible sanctions in response to a breach of the Code.

**Policy:**

- We will take timely and appropriate actions to consider alleged breaches of the Code, the Values and Employment Principles including considering whether a formal investigation into a suspected breach of the Code is required.
- Determination of a suspected breach will not be made unless reasonable steps have been taken to:
  - a. inform the employee of the details of the suspected breach (including any subsequent variation of those details) and the sanctions that may be imposed on the APS employee under s 15(1) of the Act, and
  - b. give the employee

provided the employee with a reasonable opportunity to make a statement in relation to the suspected breach.

- Reasonable steps will be taken to ensure that sanction delegates appointed to determine any sanction(s) to be imposed for breaches of the Code will be, and will appear to be, independent and unbiased.
- Determination of sanction will not be made unless reasonable steps have been taken to:
  - a. inform an employee of the determination of the breach of the Code, the sanction or sanctions that are under consideration and the factors that are under consideration in determining any sanction to be imposed, and
  - b. give the employee a reasonable opportunity to make a statement in relation to the sanctions under consideration.

### **Determinations**

68. After the investigation has been completed, the breach decision maker will:

- a. make a preliminary determination, in writing, as to whether or not there has been a breach of the Code
- b. take reasonable steps to inform the employee of the preliminary determination
- c. provide the employee with seven days (or longer period as considered appropriate by the breach decision maker) to consider the preliminary determination and make a statement in response, prior to the decision maker making a final determination.

69. Where considered by the breach decision maker to be appropriate in the circumstances, they may provide the employee with an opportunity to make an oral statement.

70. The breach decision maker will consider any response and make a final determination regarding a breach. They will also take reasonable steps to inform the employee of the final decision.

### **Consideration of sanction**

71. If the employee is determined to have breached the Code, a sanction delegate will be appointed.

## OFFICIAL

72. In determining the most appropriate person to appoint as sanction delegate, reasonable steps will be taken to ensure the sanction delegate is, and appears to be, independent and unbiased in the matter, has appropriate administrative decision-making skills and applies procedure fairness throughout the sanction consideration process. Where appropriate, this person may be external to Comcare, however, will likely be within the relevant portfolio.
73. The sanction delegate will take reasonable steps to inform the employee of:
- a. their appointment as sanction delegate
  - b. the sanction or sanctions that are under consideration (known as preliminary view on sanction)
  - c. the matters the sanction delegate proposes to have regard to in determining whether a sanction should be imposed, and
  - d. the employee's right to make a statement in relation to the sanctions under consideration within seven days (or for a longer period as allowed by the sanction delegate).
74. Where considered by the sanction delegate to be appropriate in the circumstances, they may provide the employee with an opportunity to make an oral statement.
75. Following consideration of any statement or information provided by the employee, or the expiration of the period which the employee was given to make a statement, the sanction delegate may impose any sanction that is authorised under section 15(1) of the Act. A sanction cannot be imposed on a former APS employee.
76. The sanction delegate will advise the employee in writing of the sanction (if any) within seven days of the decision being made.
77. In determining the appropriate sanction to impose, the sanction delegate will have consideration of a range of factors including the following:
- a. the seriousness of the breach
  - b. the likelihood of the breach occurring again
  - c. whether the employee has committed the breach more than once, and
  - d. the risk the breach poses to other employees, the reputation of the organisation or the reputation of the APS.

## OTHER MATTERS

**Aim:** To inform employees on the additional entitlements and support options available during investigation into suspected breaches of the Code.

**Policy:**

- All managers and employees are expected to demonstrate the core behaviours of respect, fairness and courtesy.
- We will take timely and appropriate actions to consider alleged breaches of the Code, the Values and Employment Principles including considering whether a formal investigation into a suspected breach of the Code is required.
- Reasonable steps will be taken to ensure that breach decision makers appointed to consider suspected breaches of the Code will be, and will appear to be, independent and unbiased.
- The process for determining whether an APS employee in Comcare has breached the Code will be conducted with as little formality and as much expedition as proper consideration of the matter allows.
- Determination of a suspected breach will not be made unless reasonable steps have been taken to:
  - a. inform the employee of the details of the suspected breach (including any subsequent variation of those details) and the sanctions that may be imposed on the APS employee under s 15(1) of the Act, and
  - b. provide the employee with a reasonable opportunity to make a statement in relation to the suspected breach.
- Determination of sanction will not be made unless reasonable steps have been taken to:
  - a. inform an employee of the determination of the breach of the Code, the sanction or sanctions that are under consideration and the factors that are under consideration in determining any sanction to be imposed, and
  - b. give the employee a reasonable opportunity to make a statement in relation to the sanctions under consideration.

## Right to a support person

78. Any employee participating in an investigation relating to suspected breaches of the Code is entitled to have a support person present at any discussion relating to the investigation.

## Behaviour and conduct

79. At all times during the investigation, all employees participating in the process (including as a witness or support person) are required to uphold the APS Values and the Code. This includes acting with honesty, integrity and treating others with respect and courtesy.
80. A failure to uphold these conditions may result in disciplinary action in accordance with these procedures.

## Access to the Employee Assistance Program (EAP)

81. At any time, an employee may access the confidential employee assistance program (EAP) for support. This support is provided free of charge, and can be accessed through a self-referral, or as a suggestion or Comcare referral from the People, Property and Security team.

## Privacy

82. The privacy of employees is important to Comcare. We will only collect, use or disclose personal information in accordance with the *Privacy Act 1988* (the Privacy Act), including where authorised as the employer under the Public Service Act 1999 (s 72E) and the Public Service Regulations (reg 9.2). The information collected regarding the conduct of the employee will be used to assist the breach decision maker and sanction delegate (as the case may be) to determine whether an alleged breach of the Code has occurred, and if so, form a view of an appropriate sanction to be applied.
83. At all times during a process, employees are required to adhere to the Privacy Act and Australian Privacy Principles ensuring that information disclosed or discussed is relevant and consistent with the purpose of the investigation.
84. Personal information about an employee may be collected from current and previous employees or other people, or from within documentary records held by Comcare or other sources. The purpose of collecting personal information is to manage the employment relationship by providing a factual basis for determining whether an employee has breached the Code and, if so, determining what (if any) sanction to apply to the employee.
85. Comcare (the Employer) may also use and disclose the information provided as part of Code of Conduct investigation for other purposes related to employment, including to assist Comcare (the Insurer), in making an assessment of any claims made for work-related compensation or respond to matters at the Fair Work Commission. Comcare is not likely to disclose personal information overseas.
86. To request access to, or correct personal information that Comcare holds about the employee, they may request a copy of our Privacy Policy. To make a privacy complaint, please visit [http://www.comcare.gov.au/about\\_us/privacy](http://www.comcare.gov.au/about_us/privacy), contact us on 1300 366 979, or email [privacy@comcare.gov.au](mailto:privacy@comcare.gov.au).
87. Code of Conduct files containing personal information are stored electronically within Comcare's approved record keeping system, only accessible to the relevant delegate and specific members of the People, Property and Security team responsible for supporting delegates in such matters.
88. Electronic records are disposed of in accordance with the *Records Disposal Authority*.

## Record keeping

89. If a determination is made in relation to a suspected breach of the Code of Conduct by an APS employee in Comcare, a written record must be made of:
  - a. the suspected breach
  - b. the determination
  - c. any sanctions imposed as a result of a determination that the APS employee breached the Code of Conduct, and
  - d. if a statement of reasons was given to the APS employee—the statement of reasons.
90. Records are to be maintained at all stages in the process and stored within the Comcare's approved record keeping system, only accessible to the relevant delegate/s and specific members of the People, Property and Security team responsible for supporting delegates in such matters.

91. The types of records maintained within the file include:

- a. referral information
- b. supporting evidence
- c. case notes
- d. the suspected breach notification
- e. the determination and supporting information (for example, evidence, investigation reports)
- f. any sanctions imposed as a result of a determination that the APS employee breached the Code, and
- g. a copy of the statement of reasons given to the employee.

## **Right of review**

92. An employee may be entitled to seek a review of actions or decisions made in connect with their employment, including determinations relating to misconduct, suspension or sanctions (other than termination of employment). Further information is available in the Review of Action procedures.

## SUPPORTING INFORMATION

### *Roles and responsibilities*

Role	Responsibilities
Breach decision maker	The person responsible for considering the allegations and evidence to determine whether a breach of the Code has occurred.
Investigator	The person engaged to impartially and objectively to gather and consider relevant facts relating to suspected breach of the APS code of conduct. The investigator is not a decision maker, rather may (amongst other things) provide recommendations on whether, on the balance of probabilities, a breach may have occurred.
Sanction delegate	The person appointed to determine sanction following the confirmation of misconduct.
Suspension delegate	The person responsible for considering whether the employee should be suspended from duty, and if so with or without pay.

### *Definitions*

Term	Definition
APS Code of Conduct	Sets the standard of conduct required of APS employees, designed to protect the integrity of the APS and thereby maintain public confidence in public administration.
APS Values	The Australia Government's expectation of public servants in terms of performance and standards of behaviour.
Assignment of duties	The action of the agency head under s25 of the Act in determining the duties of an employee and the place or places where the duties are to be performed.
Breach decision maker	The person appointed to determine whether or not a breach of the Code has occurred.
Bullying	The term used to describe repeated behaviour that could reasonably be considered to be humiliating, intimidating, threatening or demeaning to an individual or group of individuals.
Determination	A decision made by the breach decision-maker of whether an employee has been found to have breached the Code.

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Dispute resolution	The process by which disputes are brought to an end that may include negotiation, mediation, facilitated conversations or arbitrated, binding decisions.
Harassment	Workplace behaviours that include offensive, sexual, belittling or threatening behaviour towards an individual or a group of employees. The behaviour is unwelcome, unsolicited usually unreciprocated and often repeated.
Misconduct	Conduct by a person while an APS employee that is determined to be in breach of the Code. Prior to the determination, the conduct is referred to as 'suspected' or 'alleged' misconduct.
Procedural fairness	Procedural fairness is concerned with the procedures used by a decision-maker, rather than the actual outcome reached. It requires a fair and proper procedure be used when making a decision.
Reassignment of duties	A sanction available under s15 of the Act relating to the movement of an employee's duties and place or places where the duties are to be performed.
Sanction	Sanctions set out in s15(1) of the Act may be applied following a determination of a breach of the Code.
Sexual harassment	<p>Sexual harassment is unwelcome conduct of a sexual nature which makes a person feel offended, humiliated and/or intimidated, where the possibility of that reaction could be reasonably anticipated in the circumstances.</p> <p>It does not have to be directed at a specific person. Sexual harassment includes behaviour that makes the working environment uncomfortable or threatening in a sexually hostile way, such as displaying sexually offensive pictures or a culture of suggestive comments or jokes.</p> <p>Sexual harassment can happen during working hours and at work-related activities such as training courses, conferences, trips, and work-related social activities. It might come from workers, a supervisor or manager, or from customers or clients. The incident may be a one-off and does not need to be repeated to be considered sexual harassment.</p>
Suspension	The action of standing an employee down from their duties for a suspected breach of the Code, as set out in s28 of the Act and regulations.
Workplace discrimination	Discrimination based on race, gender, religion, national origin, physical or mental disability, age, sexual orientation and gender identity by employers.

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### Related legislation

Document name	Link
<i>Australian Public Service Commissioner's Directions 2022</i>	<a href="#">PS directions</a>
<i>Fair Work Act 2009</i>	<a href="#">FW Act</a>
<i>Privacy Act 1988</i>	<a href="#">Privacy Act</a>
<i>Public Interest Disclosure Act 2013</i>	<a href="#">PID Act</a>
<i>Public Service Act 1999</i>	<a href="#">PS Act</a>
<i>Public Service Regulations 1999</i>	<a href="#">PS Regulations</a>
<i>Work Health and Safety Act 2011 (Cth)</i>	<a href="#">WHS Act</a>

### Related Policy

Document name	Link
Respect, conduct and review policy	<a href="#">Respect, conduct and review policy</a>

### Related procedure and guidelines

Document name	Link
Review of action procedure	<a href="#">Review of action procedure</a>
Respect and courtesy procedure	<a href="#">Respect and courtesy procedure</a>
SWA National Guidance on Sexual Harassment	<a href="#">SWA guidance on sexual harassment</a>
Regulatory guidance for employers on their work health and safety responsibilities	<a href="#">Regulatory guidance on sexual harassment</a>
SWA National Guidance on Sexual Harassment	<a href="#">SWA guidance on sexual harassment</a>
Workplace sexual harassment: Practical guidance for workers	<a href="#">Worker guidance</a>



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Workplace sexual harassment: practical guidance for managers and supervisors

[Manager and supervisor guidance](#)

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Workplace sexual harassment: practical guidance for employers

[Employer guidance](#)

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### ***Change history***

Version	Date	Author	Reason for change
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**26**