



Workplace Behaviour Policy

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Introduction

The department is strongly committed to providing its employees with a healthy and safe workplace, free from all forms of unacceptable and inappropriate workplace behaviour including bullying, workplace discrimination, harassment and victimisation.

All employees have an obligation under the Australian Public Service (APS) Code of Conduct (the Code) to treat everyone with respect and courtesy, and without harassment, when acting in connection with APS employment. Employees are also obliged to comply with the five APS Values:

- **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.

Unacceptable workplace behaviour may amount to a breach of the Code which can result in a range of disciplinary actions for departmental employees. This policy focuses on bullying, workplace discrimination, harassment and victimisation, which are particular types of unacceptable workplace behaviour. This Policy is supported by the department's compulsory '*Eliminate Workplace Bullying*' online training module. For further information about the required standard of behaviour of employees under the APS Values and Code of Conduct more generally refer to the department's Code of Conduct policy: [Procedures for Code of Conduct](#).

In addition to the APS Values and Code of Conduct, unacceptable workplace behaviour may also constitute a breach of anti-discrimination and workplace health and safety legislation.

Scope

This policy applies to all employees within the department, including employees and contractors.

Aim

- To maintain an appropriate level of awareness of what constitutes unacceptable behaviour in the workplace and the consequences of unacceptable behaviour.

- To ensure that all workers within the department are aware of their responsibility and obligation to behave in an acceptable manner; prevent and act upon unacceptable workplace behaviour.
- To ensure that employees and other workers are aware of their rights and responsibilities relating to bullying and other forms of unacceptable workplace behaviour.
- To provide employees and other workers with details of the processes for raising and resolving complaints.

Principles

Although not bound by the Code the department expects all other workers including contractors and non-APS secondees to the department, who perform work for the department, to behave in a manner that is compliant with the Code and this policy.

Bullying, workplace discrimination, harassment and victimisation, will not be tolerated by the department. Any conduct amounting to unacceptable or inappropriate workplace behaviour will be addressed promptly by the department and in a serious manner.

Unacceptable workplace behaviour can have serious implications for productivity, morale and workplace health and safety. The negative consequences for employees, other workers and the department include:

For Employees

Bullying, sustained harassment, discrimination or victimisation can have a harmful effect on the lives of the person experiencing it. Individuals can suffer fear, anxiety and stress which can cause or exacerbate physical or psychological illness, reduce their work performance, increase absenteeism and even cause them to resign from work.

For the Department

If unchecked, unacceptable workplace behaviour can also damage the workplace by creating tension and conflict which can lead to poor staff morale, divided teams, absenteeism, reduced productivity and higher staff turnover.

The aim of achieving a workplace free of bullying, workplace discrimination, harassment and victimisation is not intended to impose restrictions on individual working styles or on workplace related relationships and social activities. Rather, its aim is to recognise that all employees and other workers, including those with different backgrounds and interests, need to treat each other with respect and courtesy if the department is to be an effective organisation. Bullying, workplace discrimination, harassment and victimisation does not refer to reasonable management action carried out in a reasonable manner.

For other workers

Under work health and safety laws (*Work Health and Safety Act 2011*) and workplace bullying laws (*Fair Work Act 2009*) 'workers' in our workplaces are more broadly defined than only departmental 'employees' and also include contractors or subcontractors (and their employees), secondees and volunteers. All 'workers', as well as members of the public who are visitors to our workplaces, must take reasonable care that they do not adversely affect the health and safety of others. A

copy of this policy will be made available to all workers including contractors and secondees to the department.

Expected Workplace Behaviours

The department expects all employees and other workers to behave in a manner that is consistent with the Code and which upholds the APS Values, integrity and good reputation of the APS. All workers are expected to:

- behave in a responsible and professional manner;
- treat others in the workplace with courtesy and respect;
- listen and respond appropriately to the views and concerns of others; and,
- be fair and honest in their dealings with others.

This policy applies to behaviours that occur:

- in connection with work, even if it occurs outside normal working hours;
- during work activities, for example when dealing with stakeholders and clients;
- at work-related events, for example at conferences and work-related social functions; and,
- on social media where workers interact with colleagues, stakeholders or clients and their actions may affect them either directly or indirectly.

Workplace Bullying

Workplace bullying is defined as *repeated* and *unreasonable* behaviour directed towards a worker or a group of workers that creates a risk to health and safety.

Repeated behaviour refers to the persistent nature of the behaviour and can involve a range of behaviours over time.

Unreasonable behaviour means behaviour that a reasonable person, having considered the circumstances, would see as unreasonable, including behaviour that is victimising, humiliating, intimidating or threatening.

Examples of behaviour, whether intentional or unintentional, that may be considered to be workplace bullying if they are *repeated*, *unreasonable* and *create a risk to health and safety* include, but are not limited to:

- Abusive, insulting or offensive language or comments.
- Unjustified criticism or complaints.
- Deliberately excluding an individual or group from workplace activities.
- Withholding information that is vital for effective work performance.
- Consistently setting unreasonable timelines or constantly and unreasonably changing deadlines.
- Consistently setting tasks that are unreasonably below or beyond a person's position or level.
- Denying access to information, supervision, consultation or resources to the detriment of the worker.
- Intentionally spreading misinformation or malicious rumours.
- Changing work arrangements, such as rosters or leave, to deliberately inconvenience a particular worker or group.

- Inappropriate comments about personal characteristics such as an individual's physical appearance, lifestyle, family, race, culture, education or economic background.
- Inappropriate interference with an individual's personal effects or work equipment.

Workplace bullying behaviour can be carried out in a variety of ways including in person, over the telephone, through email or text messaging or social media channels. Workplace bullying can be directed at a single worker or group of workers and be carried out by one or more workers. Workplace bullying can occur:

- sideways between workers;
- downwards from supervisors or managers to staff;
- upwards from staff to supervisors or managers; or,
- be directed at, or undertaken by, other people in the workplace such as stakeholders, clients, customers and other members of the public.

A single incident of unreasonable behaviour is not considered to be workplace bullying, however it may have the potential to escalate and should not be ignored.

If workplace bullying behaviour involves violence, for example physical assault or the threat of physical assault, it should be reported to the police.

Behaviour which is not Workplace Bullying

The department may take reasonable management action to direct and control the way work is carried out by employees and other workers. It is reasonable for managers and supervisors to carry out legitimate management decisions and actions. For example, assign work, give feedback on work performance or behaviour and allocate work hours based on operational requirements and taking specific circumstances into account.

These actions are not considered to be workplace bullying provided that they are carried out reasonably and lawfully.

Differences of opinion, robust and passionate discussions between colleagues and disagreements are generally not considered to be workplace bullying, however if such workplace conflict escalates it may reach the point where it becomes workplace bullying because the behaviour is no longer reasonable (for example, because of the use of inappropriate or abusive language or tone of voice).

Further examples of reasonable management action, that is not bullying, are set out under '*Correctly identifying bullying and other unacceptable workplace behaviour*' on page 11 of this policy.

Unlawful Workplace Discrimination

Unlawful Workplace Discrimination is denying any person equality of treatment in employment matters because they have a particular characteristic or belong to a particular group of people which are not directly related to the requirements of the job.

Discrimination can occur directly or indirectly:

- **Direct discrimination:** occurs when a person or group of people are treated in an unfair or less favourable way because of an attribute such as age, gender, race, religion, sexual orientation, disability, pregnancy, or marital status.
- **Indirect discrimination:** occurs when a person or organisation imposes a requirement (a rule, policy, practice or procedure) that is the same for everyone, but has an unequal or disproportionate effect on a particular group or groups. If the requirement is not reasonable in all the circumstances, it is likely to be indirect discrimination.

As an equal opportunity employer, the department will treat all workers and prospective workers fairly and on the basis of their individual merit.

Behaviour or action which is not Unlawful Discrimination

It is not unlawful discrimination for the department to require an employee or other worker to fulfil the inherent requirements of their position. If a worker is unable or unwilling to fulfil these inherent requirements (for eg. adhering to the APS Code of Conduct and Values and participating in performance management processes) reasonable disciplinary or performance action may be justified in the circumstances and is not unlawful discrimination.

Workplace and Sexual Harassment

Workplace harassment is any form of behaviour that is unwelcome, unsolicited, unreciprocated and usually (but not always) repeated, and which is reasonably likely to offend, humiliate or intimidate. Harassment can make it difficult for effective work to be done by the individual or groups targeted or affected by this behaviour.

For harassment to occur there does not have to be an intention to deliberately offend, humiliate or intimidate. It is the *impact* of the behaviour on the person who is receiving it, together with the nature of the behaviour (that is, the reasonableness of the behaviour), which determines whether it is harassment.

Further, 'workplace' in this context is defined to include not only the usual work environment, but also work related events, seminars, conferences, work functions (including Christmas parties), and business trips.

Sexual harassment is any unwanted, unwelcome or uninvited behaviour of a sexual nature that is likely to offend, humiliate or intimidate.

Some examples of workplace harassment include, but are not limited to:

- Offensive physical contact, derogatory language or intimidating actions.
- Insulting or threatening gestures or language (overt or implied) or continual and unwarranted shouting in the workplace.
- Unjustified and unnecessary comments about a person's work or capacity for work.

- Openly displayed pictures, posters, graffiti or written materials which might be offensive to some.
- Phone calls or messages on e-mail or computer networks which are threatening, abusive or offensive to workers.
- Persistent following or stalking within the workplace, or to and from work.
- The exclusion of a person or group from normal conversations, work assignments, work related social activities and networks in the workplace.

Sexual harassment can take many forms and may include:

- Belittling jokes or comments based on gender stereotypes.
- Behaviour which insists that gender stereotypes be maintained and exercised in the workplace.
- Uninvited touching, kissing or embracing.
- Making promises or threats in return for sexual favours.
- Displays of sexually graphic material including posters, cartoons and screen savers.
- Requests for sexual favours or repeated unwanted requests to go out on dates (including inappropriate advances using social media).
- Staring or leering.
- Sexually explicit conversation.
- Distribution of sexually explicit e-mails or text messages.
- Persistent questions or insinuations about a person's private life.
- Any behaviour that creates a sexually hostile work environment.

Behaviour or action which is not Harassment

Workplace harassment should not be confused with legitimate comment and advice on work performance or work related behaviour of an individual or group. Nor should it be confused with other forms of legitimate and reasonable management action such as taking action to transfer an employee; allocating work; setting reasonable standards and deadlines and making a decision not to select and employee for promotion. However, management action should be undertaken in a constructive and reasonable way; with respect and courtesy; and (where relevant) in a manner consistent with the department's performance management process. Where management action is undertaken in such a manner it will not be considered to be harassment.

Behaviour that is based on mutual attraction and that is consensual, welcome and reciprocated is not sexual harassment. However, workers should remain careful and circumspect in their behaviour within the workplace as overt demonstrations of affection are unprofessional and may offend some people or make them uncomfortable, in which case the behaviour may nevertheless be considered to be harassment.

Victimisation

Victimisation involves treating someone unfairly because they have made, or intend to make, a complaint regarding the workplace. The complaint may relate to unacceptable workplace behaviour such as bullying, workplace discrimination, harassment or other issues related to the complainants employment. This also includes those who have supported another person in making a complaint. Under the *Public Interest Disclosure Act 2013* (PID Act) 'public officials' including departmental employees, and contractors to the department, who make a public interest disclosure in accordance with the requirements set out in the Department's Public Interest Disclosure (PID) Procedure, are entitled to certain protections under the PID Act. Individuals should refer to the Department's PID Procedure to decide whether they wish to make a public interest disclosure. Refer: [Department's Public Interest Disclosure Procedure](#).

Roles and Responsibilities

All workers within the department are responsible for ensuring that the workplace is free from unacceptable and inappropriate workplace behaviour and is thereby a safe working environment. Bullying, workplace discrimination, harassment and victimisation, will not be tolerated by the department but nor should it be tolerated by workers, managers/supervisors and the department's Senior Executive. Individual workers, managers/supervisors and Senior Executive who are the subject of, or who witness unacceptable workplace behaviour, should take steps to promptly address the behaviour. Any conduct amounting to unacceptable or inappropriate workplace behaviour will be addressed promptly and in a serious manner by the department.

All Workers

All workers within the department, including employees and contractors, have the responsibility to monitor their own conduct and to maintain appropriate standards of behaviour.

Further, all workers, who perform work for the department, must:

- act in accordance with the APS Values and Code of Conduct;
- speak out against unacceptable workplace behaviour such as bullying, discrimination, harassment and victimisation if it is witnessed;
- be aware of unacceptable workplace behaviour and the forms they can take and of the damage they can cause to individuals and the organisation; and
- ensure that their conduct does not include behaviour that could possibly constitute bullying, discrimination, harassment or victimisation.

If workers do experience what they consider to be unacceptable workplace behaviour, or witness this behaviour in the workplace, this behaviour must be addressed as soon as possible. Refer to '*Procedures for responding to unacceptable workplace behaviour*' on page 11 of this policy for guidance regarding the ways in which unacceptable workplace behaviour within the department may be addressed.

Managers/Supervisors

Managers and supervisors have further responsibilities for maintaining a workplace free of bullying, discrimination, harassment and victimisation. In addition to the responsibilities of workers, managers and supervisors are expected to:

- be aware of and familiar with the department's policy on workplace behaviour and its application;
- actively support and promote this policy and prevent unacceptable workplace behaviour by being clear to their work groups regarding the department's behavioural expectations;
- lead by example, demonstrating professional behaviour and establishing high standards of behaviour in their work area;
- take action to stop unacceptable workplace behaviour after it is observed or reported;
- encourage employees and other workers to report instances of bullying, workplace discrimination, harassment and victimisation
- respond promptly, seriously and with sensitivity to every complaint; and,
- monitor and review the effectiveness of any steps taken to resolve a complaint.

It is important to note that managers and supervisors have a positive duty to prevent unacceptable workplace behaviour in the workplace. That is, they must be proactive in addressing incidents when they become aware, or could reasonably be expected to be aware, of them. This includes cases where the worker who may be the target of unacceptable workplace behaviour has not made a complaint. Further, a manager or supervisor who ignores, contributes to, assists or encourages unacceptable behaviour may possibly be held personally liable in any civil court action that might be taken by a complainant (eg. alleging a breach of the *Workplace Health and Safety Act 2011*) without support or indemnity from the department.

Senior Executives

Senior executives must exemplify the values and behaviours required of all APS employees. Senior executives are responsible for cultivating a culture of respect and courtesy within the organisation, and ensuring that managers and supervisors within their work area develop the necessary skills to identify and manage bullying, discrimination, harassment and victimisation in the workplace.

Workplace Contact Officers

Workplace Contact Officers (WCOs) (sometimes referred to as Harassment Contact Officers) are trained employees within the department, who have volunteered to provide guidance on workplace discrimination, harassment and bullying issues. They can also:

- advise on what constitutes workplace diversity;
- listen sympathetically and without judgement to a complainant;
- find out what the complainant wants to happen and explain available and appropriate options; and

- provide support to the complainant in any further action to resolve the matter, including accompanying the complainant as a support person to internal enquiries and formal interviews.

Additional information about the role of WCOs within the department, including contact details, can be accessed via the Workplace Contact Officers page of the department's intranet site.

Procedures for responding to unacceptable workplace behaviour

Correctly identifying bullying or other unacceptable workplace behavior.

It is important that workers do not confuse bullying, workplace discrimination, harassment or victimisation for reasonable management action taken in a reasonable way. It is reasonable for managers and supervisors to allocate work and give feedback on work performance. These actions are not considered inappropriate if they are carried out lawfully and in a reasonable manner, taking the particular circumstances into account. Examples of reasonable management action include, but are not limited to:

- Setting reasonable performance goals, standards and deadlines.
- Allocating work hours where the requirements are reasonable.
- Approving or rejecting leave applications based on operational requirements or other reasonable considerations.
- Transferring a worker for operational reasons or other reasonable considerations.
- Deciding not to select a worker for promotion where a fair and merit based process is followed.
- Informing a worker about unsatisfactory work performance in an honest, fair and constructive way.
- Implementing organisational changes and restructures, and communicating these with staff.
- Informing a worker about inappropriate behaviour and taking disciplinary action, including suspension or termination of employment.

Workers should note that differences of opinion and disagreements are generally not considered to be bullying, workplace discrimination, harassment or victimisation. If managed properly, these workplace conflicts can be settled without the parties engaging in repeated, unreasonable behaviour, or jeopardising productive working relationships.

If workers are not sure if workplace behaviour may constitute bullying, or another form of unacceptable workplace behaviour, they can seek advice and guidance from their managers, WCOs or the Department's Employee Assistance Program.

When bullying or unacceptable workplace behaviour is alleged

Workers who believe they are being subjected to bullying or other unacceptable workplace behaviour, or workers who witness this behaviour, should not ignore it. Ignoring unacceptable workplace behaviour may be misinterpreted as unspoken consent from the perspective of the alleged perpetrator or the alleged perpetrator may not be aware of the effect that their behaviour may be having on other workers. The longer the behaviour continues, the more difficult it can be to address.

If identified and addressed early, these issues can generally be resolved at the work area level and any potential risk to work health and safety can be minimised.

Self-Managed Resolution

There are several options available to workers who consider that they may be experiencing bullying, workplace discrimination, harassment or victimisation. These options include:

- Talking to the person who is making you feel uncomfortable.

Note: This option is only suitable if you feel comfortable raising the matter with the person directly. If you are not able to, you may wish to have a support person present when you have the discussion, or to appoint a representative to speak on your behalf.

- Talking to your supervisor.
- If your supervisor is the person whose behaviour you consider to be unacceptable, talking to another senior manager.
- Seeking advice from a WCO or the Employee Assistance Program about how to resolve the matter, and the options available to you.
- Seeking advice from the People and Planning Branch regarding the options available to them.

To assist in achieving a positive outcome, all conversations should be approached calmly and reasonably, describing the perceived unacceptable/objectionable behaviour using specific examples and how it affected you. It is not reasonable to expect the alleged perpetrator of the unacceptable workplace behaviour to amend their behaviour if they are not provided with specific feedback about how and why their behaviour is considered to be inappropriate.

In many instances, the simple actions listed above are successful in stopping unacceptable workplace behaviour, as they allow the matter to be addressed informally and quickly without jeopardising working relationships. This is particularly beneficial where the behaviour is unintentional or misguided.

It is important to report all incidents of bullying and other unacceptable workplace behaviour to your manager or senior executive, even if you have been able to resolve the matter with the alleged perpetrator yourself. This allows the manager or senior executive to monitor the situation within the work area, and take any necessary steps to prevent similar behaviour in future.

Escalation within the Work Area

If the worker is unable to resolve the issue with the alleged perpetrator themselves, they may seek assistance from their manager or senior executive. When issues regarding unacceptable workplace behaviour are raised managers and senior executives should consider whether it may be appropriate for the matter to be dealt with under the Department's Public Interest Disclosure (PID) Procedure. This will depend on the type of unacceptable workplace behaviour involved and the relative seriousness of the conduct.

It will be appropriate to deal with the matter under the PID Procedure where the manager has reasonable grounds to believe that the information provided to them by the worker involved concerns, or could concern, 'disclosable conduct' as defined by the PID Act. Disclosable conduct includes, but is not limited to, conduct that contravenes a Commonwealth, State or Territory law, is corrupt, constitutes maladministration or unreasonably endangers health and safety. Managers should refer to the definition of disclosable conduct in the PID Procedure and seek further guidance from HR&SP Branch as required. Refer: [Public Interest Disclosure Procedure](#).

Upon receiving the report of bullying or other unacceptable workplace behaviour, the manager or senior executive must:

- Take the matter seriously and consider what steps may be necessary to mitigate the risk of further unacceptable workplace behaviour or victimisation taking place while the allegations remain under consideration. If such steps are taken, they must be proportionate with the seriousness of the allegations made, and the impact of the behaviour on the individuals and work area involved.
- Handle the complaint promptly and as soon as reasonably possible after the complaint is received, so as to ensure that any potential risks to health and safety are minimised.
- Where appropriate and necessary, for example due to the complexity of the situation or any unexpected delays, the manager or senior executive should provide the complainant with an estimated timeframe for consideration of the matter.

A manager or senior executive may consider a complaint in any manner they consider appropriate, however, they may ordinarily seek information about the alleged behaviour from the complainant (the person the subject of the unacceptable workplace behaviour), the respondent (the alleged perpetrator of the unacceptable workplace behaviour), and, to the extent considered necessary and relevant by the manager or senior executive, any witnesses there may be. Once the available information has been considered, the manager or senior executive will decide how to proceed.

- Support and advice is available to managers and senior executives who are required consider complaints of unacceptable workplace behaviour. They may:
- seek advice from the People and Planning Branch regarding the process and their particular role; and

- utilise the 'Manager Assist' services available through the Employee Assistance Program which provides managers with practical guidance about how to manage and resolve workplace disputes.

There are three key ways in which a manager may decide to proceed to manage a complaint of unacceptable workplace behaviour after obtaining information from all relevant parties:

- The manager may form the view that the complaint does not relate to bullying or other unacceptable workplace behaviour and that no further action is required in relation to the complaint. Where the manager decides that no further action is required, that decision including reasons for the decision is to be communicated to the complainant where appropriate and necessary to do so in the circumstances.
- The manager may consider it appropriate to address the complaint through a form of appropriate workplace resolution or management action. Examples, of such resolution or management action may include, but is not limited to, an apology from one worker to another; mediation between the parties; training or coaching; utilisation of the department's review of action scheme; additional management oversight of the worker the subject of the complaint or information disciplinary action such as warnings and counselling. Appropriate workplace resolution or management action may include more than one action.
- The manager may consider the alleged unacceptable conduct to be of sufficient substance and seriousness to warrant possible action under the APS Code of Conduct. In such circumstances, the manager should revert to the Department's Code of Conduct policy.

Leaving workers with no option other than to accept continuing offensive behaviour is not an acceptable solution. At the same time, the manager or senior executive should ensure that the person alleging unacceptable workplace discrimination is acting in good faith and not out of malice or other such motivations. Complainants who the department considers may have submitted complaints which are vexatious in nature may themselves be the subject of disciplinary action.

It is important that, in considering an allegation of bullying or other unacceptable workplace behaviour, the manager or senior executive complies with the principles of procedural fairness, which include informing the alleged perpetrator/s of the substance of the allegations made and giving them an opportunity to respond. It should be noted that procedural fairness may require the identification of the person making the allegation and the provision of certain information about the complaint to the alleged perpetrator.

Where considered appropriate and necessary to do so the manager or senior executive will advise all affected parties once all available information has been considered and they have determined the appropriate course of action. If the complainant is satisfied with the outcome, they should inform their manager or senior executive so that normal working relationships can resume (if relevant). This allows the manager or senior executive to continue to monitor the situation within the work area, and take any necessary steps to quickly address any similar behaviour in the future.

WCOs can be utilised during any stage of this process to provide information and support to anyone who may be involved in a case regarding unacceptable workplace behaviour. However, in all circumstances it would be inappropriate for a WCO to advise both the alleged perpetrator/s and the complainant in the same case. In addition to WCOs the Employee Assistance Program is also available to provide support to any workers (including affected co-workers) involved in matters involving unacceptable workplace behaviour.

Escalation beyond the Work Area

If the worker who considers that they are experiencing bullying or other unacceptable workplace behaviour, is not satisfied with actions taken within the work area to resolve their complaint, or if they feel unable to raise the issue through their manager or senior executive, they may make a complaint to the General Manager, People and Planning Branch.

When submitting a complaint directly to the People and Planning Branch, it is important that the complainant include specific examples of the inappropriate behaviour being demonstrated. It is not sufficient to use general statements, like *'they always talk down to me'* or *'they exclude me from everything'*. The complaint must contain particular instances where the alleged objectionable behaviour occurred and how it affected the complainant or the work area.

Where possible, the complainant should also submit evidence (eg. written correspondence) in support of their complaint. However, if evidence is submitted, it must be accompanied by a summarising statement explaining its context and what inappropriate behaviour the complainant believes that it demonstrates.

If the complainant has previously raised the issue within their work area and were dissatisfied with the outcome, they should include a statement detailing any actions that had been taken and how they were unsatisfactory. The complainant should also state the outcome that they would have preferred or are now seeking.

If the matter has not previously been raised within their work area the complainant should advise why this is the case and be aware that, if considered reasonably appropriate by the People and Planning Branch to do so, the matter may be referred back to the complainant's work area for consideration in accordance with the procedures set out above under *'Escalation within the work area'* on page 13.

The People and Planning Branch will acknowledge receipt of the complaint and inform the complainant of an estimated timeframe for handling the matter within five working days. All complaints will be handled as expeditiously, and with as little formality, as a proper consideration of the matter allows.

The General Manager, HR&SP Branch will consider the complaint and determine what, if any, further action may be required to deal with the complaint in all of the circumstances. As with managers at the local level, the General Manager, People and Planning Branch will consider whether:

- the complaint relates to bullying or other unacceptable workplace behaviour;
- it is appropriate to address the complaint through a form of appropriate workplace resolution and/or management action; or
- it is appropriate in the circumstances to pursue action under APS Code of Conduct provisions within the *Public Service Act 1999*, in accordance with the department's policy and procedures for handling misconduct. This is particularly relevant for allegations of serious and/or repeated bullying or

o t h e r unacceptable workplace behaviour which may demonstrate a pattern of misconduct by an individual or group.

The General Manager, People and Planning Branch may consider the complaint in any manner they consider reasonably appropriate in the circumstances. However, the General Manager, People and Planning Branch, may decide that it would be appropriate to appoint an independent person to investigate a complaint of unacceptable workplace behaviour in order to assist them to determine what, if any, further action may be required. Alternatively, the General Manager, People and Planning Branch may decide to proceed directly to an investigation under the APS Code of Conduct in accordance with the Department's Code of Conduct policy. If the matter is so serious or sensitive that it is inappropriate for it to be investigated within the department, an external investigator may be appointed.

Note: *In accordance with the principles of procedural fairness, complainants should be aware that any information they provide in relation to their complaint may be made available to the alleged perpetrator/s for the purpose of giving them a reasonable opportunity to respond.*

Review of Actions

If any party involved in the complaint process is dissatisfied with the action taken within the work area, or decision reached by the General Manager, People and Planning Branch, they may submit a request for review of actions to the Secretary, subject to the department's [Review of Actions Policy](#).

Escalation outside the Department

Review of Action – Merit Protection Commission

If the complainant is dissatisfied with the outcome of the department's process for handling their complaint or if the complainant feels that the matter is so serious or sensitive that it would be inappropriate for it to be handled within the department, a request for review may be lodged directly with the Merit Protection Commissioner.

For further information about the review of action process refer to: www.apsc.gov.au.

Bullying - Fair Work Commission

From 1 January 2014 a worker who reasonably believes that they have been bullied at work may apply to the Fair Work Commission (FWC) for an order to stop the bullying under the *Fair Work Act 2009*. If the FWC is satisfied that the application is valid, it may make any order which it considers appropriate (other than an order requiring the payment of a pecuniary amount) to prevent the complainant from being bullied further at work.

The FWC will only make an order if satisfied that the worker has been bullied at work by an individual or group of individuals and there is a risk that the worker will continue to be bullied at work. The FWC will take into account these procedures and any final or interim steps taken by the department to address the alleged unreasonable behaviour.

For further information about the FWC process refer to: www.fwc.gov.au.

If the department is served by the FWC with a bullying complaint the person or area which receives the complaint should immediately contact the General Manager, People and Planning Branch for assistance with managing the complaint.

Departmental employees, contractors and other workers may be required to attend the FWC to respond to, or provide information in relation to, complaints of bullying.

Discrimination – Australian Human Rights Commission

Workplace or sexual discrimination in employment is unlawful under anti-discrimination legislation. If a complainant is dissatisfied with the outcome of the department's process for handling their complaint or if the complainant feels that the matter is so serious or sensitive that it would be inappropriate for it to be handled within the department, a complaint of discrimination may be lodged with the Australian Human Rights Commission.

Criminal Law

There may be instances where bullying or workplace harassment also amount to an offence under criminal law. Incidents involving physical or indecent assault, stalking, the sending of obscene material electronically or through the mail, and the making of nuisance phone calls, for example, may be offences under criminal law and should be reported to the police. Incidents of this nature should also be reported to the Police as well as the General Manager, People and Planning Branch, as soon as reasonably possible.

Records

Information and records relating to a complaint are to be handled confidentially by all those involved with handling the complaint, with information provided only on a 'need to know' basis. Individuals will be considered to have a 'need to know' where they are required to consider or take some action in relation to a complaint, are required to respond to a complaint or where there may be a risk to health and safety which may require some action by the department. Because of the sensitivity of material relating to bullying, workplace discrimination, harassment and victimisation, special care must be taken to protect the confidentiality and secure handling of any records relating to complaint processes. Records will be handled in line with the department's obligations under the *Privacy Act 1988*.

The *PID Act 2013* includes specific requirements for the protection of public interest disclosures. Workers and supervisors who are involved in making or handling/managing public interest disclosures should refer to the Department's PID Procedure for further information.

Requests for information relating to complaints will ordinarily be handled in accordance with the requirements of the *Freedom of Information Act 1982* (FOI Act) and where necessary information may be deemed to be exempt from release for the purposes of Part IV of the FOI Act, for example to protect personal information belonging to other workers. Where appropriate requests for information made by an individual worker, for access to their own personal information, may be handled outside of the FOI Act.

Workers subject of unacceptable behaviour Should they have concerns regarding unacceptable workplace behaviour workers should document incidents of bullying, discrimination, harassment or victimisation, and any action they have taken to address issues of concern. Records enable recurring patterns of behaviour or continuing problems in a particular work area to be identified and therefore addressed as quickly and effectively as possible.

Should a worker make a complaint of unacceptable conduct, they should be aware that the department may not be able to provide them with a copy of all the

information collected pertaining to their complaint because to do so may infringe on another person's privacy. However, complainants will receive advice regarding the outcome of the complaint process, including any corrective action which is to be taken.

Workers accused of unacceptable behaviour

Workers accused of unacceptable behaviour should retain all records relating to a complaint of bullying, discrimination, harassment or victimisation made against them. This information may include the substance of the complaint, copies of any supporting evidence, and the report from any review, investigation and outcome. Accurate and complete records will assist the respondent should they choose to seek a review of the outcome of the complaint process. Information about avenues of review will be provided to the respondent upon notification of the process outcome.

Managers and Senior Executives

Managers and senior executives should confidentially retain all records relating to complaints within their work areas. These records enable managers and senior executives to identify recurring patterns of behaviour or continuing problems in a particular work area, and address them before they become entrenched in the culture of the work area and develop into a risk to work health and safety.

Adequately maintained records will also be vital to any future decision should the complaint process outcome be formally reviewed. Accurate and complete records will also be essential if the complaint process leads to formal misconduct action (ie. to determine whether the behaviour constitutes a breach of APS Code of Conduct and a sanction is subsequently imposed).

As noted above managers and senior executives involved in handling/managing public interest disclosures should refer to the department's PID Procedure for further information about their obligations under the PID Act.

Legal Framework

General Framework

- The [Racial Discrimination Act 1975](#) makes it unlawful to discriminate in employment on the grounds of race, colour or national or ethnic origin.
- The [Sex Discrimination Act 1984](#) makes it unlawful to discriminate in employment on the grounds of a person's sex, marital status, pregnancy or potential pregnancy, or to sexually harass another person.
- The [Human Rights and Equal Opportunity Commission Act 1986](#) provides for the rights of people with physical or mental disabilities and addresses complaints of discrimination in employment.
- Under the [Work Health and Safety Act 2011](#) and relevant Code of Practice, all employers and workers must maintain a secure, healthy and safe working environment. An employer must take practical precautions to prevent harassment and bullying.
- The [Disability Discrimination Act 1992](#) makes it unlawful for an employer to discriminate against a person on the grounds of disability (including a disease).

- The [Fair Work Act 2009](#) prohibits discrimination in awards and agreements and (subject to some exemptions) in employment, provides an anti-bullying jurisdiction where workers the subject of bullying can apply for orders to have the bullying behaviour stopped.

APS Values, Employment Principles and Code of Conduct

All APS employees are subject to the APS Values, APS Employment Principles and APS Code of Conduct, as set out in the [Public Service Act 1999](#).

APS Values and Employment Principles

The [APS Values](#) state that the APS respects all people, including their rights and their heritage. Further, in relation to bullying, workplace discrimination, harassment and victimisation, the [APS Employment Principles](#) state that:

- s10A(1) The APS is a career-based public service that:
- (a) makes fair employment decisions with a fair system of review; and
 - (c) makes decisions relating to engagement and promotion that are based on merit; and
 - (d) requires effective performance from each employee; and
 - (e) provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued; and
 - (f) provides workplaces that are free from discrimination, patronage and favouritism; and
 - (g) recognises the diversity of the Australian community and fosters diversity in the workplace.

APS Code of Conduct

In relation to bullying, workplace discrimination, harassment and victimisation, the [APS Code of Conduct](#) requires that:

- s13(3) An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.
- S13(11) An APS employee must at all times behave in a way that upholds:
- the APS Values and APS Employment Principles; and
the integrity and good reputation of the employee's Agency and the APS.

Additional information relating to the APS Code of Conduct, including expectations of all APS employees and requirements specific to the department, can be found in the Procedures for Code of Conduct, available on the departmental intranet site.

Reference Documents

The Policy should be read in conjunction with the department's Enterprise Agreement.

Key contacts

For further information contact the Corporate Network Helpdesk on 02 6213 7007.

Document administration

Change history

Version	Date	Description	Created by
1	Jan 2016	Revised to include new department name and update to reflect proposed Enterprise Agreement	Employment Framework

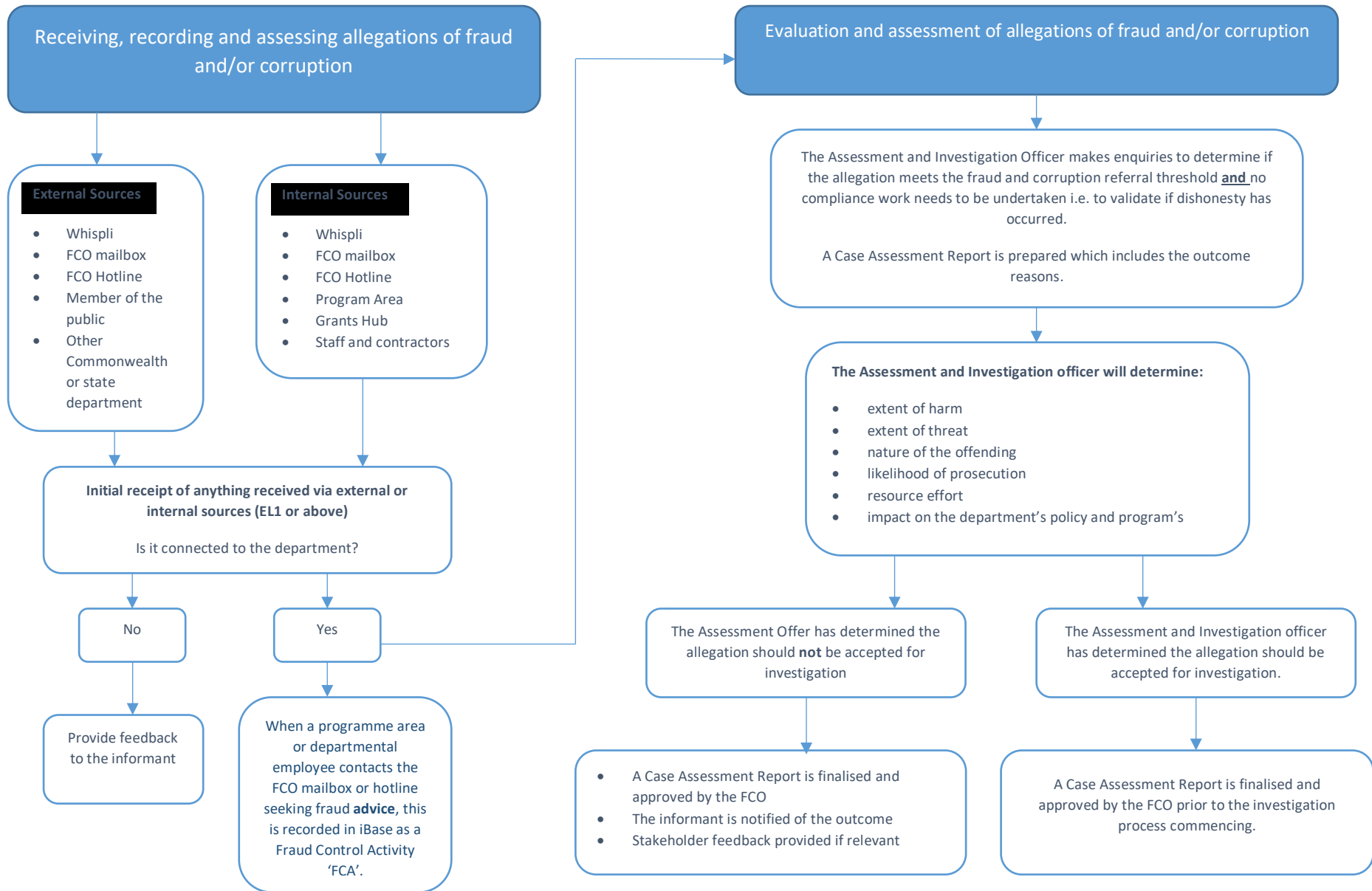
Consultation

Version	Date	Description	Comments by
1	28 August 2014	Community Public Sector Union (CPSU)	Department and CPSU

Approvals

Version	Approved By	Date

Process of the receipt of allegations of fraud and/or corruption





CODE OF CONDUCT

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Principles

- Employees will be informed of responsibilities under the department's Code of Conduct through provision of information and induction packages.
- Managers will promote ethical standards of behavior in the workplace including the promotion of APS Values and Code of Conduct.
- Any administrative process should be streamlined and not involve unnecessary steps. If several allegations of breaches are made, these should be dealt with on a collective basis.
- An alleged breach of the Code of Conduct must be dealt with in accordance with due process.
- Appropriate records regarding misconduct must be kept.
- Decisions regarding misconduct will be subject to review.
- The General Manager, People and Planning Branch, should be consulted on all matters relating to misconduct.

References

Refer to Attachment A.

Code of Conduct

The Code of Conduct (the Code) procedure is provided to assist in understanding the Code and steps to be taken for alleged breaches. It also helps to identify and address issues associated with behavioural standards that are often integrally linked to performance problems.

The department has based its Code of Conduct on the Australian Public Service (APS) Code of Conduct and requires all employees to meet the following standards of conduct:

1. An APS employee must behave honestly and with integrity in connection with APS employment.
2. An APS employee must act with care and diligence in connection with APS employment.
3. An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.
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
5. An APS employee must comply with any lawful and reasonable direction given by someone in the employee's agency who has the authority to give the direction.

6. An APS employee must maintain appropriate confidentiality about dealings with any Minister or Minister's member of staff.
7. An APS employee must:
 - (a) take reasonable steps to avoid a 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.
8. An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.
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.
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.
11. An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS.
12. An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.
13. An APS employee must comply with any other conduct requirement that is prescribed by the regulations or by the department.

Failure to comply with requirements

Where an employee is found to have breached the Code, the Secretary (or the Secretary's delegate) may decide to take misconduct action.

Delegation

In relation to "Outside Employment" and "Gifts and other benefits" the Secretary has delegated powers in relation to these issues to Deputy Secretary's, Associate Secretary's, Heads of Divisions, General Managers and State Managers.

In dealing with "Breaches of the Code of Conduct" the Secretary has delegated powers to Deputy Secretary's, Associate Secretary's, Heads of Division and the General Manager, People and Planning Branch.

Other Related Matters

The following paragraphs deal with the application of the Code to some situations which may be of particular relevance to the department. They also mention provisions in the *Crimes Act 1914* which are relevant in some situations.

Conflict of Interest

Employees are required to ensure that their private interests, both financial and personal, do not give rise to any actual or perceived conflict of interest. If any conflict does arise, employees are required to disclose the matter to their supervisor and to take action to avoid the conflict. Employees are required to update their Conflict of

Interest disclosures annually, when changing work areas or when relevant personal circumstances change.

Conduct with Industry and Members of the Public

Many employees of the department, and particularly those in programme and corporate areas, are involved in decisions which can have a major impact on individual firms and people or even whole industries. It is imperative that the department has a reputation for professionalism, fairness and impartiality in making such decisions. Actions which could call that reputation into question may be breaches of the Code. This could include any action which is perceived to be an improper connection with or disposition against an applicant for a grant, even if no such message was intended. Employees must therefore be professional, fair and impartial in all their dealings with people outside the department.

Outside Employment

Employees must not perform work outside the department if it:

- would conflict or be perceived to conflict with official duties; and/or
- is likely to interfere with the performance of official duties

Employees must have the approval of the Secretary (or the Secretary's delegate) before performing any paid work outside of the department.

Employees do not need approval to perform unpaid voluntary work.

If there is any doubt about a conflict of interest, employees should advise the Secretary (or the Secretary's delegate) of the nature of the work and discuss whether or not the work would give rise to a conflict or a perceived conflict of interest.

Pre-employment

Employees should always behave in a way that upholds the integrity and good reputation of the department as well as the APS. Action may be taken in relation to employees who have, before engagement, provided false or misleading information, failed to provide relevant information or failed to act with integrity or honesty in connection with their engagement.

Gifts and other benefits

Employees must not use their official position to obtain a benefit for themselves or anyone else. Benefits include gifts, sponsored travel, personal benefits under frequent flyer schemes, substantial hospitality and entertainment. Where employees are offered a gift or benefit, it must be declared. Gifts or benefits may be accepted if they have the written approval of the Secretary (or the Secretary's delegate).

Fair and equitable decisions

Employees are required to treat members of the public and other employees equitably, regardless of gender, age, language, ethnicity, cultural background, disability, sexual preference, religion and family responsibility. Employees must also not behave in a way that constitutes workplace harassment or sexual harassment.

For further information refer to [Diversity and Inclusion](#).

Patronage, Favouritism and Unjustified Discrimination

Decisions made in relation to the engagement, transfer or promotion of a person under the *Public Service Act 1999*, must be free of patronage, favouritism or unjustified discrimination.

Duty of Care

Employees must exercise reasonable skill and diligence in giving information or advice that is accurate and may be relied on.

Official Information

APS employees must not disclose information which the APS employee obtains or generates in connection with the APS employee's employment if it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government, including the formulation or implementation of policies or programmes. Further, an APS employee must not disclose information which the APS employee obtains or generates in connection with the APS employee's employment if the information:

- (a) was, or is to be, communicated in confidence within the government; or
- (b) was received in confidence by the government from a person or persons outside of the government;

whether or not the disclosure would be found an action for breach of confidence. Disclosure is however permitted in the course of an employee's duties, or with the Agency Head's express authority, or if a disclosure is required by law.

Post separation employment

Under section 70(2) of the *Crimes Act 1914*, employees must not disclose any official information after leaving employment with the department where it was their duty not to disclose such information.

Whistleblowing

Whistleblowing refers to the reporting, in the public interest, of information that alleges a breach of the Code by one or more employees in the department.

For further information refer to the [Public Interest Disclosure Scheme Overview](#).

APS Values and Employment Principles

The Code operates within a set of Australian Public Service (APS) Values adopted by the department.

The APS Values are as follows:

- **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 the people, including their rights and their heritage.*
- **Ethical:** *The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.*

To assist employees to remember the new values the “I CARE” acronym is encouraged to be used when referring to the APS Values.

Breaches of the Code of Conduct

Misconduct is the breach of the Code. This section addresses the process attached to managing breaches of the Code. Employees may have a support person present during any discussions included in the process.

Suspected breaches of the Code should generally be dealt with as follows. But if the Secretary (or the Secretary’s delegate) decides that one or more steps in the following procedures are impractical or inappropriate in the particular circumstances of the case or that the matter can be resolved informally, that step may be omitted. If a step is considered inappropriate the delegate may omit one or more steps if the employee has conceded, in writing that they did the act complained of and/or that they have breached the Code. In these cases, the employee should be advised in writing of the omission and the reason for the omission.

The Secretary (or the Secretary’s delegate) may at any stage suspend the employee (with or without pay) or assign the employee to other duties, if the Secretary (or the Secretary’s delegate) considers such action to be necessary to protect the interests of the department or other employees. The Secretary (or the Secretary’s delegate) must notify the employee of any such decision and the reasons for that decision.

The following procedures may be suspended if at any stage a police investigation into the matter is commenced. The procedures may be resumed only after the police investigation is complete and any criminal charges are dealt with.

The manager should meet with the employee. The manager should inform the employee of the evidence that there is a suspected breach of the Code. The manager should invite the employee to respond.

If after the considering the employee’s response, the manager considers that there may have been a breach, the manager should inform the employee in writing of this fact, the relevant provisions in the Code, the sanctions that may be imposed on the employee under subsection 15(1) of the *Public Service Act 1999* and the procedures for dealing with breaches of the Code. The employee should be given seven days to respond. The employee may have a representative involved in the process from this point on.

After considering the employee’s written response to the manager’s information, the Secretary (or the Secretary’s delegate) must either decide themselves whether there has been a breach of the Code or appoint an independent and unbiased person to investigate (the investigator may be external to the department) whether there has been a breach of the Code.

An investigator has the right to seek and review all relevant documents and to interview all relevant persons. The investigator must provide the employee with the opportunity to make written and oral representations about the matter before finalising a report for the Secretary (or the Secretary's delegate). The Secretary (or the Secretary's delegate) must consider the investigator's report and decide whether a breach of the Code has occurred.

Once the Secretary (or the Secretary's delegate) has decided whether the employee has breached the Code, the Secretary (or the Secretary's delegate) must write to the employee to set out the decision on whether there has been a breach, the reasons for that decision and the sanctions available for the breach and invite the employee to make written or oral representations in relation to the suspected breach. Determinations can be made in relation to former employees.

After considering those representations, the Secretary (or the Secretary's delegate) must decide if any sanctions are to be applied. The Secretary (or the Secretary's delegate) must decide what, if any, sanctions are to be applied. The Secretary (or the Secretary's delegate) must then write to the employee, setting out the decision on sanctions and the reasons for that decision.

Statutory Office Holders (SoH)

SoHs who are not agency heads are bound by the APS Code of Conduct when they are acting in relation to their direct or indirect supervision of APS employees.

If an employee makes an allegation within the department of misconduct by a SoH, the department will refer the matter to the Commissioner for enquiry.

Conduct Outside of Employment

Employees should at all times behave in such a way that upholds the integrity and good reputation of their agency, as well as the APS.

Inter-Agency Moves

If an employee is selected for a position in another agency or the basis of engagement is proposed to be altered and:

- (a) an APS employee in an Agency is suspected of having breached the Code; and
- (b) the employee has been informed as such; and
- (c) the matter has not been resolved

unless the Secretary (or the Secretary's delegate) agrees otherwise, the movement (including on promotion) or engagement does not take effect until the matter is resolved.

Note: Examples of a change in the basis of an APS employee's engagement in an Agency are as follows:

- (a) a change from engagement for a specified term, or for the duration of a specified task, to engagement as an ongoing APS employee;

(b) a change from engagement of duties that are irregular or intermittent to engagement as an ongoing APS employee

Sanctions

The sanctions can be imposed:

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

Right of Review

The employee must be advised of their rights of review.

Termination of employment can only be reviewed under the provisions in the *Fair Work Act 2009*.

The employee can seek a review of actions of the decision in relation to a determination that an employee has breached the Code and also in relation to a sanction imposed (other than termination of employment) for a breach of the Code. Under the *Public Service Regulations 1999*, the application for review must be made to the Merit Protection Commissioner.

Personal Information

If an employee:

- becomes the subject of conduct allegations and leaves the department before the matter is resolved; or
- is found to have a breach of the Code and leaves the department before a decision about imposing a sanction is made; or
- is found to have breached the Code and been sanctioned and subsequently leaves the department;

then information about the breach or allegation may be disclosed to any prospective or new employer. It is the usual practice of the department to pass such information to another employer where the department believes that the information might be relevant to employment related decisions which might need to be considered or made by the other employers, including (where relevant):

- recruitment decisions;

- decisions as to whether or not the employee has breached the Code and whether or not the employee should be sanctioned for any breach that is determined; and
- decisions as to whether or not the employee should be sanctioned in relation to a breach of the Code.

Document administration

Change history

Version	Date	Description	Created by

Consultation

Version	Date	Description	Comments by

Approvals

Version	Approved By	Date

Attachment A:

References

- *Public Service Act 1999;*
- *Public Service Regulations 1999;*
- *Fair Work Act 2009; and*
- *Public Governance, Performance and Accountability Act 2013*