



Code of Conduct

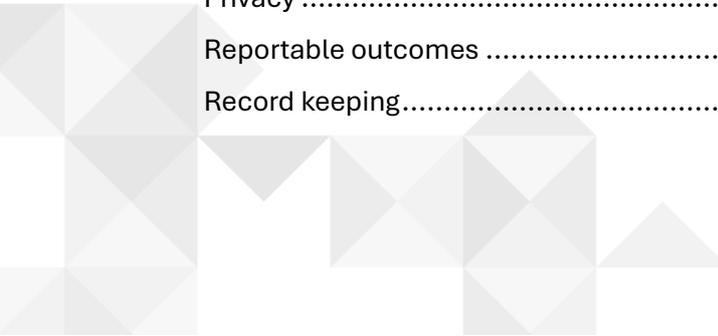
Procedure

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Introduction

1. The *Public Service Act 1999* (the Act) prescribes the standards of behaviour and conduct expected of all Australian Public Service (APS) employees. These are set out in the APS Code of Conduct (Code) in section 13 of the Act, the APS Values (the Values) and the APS employment Principles (the Employment Principles).
2. The Values set out the standard of performance and ethos required of APS employees, while the Employment Principles broadly guide employment decisions and workplace interactions. The Code specifies the behaviours expected of individual APS employees. Together, these standards shape the culture of the APS, and an APS organisation.
3. Section 15(3) of the Act requires Agency Heads to develop and make readily available, written procedures for determining whether an APS employee (or former employee) of the organisation has breached the Code, and the sanction (if any) that is to be imposed on an employee where a breach has been determined. The procedure must also comply with basic procedural requirements set out in *Australian Public Service Commissioner's Directions 2022* (the Directions) and have due regard to procedural fairness.
4. The Chief Executive Officer (CEO) is the Agency Head for the purposes of the Act, and these procedures are made for the purpose of section 15(3) of the Act. The CEO has delegated the Agency Head powers in the delegation schedule.

Purpose

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

Scope

6. This procedure applies to all employees covered by the *Comcare Enterprise Agreement* (EA) and to all Senior Executive Service (SES) employees.
7. This procedure does not act to prevent an employee from using the dispute resolution procedures in the EA including referring a matter to the Fair Work Commission or to Authorised Officers in accordance with the *Public Interest Disclosure (PID) Procedures*.
8. The Code, Values and Employment Principles may also apply to all persons considered 'workers' for the purposes of the *Work Health and Safety Act 2011* (Cth) (WHS Act). In addition to Comcare employees, this may include secondees, contractors, subcontractors, apprentices or trainees, work experience students and employees of a labour hire company placed within our organisation. Behaviours or actions that may be contrary to the Code, the Values and Employment Principles will



be managed in accordance with the relevant employment contract provisions.

Principles

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



The Code

Aim: To inform APS employees of required behavioural standards in connection with their employment and outline how a suspected breach of the Code is managed.

Policy:

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

The APS Code of Conduct

10. All managers and employees have a responsibility to adhere to the Code, the Values and Employment Principles at all times, in connection with their employment. An APS employee, or former APS employee, whose conduct does not comply with an element of the Code (in connection with employment or former periods of APS employment) can be found to have breached the Code. This is known as ‘misconduct’.
11. The primary aim of taking action in cases of suspected misconduct is protecting the integrity of the APS and maintaining public confidence in public administration. Sanctions are intended to be proportionate to the seriousness of the misconduct, to deter recurrence and reinforce that misconduct is not tolerated in our organisation.
12. Section 13 of the Act prescribes the Code which sets out the behaviours expected of APS employees. It provides the following:
 - s13(1) An APS employee must behave honestly and with integrity in connection with APS employment.*
 - s13(2) An APS employee must act with care and diligence in connection with APS employment.*
 - s13(3) An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.*
 - s13(4) An APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:
 - (a) any Act (including this Act), or any instrument made under an Act; or*
 - (b) any law of a State or Territory, including any instrument made under such a law.**
 - s13(5) An APS employee must comply with any lawful and reasonable direction given by someone in the employee’s Agency who has authority to give the direction.*



s13(6) *An APS employee must maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff.*

s13(7) *An APS employee must:*

(a) take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment; and

(b) disclose details of any material personal interest of the employee in connection with the employee's APS employment.

s13(8) *An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.*

s13(9) *An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.*

s13(10) *An APS employee must not improperly use inside information or the employee's duties, status, power or authority:*

(a) to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or

(b) to cause, or seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.

s13(11) *An APS employee must at all times behave in a way that upholds:*

(a) the APS Values and APS Employment Principles; and

(b) the integrity and good reputation of the employee's Agency and the APS.

s13(12) *An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.*

s13(13) *An APS employee must comply with any other conduct requirement that is prescribed by the regulations.*

13. Section 15(2A) of the Act further provides that:

a person who is, or was, an APS employee is taken to have breached the Code of Conduct if the person is found (under procedures established under s 15(3) of the Act) to have, before being engaged as an APS employee:

a. knowingly provided false or misleading information to another APS employee, or to a person acting on behalf of the Commonwealth

b. wilfully failed to disclose to another APS employee, or to a person acting on behalf of the Commonwealth, information that the person knew, or ought reasonably to have known, was relevant, or

c. otherwise failed to behave honestly and with integrity

in connection with the person's engagement as an APS employee.



Consequences of breaching the Code

14. Where a breach or breaches of the Code have been determined, one or more of the following sanctions under section 15(1) of the Act may be imposed.:

s15(1)(a) termination of employment

s15(1)(b) reduction in classification

s15(1)(c) re-assignment of duties

s15(1)(d) reduction in salary

s15(1)(e) deductions from salary, by way of fine

s15(1)(f) a reprimand.

Misconduct

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

16. Misconduct is any action or behaviour by an employee that has been determined by a Breach decision maker to be contrary to the Code. The action or behaviour does not generally require intent to be considered a breach. It may arise out of actions including but not limited to:

- a. behaviours an employee exhibits in the course of their employment
- b. providing false or misleading information
- c. wilfully failing to disclose relevant information, and/or
- d. failing to act with respect, courtesy, honesty and integrity in connection with engagement as an APS employee.

17. Misconduct is not substitute for managing challenging behaviours that may be more appropriately managed as unsatisfactory performance in accordance with Comcare's Performance Development Policy.

Identification and reporting of misconduct

18. Misconduct may be identified through a range of sources, including:

- a. employee reports of suspected misconduct. Failure to report may itself amount to a breach of the Code
- b. internal monitoring mechanisms including reporting, audits and reviews, and
- c. complaints from clients and members of the public.

19. Suspected misconduct may also be identified in relation to former employees of the organisation (who are suspected of breaching the Code while an APS employee in Comcare) consistent with section 58 of the Directions.

20. When a report has been made by an employee, client or member of the public that relates to suspected misconduct, the report is initially managed in accordance with the Complaints Handling Framework, and if considered suspected misconduct, it will be referred to the Performance and Conduct team (P&C) for management in accordance with this procedure. The person who refers the matter is referred to as the 'reporter'.

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21. Employees can report suspected misconduct via a range of avenues including their manager, a member of the P&C team or the COO. A report can be made verbally or in writing.
 22. Where the conduct issues include allegations of bullying and/or harassment, Comcare's Respect and Courtesy Procedure contain additional information. However, the Respect and Courtesy Procedure does not form part of this Code of Conduct Procedure (established under s15(3) of the Act).

Protection against reprisal

23. Employees will be supported to report any suspected breach of the Code to ensure wellbeing and safety in the workplace.
24. Employees who have reported breaches and/or made a statement in relation to suspected misconduct should report any detrimental action they consider has been taken as a consequence of the report to their manager, the P&C team or where it is part of a Public Interest Disclosure (PID) (see paragraphs 37 to 39 below), an Authorised Officer of Comcare.
25. Internal disciplinary action may be taken against an employee who victimises or retaliates against other employees in response to making a report or participating in the consideration or investigation of that report.
26. Where reprisal is taken against an employee who has made a disclosure, this will be considered within the Comcare's PID processes.

Confidentiality

27. The identity of the employee or persons reporting suspected misconduct, and the identity of an employee accused of the suspected misconduct will be treated confidentially as far as is reasonably practicable and consistent with a proper investigation and consideration of a matter.
28. Comcare manages personal information consistent with our obligations in the *Privacy Act 1988*.

Appointment

29. If after becoming aware of misconduct allegations, there is enough information to consider the matter further, an authorised decision maker/delegate may be appointed in accordance with the delegations.
30. Decision makers and delegates that may be appointed during the process include:
 - a. Breach decision maker, responsible for considering the allegations and evidence and determining whether a breach of the Code of Conduct has occurred (including by the person engaging in conduct referred to in s 15(2A) of the Act).
 - b. Suspension delegate, responsible for considering whether the employee should be suspended from duty due to the nature, severity and impact of the suspected misconduct.
 - c. Sanction delegate, responsible for determining what, if any, sanction should be imposed if the employee is found to have breached the Code of Conduct (including by the employee engaging in conduct referred to in s15(2A) of the Act).
31. In appointing the breach decision maker, sanction and suspension delegates, reasonable steps must be taken to ensure that the persons appointed are, and appear to be, independent and unbiased. They must also have the appropriate authority to make the relevant decisions.

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32. There may be occasions where suitable delegates are not available within the organisation, including due to real or apparent conflict. In these circumstances:
 - a. a breach decision maker outside of the organisation may be appointed by the CEO
 - b. in accordance with subsections 78(7) and 78(8) of the Act, the CEO may delegate the power to impose a sanction under s 15(1) of the Act to a decision maker outside of the organisation with the written approval of the APS Commissioner.
 33. In accordance with regulation 105 of the *Public Service Regulations 1999* (the Regulations), the CEO may delegate the power to suspend an APS employee under regulation 14 of the Regulations to a decision maker outside of the organisation with the written approval of the APS Commissioner.
 34. The decision maker and delegates must not have made a report in relation to any of the matters suspected of constituting a breach by the person and not have a real or apparent conflict of interest.
 35. Where practicable, the breach decision maker and delegates (suspension and sanction) should be different persons to ensure impartiality, avoidance of bias and independence in their decisions. There may however be occasions when the breach decision maker, sanction delegate and suspension delegate may be the same person. Such occasions will be documented with justification.
 36. The employee will be informed of the appointment of the breach decision maker at the time of notification of suspected breach. Should a suspension and/or sanction delegate be required, the employee will be advised of additional delegates as soon as practicable so that they are able to raise any concerns regarding apprehension of bias if concerns exist, for consideration.

Public Interest Disclosure

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



Suspected Breaches of the Code

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

Policy:

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

Preliminary investigation

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



Notification to employee of suspected breach

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

Additional Notification Requirements

47. In accordance with s64 of the Directions, if an SES employee is suspected of breaching the Code, consultation with the Commissioner is required:
 - a. on the process for determining whether the employee has breached the Code; and
 - b. before imposing the sanction (if a sanction is to be imposed).
48. The Commissioner's role is advisory and does not involve making the final decision. The Commissioner will be provided with relevant details, including the nature of the alleged misconduct, proposed process, and any preliminary sanction considerations.

Reassignment, or suspension from duty

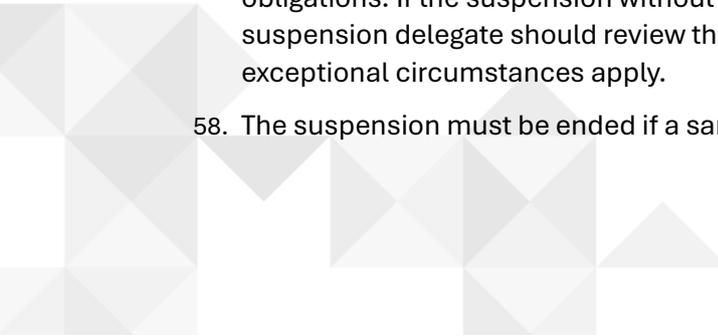
49. Consideration may need to be given to temporarily reassign an employee to an alternative work area or suspend them from duty in response to the suspected misconduct. Either of these actions may occur at any time prior to, or during the process of determining whether a breach has occurred.
50. Temporary reassignment of duties, or suspension from duty may also occur once a breach has been found, and while the sanction delegate considers whether to apply a sanction. Neither of these actions constitute a sanction.

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51. If required, a suspension delegate will be appointed to consider a range of issues when making a decision to temporarily reassign or suspend an employee from duty. This may include:
 - a. the nature and seriousness of the allegation(s) and the nature of evidence available
 - b. any risks of the alleged misconduct being repeated, or the employee behaving inappropriately, thereby impacting the wellbeing of colleagues or others within the organisation
 - c. the potential risks to the reputation of Comcare, or the APS as a whole, if the alleged misconduct was to become known or continued.

Temporary reassignment

52. A decision to temporarily reassign an employee suspected of misconduct to other duties can only be made by an appropriate delegate who must consult with the Director - Service Performance, Wellbeing and Safety or Assistant Director - Performance and Conduct, prior to making any decision.

Suspension

53. An APS employee may be suspended from duties if a delegate considers, on reasonable grounds, they may have breached the Code and the employee's suspension is in the public or Comcare's interest. The suspension may be with, or without remuneration. A decision to suspend an employee, with or without remuneration, can be made by someone with the authority to do so within the relevant delegation schedule.
 54. In making a decision to suspend an employee, the suspension delegate will generally have due regard to procedural fairness and inform the employee of the intention to suspend from duty, the reasons for the proposed decision and provide an invitation to respond before the decision is finalised. This process may not be followed where the delegate is satisfied on reasonable grounds and with regard to all circumstances, it would not be appropriate to follow this process (or have due regard to procedural fairness when making a decision to suspend an employee).
 55. In some circumstances it may not be appropriate to provide the employee with this information prior to suspension. For example, it may not be appropriate if there is an imminent and serious threat to the safety of other employees, or a serious threat to the reputation of the organisation if the employee continues to act on behalf of the organisation. Where the suspension comes into immediate effect, the employee will be provided reasons for the suspension as soon as practicable and given an opportunity to respond. The suspension will be reviewed as soon as practicable after receipt of any response from the employee.
 56. If an employee is suspended without remuneration, they may seek approval from the suspension delegate to access accrued annual and long service leave entitlements.
 57. The suspension delegate will review the suspension at reasonable intervals where the suspension is with remuneration and must immediately end the suspension if they no longer believe on reasonable grounds that the employee has or may have breached the Code or that the employee's suspension is in the public or Comcare's interest. Exceptional circumstances justifying suspension without pay beyond 30 days must be documented and approved by the CEO or an authorised officer within Comcare, with reference to specific risks or legal obligations. If the suspension without remuneration is proposed for longer than 30 days, the suspension delegate should review the suspension without remuneration every 30 days, unless exceptional circumstances apply.
 58. The suspension must be ended if a sanction has been imposed.
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Investigating Misconduct

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

Policy:

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

59. The process for determining whether an employee has breached the Code must be carried out with as little formality and as much expedition as proper consideration of the matter allows.
60. If the breach decision maker (including an external breach decision maker) determines an investigation is required, they may decide how to best conduct the investigation in accordance with Comcare's Investigation Policy. This may either be internally by the breach decision maker or an internal investigator appointed by them, or externally by the breach decision maker or an external investigator appointed by them. External delegates must be vetted for independence and expertise, and their appointment documented.

Investigations

61. If the breach decision maker considers the matter appropriate to investigate, reasonable steps will be taken to provide the employee notification that includes:
 - a. purpose of the investigation (for example, details of the suspected breach)
 - b. contact details of the investigator (if any)
 - c. potential sanctions or actions that may be imposed if, following consideration of the evidence, a breach is found
 - d. terms of reference to ensure clarity on the scope and proposed approach to the investigation (if required)
 - e. offer the individuals the opportunity to identify a support person to attend any interviews or discussions
 - f. Employee Assistance Program (EAP) contact details.
62. Notification of these matters may be included in the notice of suspected breach (see paragraph 43 above) or otherwise in writing.
63. The breach decision maker may conduct the investigation with the assistance of other persons as required or may appoint an internal or external investigator to conduct it on their behalf.

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64. Any appointed investigator must meet the Australian Government Investigations Standard (AGIS), including holding the required security clearance and qualifications, and adhere to Comcare's conflict-of-interest considerations.
 65. During the course of the investigation, the breach decision maker (or the investigator) will obtain and collate information and evidence relevant to the matter.
 66. Where an investigator is appointed to conduct the investigation on behalf of the breach decision maker, the breach decision maker may request the investigator to:
 - a. report findings of fact and recommend finding(s) on whether or not the employee has breached the Code, based on substantiated evidence/information obtained through the investigation
 - b. report on any other matters relevant to the investigation, including:
 - the method undertaken in the investigation
 - relevant stakeholders (for example, employees involved, witnesses, additional sources of information)
 - evidence reviewed
 - findings and relationship to legislative or policy frameworks
 - any other recommendation the external investigator may have been asked to make
 - c. include any of the above matters in a written report to the breach decision maker.
 67. The report (if required) of findings may provide a recommendation as to whether, based on the evidence, and the balance of probabilities, a breach has likely occurred.

Timeframes

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

Request for work time to participate in investigations

69. Any employee will be provided reasonable work time to participate in the investigation (for example, time to attend the interview).
70. Should any employee wish to provide supporting evidence, and if the collation of the evidence is preferred to be completed in work time, a request for reasonable work time to do so is to be sent to performance@comcare.gov.au. All reasonable requests will be considered.



Determinations and Sanctions

Aim: To inform employees on the process undertaken by the delegate in determining sanctions proportionate to a breach of the Code.

Policy:

- Comcare will take timely and appropriate actions to consider alleged breaches of the Code, the Values and Employment Principles including considering whether a formal investigation into a suspected breach of the Code is required.
- Determination of a suspected breach will not be made unless reasonable steps have been taken to:
 - a. inform the employee of the details of the suspected breach (including any subsequent variation of those details) and the sanctions that may be imposed on the APS employee under s 15(1) of the Act, and
 - b. give the employee a reasonable opportunity to make a statement in relation to the suspected breach.
- Reasonable steps will be taken to ensure that sanction delegates appointed to determine any sanction(s) to be imposed for breaches of the Code will be, and will appear to be, independent and unbiased.
- Determination of sanction will not be made unless reasonable steps have been taken to:
 - a. inform an employee of the determination of the breach of the Code, the sanction or sanctions that are under consideration and the factors that are under consideration in determining any sanction to be imposed, and
 - b. give the employee a reasonable opportunity to make a statement in relation to the sanctions under consideration.

Determinations

71. After the investigation has been completed, the breach decision maker will:
 - a. make a preliminary determination, in writing, as to whether or not there has been a breach of the Code
 - b. take reasonable steps to inform the employee of the preliminary determination
 - c. provide the employee with seven days (or longer period as considered appropriate by the breach decision maker) to consider the preliminary determination and make a statement in response, prior to the decision maker making a final determination.
72. Where considered by the breach decision maker to be appropriate in the circumstances, they may provide the employee with an opportunity to make an oral statement.
73. The breach decision maker will consider any response and make a final determination regarding a breach. They will also take reasonable steps to inform the employee of the final decision.



Consideration of sanction

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



Other Matters

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

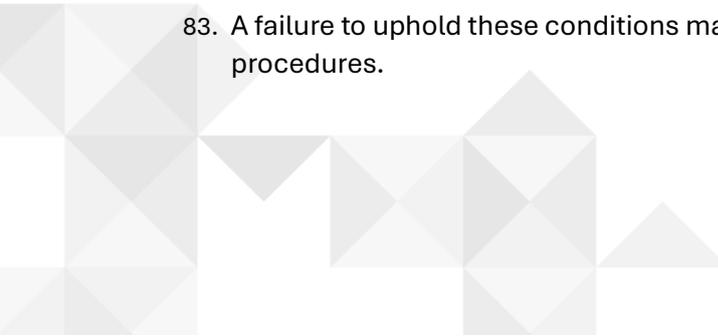
Policy:

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

Right to a support person

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

Behaviour and conduct

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

84. At any time, an employee may access the confidential employee assistance program (EAP) for support. This support is provided at no cost to the employee, and can be accessed through a self-referral, or as a suggestion or consensual referral by the People, Service and Performance teams.

Privacy

85. The privacy of employees is important to Comcare. We will only collect, use or disclose personal information in accordance with the Privacy Act 1988 (the Privacy Act), including where authorised as the employer under the Act (s 72E) and the Regulations (reg 103). The information collected regarding the conduct of the employee will be used to assist the breach decision maker and sanction delegate (as the case may be) to determine whether an alleged breach of the Code has occurred, and if so, form a view of an appropriate sanction to be applied.
86. At all times during a process, employees are required to adhere to the Privacy Act and Australian Privacy Principles ensuring that information disclosed or discussed is relevant and consistent with the purpose of the investigation.
87. Personal information about an employee may be collected from current and previous employees or other people, or from within documentary records held by Comcare or other sources. The purpose of collecting personal information is to manage the employment relationship by providing a factual basis for determining whether an employee has breached the Code and, if so, determining what (if any) sanction to apply to the employee.
88. Comcare (the Employer) may also use and disclose the information provided as part of Code of Conduct investigation for other purposes related to employment or where authorised or required by law, including to assist Comcare (the Insurer), in making an assessment of any claims made for work-related compensation or respond to matters at the Fair Work Commission. Comcare is not likely to disclose personal information overseas.
89. To request access to or correct personal information that Comcare holds about the employee, the employee may request a copy of our [Privacy Policy](#). To make a privacy complaint, please visit http://www.comcare.gov.au/about_us/privacy contact us on 1300 366 979, or email privacy@comcare.gov.au.
90. Code of Conduct files containing personal information are stored electronically within Comcare's approved record keeping system, only accessible to the relevant delegate and specific members of the People and Service Performance team responsible for supporting delegates in such matters.
91. Electronic records are disposed of in accordance with the applicable *Records Disposal Authority* and the *Archives Act 1983* (s 24).

Reportable outcomes

92. Code breaches and sanction outcomes will be reported to the Security team and if required, reported to the Australian Government Security Vetting Agency (AGSVA). Additionally, clearance holders who have any employment changes related to code breaches must be reported to AGSVA by the applicant as a change of circumstances.

Record keeping

93. If a determination is made in relation to a suspected breach of the Code of Conduct by an APS employee in Comcare, a written record must be made of:

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- a. the suspected breach
 - b. the determination
 - c. any sanctions imposed as a result of a determination that the APS employee breached the Code of Conduct, and
 - d. if a statement of reasons was given to the APS employee—the statement of reasons.
94. Records are to be maintained at all stages in the process and stored within Comcare’s approved record keeping system, only accessible to the relevant delegate/s and specific members of the Service Performance, Wellbeing and Safety team responsible for supporting delegates in such matters.
95. The types of records maintained within the file include:
- a. referral information
 - b. supporting evidence
 - c. case notes
 - d. the suspected breach notification
 - e. the determination and supporting information (for example, evidence, investigation reports)
 - f. any sanctions imposed as a result of a determination that the APS employee breached the Code, and
 - g. a copy of the statement of reasons given to the employee.

Right of review

96. An employee may be entitled to seek a review of actions under s33 of the Act for decisions made in connection with their employment, including determinations relating to misconduct, suspension or sanctions (other than termination of employment). Further information is available in the [Dispute Resolution and Review of Action procedures](#) and Comcare’s Investigations Policy.
97. An employee subject to termination of employment may seek appeal through the [Fair Work Commission](#).



Supporting information

Roles and responsibilities

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

Definitions

Term/Phrase	Definition
<i>APS Code of Conduct</i>	Sets the standard of conduct required of APS employees, designed to protect the integrity of the APS and maintain public confidence in public administration.
<i>APS Values</i>	The Australia Government's expectation of public servants in terms of performance and standards of behaviour.
<i>Assignment of duties</i>	The action of the agency head under s25 of the Act in determining the duties of an employee and the place or places where the duties are to be performed.
<i>Breach decision maker</i>	The person appointed to determine whether a breach of the Code has occurred.
<i>Bullying</i>	Refers to repeated behaviour that could reasonably be seen as humiliating, intimidating, threatening, or demeaning, and creates a risk to the health and safety of those affected.

Determination	A decision made by the breach decision-maker of whether an employee has been found to have breached the Code.
Dispute resolution	The process by which disputes are resolved that may include negotiation, mediation, facilitated conversations or arbitrated decisions.
Harassment	Workplace behaviours that include offensive, belittling or threatening behaviour towards an individual or a group of employees. The behaviour is unwelcome, unsolicited usually unreciprocated and can be one-off or repeated.
Misconduct	Behaviour or actions conducted by an APS employee that breaches the Code of Conduct, as determined through a formal process. Before this determination, it is referred to as suspected or alleged misconduct.
Procedural fairness	Procedural fairness requires that a person is given reasonable notice of a potential adverse decision, an opportunity to respond, and that their response is properly considered before the decision is made.
Sanction	Actions set out in s15(1) of the Act that may be taken against an APS employee after a breach of the Code is determined.
Sexual harassment	<p>Refers to unlawful behaviours that involve unwelcome conduct of a sexual or gendered nature that could reasonably be expected to offend, humiliate, or intimidate. It may not be directed at a specific person and can include sexually hostile environments, such as offensive materials or suggestive jokes.</p> <p>It can occur in connection with work, including during work hours, at work-related events, online, or involving colleagues, managers, clients, or customers. A single incident may be enough to constitute sexual harassment.</p>
Suspension	The action of standing an employee down from their duties for a suspected breach of the Code, as set out in s28 of the Act and Regulations.
Workplace discrimination	Unlawful discrimination based on race, gender, religion, national/social origin, physical or mental disability, age, sexual orientation and gender identity. It generally refers to a workplace decision to the detriment of an employee based on a protected attribute pertaining to that employee or another person.

Related legislation and documents

Document name	Link
<i>Australian Public Service Commissioner's Directions 2022</i>	PS directions
<i>Fair Work Act 2009</i>	FW Act
<i>Privacy Act 1988</i>	Privacy Act
<i>Public Interest Disclosure Act 2013</i>	PID Act
<i>Public Service Act 1999</i>	PS Act
<i>Public Service Regulations 1999</i>	PS Regulations
<i>Work Health and Safety Act 2011 (Cth)</i>	WHS Act
<i>Dispute resolution and Review of Action procedure</i>	To be released
<i>Respect, Conduct and Review policy</i>	Respect, Conduct and Review Policy
<i>Respect and Courtesy procedure</i>	Respect and Courtesy Procedure
<i>Workplace sexual harassment procedure</i>	Workplace sexual harassment procedure
<i>Workplace sexual harassment policy</i>	Workplace sexual harassment policy
<i>SWA National Guidance on Sexual Harassment</i>	SWA guidance on sexual harassment
<i>Regulatory guidance for employers on their work health and safety responsibilities</i>	Regulatory guidance on sexual harassment
<i>Workplace sexual harassment: Practical guidance for workers</i>	Worker guidance
<i>Workplace sexual harassment: practical guidance for managers and supervisors</i>	Manager and supervisor guidance
<i>Workplace sexual harassment: practical guidance for employers</i>	Employer guidance



Change history

Version	Date	Author	Reason for change
1.0	July 2022	HR Operations – Jessica Kliger	Reviewed and updated
1.1	March 2026	People Operations	Review of language, AGIS and regulatory changes