



Australian Government

Department of the Prime Minister and Cabinet

## Procedures for determining breaches of the APS Code of Conduct and the imposition of sanctions

I, Emma Greenwood, Chief People Officer, People Branch, Department of the Prime Minister & Cabinet (the Department), have established these procedures in accordance with section 15(3) of the Public Service Act 1999 (The Act).

s 22(1)(a)(ii)

Dated: 16 June 2017

### 1 Application

1.1 These Procedures must be complied with in determining:

- a) whether an employee of the department, or former employee of the department, has breached the APS Code of Conduct in s 13 of the Act (*'the Code of Conduct'*).
- b) the sanction/s, if any, that should be imposed on an APS employee in accordance with section 15(1), where a breach of the Code of Conduct has been determined.

*Note: These Procedures apply in relation to a suspected breach of the Code of Conduct by an APS employee, a former APS employee or the actions of an employee prior to commencing with the department, in respect of which a determination is to be made. Not all suspected breaches of the Code of Conduct may need to be dealt with by way of a determination. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate.*

### 2 Availability of procedures

2.1 These procedures are made publicly available on the Department's website in accordance with subsection 15(7) of the Act.

### **3 Information to be given to the APS employee, or former APS employee before a determination is made**

- 3.1 A determination may not be made in relation to a suspected breach of the Code of Conduct by an APS employee, or former APS employee, unless reasonable steps have been taken to:
- a) inform the person of:
    - i. the details of the suspected breach (including any subsequent variation of those details); and
    - ii. the sanctions that may be imposed on the APS employee under subsection 15(1) of the Act
  - b) give the person a reasonable opportunity to make a statement in relation to the suspected breach.

### **4 Information to be given to the employee before sanction is imposed**

- 4.1 If a determination is made that an APS employee has breached the Code of Conduct, a sanction may not be imposed on the APS employee unless reasonable steps have been taken to:
- a) inform the APS employee of:
    - i. the details of the determination of breach of the Code of Conduct; and
    - ii. the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the Act; and
    - iii. the factors that are under consideration in determining any sanction to be imposed; and
  - b) give the APS employee reasonable opportunity to make a statement in relation to the sanction/s under consideration.

### **5 Person making determination to be independent and unbiased**

- 5.1 The department will take reasonable steps to ensure that:
- a) the person who determines whether an APS employee, or former APS employee, has breached the Code of Conduct is, and appears to be, independent and unbiased; and
  - b) the person who determines any sanction to be imposed is, and appears to be, independent and unbiased.

## **6 Determination process to be informal**

- 6.1 The process for determining whether an APS employee, or former APS employee, has breached the Code of Conduct must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.

## **7 Record of determination and sanction**

- 7.1 If a determination is made in relation to a suspected breach of the Code of Conduct by an APS employee, or former APS employee, a written record must be made of:
- a) the suspected breach; and
  - b) the determination; and
  - c) any sanctions imposed as a result of the determination that the APS employee breached the Code of Conduct; and
  - d) any statement of reasons provided to the employee.

*Note: The Archives Act 1983 and the Privacy Act 1988 apply to a record made under this clause.*

## **8 Procedure when an employee seeks to move to another Agency during an investigation**

- 8.1 This clause applies if:
- a) an APS employee in the department is suspected of having breached the Code of Conduct; and
  - b) reasonable steps have been taken to formally advise the APS employee of the suspected breach in accordance with clause 3.1; and
  - c) a decision is made to promote an APS employee and the matter to which the suspected breach relates has not yet been resolved before the employee moves to take up the promotion; or
  - d) a decision has been made, apart from these procedures, that would result in the movement of the employee under section 26 of the Act to another Agency.
- 8.2 Unless the original Agency Head and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.
- 8.3 For this clause, the matter is taken to be resolved when:
- a) a determination is made as to whether the APS employee has breached the Code of Conduct; or
  - b) it is decided that such a determination is not necessary.





## EMPLOYMENT GUIDELINE

**Title: MANAGING AND DETERMINING SUSPECTED BREACHES OF THE APS CODE OF CONDUCT**

**Effective Date: 01 July 2011**

### PURPOSE

1. This guideline provides advice and guidance to the Department of the Prime Minister and Cabinet (PM&C) as Australian Public Servants.
2. Section 15(3) of the *Public Service Act 1999* (the PS Act) requires Agency Heads to establish procedures for determining breaches to these standards.
3. The purpose of this guideline is to provide advice and guidance to PM&C supervisors and employees on determining whether an employee has breached the Code of Conduct (the Code). It sets out the legislative requirements and basic procedures to be followed which will inform any decision regarding a breach.
4. The PS Act incorporates the APS Values and the Code and describes the standards of behaviour and conduct expected of all PM&C employees as Australian Public Servants.
5. This guideline applies to all APS non-ongoing and ongoing PM&C employees, including Senior Executive Service (SES) employees and APS employees on secondment to PM&C.
6. This guideline meets the requirements of the PS Act and associated instruments, including:
  - the Public Service Regulations 1999 (the Regs);
  - the Public Service Commissioner's Directions 1999 (the Directions);
  - the Australian Public Service Commission (APSC) framework on Managing Breaches of the APS Code of Conduct; and
  - other supplementary APSC material and PM&C's culture and expectations.
7. This guideline only applies in cases where an APS employee is suspected of breaching the Code and a determination needs to be made. Not all suspected breaches of the Code need to be dealt with by way of a determination. Where a suspected breach appears minor in nature, a warning may be sufficient, noting that a repeat of similar conduct could lead to an investigation.
8. The Assistant Secretary (AS), People, Capability and Performance (PCP) Branch can assist in determining if an action or behaviour is a suspected breach of the Code.
9. The term 'misconduct' is used in this guideline as a readily understood term for conduct that breaches the Code.



## **GUIDING PRINCIPLES**

10. PM&C is committed to creating and maintaining a workplace that upholds the APS Values and the Code. Copies of the APS Values are at [Attachment A](#), and the Code at [Attachment B](#).
11. All suspected breaches of the Code will be dealt with swiftly and with minimal formality, without jeopardising the principles of procedural fairness.
12. A flow chart at [Attachment C](#) sets out the process for determining whether an APS employee has breached the Code.
13. A breach occurs when an APS employee's conduct does not comply with the standards outlined in the Code. This includes conduct or action:
  - within or outside the workplace;
  - within or outside working hours; or
  - at various work locations in Australia or overseas.
14. A number of the sections of the Code have several elements within them. It may not be necessary for the employee to have breached all elements of a particular section of the Code in order for a breach to be determined.
15. Expected behaviour under the Code can be linked to APS employment in three (3) ways:
  - in the course of employment - conduct directly associated with, and expected of, an employee at work. This includes employer related functions such as a Christmas Party;
  - in connection with APS employment – addresses situations where an employee's actions or behaviour may have some influence on how they perform their duties; and
  - at all times – broader application to conduct which occurs outside work hours but may impact the workplace or the employment relationship.
16. The Code may apply as long as there is a connection between the behaviour and its effect on:
  - the workplace;
  - employees or others; and
  - the reputation of PM&C, the APS or the Commonwealth.
17. Employees must behave at all times in a way that upholds the APS Values and the integrity and good reputation of the APS. 'At all times' includes conduct unrelated to the performance of duties. Subsection 13(11) of the PS Act may determine whether an employee found guilty of a criminal offence has also breached the Code. An assessment would consider:
  - whether the criminal behaviour has compromised the integrity and good reputation of the APS; and
  - the extent to which the behaviour has adversely affected the employee's position in the workplace.
18. Where a breach is determined, the nature or severity of the breach will establish whether a formal or informal process should apply.



19. Where fraudulent activity is suspected, PM&C's Fraud Control Plan (FCP) must be followed.

### **Procedural fairness**

20. The principles of procedural fairness have three key 'rules':

- the 'hearing' rule – which allows for people with interests or rights at stake to have an opportunity to be heard;
- the 'no bias' rule – which requires a decision maker to act without bias or self-interest; and
- the 'evidence' rule – which requires that a decision be based on compelling or 'logically probative' evidence.

21. Procedural fairness requires that a person whose interests may be adversely affected by a decision will:

- be informed of the allegations in as much detail as possible to enable them to understand what the allegation is. This may not include every particular detail;
- be provided with reasonable time to respond in writing (at least seven calendar days); and
- have their response taken into account in the decision-making process.

22. Procedural fairness also requires that:

- no person judges their own case or a case where they have a direct interest; and
- all parties to the matter must be heard and all relevant responses must be considered where there are competing interests.

### **Duty of care**

23. The *Occupational Health and Safety Act 1991* imposes general duties of care on employers. Supervisors have a duty of care for the health, safety and welfare of employees. This may mean that supervisors need to take action if they suspect a breach of the Code or if an alleged breach is brought to their notice.

### **REPORTING SUSPECTED BREACHES OF THE CODE OF CONDUCT**

24. A suspected breach of the Code can be reported by anyone including:

- managers;
- work colleagues;
- private citizens; and
- contractors or consultants.

25. In the first instance suspected breaches may be discussed with or reported to:

- direct supervisors;
- Director (EL 2), PCP Branch;
- AS, PCP Branch;
- First Assistant Secretary and above; and



- a Harassment Contact Officer (HCO).
26. Reports can be verbal or written and should contain specific details about the suspected breach. The report should include details about:
- the behaviour or actions;
  - the people involved;
  - dates;
  - times;
  - locations; and
  - any supporting evidence.
27. Where an employee making the allegation does not wish to make a signed complaint PM&C will not directly raise issues with the alleged perpetrator. PM&C has a duty of care to ensure allegations are not false or misleading before approaching the alleged perpetrator.
28. Complaints are taken seriously when the employee formalises their complaint in writing and signs and dates it. The signed statement should:
- be a true account of what happened;
  - clearly identify the employees who have engaged in misconduct;
  - list any relevant witnesses; and
  - explain how the misconduct affected them and why, if relevant.
29. All stakeholders are kept informed during the process and notified of outcomes, as far as privacy provisions allow.

### **Victimisation or retaliation**

30. Any employee making a report, or a witness, is protected from victimisation or retaliation by the Code (i.e. being harassed to change their complaint or statement), under subsection 13(3) of the PS Act.
31. Employees victimising others should be aware that this is serious misconduct and likely to result in termination of employment, if a breach of the Code is determined.
32. If an employee feels they are being victimised or discriminated against after making a report, they should speak to the person they made the initial report to.
33. Alternatively, the employee can seek assistance from:
- a HCO;
  - PM&C's Employee Assistance Program (EAP);
  - Director (EL 2) PCP Branch; and
  - AS, PCP Branch.
34. Section 16 of the PS Act protects APS employees who make a report under the whistleblowing provisions. Further information is in the [Whistleblowing](#) – Disclosure, Protection and Procedures employment guideline.





### **Frivolous or vexatious claims**

35. Complaints made should be clearly justified. Frivolous and vexatious complaints may expose the complainant to disciplinary action.
36. PM&C will not tolerate the spreading of rumours or innuendo about alleged breaches of the Code. This includes alleged bullying and harassment or gossip about investigations of complaints/allegations. This will result in an investigation of a breach of the Code and may leave employees open to defamation action.

### **Underperformance**

37. Underperformance is not misconduct; however, where underperformance is intentional (i.e. the employee has not acted with care and diligence in the course of their employment, under subsection 13(2)) then a breach of the Code may be established.
38. Whether something is within a person's control or not should be determined against the circumstances of each case.

### **Probationary employee**

39. Where performance and/or behaviour issues arise with employees on probation, the matters are to be managed in the probationary framework and not as a Code process.
40. The Code process can be used in relation to probationary employees; however there is a difference between assessing performance to determine future suitability and assessing conduct which may amount to a breach of the Code.

### **ASSESSING SUSPECTED BREACHES OF THE CODE OF CONDUCT**

41. Before a formal investigation/misconduct process commences an assessment of the seriousness of the breach is made. Not all suspected misconduct should use formal misconduct procedures.
42. The matter should be discussed with the AS, PCP Branch to determine the most appropriate approach to take and ensure a consistent application across PM&C.

### **Considerations for informal processes**

43. In less serious cases of misconduct the following informal options may be considered:
  - close monitoring and coaching to improve the employee's awareness of the required standards of conduct;
  - providing mediation, conciliation or counselling;
  - a written warning, signed by the employee with a copy kept on the employee's personnel file; and
  - using provisions within PM&C's performance management employment guidelines.
44. Conducting an informal misconduct processes should be as quick as proper consideration will allow.



45. Agreed actions and outcomes are documented and signed by the employee and supervisor. Both parties should retain a copy of the agreed arrangements. The supervisor monitors behaviour until satisfied the matter has been resolved.

#### **Considerations for formal processes**

46. Where the suspected breach is more serious in nature or if conduct has not improved using informal processes, the supervisor must refer the matter to the AS, PCP Branch. The supervisor should attach, or identify, all relevant documentation, including material which:

- outlines, or provides evidence of, the suspected breach; and
- provides relevant information of the employee's work history and (where relevant) records of any prior attempts to address the matters of concern.

47. If a suspected breach is deemed criminal in nature it should be referred to the police for investigation.

#### **DETERMINING WHETHER A BREACH HAS OCCURRED**

##### **Initial incident**

48. The AS, PCP Branch submits an initial incident report of the complaint to the Secretary or delegate.

49. The initial incident report should contain:

- a description of the suspected breach(es) outlining the element(s) of the Code allegedly breached and the names of any employees involved in the breach(es);
- the date the suspected breach(es) occurred;
- any information to support the allegation and the names and contact details of any witnesses;
- the name and signature of the person initiating the report; and
- what action has been taken regarding the complaint.

##### **Notification to the affected employee**

50. Notification to an affected employee should be made as soon as practicable after a complaint has been made.

51. The initial notification to the employee must be a letter or minute from the Secretary or delegate. A sample document is at [Attachment G – Template 2](#).

52. After the initial notification the decision maker must write to inform the affected employee whether an investigation is to be conducted, who will conduct that investigation, the details of the suspected breach(es) and the sanction(s) which may be imposed. This second letter may, where appropriate, include:

- a description of the role/authority of the decision maker;
- an outline of the facts and circumstances that have led to the investigation;



- why the facts and circumstances may amount to a possible breach, including the particular sections of the Code that may be relevant;
- notification that personal information may be disclosed to others and that confidentiality will be maintained where necessary and as appropriate;
- the sanction(s) available in the event that a breach is determined (as outlined in section 15 of the PS Act); and
- advice that the affected employee is entitled to seek the assistance and support of a fellow employee, union representative or legal representative in responding to the notification and throughout the investigation, and drawing attention to:
  - the rights of employees;
  - an invitation to make a statement, within seven days, in response to the allegations;
  - an indication of the next steps in the process; and
  - the decision maker's summary of the information to be relied upon.

A sample document is at [Attachment I – Template 4](#).

53. The details in the suspected breach(es) letter will be more specific than those outlined in the initial letter, as the allegation will now have the substance of information through witnesses or other processes. This allows the affected employee to understand the allegation in order to respond to it.
54. If the details of the suspected breach(es) change (due to additional documents/material uncovered), the affected employee should be informed and invited to make a further statement. The decision maker or investigator should send a revised notification to the affected employee.

#### **Affected employee's right to respond**

55. An affected employee is entitled to respond to allegations in a written statement.
56. If the affected employee wishes to make an oral statement as a supplement to, or instead of, a written statement, this should be agreed to. A record will be made and a copy given to the affected employee who may correct the statement. Any inconsistency should be noted and clarification sought if necessary.
57. A support person can be present when an affected employee gives a verbal response to the allegation. That person may be a friend, union representative or lawyer. The support person is not to answer on behalf of the affected employee as the affected employee is obliged to answer questions.
58. The affected employee could also receive assistance from a support person in drafting a written response. Where a support person drafts the written response the affected employee must agree in writing with the response written on their behalf.
59. An affected employee who is not fluent in English should be interviewed through a competent interpreter.
60. An affected employee can decline to provide a statement. The decision maker should not draw any conclusions from this absence. The affected employee should acknowledge that the decision maker will make their decision based on the information before them.



61. Any request for an extension of time should be considered on its merits, recognising:

- the need to be fair to the affected employee; and
- the requirement for timeliness and expedition.

An extension of time will not be approved automatically and the affected employee will need to show justifiable reasons to support their request.

#### **INVESTIGATING AN ALLEGED BREACH**

62. When a formal investigation is conducted a decision maker is appointed. The decision maker investigates all relevant matters and provides the delegate with enough information to make a fair decision. The delegate chooses the decision maker.
63. The decision maker conducts the investigation, or appoints another person to investigate, to determine whether a breach has occurred and make sanction recommendations. A checklist for the decision maker is at [Attachment D](#).
64. Evidence is collected from various sources. In some cases the investigation will be founded on physical evidence, such as computer records, in others it may be founded on witness accounts.

#### **Performing the investigation**

65. The decision maker should make note of:
- any/all facts that are not in dispute;
  - any/all facts that are in dispute, and need further investigation;
  - any person/s who may have information relevant to the matter and their contact details;
  - any documents they are aware of that could be relevant to the matter;
  - any questions they are aware of that need to be answered, and the best person/s to ask;
  - any additional information required;
  - any gaps in information that have been identified; and
  - an expected timetable for the investigation, including completion.
66. The decision maker's notes are to be updated during the course of the investigation with any new or relevant material that may surface. These notes can be used as a checklist of what has taken place in the investigation, and what needs to take place before the investigation is concluded.
67. The decision maker may interview any person they believe may have information relevant to the matter, including the employee suspected of the breach. Any person to be interviewed should, where possible, be provided with 24 hours notice.
68. The decision maker determines what information needs to be gathered, and from whom, and arranges to take possession of relevant documents, or copies of those documents at the interview.
69. All employees are to cooperate fully and openly with any requests for information or documents. Failure to cooperate could be considered a breach of the Code.



## **Interviews**

70. An employee suspected of having breached the Code may bring a support person to any discussion/interview.
71. In all discussions/interviews relevant equity and diversity provisions which can include but is not limited to:
- relevant interpreter services, if necessary;
  - consideration of cultural differences;
  - assistance/recognition of employees who may be vision, mobility or hearing impaired; and
  - assistance/recognition of employees who may suffer from a psychological disorder.
72. Interviews can be in person, by telephone, by videoconference or as an exchange of written correspondence.
73. The interviewee should be made as comfortable as possible. This will assist in gathering information, as an uncomfortable interviewee may be less forthcoming.
74. The emotions of the interviewee should be acknowledged and accommodated. An emotional interviewee may not be as focused or accurate in their recollections. Time out from interviews may also be useful. An employee may access the Employee Assistance Program for support if required.
75. An in-person or telephone/video interview should be in a private venue where the conversation cannot be overheard. Do not call attention to the employee. It should be made clear that the discussion/interview is confidential and not to be discussed with anyone. The decision maker will only use the information to assist in the determination.
76. Questions being asked during the interview should:
- be asked one question at a time;
  - not lead the employee to answer the question;
  - not lead the employee to give an answer they believe is expected;
  - be clear and easy to understand;
  - be as open as possible; and
  - require more than a yes or no answer.
77. Detailed notes should be taken, including the date, time and place the interview was conducted. If possible, these notes should include an indication of the employee's emotional state/demeanour. The conversation may be recorded only where all parties agree.
78. An official record of interview must be prepared as soon as practicable after the interview. The employee should be shown the record and should sign it, to indicate they agree with what was said. Any disputes over the content of the record should be noted and signed by the decision maker and the employee.
79. If the interview is via written correspondence, the decision maker should ask all questions in one piece of correspondence, and make the questions clear and direct. The same process for in-person or telephone interviews should be followed.



80. More than one interview with a person may be necessary. The documenting procedures for each subsequent interview are the same as for the initial interview.

81. An affected employee who is not fluent in English should have a competent interpreter provided at interview.

#### **Workplace searches**

82. Only the Secretary can request searches of the employee's workplace or an employee's personal effects. They are coordinated through the AS, PCP Branch.

83. The employee should be present while the search is conducted and should be given the opportunity to have a witness of their choice present during the search.

84. Workstations, computers, drawers, cabinets and bookshelves are PM&C property and can be searched if there are reasonable grounds for doing so. Although not absolutely necessary, the employee's consent should normally be obtained prior to a search.

85. If a search is conducted without the employee's consent, personal items located in the workstation cannot be searched unless a search warrant has been obtained.

#### **REACHING A FINDING AS TO WHETHER THE CODE HAS BEEN BREACHED**

86. At the conclusion of the investigation, the decision maker should ensure no further inquiries are necessary. The decision maker is to reach a decision with as little formality and as promptly as proper consideration allows.

87. The next steps will depend on the circumstances of the case.

- If there is no dispute of the facts, a decision will be based on the information collected and the affected employee's response.
- Where facts or circumstances are in dispute, options may include seeking statements or holding discussions with other people. All discussions that may have a bearing on the decision-making process must be documented and countersigned by interviewee.

88. In complex matters, tape-recorded interviews may be appropriate with the consent of the interviewee. A copy of the transcript should be provided to the interviewee with their signature.

89. The decision maker should take great care to ensure that irrelevant factors are not taken into account in deciding whether a breach has occurred. The decision maker should ensure evidence relied upon is tested. That means validating it against competing claims, if any, and deciding on which to accept or reject.



90. In the use of, and reliance on, material:

- primary sources of evidence are preferable to secondary sources (e.g. an original document is better than a photocopy);
- disputed facts should, where possible, be corroborated by other evidence, where possible;
- hearsay evidence should be approached with caution as it does not establish the truth of what may have been said; and
- any previous counselling or misconduct action is not relevant to the present inquiry but may be relevant to the sanction if a breach of the Code is found.

91. Several factors can lead to an invalid decision where the decision maker:

- is not empowered through an act or delegation;
- fails to follow a procedure in the relevant legislation;
- acts for a wrong purpose;
- takes into account irrelevant considerations;
- fails to take into account relevant considerations;
- acts unreasonably;
- acts on the basis of insufficient evidence; or
- acts at the direction of another person.

92. Decision makers are encouraged to seek advice from the AS, PCP Branch.

### **Standard of proof**

93. The standard of proof for determining whether a breach of the Code has occurred is on the 'balance of probabilities'. This means that the decision maker must be satisfied that a breach is more probable than not. This is called the civil standard of proof, and differs from the criminal law standard of proof, which is 'beyond reasonable doubt'.

94. The level of satisfaction required by the civil standard of proof will rise depending on the seriousness or importance of the issue to be determined. In serious misconduct cases where the sanctions are likely to be more severe, a decision maker should have strong supporting information that a breach has occurred before making a decision.

95. The level of satisfaction required for each case depends on the circumstances. Factors to be taken into account include:

- the seriousness of the suspected breach;
- more likelihood than not that the suspected breach occurred; and
- the gravity of the consequences for the affected employee if the suspected breach is found.

96. An affected employee is presumed not to have breached the Code until the contrary is proved.



## **Criminal offences**

97. Where an affected employee is charged with a criminal offence, facts and circumstances of the crime may also constitute a breach of the Code. These cases should be referred to the AS, PCP Branch immediately for consideration.
98. Care must be taken not to risk jeopardising the criminal investigation and any possible prosecution from that investigation. Close liaison with the police and/or prosecuting authority is essential.
99. Where a criminal offence is not directly related to work, subsection 13(11) of the PS Act, which requires that APS employees at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS, may be relevant.
100. Where an affected employee is charged with a criminal offence and the charge relates to behaviour that could impact their ability to maintain honesty and integrity in their APS employment, or is likely to damage the good reputation of the APS, a Code investigation should be considered.
101. In very serious cases, the affected employee may need to be suspended until the court decision is known. Once the criminal charge is heard, the Secretary or an appropriate delegate may continue a Code investigation due to the effect the conduct has on the affected employee's employment.
102. In some cases the link will be obvious, but in other cases a careful and objective evaluation of the facts and circumstances and of the affected employee's role in PM&C must occur.
103. Certain criminal charges have different implications for PM&C. Criminal charges can take many months to be heard or withdrawn as the burden of proof is different.
104. The following points are to be considered when determining whether a breach of the Code has occurred when criminal matters are involved:
  - 'criminal offence' includes situations where a court has proved but has not proceeded to formally record a conviction;
  - the sentence imposed and any remarks on the sentencing process by the court can and should be taken into account; and
  - the court's decision is based on facts and circumstances that may be relevant in the context of the Code. In most cases, accept and rely on those findings. Where difficulties or uncertainties arise, discuss the case with the AS, PCP Branch.
105. Where an affected employee has both a suspected breach of the Code and a criminal offence, do not delay action on the breach of the Code until criminal processes are complete. Criminal proceedings may be lengthy or ultimately not proceeded with by the Police or AFP. Seek advice from the AS, PCP Branch.





### **Notifying the employee of progress and outcome of the investigation**

106. All cases should be finalised as promptly as proper consideration of the matter allows, usually within four weeks. Sometimes delay cannot be avoided, as when the case takes a new direction. The decision maker should keep key stakeholders informed of progress. Key stakeholders include but are not limited to:

- the complainant if there is one;
- the affected employee;
- the affected employee's manager;
- the delegate;
- the affected employee's First Assistant Secretary;
- the AS, PCP Branch; and
- other persons who might be expected to have a special or sensitive interest in the outcome (i.e. where information was provided by a fellow employee).

107. The decision maker must be satisfied that the investigation process gathered enough evidence to make a fair, balanced and conscientious decision.

108. If there **has not** been a breach of the Code, the affected employee should be notified as soon as possible, given a copy of the notice of the determination and the basis for that decision. The affected employee's First Assistant Secretary should be advised of the decision.

109. To minimise any recurrence of a suspected breach, managers/ supervisors may need to apply remedial action including training, professional development and/or performance management measures.

110. If there **has** been a breach of the Code, the decision maker should prepare a written notice of determination, specifying the element(s) of the Code breached and a statement of reasons for the basis of the decision. This needs to be detailed, noting the various sources of information, highlighting any key findings, and include key issues where one version of events has been preferred to another. The affected employee should also be advised of their right to seek review.

A sample notice of determination is at [Attachment J – Template 5](#)

### **SELECTING THE APPROPRIATE SANCTION**

111. Once a breach of the Code has been determined, the decision maker must recommend a sanction to the Secretary or the appropriate delegate.

Note: The sanction is determined by a different person to the one who make the decision that the employee has breached the Code.

112. Deciding and imposing a sanction(s) is the responsibility of the Secretary or the appropriate delegate, in consultation with the AS, PCP Branch. When giving a sanction(s), the recommendation provided by the decision maker, and the details of the investigation, are considered. An alternative sanction can be determined by the Secretary or appropriate delegate, in consultation with the AS, PCP Branch.



113. The available sanctions (as outlined in section 15 of the PS Act) are:

- termination of employment;
- reduction in classification;
- re-assignment of duties;
- reduction in salary by way of fine (not be more than two per cent (2%) of annual salary – see Section 2.3 of the Regs); and
- a reprimand.

114. The Secretary or delegate will advise the affected employee, in writing, of the proposed sanction and the reasons. The employee is able to make a statement about the proposed sanction (see sample document at [Attachment K – Template 6](#)).

115. After considering the statement, the Secretary or appropriate delegate will advise the affected employee, in writing, of the final sanction and their rights of review (see sample document at [Attachment L - Template 7](#)).

116. More than one sanction may be imposed if the circumstances warrant but combinations of sanctions should only occur after careful consideration about practicality and fairness.

117. In deciding what sanction should be taken against an affected employee, the Secretary or the delegate should take account of:

**a) Previous employment and conduct history and the general character of the affected employee, for example:**

- official conduct record, recent written or oral counselling and their supervisor’s reports on their character and work performance, performance management and disciplinary actions;
- no regard to past disciplinary actions or processes if the record is no longer on the affected employee's record or relates to counselling records older than two years;
- if the supervisor’s reports are favourable or there is no record of prior counselling or misconduct action in relation to similar matters, counselling or a relatively minor sanction may be sufficient;
- if the matter determined is the latest in a series of incidents by the affected employee or a well-known serious incident; and
- if an employee has failed to respond to counselling or misconduct action in the past, a more severe sanction may be appropriate.

**b) The nature and seriousness of the determination and the type of conduct involved, for example:**

- discourtesy as compared to theft;
- amounts, values or quantities (e.g. a theft of \$20 regularly or a \$100,000 one-off);
- use of internal systems for selling or engaging in private business enterprises (e.g. the mail system), or use of PM&C’s supplies;
- the actual and potential consequences of the employee's conduct; and



- the standard of professional care and skill required in the employee's position (e.g. a higher standard of care may be expected from a senior employee).
- c) **The degree of relevance of the determination to the employee's duties or to the reputation of the APS, for example:**
- whether a breach of trust is involved;
  - whether the type of breach or offence affects management's confidence in the employee's continued ability to properly perform their duties;
  - whether the employee holds a senior or managerial position; and
  - any special requirements of the job (e.g. public contact positions, the need to maintain professional and ethical standards, public safety considerations).
- d) **The circumstances of the breach, for example:**
- the degree of participation (e.g. if several employees were involved in one incident, their relative responsibility for the incident);
  - external pressures, such as provocation, domestic or emotional stress and financial difficulties; and
  - whether the action was well-meaning but misguided, or a knowing breach of the rules.
- e) **Any mitigating factors which may assist in deciding the severity of action or the level of penalty, for example:**
- youth, length of service and age combined with a long period of unblemished service; and
  - cultural background, values and language difficulties.
- f) **The effect of the proposed sanction on the employee.**  
It is the responsibility of employees to understand that it is their behaviour that brings the consequences of misconduct.
- g) **Any loss of earnings already incurred by the employee as a result of suspension.**
- h) **Alternatives to sanctions in appropriate cases might include:**
- the probation provisions;
  - deferral of increments;
  - removal from temporary performance of higher duties;
  - re-assignment of duties (i.e. transfer);
  - redeployment and retirement on the grounds of failure to exercise reasonable care and skill (if deliberate acts or culpable behaviour are involved the disciplinary provisions should be used); and
  - resignation.
- i) **Any additional information that might be considered relevant.**



118. Important steps to comply with when issuing a sanction:

- where termination of employment is being considered, there must be prior consultation with the AS, PCP Branch, and if necessary, legal advice to ensure that all relevant legal and procedural requirements have been met;
- a re-assignment of duties or relocation should be arranged with the 'receiving' area before a decision is taken;
- a date of effect may need to be specified; depending on the nature of the sanction;
- some sanctions may not be applicable to a non-ongoing employee, depending on their particular employment arrangements; and
- termination of an SES employee cannot take place unless the Public Service Commissioner has issued a certificate stating that all relevant requirements of the Directions have been satisfied under Section 36 of the PS Act. The Commissioner must consider termination is in the public interest.

119. When issuing fines decision makers need to consider carefully the meaning of the term 'salary' in the light of PM&C's remuneration arrangements under the Enterprise Agreement or section 24(1) determinations. When in doubt of what payments to include, legal advice should be sought.

120. If there is no sanction, there may be a requirement for some form of counselling.

#### **Advising other parties of the outcome**

121. Consistent with the *Privacy Act 1988* (Privacy Act), PM&C will ensure that personal information about an affected employee remains confidential. Information will not be provided to other parties unless PM&C considers it necessary, appropriate and reasonable to do so.

122. Other people may have an interest in the outcome, particularly the complainant or employees who provided information to an investigation. These people require sufficient information to provide assurance that PM&C:

- has taken the allegation seriously;
- does not tolerate behaviour that is inconsistent with the Code;
- has imposed an appropriate sanction where a breach has been found; and
- has taken steps to ensure the problem does not recur.

A sample letter to the complainant advising of the outcome of a Code investigation is at [Attachment M – Template 8](#).

123. Before providing information to complainants or those employees providing information, the decision maker must consider:

- an individual employees' right to privacy, the protection of personal information about individual employees and PM&C's obligations under the Privacy Act; and
- the need to be transparent and accountable to other parties involved.



124. A decision maker should consider the factors set out in the APSC's circular on *Providing information on Code of Conduct investigation outcomes to complainants*.

125. During a Code investigation, or after it is complete, personal information about an affected employee and a broad outline of the nature of the breach may, where necessary, appropriate and reasonable, be disclosed to others, including:

- the complainant;
- other Commonwealth bodies involved in the matter, such as the Commonwealth Ombudsman, the Office of the Privacy Commissioner or the Inspector-General of Intelligence and Security;
- an APS agency when the affected employee moves or seeks to move in the future; and
- the Commonwealth Parliament (e.g. a Senate committee).

### **Confidentiality**

126. Only those with a genuine need to know should be made aware of the report of a suspected breach of the Code. These may include:

- employees or others responsible for investigating the complaint, are involved in the investigation or in preparing a report (for example the Secretary or the Secretary's delegate), the relevant First Assistant Secretary, the AS, PCP Branch, and the decision maker;
- a HCO;
- a supervisor;
- staff in the PCP Branch;
- the employee against whom the complaint has been made and their advisers or support persons (under procedural fairness requirements);
- witnesses; and
- the Commonwealth Parliament or a Senate Committee of Inquiry.

127. Public service employers do not owe an absolute obligation of confidentiality or privacy to their employees. An employee's claims to confidentiality or privacy is balanced against a range of obligations.

128. PM&C deals with complaints in accordance with relevant privacy legislation and the Information Privacy Principles (IPPs). It is PM&C's policy to endeavour to maintain confidentiality of any material relating to a complaint. However, employees should be aware that information could be divulged to other parties if the matter is the subject of a formal Code investigation and there is the potential for the matter to be subject to:

- occupational health and safety legislation;
- Comcare procedures;
- proceedings before a relevant court or tribunal ;
- a Freedom of Information request; and
- disclosure to other relevant external agencies, the Commonwealth Parliament or to PM&C's insurers.



## **SUSPENSION OR TEMPORARY RE-ASSIGNMENT OF DUTIES**

**Important: Suspension during an investigation must be for sound reasons. It should not be characterised as a sanction in itself.**

129. Circumstances may arise where the affected employee is assigned to other duties or suspended from duty. Re-assignment decisions are under sections 20 and 25 of the PS Act. The procedural framework for suspension is set out in Section 3.10 of the Regs. The decision maker must read Section 3.10 of the Regs before recommending the suspension of an affected employee.

130. When an employee or manager reports a possible breach of the Code to the AS, PCP Branch, they should also provide advice and appropriate supporting information on whether there is a need to re-assign or suspend the affected employee, until the matter is finalised. The formal grounds for a suspension decision are that:

- the employee has, or may have, breached the Code; and
- the employee's suspension is in the public, or PM&C's, interest.

131. The affected employee should be notified before a suspension/re-assignment decision is taken, and given an opportunity to make a statement (see sample document at [Attachment N – Template 9](#)).

132. Each case should be considered according to the circumstances, but factors relevant to 'the public, or PM&C's interests may include:

- the potential seriousness of the possible breach (including where termination of employment may be an outcome);
- the integrity and good reputation of the APS and of PM&C; and
- the maintenance of a cohesive and effective workforce in the affected employee's particular workplace.

133. The affected employees circumstances and their family should be considered (for example, where relocation to another region may be involved). Care should be taken to ensure that a suspension/re-assignment decision is based, and seen to be based, solely on the criteria outlined above. The decision should not appear to prejudge whether the Code has been breached or not.

134. The affected employee must receive a written notice of the decision to suspend as soon as practicable after the decision has been made (see sample document at [Attachment O – Template 10](#)). The notice should include:

- the reason for the decision;
- the date of effect;
- the intervals when the suspension will be reviewed;
- the fortnightly monies to be paid (if relevant); and
- the employee's right of review.

135. An affected employee may apply for a review of a suspension during the investigation.



136. Where suspension/re-assignment has occurred without any prior advice, due to urgent circumstances (e.g. security considerations), the affected employee should still be provided the opportunity to make a statement on why the initial decision should be reviewed.

137. The AS, PCP Branch can provide advice and assistance on suspension or temporary re-assignment of duties.

### **Remuneration during suspension**

138. Section 3.10 of the Regs states that suspension can be with or without remuneration. A period without remuneration is to be:

- not more than 30 days; and
- a longer period, if exceptional circumstances apply.

139. Exceptional circumstances are determined on a case-by-case basis and may include:

- where an affected employee has been charged with a criminal offence and is waiting to have the charge heard and determined; and
- where an affected employee has appealed against a conviction and is waiting to have the appeal heard.

140. The Secretary or appropriate delegate will consider all the circumstances of the case and whether suspension will be with remuneration or not, in consultation with the AS, PCP Branch and the relevant First Assistant Secretary. Depending on the circumstances, the Secretary or appropriate delegate may decide that some allowances can continue to be paid. (e.g. regional allowances).

141. An affected employee should have access to paid leave as an alternative to suspension without remuneration. Requests to engage in outside employment during suspension without remuneration should also be considered.

142. Any period of suspension on full remuneration counts as service for all purposes.

### **Review of suspension/re-assignment decisions**

143. Section 3.10 of the Regs requires that a suspension decision be reviewed at reasonable intervals. The management of reviews will consider the particular circumstances of the case with a decision by the Secretary or appropriate delegate, in consultation with the AS, PCP Branch, and the relevant First Assistant Secretary. Any reasonable requests for review, by the affected employee, could be considered (see sample document at [Attachment P – Template 11](#)).

144. Section 3.10 of the Regs sets out the formal test to be applied when reviewing a suspension decision. The Secretary or delegate must end a suspension if they no longer believe on reasonable grounds that:

- the employee has, or may have, breached the Code; and
- the employee's suspension is in the public, or the PM&C's interest.



145. If there is no review, after 30 days of suspension without remuneration the employee is to be remunerated again. A review should be planned to coincide with the 30-day period, when any 'exceptional circumstances' could also be considered.

146. Delegates are encouraged to seek advice from the AS, PCP Branch, and/or seek legal advice.

#### **Lifting of suspension/re-assignment decisions**

147. A suspension may be lifted where there is a decision that no breach of the Code has occurred. Where some or all of the period of suspension was without remuneration, that remuneration must be restored and paid as a lump sum.

148. Section 3.10 of the Regs requires that a suspension must end if a sanction is imposed on the employee for the relevant breach of the Code.

#### **Checklist for managing suspension**

149. A checklist for managing suspension is at Attachment D.

#### **RIGHT OF REVIEW**

150. Under Section 33 of the PS Act and Division 5.3 of the Regs, APS employees are entitled to review any APS action that relates to their employment, except termination of employment.

151. Where the action is termination, employees may appeal to the Fair Work Ombudsman in accordance with the *Fair Work Act 2009* (FW Act).

152. Any application for a review of a determination of a breach of the Code or a review of an imposed sanction must be made to the Merit Protection Commissioner.

153. Under Section 5.23(3) of the Regs the application may cease to be a reviewable action by the Merit Protection Commissioner if:

- the application for review is made more than one year after the action happened; and
- there are no exceptional circumstances explaining why the application was not made within the year.

#### **Effect on implementation of a sanction decision**

154. A decision to terminate employment comes into effect under the FW Act. Proceedings for alleged unlawful termination of employment are a matter for Fair Work Australia and the Federal Court under the FW Act.

155. Section 5.36 of the Regs specifies that making an application for review does not stop the action and implementation of a decision.

156. The Secretary or appropriate delegate, in consultation with the AS, PCP Branch, and the relevant First Assistant Secretary, will assess all the circumstances of the case, taking into account factors such as:





- whether things could easily be restored to where they were if the sanction is reversed (e.g. where the sanction is a fine or reduction in salary); and
- overall 'balance of convenience' issues (e.g. where the sanction involves relocation to another region).

## **PRIVACY AND DISCLOSURE INFORMATION**

157. Information gathered during a determination process is regarded as personal information and is governed by the Privacy Act and the PS Act.

158. Personal information gathered during a determination process is not disclosed, however, there are some circumstances where limited personal information may be disclosed:

- providing feedback about the outcome of an investigation;
- sharing information between APS agencies for employment related purposes; and/or
- review of action processes.

159. Where an employee is seeking to move between APS agencies the disclosure of information concerning an investigation may be provided to the receiving agency. The receiving agency may only use the information provided to make their initial employment decision or to continue the determination process once the employee moves. Misconduct action cannot be avoided by moving between agencies.

160. PM&C may also request disclosure of suspected or determined breaches of the Code when recruiting an employee from another APS agency.

161. Agencies are governed by the Information Privacy Principles (IPP) contained in Section 14 of the Privacy Act on the use and disclosure of information between agencies.

### **Record keeping**

162. The investigator must keep written notes on the process followed and all information gathered from interviews or physical evidence. PCP Branch will establish a 'Staff In Confidence' file that will hold all relevant paperwork associated with the investigation.

163. Records that relate to misconduct action following a breach of the Code will not be placed on an employee's personnel file. However, a cross-reference to the misconduct file will be noted on a personnel file where a breach is determined. Access to this file will be determined by the AS, PCP Branch, and handled in accordance with the IPPs.

164. The decision maker must summarise their findings and, if misconduct has occurred, outline the elements of the Code that are breached. The summary should include reasons for the determination, the recommended sanction(s) and notification if any advice was provided to other parties.

165. Where an investigation reveals allegations are unfounded, a separate 'Staff In Confidence' misconduct or investigation file will be maintained by the PCP Branch. The file will be retained/destroyed in accordance with the National Archives of Australia Administrative Functions Disposal Authority of February 2000 (Disposal Authority).



166. The delegate is responsible for keeping records on the determination process in accordance with the *Archives Act 1983*, *Freedom of Information Act 1982* and the Privacy Act.

## **OTHER ISSUES**

### **Procedures where basis of an employee's engagement changes**

167. Examples of a change in the basis of an APS employee's engagement are:

- engagement for a specified term or for the duration of a specified task to engagement as an ongoing APS employee; or
- engagement for duties that are irregular or intermittent to engagement as an ongoing APS employee.

### **Procedures where an employee moves to a different agency**

168. Where an affected employee moves from PM&C before any determination is made about a suspected breach of the Code, clause 5.6 of the APS Commissioner's Directions states that the process is commenced or completed in the gaining agency using that agency's misconduct procedures. The Agency Head of the new agency can decide to use the expertise of employees from PM&C in the investigation if required.

169. Where an affected employee moves after a finding of a breach but before application of a sanction, it is not necessary for a fresh investigation to commence. The new Agency Head can apply a sanction, in accordance with the new agency's procedures, based on PM&C's finding of a breach. An Agency Head's power under section 15 of the PS Act to apply a sanction extends to findings made under another agency's Code procedures.

### **Resignation during an investigation of a suspected breach**

170. Where an affected employee resigns during the investigation, the investigation must be discontinued.

171. The purpose of the APS disciplinary provisions is to maintain the integrity of the APS and preserve public confidence in the APS. If the person is no longer an APS employee, then the integrity of the APS and public confidence in the APS is preserved. All documentation from the investigation, up to the date of resignation, is to be retained, even though not complete. If the person later seeks re-engagement to the APS, these records can be accessed as part of the pre-employment checking process.

172. A resignation will not stop any criminal action against the person – it only ceases PM&C's disciplinary action.

## **RESPONSIBILITIES**

### **The Secretary**

173. The Secretary must uphold and promote the APS Values through:

- this guideline;
- information on PM&C's intranet site; and



- induction training and other PM&C training on the APS Values and the Code.

### **Supervisor**

174. Supervisors must ensure appropriate conduct and behaviour by themselves and by employees. They are also required to ensure that employees are:

- familiar with the Code;
- provided with advice or guidance on any issues that may arise concerning the application of the Code in particular workplace situations, or to particular employees; and
- reminded on an ongoing basis of the Code and other relevant policies.

175. Supervisors have primary responsibility to make judgements on what kind of action may amount to a breach of the Code. Supervisors are responsible for discussing appropriate action with the AS, PCP Branch.

176. Furthermore, supervisors are required to:

- treat all situations of a suspected breach of the Code as priority management tasks;
- provide guidance and advice to employees involved in a report of a suspected breach, including:
  - the employee who has made the report;
  - the affected employee(s);
  - any witnesses; and
- ensure complainants or witnesses are not victimised by other employees for alleging a breach of the Code;
- treat any information gathered during a determination process confidentially with disseminated on a need to know basis; and
- cooperate and support the relevant decision maker throughout the determination process.

### **Employees**

177. All employees shall:

- know the content, apply and uphold the APS Values and the Code;
- attend relevant training sessions;
- conduct themselves in a way that maintains and enhances the reputation of PM&C and the APS;
- report any suspected breaches of the Code; and
- not victimise or harass any employee who has alleged a breach of the Code or is a witness to a suspected breach of the Code.



## **Decision maker**

178. The decision maker is an APS employee or external person appointed by the Secretary or their delegate to decide whether a breach of the Code is established on relevant information. They are to set out in a written report the reasons for establishing whether a breach of the Code has occurred or not.

179. The decision maker may also make a recommendation for appropriate sanction(s) arising from an established breach. The decision maker may conduct an investigation if existing information is not sufficient to establish a breach. A decision maker could find that a Code investigation is not warranted based on the information and evidence available.

180. Decision makers are required to:

- comply with this policy and the procedures; and
- consult with the AS, PCP Branch to ensure compliance.

181. Decision makers should be, and be seen to be, both independent and unbiased. In particular, a decision maker must not be able to determine whether an employee has breached the Code if they themselves have previously made a report about the same matters. Good judgment and an evaluation of all the circumstances should be used to ensure the person is not someone who has had any past role in relation to the matters under investigation.

182. The decision maker conducting the determination process must have due regard to procedural fairness.

183. The decision maker must conduct the process in a confidential manner with information disseminated on a need to know basis.

## **Delegate**

184. The Secretary is able to delegate the authority to determine a breach of the Code and impose sanctions under section 15 of the PS Act.

185. The delegate must select and authorise a decision maker and inform the Secretary of the appointment. A sample Instrument of Selection and Authorisation is at [Attachment F – Template 1](#).

186. The delegate must write to notify the employee of the suspected breach(es) of the Code and the appointment of a decision maker. A sample initial notification letter is at [Attachment G – Template 2](#).

187. The delegate has the ability to re-assign duties or to suspend an employee from duties during the investigation. Re-assignment or suspension may be applied to any person identified because of a complaint being received or from the investigation process.



## DELEGATIONS

Authority to establish procedures for determining breaches of the Code	<ul style="list-style-type: none"><li>• SES Band 1, PCP Branch</li><li>• SES Band 2, Corporate Services Division</li><li>• SES Band 3, Governance</li></ul>
Authority to suspend an employee from duties during investigation of a suspected breach of the Code	<ul style="list-style-type: none"><li>• SES Band 1, PCP Branch</li><li>• SES Band 2, Corporate Services Division</li><li>• SES Band 3</li></ul>
Authority to impose a sanction/s for a breach of the Code (under procedures established under subsection 15(3) of the PS Act)	<ul style="list-style-type: none"><li>• SES Band 1, PCP Branch</li><li>• SES Band 2, Corporate Services Division</li><li>• SES Band 3, Governance</li></ul>
Authority to establish procedures for dealing with whistleblower's reports	<ul style="list-style-type: none"><li>• SES Band 1, PCP Branch</li><li>• SES Band 2, Corporate Services Division</li><li>• SES Band 3, Governance</li></ul>
Authority to receive whistleblowing reports of a breach (or alleged breach) of the Code	<ul style="list-style-type: none"><li>• Executive Level 2, PCP Branch</li><li>• SES Band 1, PCP Branch</li><li>• SES Band 2 and above</li></ul>

188. Human resource delegations are available at:  
[http://intranet/corp\\_documents/hr/hr\\_framework/personnel\\_delegations\\_manual.pdf](http://intranet/corp_documents/hr/hr_framework/personnel_delegations_manual.pdf)



## RELATED EMPLOYMENT PROCEDURES AND PUBLICATIONS

[Department of the Prime Minister and Cabinet Enterprise Agreement 2010-2011](#)

[Public Service Act 1999](#)

[Public Service Regulations 1999](#)

[Public Service Commissioner's Directions 1999](#)

[Fair Work Act 2009](#)

[Privacy Act 1988](#)

[Crimes Act 1914](#)

Whistleblowers – Disclosure, Protection and Procedures guideline

Workplace Bullying and Harassment Prevention guideline

[Review of Actions employment guideline](#)

[Performance Management and Development Scheme employment guideline](#)

CEI 2.4 – Fraud Prevention and Control

Fraud Control Plan

[APS Values and Code of Conduct in Practice – A Guide to Official Conduct for APS Employees and Agency Heads](#)

**Author:** People, Capability and Performance Branch

### Revision and approval history

Version	Authorisation Date	Authorisation Position	Approval/Revision Type
1.0	24 June 2011	A/g Deputy Secretary, Governance	Approval
1.1	6 September 2011	Secretary	Amended delegations



*Public Service Act 1999*

***The APS Values***

- (a) the APS is apolitical, performing its functions in an impartial and professional manner;
- (b) the APS is a public service in which employment decisions are based on merit;
- (c) the APS provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves;
- (d) the APS has the highest ethical standards;
- (e) the APS is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public;
- (f) the APS is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government's policies and programs;
- (g) the APS delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public;
- (h) the APS has leadership of the highest quality;
- (i) the APS establishes workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace;
- (j) the APS provides a fair, flexible, safe and rewarding workplace;
- (k) the APS focuses on achieving results and managing performance;
- (l) the APS promotes equity in employment;
- (m) the APS provides a reasonable opportunity to all eligible members of the community to apply for APS employment;
- (n) the APS is a career-based service to enhance the effectiveness and cohesion of Australia's democratic system of government;
- (o) the APS provides a fair system of review of decisions taken in respect of APS employees.



*Public Service Act 1999*

***The APS Code of Conduct***

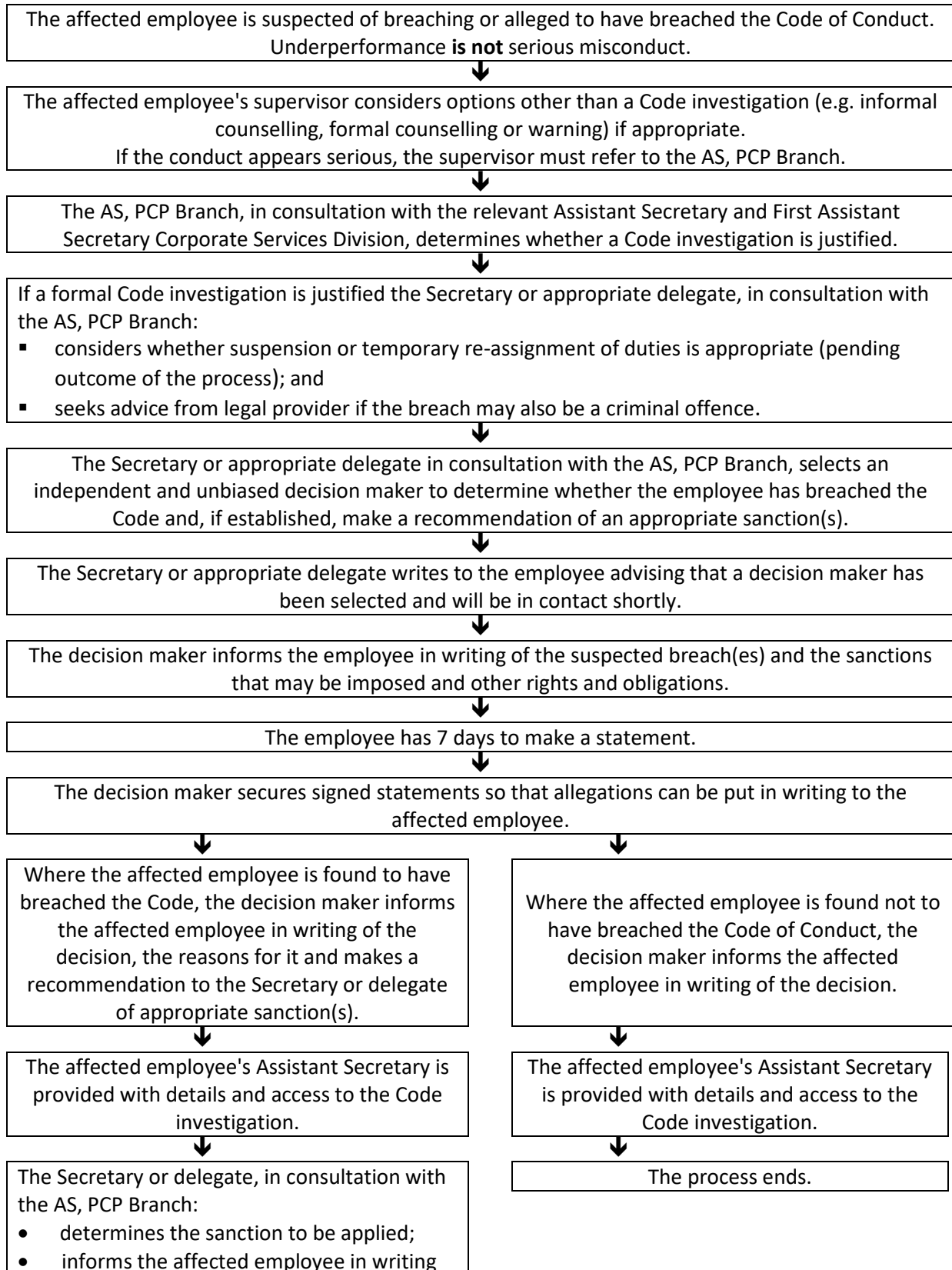
- (1) An APS employee must behave honestly and with integrity in the course of APS employment.
- (2) An APS employee must act with care and diligence in the course of APS employment.
- (3) An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.
- (4) An APS employee, when acting in the course of 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 that the employee has with any Minister or Minister's member of staff.
- (7) An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.
- (8) An APS employee must use Commonwealth resources in a proper manner.
- (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 make improper use of:
  - (a) inside information; or
  - (b) the employee's duties, status, power or authority;in order to gain, or seek to gain, a benefit or advantage for the employee or for any other person.
- (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.

*Public Service Regulation 2.1 provides additional conduct requirements in relation to an employee's duty not to disclose information.*





The process for determining whether a breach of the Code has occurred





of the preliminary view of the appropriate sanction(s); and

- invites the affected employee to make a statement.

The Secretary or delegate, in consultation with the AS, PCP Branch, determines whether to disclose the outcome of the investigation to other parties (e.g. the complainant). This may involve the disclosure of personal information about the affected employee.



The employee has 7 days to reply to the findings



The Secretary or delegate reviews the employee's response, if one is provided, and advises the affected employee in writing of any sanction(s), the reasons for the sanction(s), and rights of review if the sanction(s) decision holds.



Sanction takes effect and the investigation process ends. The affected employee may exercise rights of review.



**Checklist for managing suspension**

<i>Deciding whether or not to suspend</i>	<p>Is it in the public interest, or PM&amp;C's interest, to remove the affected employee from the workplace?</p> <p>Has re-assignment of duties been considered as an option?</p>
<i>When imposing suspension</i>	<p>Will the suspension be with or without pay?</p> <p>Having regard to the seriousness of the conduct, has there been an opportunity for the affected employee to make a statement before the suspension is implemented?</p> <p>Has the affected employee been advised of the possible length of suspension and of their ongoing status?</p>
<i>Where suspension is without pay</i>	<p>Has the affected employee been advised about possible access to leave credits?</p> <p>Has the affected employee been advised about the length of the period of suspension and the fact that they could seek outside employment?</p>
<i>During suspension</i>	<p>Is the suspension being reviewed at reasonable intervals and are the dates for reviews entered into relevant diaries?</p> <p>Are there exceptional circumstances warranting the extension of unpaid suspension beyond 30 days?</p>



**Attachment E**

**Investigation into suspected breach of the Code of Conduct Decision Maker's checklist**

Action Required	Person Responsible	Date completed
1. The delegate, in consultation with AS PCP, selects a decision maker	Delegate/AS PCP	
2. Delegate informs Secretary of the decision maker	Delegate	
3. Delegate selects and authorises the decision maker in writing *Template No.1	Delegate	
4. PCP creates a classified Staff-in-Confidence file	PCP	
5. Delegate formally notifies employee in writing of investigation and decision maker *Template No.2	Delegate	
6. Delegate notifies decision maker of their appointment *Template No.3	Delegate	
7. Decision maker notifies employee of suspected breach and their role *Template No.4 (usually within two working days)	Decision Maker	
8. Employee is given reasonable time to respond (minimum seven working days)	Employee	
9. Decision maker may select an investigator and formally notifies employee of their role	Decision maker/Investigator (may be the same person)	
10. Decision maker (or nominated Investigator) conducts an investigation (usually within 10 working days) <ul style="list-style-type: none"> <li>• Interviews employee</li> <li>• Interviews complainant</li> <li>• Interviews witnesses</li> <li>• Reviews evidence</li> <li>• Reviews legislation</li> </ul>	Decision Maker/Investigator	
11. The decision maker informs the employee of outcome in writing *Template No.5 <ul style="list-style-type: none"> <li>• Notifies employee's Assistant Secretary if breach not determined</li> </ul>	Decision maker	
12. The delegate notifies the employee of the proposed sanction and requests employee statement *Template No.6	Delegate	
13. Employee is given reasonable time to respond (usually seven days)	Employee	
14. The delegate notifies the employee of the appropriate sanction *Template No.7	Delegate	
15. The delegate notifies complainant of the outcome *Template No.8	Delegate	
16. The delegate notifies the employee of suspension of duties *Template No. 9-13	Delegate	



**Template 1 – Instrument of selection and authorisation of decision maker**

**Instrument of selection and authorisation of decision maker**

I, **[insert name and position]**, being **[the Secretary or delegate]** for the purposes of the Department of the Prime Minister and Cabinet's (PM&C) *Managing and Determining Suspected Breaches of the APS Code of Conduct employment guideline*, established under subsection 15(3) of the *Public Service Act 1999*,

**HEREBY SELECT**

**[insert Decision Maker's name]**

and authorise that person to determine whether **[insert employee's name and section]** has breached of the APS Code of Conduct and to make a recommendation as to the appropriate sanction or sanctions (if any) to be imposed, in accordance with PM&C's *Managing and Determining Suspected Breaches of the APS Code of Conduct employment guideline*.

**[insert Secretary's or delegate's name and position]**

**[Date]**



## Template 2 – Initial notification by Secretary or delegate to employee of suspected breach

[Employee's name]  
[Employee's address]

Dear [Employee's name]

### Notice of suspected breach(es) of the APS Code of Conduct

An allegation and supporting documentation has been provided to me concerning suspected breach(es) of the APS Code of Conduct arising out of [insert details of incident].

#### APS Code of Conduct

Based on the information in that allegation, you are suspected of breaching the APS Code of Conduct (section 13 of the *Public Service Act 1999*).

I have considered the information provided to me and, pursuant to subsection 15(3) of the *Public Service Act 1999*, I have decided that the conduct may give rise to breach(es) of the Code of Conduct and should be investigated.

This notice is to advise you that, in accordance with the provisions of the Department of the Prime Minister and Cabinet's (PM&C) *Managing and Determining Suspected Breaches of the APS Code of Conduct employment guideline*, I have allocated to [insert decision maker's name and position] the following task(s) to perform in relation to the suspected breach(es) of the APS Code of Conduct:

#### [delete if not applicable]

- to determine using the resources and people at the decision maker's disposal whether you breached the APS Code of Conduct; and
- if a breach of the Code of Conduct is determined, to, in their discretion, make a recommendation as to what, if any, sanction(s) should be imposed as a result of the determination.

As part of this process, your personal information may be collected for the purposes of conducting the investigation and certain personal information may be disclosed to other parties, where necessary and appropriate, including to other agencies, law enforcement agencies and, where appropriate and reasonable, the complainant.

As part of this process, you will be provided with formal notification from the decision maker regarding the details of the allegations that you may have breached the APS Code of Conduct.

You will be provided with an opportunity to make a statement in relation to the allegations orally and/or in writing. You cannot directly contact witnesses identified by the decision maker or that you suspect are involved once you consider the details of the allegation. Any action by you to contact witnesses will in itself constitute serious misconduct and could result in termination of your employment.



**Australian Government**

**Department of the Prime Minister and Cabinet**

A copy of PM&C's *Managing and Determining Suspected Breaches of the APS Code of Conduct employment guideline* is attached.

If you require any further information in relation to the contents of this letter or the details of the suspected breach please contact me.

**[insert decision maker's name]** will contact you in due course.

Yours sincerely

**[insert Secretary's or delegate's name and position]**

**[Date]**



### Template 3 – Letter to decision maker re appointment

[Decision Makers name/title/branch/division]

Dear [Decision Maker]

#### Notice of suspected breach(es) of the APS Code of Conduct

An allegation and supporting documentation has been provided to me concerning suspected breach(es) of the APS Code of Conduct arising out of [insert details of incident].

#### APS Code of Conduct

[Employees Name] is suspected of breaching the APS Code of Conduct (section 13 of the *Public Service Act 1999*).

I have considered the information provided to me and, pursuant to subsection 15(3) of the *Public Service Act 1999*, I have decided that the conduct may give rise to breach(es) of the Code of Conduct and should be investigated.

I am writing to advise that I have agreed to appoint you as a decision maker in accordance with the Department of the Prime Minister and Cabinet's (PM&C) *Managing and Determining Suspected Breaches of the APS Code of Conduct employment guideline (Attachment A)*.

[Employees Name] has been advised that you have been appointed as the decision maker for this investigation and that you will be in contact with him/her shortly.

Please note that as decision maker, you are:

- to determine, using the resources and people at your disposal, whether [Employees Name] has breached the APS Code of Conduct; and
- if a breach of the Code of Conduct is determined, to, in your discretion, make a recommendation to me as to what, if any, sanction(s) should be imposed as a result of the determination.

As part of this process, you may collect personal information for the purposes of conducting the investigation and where necessary and appropriate, you may disclose certain personal information to other parties, including to other agencies, law enforcement agencies and, where appropriate and reasonable, the complainant.

If you require technical assistance during the investigation, please note that the Assistant Secretary, People, Capability and Performance Branch is available to assist you and you may also access legal support.





**Australian Government**

**Department of the Prime Minister and Cabinet**

If you require any further information in relation to the contents of this letter or the details of the suspected breach please contact me.

Yours sincerely

**[insert Secretary's or delegate's name and position]**

**[Date]**



**Template 4 – Formal notification by decision maker to employee of suspected breach**

[Employee's name]  
[Employee's address]

Dear [Employee's name]

**Suspected breach(es) of the APS Code of Conduct**

I have been appointed as the decision maker for the purpose of determining whether there has been breach(es) of the Australian Public Service (APS) Code of Conduct.

As you are aware, an allegation and supporting documentation have been provided to the **[Secretary or delegate and your Executive Director]** concerning suspected breach(es) of the APS Code of Conduct arising out of **[insert details of incident]**.

**APS Code of Conduct**

Based on the information provided to me, you are suspected of breaching the following part(s) of the APS Code of Conduct (section 13 of the *Public Service Act 1999*):

**[insert relevant part(s) of the Code]**

The details of the suspected breach(es) are:

**[Insert date and details of alleged breach(es). The description should not be legalistic but it must be detailed enough and contain sufficient information for the employee to understand what is being alleged and to enable the employee to respond appropriately to the allegation.]**

**Authority to investigate allegations**

I have been authorised to:

- (i) determine whether you have breached the APS Code of Conduct using the resources and people that are at my disposal
- (ii) if a breach of the Code of Conduct is determined, make a recommendation as to what, if any, sanction(s) should be imposed under section 15 of the *Public Service Act 1999* as a result of the determination

Sanctions that may be imposed pursuant to subsection 15(1) of the *Public Service Act 1999* are:

- (a) termination of employment
- (b) reduction in classification
- (c) re-assignment of duties
- (d) reduction in salary
- (e) deductions from salary, by way of fine
- (f) a reprimand



### **Documents relied upon**

The information and documents which I considered in formulating the details of the suspected breaches include:

**[Insert details of information and documents relied on (do not include witness statements). For example:**

- **the *Public Service Act 1999* and regulations; and**
- **the Department of the Prime Minister and Cabinet's *Managing and Determining Suspected Breaches of the APS Code of Conduct employment guideline*.**

A copy of the above information and documents is enclosed for your information.

### **Statement**

If you wish to make a statement in relation to the suspected breach(es) you have until **[insert date – must be at least 7 days]** to provide a written response to me.

Please advise me as soon as possible if you do not intend to make a written statement. You will separately be invited by **[the Secretary or delegate]** to make a statement in relation to the appropriate sanction (if any) to be imposed.

You are entitled to seek the assistance and support of a fellow employee, union representative or legal representative in responding to the notification and throughout the investigation, at your own cost.

If you wish to make an oral statement, you have the right to do so whether you furnish a written statement or not. This must be done within the same timeframe as that given to you to provide a written response.

No determination will be made in relation to the suspected breach(es) until after the period for you to make a statement has ended and any statement that you make has been considered. If you decide not to make a statement, it will not be taken to mean that you have admitted committing the breach(es). However, you should understand that I will consider the information that has been placed before me without having any opposing view put by you in making my determination.

If you require any further information in relation to contents of this letter or the details of the suspected breach please contact me. As noted above, if you wish to lodge a written statement in relation to the suspected breach(es) of the Code, please do so by **[insert date]**.

Yours sincerely

**[insert decision maker's name and position]**  
**[Date]**



## Template 5 – Notice of determination by decision maker to employee

[Employee's name]  
[Employee's address]

Dear [Employee's name]

### Determination in relation to suspected breach(es) of the APS Code of Conduct

I refer to my letter dated [insert date of Template No. 4] in which you were advised of suspected breach(es) of the Australian Public Service (APS) Code of Conduct.

This letter is to advise you that [select appropriate text]

it has been determined that the breach(es) of the APS Code of Conduct identified in the letter to you dated [insert date] are not proven.

[or]

it has been determined that the breach(es) of the APS Code of Conduct identified in the letter to you dated [insert date] have been proven based on the evidence before me.

[Use the following sections only if a breach is determined.]

### Summary of allegations

[insert summary]

### Reasons for determination

My reasons and findings for the determination are [insert reasons] or refer to an attached statement of reasons].

### Recommendation on sanction

I will also make a recommendation to the [Secretary or delegate] on the appropriate sanction to be imposed as a consequence of the breach(es).

### Possible sanctions

You will recall that the sanctions that may be imposed pursuant to subsection 15(1) of the *Public Service Act 1999* (the PS Act) are:

- (a) termination of employment
- (b) reduction in classification
- (c) re-assignment of duties
- (d) reduction in salary
- (e) deductions from salary, by way of fine
- (f) a reprimand



I carefully considered the sanctions set out in subsection 15(1), and **[insert reasoning as to why sanctions are not appropriate or why the recommended sanction is appropriate]**.

My recommendation as to the action to be taken as a consequence of the breaches is **[insert detail of proposed recommendation]**, as provided for by subsection 15(1) of the PS Act.

Given the nature of the breaches, I believe that **[insert recommendation]** is an appropriate sanction.

I have taken account of the following matters in making this recommendation:

**[Insert matters taken into consideration, as set out in Part 7 of the policy and procedures.]**

I have also considered the following alternatives to the sanctions listed in subsection 15(1) of the PS Act:

- the probation provisions
- deferral of increments
- denial of promotion or removal from temporary performance of higher duties
- re-assignment of duties (i.e. transfer) **[Please note that this alternative is different to the sanction of 're-assignment of duties' which does not involve transfer, listed in subsection 15(1) of the PS Act]**
- redeployment and retirement on the grounds of failure to exercise reasonable care and skill
- resignation

In the circumstances none of these alternatives are appropriate. **[if applicable]**

### **Statement**

The decision as to what sanction(s) (if any) will be imposed as a consequence of the breach(es) will be made by the **[Secretary or delegate]**, in consultation with the Assistant Secretary, People, Capability and Performance Branch.

You will be given an opportunity to provide your view on the proposed sanction(s) to the **[Secretary or delegate]** prior to any sanction being imposed. I anticipate that the **[Secretary or delegate]** will be writing to you in the near future.

If you require any further information in the meantime please contact me.

Yours sincerely

**[insert decision maker name and position]**

**[Date]**



**Template 6 – Request from Secretary or delegate for statement in relation to sanction**

[Employee's name]  
[Employee's address]

Dear [Employee's name]

**Request for statement as to sanction for breach(es) of the APS Code of Conduct**

On [insert date of Template No. 5], [insert decision maker's name] made a determination that you had breached certain parts of the Australian Public Service (APS) Code of Conduct set out in section 13 of the *Public Service Act 1999* (PS Act), identified in the letter to you dated [insert date of Template No. 4].

I must now make a determination on the appropriate sanction(s) to be imposed as a consequence of the breach(es).

[insert decision maker's name] has provided me with a recommendation as to the appropriate sanction, which [he/she] considers to be [insert sanction description].

Having reviewed the relevant materials, my preliminary view as to the action to be taken as a consequence of the breach(es) is to agree with [insert decision maker's name]'s recommendation, which is for the imposition of the following sanction(s) as provided for by subsection 15(1) of the PS Act:

**[select the appropriate sanction(s)]**

- (a) termination of employment
- (b) reduction in classification
- (c) re-assignment of duties
- (d) reduction in salary
- (e) deductions from salary, by way of fine [insert amount]
- (f) a reprimand

**Reasons**

The reasons for my preliminary view that this is an appropriate sanction are [insert brief statement of reasons or refer to an attached statement of reasons].

**Opportunity to make a submission**

Before making a decision as to the appropriate sanction, I am inviting you to make a statement, either in writing or orally, in relation to my preliminary view as to the appropriate sanction to be imposed. You have until [insert date – at least 7 days] to provide such a statement to me. Please advise me as soon as possible if you do not intend to make a statement.



**Australian Government**

**Department of the Prime Minister and Cabinet**

I will make no decision as to sanction(s) until after the period for you to make a statement has ended, and any statement that you make has been considered by me. After this time will I advise you in writing of my decision.

Yours sincerely

**[insert Secretary's or delegate's name and position]**  
**[Date]**



**Template 7 – Notification by Secretary or delegate to employee of sanction**

[Employee's name]  
[Employee's address]

Dear [Employee's name]

**Determination as to sanction for breach(es) of the APS Code of Conduct**

I refer to [insert name of decision maker]'s letter dated [insert date of letter] in which [he/she] determined that that you had breached certain parts of the Australian Public Service (APS) Code of Conduct set out in section 13 of the *Public Service Act 1999* (PS Act).

The reasons for the determination are set out in the letter to you dated [insert date of Template No. 5], a copy of which is attached. [attach a copy of Template No. 5]

On [insert date of Template No. 6] I advised you of my preliminary view as to the appropriate sanction to be imposed as a consequence of the breach(es).

You were invited to make a statement to me, either orally or in writing, in relation to my preliminary view, no later than [insert date]. On [insert date] you sent [insert detail as appropriate].

**[If it is decided to impose a sanction or sanctions, insert the following.]**

In accordance with subsection 15(1) of the PS Act, I have decided, following consultation with the Assistant Secretary, People, Capability and Performance Branch, that the appropriate action to be taken as a consequence of the breach(es) is to impose the following sanction(s) as provided for by subsection 15(1) of the PS Act:

**[select the appropriate sanction(s)]**

- (a) termination of employment
- (b) reduction in classification
- (c) re-assignment of duties
- (d) reduction in salary
- (e) deductions from salary, by way of fine [insert amount]
- (f) a reprimand

**Reasons for decision**

The reasons for my decision regarding the appropriate sanction were set out in my letter dated [insert date of Template No. 5 and attach copy of letter], a copy of which is attached. Following consideration of your submissions, if any, my views as to the appropriate sanction [have/have not] changed.

**[select appropriate text]**

The sanction(s) are effective on [insert date].

**[or]**

You will be advised soon of how and when the sanction(s) will come into effect.





**Australian Government**

**Department of the Prime Minister and Cabinet**

**Rights of review**

A decision to impose a sanction other than termination of employment is a decision that may be reviewed in accordance with Public Service Regulation 5.24(2) directly to the Merit Protection Commissioner.

Where the sanction imposed is termination of employment, right of review available to the employee is under Part 6-4, Division 2, Section 773 of the *Fair Work Act 2009*.

Yours sincerely

**[insert Secretary's or delegate's name and position]**

**[Date]**



Template 8 – Letter to complainant advising the outcome of a Code of Conduct investigation

**Note: Only use this letter if the decision maker or Secretary or delegate has determined that it is appropriate to disclose the outcome of the investigation to other third parties, such as the complainant – it may be appropriate and possible to provide general information about the handling of the complaint to the complainant without disclosing personal information about the employee.**

**Disclosure of either a sanction to be imposed or the fact that no breach of the Code of Conduct was found would amount to disclosure of personal information under the *Privacy Act 1988*.**

[Complainant's name]

[Complainant's address]

Dear [Complainant's name]

**Determination regarding alleged breach(es) of the APS Code of Conduct**

I am writing in relation to your complaint about [insert nature of complaint], which you forwarded to the Department of the Prime Minister and Cabinet (PM&C) on [insert date].

An investigation of this matter has been conducted in accordance with PM&C's Code of Conduct investigation procedures. This investigation has now been finalised.

**[select appropriate text]**

As a result, a breach of the Code of Conduct was found and a sanction imposed under section 15 of the *Public Service Act 1999*.

In addition, PM&C will undertake to [describe remedial action, e.g. train staff, improve agency procedures] to ensure this situation does not arise in the future.

**[or]**

As a result, no breach of the Code of Conduct was found in this case. However, PM&C will undertake to [describe remedial action, e.g. train staff, improve agency procedures] to ensure the possibility of the same or similar situation does not arise in the future.

**[or]**

As a result, no breach of the Code of Conduct was found in this case.

Thank you for raising this matter with PM&C. If you require any further information please contact me on [insert telephone number]

Yours sincerely

[insert Secretary's or delegate's name and position]

[Date]



**Template 9 – Notice of possible suspension from duties**

[Employee's name]  
[Employee's address]

Dear [Employee's name]

**Notice of possible suspension of duties under Public Service Regulation 3.10**

I have received a report regarding suspected breach(es) of the Australian Public Service (APS) Code of Conduct concerning **[insert nature of breach(es) and dates]**. I am of the opinion that the nature of the suspected breach(es) may warrant a suspension from duties on the grounds that it would be in the public interest and the interest of the Department of the Prime Minister and Cabinet.  
**[optional – Suspension may also be in your interests and the interests of your fellow employees.]**

**[select appropriate text]**

Therefore, this notice is to advise you that I am considering suspending you from your duties.

However, before the decision is made, you have the opportunity to make a statement regarding the questions of:

1. whether to suspend you; and
2. if the decision to suspend you is made, whether the suspension is to be with or without remuneration.

If you wish to make a statement, it must reach me by **[insert date – at least 7 days]**. You are also advised that if a decision to suspend you is made, such a decision is not prejudging the matter of the suspected breach(es) of the APS Code of Conduct.

Being on suspension does not alleviate you from your obligations to be ready, willing and able to attend interviews as directed by my delegate, the decision maker or me.

**[or]**

Having regard to the seriousness of the conduct alleged to have occurred, I would normally request you provide a written response to my consideration of responding to you. However, I have spoken with you and having considered what was said, suspend you immediately from your duties.

Yours sincerely

**[insert delegate's name and position]**  
**[Date]**



### Template 10 – Notice of suspension from duties

[Employee's name]  
[Employee's address]

Dear [Employee's name]

#### Notice of suspension from duties under Public Service Regulation 3.10

I have received a report regarding a suspected breach of the Australian Public Service (APS) Code of Conduct concerning **[insert nature of breach(es) and dates]**.

I have considered **[delete as appropriate]** your comments and/or the statement provided by you regarding the suspension and have reached the decision that I believe on reasonable grounds that your suspension from duties is in the public interest and the interest of the Department of the Prime Minister and Cabinet (PM&C). **[Optional – I also believe that the suspension is in your interests and the interests of your fellow employees.]**

Accordingly, I inform you that I am suspending you from duties pursuant to regulation 3.10 (section 28 of the *Public Service Act 1999*) with effect from the time of delivery of this notice to you. I also draw the following matter to your attention:

**[Delete whichever of the following paragraphs regarding remuneration is not applicable.]**

- The period of suspension is without remuneration, and will be reviewed by **[insert a date of either not more than 30 days, or a longer period if exceptional circumstances exist]**. The reasons for my decision to suspend you without remuneration are **[insert reasons, including the exceptional circumstances if relevant]**.

**[or]**

- The period of suspension is with remuneration, and will be reviewed by **[insert a date of either not more than 30 days, or a longer period if exceptional circumstances exist]**. The amount per fortnight is **[insert amount]**. I will end the suspension immediately if I no longer believe on reasonable grounds that you have, or may have, breached the Code of Conduct, or that your suspension is not in the public or PM&C's interests.

I will end the suspension within 48 hours if a sanction is imposed on you for a breach of the Code of Conduct. In deciding to suspend you I am not prejudging the matter of the suspected breach(es) of the APS Code of Conduct.

You should note that you may apply for permission to engage in outside employment during the period of suspension, but not for any period where you may be receiving remuneration. Should you seek approval to engage in outside employment, you must be ready to attend any interviews or meetings requested by PM&C concerning the investigation or your previous duties.

Yours sincerely

**[insert Secretary's or delegate's name and position]**  
**[Date]**



**Template 11 – Notice of review of suspension from duties**

**[Employee's name]**  
**[Employee's address]**

Dear **[Employee's name]**

**Notice of review of suspension of duties under Public Service Regulation 3.10**

You were notified in the notice of suspension from duties, dated **[insert date of Template No. 10]**, that your suspension would be reviewed by **[insert date]**. Accordingly, before the decision whether to extend your suspension is made, you have the opportunity to make a statement regarding the questions of:

1. whether your suspension should be extended; and
2. if the decision to extend your suspension is made, whether the suspension is to be with or without remuneration.

If you wish to make a statement, it must reach me by **[insert date]**.

You are also advised that if a decision to continue your suspension is made, such a decision is not prejudging the matter of the suspected breach(es) of the APS Code of Conduct.

Yours sincerely

**[insert Secretary's or delegate's name and position]**  
**[Date]**



**Template 12 – Notice of extension of suspension from duties**

[Employee's name]  
[Employee's address]

Dear [Employee's name]

**Notice of extension of suspension from duties under Public Service Regulation 3.10**

Under Public Service Regulation 3.10(4) I am required to review your suspension from duties at reasonable intervals. I have reviewed your suspension and considered your comments and/or the statement furnished by you regarding the prospect of your suspension being extended and have reached the decision that your suspension from duties should continue.

My reasons for this are that I believe on reasonable grounds that an extension of your suspension from duties is in the public interest and the interest of the Department of the Prime Minister and Cabinet (PM&C). **[Optional – I also believe that the suspension is in your interests and the interests of your fellow employees.]**

Accordingly, I hereby give notice that that I am extending your suspension from duties pursuant to regulation 3.10 (section 28 of the *Public Service Act 1999*) with effect from **[insert date]**.

I also draw the following matter to your attention:

**[Delete whichever of the following paragraphs regarding remuneration is not applicable.]**

- The period of suspension is without remuneration, and will be reviewed by **[insert a date of either not more than 30 days, or a longer period if exceptional circumstances exist]**.

**[or]**

- The period of suspension is with remuneration, and will be reviewed by **[insert a date of either not more than 30 days, or a longer period if exceptional circumstances exist]**. The amount per fortnight is **[insert amount]**.

I will end the suspension immediately if I no longer believe on reasonable grounds that you have, or may have, breached the Code of Conduct, or that your suspension is not in the public or PM&C's interests.

In deciding to suspend you I am not prejudging the matter of the suspected breach(es) of the APS Code of Conduct.

You should note that you may apply for permission to engage in outside employment during the period of suspension, but not for any period where you may be receiving remuneration. Should you seek approval to engage in outside employment, you must be ready to attend any interviews or meetings requested by PM&C concerning the investigation or your previous duties.

Yours sincerely

**[insert Secretary's or delegate's name and position]**  
**[Date]**



**Template 13 – Notice cessation of suspension from duties**

**[Employee's name]**  
**[Employee's address]**

Dear **[Employee's name]**

**Notice of cessation of suspension of duties under Public Service Regulation 3.10**

This notice is to advise you that your suspension from duties will cease with effect from **[insert date]**.

The reason for the cessation of your suspension is: **[insert appropriate clause from the text below]**

1. that I no longer believe that you have, or may have, breached the Code of Conduct.
2. that your suspension is no longer in the public or the Department of the Prime Minister and Cabinet's interest.
3. that the suspected breach of the Code of Conduct has been determined and a sanction under section 15 of the *Public Service Act 1999* has been imposed.

Yours sincerely

**[insert Secretary's or delegate's name and position]**  
**[Date]**