

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio
Additional Estimates
2015 - 2016

Department/Agency: ACCC

Question: AET 2871-2872

Topic: Departmental staff misconduct

Reference: written - 19 February 2016

Senator: Ludwig, Joe

Question:

Since the change of Prime Minister on 14 September, 2015:

2871. Please provide a copy of the departmental staff code of conduct.

2872. Have there been any identified breaches of this code of conduct by departmental staff?

- a) If yes, list the breaches identified, broken by staffing classification level.
- b) If yes, what remedy was put in place to manage the breach? If no remedy has been put in place, why not?
- c) If yes, when was the breach identified? By whom? When was the Minister made aware?
- d) If yes, were there any legal ramifications for the department or staff member? Please detail.

Answer:

2871. See Attachment A for a copy of the ACCC's staff code of conduct.

2872. No.

- a) –d) Not applicable.

Attachment A



Australian
Competition &
Consumer
Commission

GUIDELINES FOR DEALING WITH SUSPECTED BREACHES OF THE CODE OF CONDUCT AND FOR DETERMINING SANCTION

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Introduction

This document provides information and advice for dealing with suspected breaches of the APS Code of Conduct (the Code) in the ACCC. It aims to assist employees, managers and decision makers to understand and meet their responsibilities in a situation where misconduct is suspected. These guidelines should be read in conjunction with the ‘*ACCC Procedures for Determining Breaches of the Code of Conduct and for Determining Sanction*’ (established under section 15 (3) of the *Public Service Act 1999* which are **legally binding**) and the Australian Public Service Commission (APSC) ‘*Good Practice Guide – Handling Misconduct*’.

The APS Code of Conduct is prescribed by Section 13 of the *Public Service Act 1999 (PS Act)*.

The Code of Conduct requires that an APS employee must:

- behave honestly and with integrity in connection with APS employment
- act with care and diligence in connection with APS employment
- when acting in connection with APS employment, treat everyone with respect and courtesy, and without harassment
- when acting in connection with APS employment, comply with all applicable Australian laws
- comply with any lawful and reasonable direction given by someone in the employee's Agency who has authority to give the direction
- maintain appropriate confidentiality about dealings that the employee has with any Minister or Minister's member of staff
- take reasonable steps to avoid any conflict of interest (real or apparent) and disclose details of any material personal interest of the employee in connection with the employee's APS employment
- use Commonwealth resources in a proper manner and for a proper purpose;
- not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment
- not improperly use inside information or the employee's duties, status, power or authority:
 1. to gain, or seek to gain, a benefit or an advantage for the employee or any other person; or
 2. to cause, or to seek to cause, detriment to the employee's Agency, the Commonwealth or any other person.
- at all times behave in a way that upholds the APS Values and Employment Principles (*Section 10 & 10A of the PS Act*), and the integrity and good reputation of the employee's Agency and the APS
- while on duty overseas, at all times behave in a way that upholds the good reputation of Australia, and
- comply with any other conduct requirement that is prescribed by the regulations ([regulations available on the ComLaw website](#)).

What is a breach of the Code of Conduct?

In broad terms, an APS employee whose action or behaviour does not comply with any element of the APS Code of Conduct can be found to have breached the Code. Any such action or behaviour must be referred to as “suspected misconduct” until a decision regarding the action or behaviour is made.

Further guidance on the application of the Code is at **Attachment A**. Some examples of what constitutes a breach of the Code and what doesn't are at **Attachment B**.

Definitions

- a. Breach Decision Maker – responsible for determining in writing whether a breach of the Code has occurred.
 - SES Officer appointed by the Delegate
- b. Delegate – has the authority to select a Breach Decision Maker, Sanction Delegate and for suspending or temporarily reassigning the duties of an employee of the ACCC who is suspected of having breached the Code.
 - Chief Executive Officer
 - Deputy Chief Executive Officers
 - Executive General Manager, Corporate
- c. Investigator – responsible for investigating the alleged breach, gathering evidence and making a report of factual findings to the Breach Decision Maker.
 - ACCC SES Officer
 - Director or Assistant Director, Workplace Relations, Human Resources Branch
 - Independent Consultant
 - SES Officer from another Commonwealth Body
- d. Manager/s - staff responsible for managing an APS employee
- e. Sanction Delegate – responsible for deciding on the sanction, if any, to be imposed on the APS employee who has breached the Code.
 - Chief Executive Officer
 - Deputy Chief Executive Officer
 - Executive General Manager Corporate
 - Group General Manager
 - Director Human Resources
- f. Witness – an individual who may be interviewed by the Breach Decision Maker or Investigator.
- g. Support Person – an individual nominated by an employee to support the employee in meetings. A support person could be a friend, a colleague, or other nominated person. The role of the Support Person is not of an advocate or as a participant to the interview or meeting, but rather providing emotional support and reassurance.

Reporting suspected misconduct

All APS employees, in particular supervisors and managers, are obliged to report suspected breaches of the APS Code of Conduct.

Under the *Public Interest Disclosure Act 2013 (PID Act)*, where a public interest disclosure relates to conduct that is, or may be, a breach of the Code of Conduct, it is likely that an investigation will be a two-stage process with the first stage being the *PID Act* investigation and the second stage being a Code of Conduct investigation in accordance with the PS Act.

In the ACCC, complaints of suspected breaches may be made to:

- Assistant Director or Director, Workplace Relations, Human Resources (HR) Branch
- Executive General Manager, Corporate Division

It is preferable that reports of suspected misconduct are made in writing and include:

- a description of the suspected breach
- the names of the people involved
- details of dates, locations and witnesses (if any)
- any relevant supporting documentation, such as file references, emails, diary notes or other written records.

Once a report of a suspected breach has been received, it should be discussed with the Director or Assistant Director of the Workplace Relations team in the HR Branch so that an appropriate course of action can be agreed.

Workplace Relations will suggest an alternative path if they do not consider the issue represents a breach of the Code. *Not all allegations of misconduct or suspected misconduct* are best dealt with via an investigation into an alleged breach of the Code. In less serious cases, for example, or in some cases involving personality clashes, other approaches such as using the performance management system or conciliation may be the most effective first option. Where appropriate, using other procedures can often resolve problems more quickly and effectively than by applying the misconduct procedures.

Other processes that may relate to an alleged Code of Conduct:

- From January 2014 the *Public Interest Disclosure Act 2013* (the *PID Act*) requires any public interest disclosure to be handled in accordance with the procedures set out in the *PID Act 2013* to ensure full protections are available to the discloser. See further information on the ACCC's Corporate Portal or on the Commonwealth Ombudsman's website.
- From 1 January 2014, a worker who reasonably believes they have been bullied at work may alternately apply to the Fair Work Commission for an order to stop the workplace bullying. Further information on this avenue is available on the ACCC's Corporate Portal or on the Fair Work Commission's website <http://www.fwc.gov.au/>.
- Incidents that endanger the physical or mental health and safety of a person at work may provide the basis for a Code of Conduct report, but should also be reported by lodging an incident report in accordance with the ACCC's policy on '*Work Health and Safety Risk Management, Hazard and Incident Reporting, Investigation and Review*'.

Confidentiality, protection and support for the reporting employee

The identity of employees who report misconduct or who provide witness statements will be kept confidential as far as the law allows. Where a case requires the accused employee knowing the identity of the person reporting misconduct, the reporting employee will be advised of this disclosure and, if needed, will be provided with protection from any victimisation or discrimination.

Additional support might be considered in some circumstances, especially where bullying and harassment are involved, through access to the Employee Assistance Program or by allowing a support person to be present at interviews and meetings. Additional protective mechanisms may also be put in place including, but not limited to:

- Directing employees who are suspected of misconduct not to enter into any discussion about the incident/s with the employee reporting the misconduct or other witnesses

- Directing the manager of the employee to take active steps to promote a workplace culture which recognises the importance of encouraging employees to report suspected misconduct
- Arranging for the suspected employee to be temporarily assigned duties in another location or
- Where a risk assessment supports it, the reporting employee or witness can be assigned other duties for which they are qualified in another location

The process for handling suspected misconduct

The process for handling suspected misconduct, in summary, is:

- receipt of a report of suspected misconduct
- preliminary assessment of the report to decide how best to handle the suspected misconduct
- informal resolution or commencement of formal misconduct procedures and investigation
- investigation findings on whether misconduct has occurred and determination of appropriate and proportionate sanctions (where necessary)
- notification of decision and implementation of sanction (where necessary).

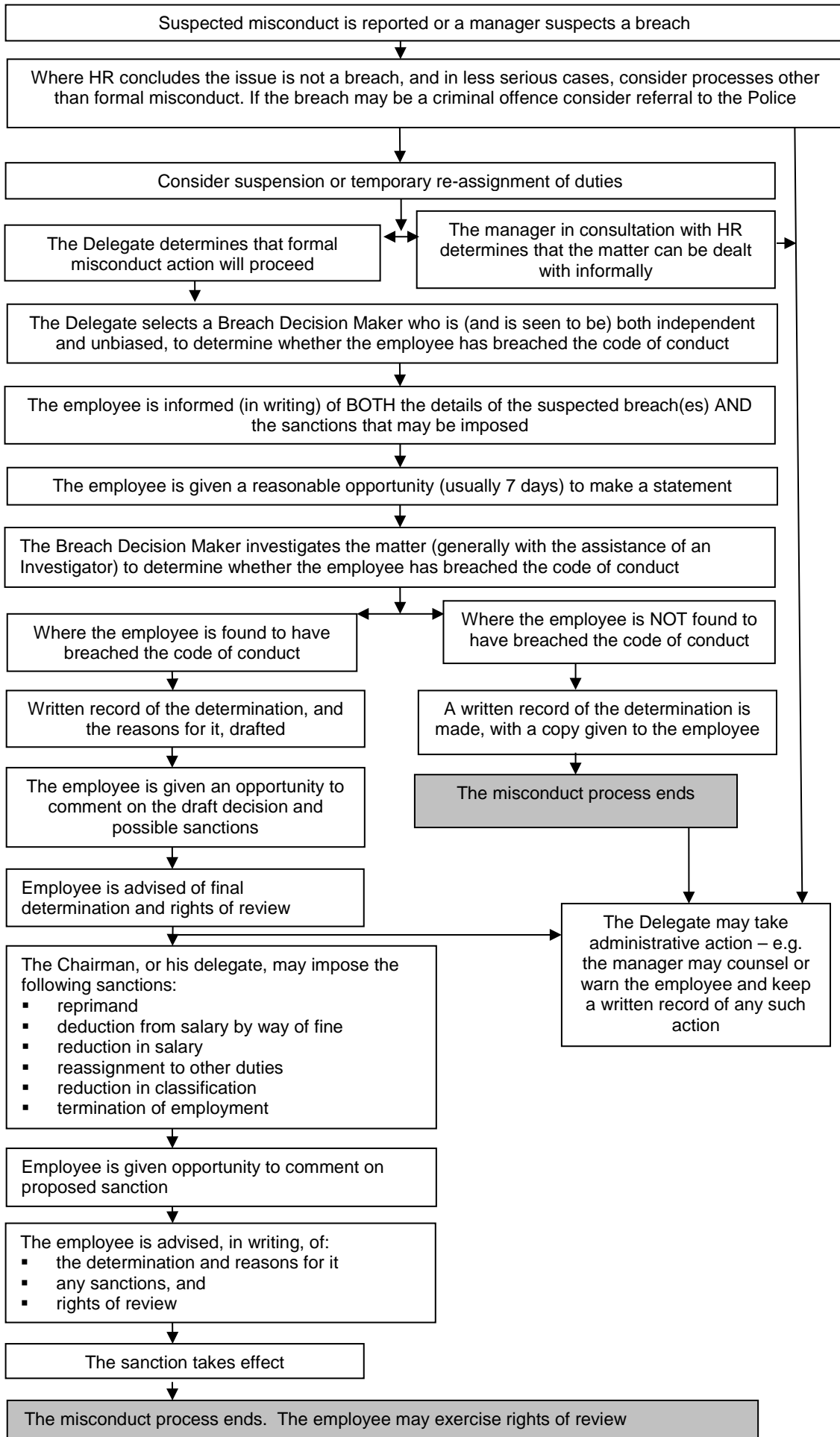
The HR Branch provides support to all ACCC employees throughout the process, using the detailed guidance on handling suspected and determined breaches of the APS Code of Conduct contained in the APSC's '*A Good Practice Guide: Handling Misconduct*.' The good practice guide can be found at www.apsc.gov.au.

Additional information and advice, specific to the ACCC, to assist

- employees suspected of misconduct is at **Attachment C**
- managers is at **Attachment D**
- Breach Decision Makers (and Sanction Delegates) is at **Attachment E**.

Detailed steps for handling suspected misconduct are provided on the following page.

The **steps in handling misconduct** are outlined in the following flowchart:



Informal or formal process for suspected breach of the Code of Conduct

When managers observe conduct that they suspect is in breach of the Code or when complaints of suspected breaches are received, they must consider whether formal misconduct procedures or some other form of action would be appropriate.

Not all suspected breaches of the Code need to be dealt with by implementing formal misconduct procedures. With minor misconduct, atypical behaviour, and cases involving personality clashes, other approaches may be more appropriate and may resolve matters more quickly and effectively. In less serious cases, the focus should be on providing constructive feedback and prompt, preferably agreed, remedial action.

As a general rule, alleged misconduct should be considered under more formal misconduct procedures if it is likely that a sanction (such as termination of employment, reduction in classification, re-assignment of duties, reduction in salary, fine or reprimand) would be imposed if the suspected misconduct was found to have occurred and was determined to be a breach of the Code.

Reassignment or suspension

A decision to temporarily re-assign duties or to suspend an employee suspected of breaching the Code of Conduct may be taken at any time prior to or during the process of determining whether a breach has occurred and a sanction should be applied. Generally the issue of suspension or re-assignment should be considered at the same time as a decision is made about whether to commence misconduct procedures. Some advice on reassignment and suspension can be found in the information for managers at **Attachment D**.

Decisions regarding suspension and re-assignment may only be made by the Delegate.

Employees and managers should seek advice from the Director or Assistant Director, Workplace Relations in the HR Branch, on issues associated with suspension or reassignment, including remuneration during suspension etc.

The Breach Decision Maker and the Investigator

The Delegate may select a Breach Decision Maker to determine if there has been a breach of the Code.

The Breach Decision Maker must be, and should be seen to be, both independent and unbiased. Selection will be based on a common-sense evaluation of the circumstances of the investigation, such as ensuring that the Breach Decision Maker is not someone who has had any past role or involvement in the matters under investigation.

Once selected, the Breach Decision Maker has final responsibility for adhering to the ACCC's procedures and processes, including procedural fairness. The Breach Decision Maker is responsible for notifying the suspected employee as soon as practicable at the commencement of the formal misconduct process and will liaise with the Workplace Relations team in HR on the appropriate content for the notification letter.

The Breach Decision Maker may select a person to assist with the investigation and to report on findings. The ACCC may seek the services of an internal or an external Investigator. The Breach Decision Maker should be actively involved in the planning of the investigation and ensuring the quality of the process. It is the Breach Decision Maker who makes the determination as to whether the Code has been breached – not the Investigator.

The investigation will be conducted according to the processes regarding gathering evidence outlined in the APSC *'Good Practice Guide: Handling Misconduct'* (Part 2.5).

The Sanction Delegate

The Sanction Delegate will decide on what, if any, sanction should be imposed for a breach of the Code.

The Breach Decision Maker and the Sanction Delegate must be, and must appear to be, independent and unbiased. The Breach Decision Maker and the Sanction Delegate must advise the Delegate in writing if they consider that they may not be independent and unbiased or if they consider that they may reasonably be perceived not to be independent and unbiased; for example, if they are a witness in the matter.

Appointment as a Breach Decision Maker under these procedures does not empower the Breach Decision Maker to make a decision regarding sanction. Only the Sanction Delegate may make a sanction decision. However the Delegate may appoint the Breach Decision Maker to also have the role of Sanction Delegate.

The rights of the employee suspected of misconduct

The employee suspected of misconduct has the right to an investigation of the allegations that is timely, systematic and effective, and consistent with procedural fairness. The employee also has, at a minimum, the following rights:

- to be informed of the details of the suspected breach of the Code (including any subsequent variation of those details) made against them
- that their identity, the detail of the allegations and all related records will be kept confidential as far as possible and managed on a ‘need to know’ basis, consistent with the requirements of the *Privacy Act 1988*
- that the matter is treated as an allegation until such time as the Delegate determines that a breach of the Code has occurred.

After the investigation

Once the Breach Decision Maker considers that the investigation process has been completed in accordance with the ACCC’s procedures and all relevant evidence has been obtained, a determination will be made as to whether or not there has been a breach of the Code.

The Breach Decision Maker must be satisfied that the investigation has brought them to a point where they can make a fair, balanced and conscientious decision. The Breach Decision Maker prepares a written record of their decision and invites the suspected employee to respond to the draft decision within 7 days.

Once any response from the employee has been received and considered, the Breach Decision Maker should make the final determination, advise the employee in writing of the final determination and their ‘rights of review’.

Standard of proof

The standard of proof used in determining breaches of the Code is ‘the balance of probabilities’ – the civil standard. That is, in order for the Breach Decision Maker to conclude that the Code has been breached, the evidence must satisfy the Breach Decision Maker that it is “more likely than not” that the breach occurred.

However, as the seriousness of the alleged breach escalates, so does the level of proof required to substantiate it, given the adverse consequences for the suspected employee. The Breach Decision Maker needs to act with much care and caution before finding that a serious allegation is established.

There are comprehensive guidelines for decision makers in suspected misconduct matters in the APSC *‘Good Practice Guide – Handling Misconduct’* (Part 2.6).

What determines the sanction?

Once a determination has been made that an employee has breached the Code, an appropriate sanction may be imposed. The Breach Decision Maker may choose to recommend an appropriate sanction to the Sanction Delegate.

In deciding an appropriate sanction, the Sanction Delegate will consider the following factors:

- the nature and seriousness of the breach
- the degree of relevance to the employee's duties and the reputation of the APS
- response to the misconduct, and the likelihood of recurrence
- the effect of the proposed sanction on the offender.

The mere fact that an employee finds the experience of disciplinary action stressful does not warrant a lesser sanction. The presence of mitigating factors may warrant the imposition of a lesser sanction than might otherwise have been imposed.

The employee will be given the opportunity to respond to the proposed sanction before a final decision by the Sanction Delegate.

Comprehensive guidance for Sanction Delegates is contained in the APSC '*Good Practice Guide: Handling Misconduct*' (Part 2.6).

Rights of review

Employees may seek a review of a decision relating to suspension to the Delegate. All requests for review should be provided in writing.

Employees who have been found to have breached the Code and who wish to challenge a determination that a breach has occurred, may seek a review either:

- Internally –
 - written request (outlining the reason) to the Delegate to review the determination
- Externally –
 - the APS Merit Protection Commissioner under the Public Service Regulations.

Employees who have been found to have breached the Code and who wish to challenge the sanction imposed may seek a review either:

- Internally –
 - written request (outlining the reason) to the Delegate to review the sanction
- Externally –
 - the APS Merit Protection Commissioner under the Public Service Regulations
 - Fair Work Australia for termination of employment.

Further information on the review process can be provided by the APSC. However, the APSC cannot give advice on whether an application for review should be lodged in a particular case or particular circumstance.

Recordkeeping

All records relating to misconduct action taken in accordance with Section 15 (Breaches of the Code of Conduct) of the *PS Act* will be maintained securely and centrally by Workplace Relations, in the HR Branch. This includes all confidential files relating to the investigation.

These files will be classified "Staff in Confidence" and will be separate from an employee's Personnel file. These records will only be accessed on a "need to know" basis and will comply with all

requirements of the *Privacy Act 1988*. Further information regarding access to misconduct records is available on the website of the Office of the Federal Privacy Commissioner.

The National Archives of Australia (NAA) *Administrative Functions Disposal Authority* of February 2000 provides information on the retention of records and sets out minimum periods for which various classes of records relating to counselling and misconduct matters should be retained. Full details can be found on the NAA website.

If the Delegate determines that a breach of the Code of Conduct has occurred, a copy of the formal letter advising the employee/former employee of the determination and sanction will be placed on the employee's Personnel file.

Further Information

The Workplace Relations team in the HR Branch can assist managers and employees with enquiries about breaches of the Code.

Information is also available from the Australian Public Service Commission (APSC), either from publications on the website or through the Ethics Advisory Service.

- APSC '*Good Practice Guide: Handling Misconduct*'
- Safe Work Australia's '*Guide For Preventing And Responding To Workplace Bullying*' and '*Dealing With Workplace Bullying - A Worker's Guide*'

ACCC related policy and guidelines can be accessed through the Intranet, and include:

- *Procedures for Determining Breaches of the Code of Conduct and for Determining Sanctions*
- *Public Information Disclosure Procedures*
- *Harassment and discrimination-free workplace policy & procedure*
- *Work health & safety risk management, hazard & incident reporting, investigation & review*
- *Drugs and alcohol policy and guideline*
- *Records and information management policies and procedures*
- *Individual Performance Framework.*

List of Attachments

Attachment A: Applying the Code

Attachment B: APS Code of Conduct - what is and isn't a breach

Attachment C: Information and advice for employees suspected of breaching the Code

Attachment D: Information and advice for managers of employees suspected of breaching the Code

Attachment E: Information and advice for Breach Decision Makers (and Sanction Delegates)

Attachment G: Witnesses – what can you expect?

Attachment A: Applying the Code

Conduct of persons before and after APS employment	Amendments to the Public Service Act (<i>PS Act</i>) in 2013 clarify that some conduct undertaken <i>before</i> being engaged as an APS employee may be found to be in breach of the Code of Conduct (such as providing false or misleading information in connection with engagement as an APS employee). They also clarify that breaches of the Code of Conduct may be found against <i>former</i> employees of the APS. This means that an investigation into an alleged Code of Conduct breach can be completed even if the person alleged to have made the breach leaves the APS.
Provisions of the Code may contain more than one element	Where a provision of the Code contains more than one element, it may not be necessary for the employee to have breached all elements in order for a breach of the Code to be determined. For example, the <i>PS Act</i> requires an APS employee to treat everyone with respect and courtesy and without harassment. An employee who is discourteous, but who has not engaged in harassing behaviour, could be found to have breached the Code.
Compliance with laws	The Code requires that an APS employee when acting in connection with APS employment must comply with all applicable Australian laws. Examples of applicable laws include: <ul style="list-style-type: none"> ▪ Provisions of the <i>Financial Management and Accountability Act 1997</i> which provide that an official must not use a Commonwealth credit card or number to obtain cash, goods or services otherwise than for the Commonwealth ▪ The <i>Work Health and Safety Act 2011</i> ▪ The equitable obligation of confidence ▪ The <i>Safety Rehabilitation and Compensation Act 1988</i> ▪ The implied obligation of loyalty and fidelity.
The Code specifies two different levels of connection	The Code specifies two levels of connection between the standard of conduct and APS employment: <ul style="list-style-type: none"> ▪ “in connection with employment”, and ▪ “at all times”. <p>2013 amendments to the <i>PS Act</i> replaced the term “in the course of employment” with “in connection with employment”. “In the course of employment” had been interpreted as requiring a direct association with employment, while “in connection with employment” only requires some connection with employment.</p> <p>There are other provisions of the Code where the level of connection is not specified. In these cases, connection is inherent in the provision itself (e.g. the requirement to comply with any lawful and reasonable direction given by someone in the employee’s agency who has authority to give the direction).</p> <p>The different levels of connection are relevant in determining whether a breach of the Code has occurred.</p>

<p>Some aspects of the Code apply “at all times”</p>	<p>The term “at all times” means that conduct which is apparently unrelated to the performance of duties may be subject to the Code, for example, harassment of one employee by another at a social event involving work colleagues <i>held outside the workplace</i> (but <i>not</i> at an event sponsored by the employer). Such conduct could be found to be in breach of the requirement to uphold the APS Values and the integrity and good reputation of the ACCC and the APS <i>at all times</i>.</p> <p>The requirement to uphold the integrity and good reputation of the ACCC and the APS at all times is also relevant where an employee has been found guilty of a criminal offence. In order for a breach of the Code of Conduct to be found in these cases, it would be necessary to assess whether criminal behaviour has compromised the integrity and good reputation of the APS or the ACCC, and the extent to which that behaviour has adversely affected the employee's position in the workplace.</p>
<p>ACCC Values</p>	<p>The ACCC’s Values include expected behaviours that the ACCC has decided to emphasise within its work environment. However, like other agency codes and values, the ACCC’s Values can only be enforced through formal misconduct procedures where the conduct or behaviour in question is able to be linked to a particular element of the APS Code of Conduct. For example, the emphasis in the ACCC’s Values on “respect” can be clearly linked to the requirement to treat everyone with respect and courtesy and without harassment in the APS Code of Conduct.</p>

Attachment B: APS Code of Conduct - what is and isn't a breach?

The Australian Public Service (APS) Values and APS Code of Conduct (the Code) which are set out in the *Public Service Act 1999 (the PS Act)*, outline the standard of behaviour and ethical conduct expected of all employees of the APS. Some examples of actions and behaviours which may lead to a breach of the Code being determined include but are not limited to the following:

Action/Behaviour which may constitute a breach of the Code

- Displaying offensive material in the workplace
- Racist or otherwise discriminatory comments
- Bullying and/or harassment
- Threatening comments made to or about another person
- Failure to comply with departmental policy or other lawful and reasonable direction
- Inappropriate use or disclosure of information gained as an APS employee
- Any type of theft or fraud in connection with APS employment eg. Credit Card / Cab Charge misuse; removal of departmental equipment without authority; or removal of another person's property from the workplace
- Falsely recording hours of work or leave records
- Inappropriate use of departmental resources such as email, internet, phones, printers etc
- Failure to disclose a real or apparent conflict of interest

Action/Behaviour which does not constitute a breach of the Code

- Providing constructive feedback on performance or behaviour in a respectful and courteous manner
- Making a complaint about another employee's conduct to an appropriate person
- Failure to comply with a direction which is unlawful
- Expressing differences of opinion in a frank and polite manner
- Exercising authority as a manager and making a final decision when agreement cannot be reached

Attachment C: Information and advice for employees suspected of breaching the Code of Conduct

If the ACCC notifies you that you may have breached the Code of Conduct (the Code), you should refer to this summary of your rights and responsibilities and the process that will be followed if there is a formal investigation of your conduct.

Notification of a suspected breach

If the ACCC suspects that you may have breached the Code, and your manager considers that it is a minor breach, he or she will notify you and discuss the matter with you.

If it is decided that a formal investigation of your conduct is warranted, the ACCC will select a Breach Decision Maker, who will advise you about the suspected breach and the investigation process.

Minor suspected breach

If your manager considers that the suspected breach is relatively minor, or that you have been following a pattern of conduct or behaviour that needs to be addressed, he or she may decide to handle the matter by:

- informal discussion and counselling, including constructive criticism and suggestions for improvement
- formal counselling, where a written record of the counselling is made and placed on your ACCC Personnel file
- issuing you with a formal written warning and placing a copy of the warning on your Personnel file; or developing a strategy for improving performance using the ACCC Individual Performance Framework (IPF).

Suspected breach warranting formal investigation

Where previous efforts to resolve inappropriate conduct have been unsuccessful, or where your manager considers that the current circumstances warrant immediate formal investigation, your manager is required to refer the matter to the Director or Assistant Director, Workplace Relations, in the HR Branch, who may seek a decision from the Delegate on whether to commence an investigation to examine your conduct and determine if you have breached the Code.

Criminal offence

If your manager becomes aware that you may have committed a criminal offence, he or she is required to immediately advise the Executive General Manager Corporate or a Director or Assistant Director in Workplace Relations. Human Resources will, if not already initiated, refer the matter to the police and if appropriate, arrange for an investigation to examine if the conduct associated with the alleged criminal offence also constitutes a breach of the Code.

Initiating an investigation

If the Breach Decision Maker decides that there is to be a formal investigation you will be advised in writing that a formal investigation is to commence and provided with an outline of the procedures that will be followed. The notification will include the following information:

- the specific details of the alleged breach of the Code (including any subsequent variation to those details) and any particular element/s of the Code that are potentially relevant
- a copy of the allegation and an outline of the apparent facts and circumstances that have given rise to the allegation

- where practicable and appropriate (in special cases, confidentiality factors may need to be considered), a reference to the manner in which these matters have come to attention (e.g. report from manager, reports or statements from other persons, other source material)
- advice that you are entitled to the support person of your choice, when responding to the notification and throughout the investigation (e.g. employees often choose to bring a support person with them to the interview)
- the name of the Breach Decision Maker who will make the determination
- the name of the Investigator who will be involved in the process
- the name of the Sanction delegate who will decide on the sanction, if any
- the options that are available in the event that a breach is determined to have occurred (this would include an outline of the various sanctions specified in section 15 of the *PS Act*, together with the alternatives of no action or of counselling. In the case of a non-ongoing employee, an indication may be given as to which of the sanctions, if any, are considered to be inapplicable because of the employee's employment arrangements)
- an invitation to make an oral and/or written statement, within seven (7) days or other specified and reasonable period, in response to the matters that have been raised
- a copy of the ACCC's '*Procedures for determining breaches of the Code of Conduct and for Determining Sanction*', the ACCC's '*Guidelines for determining breaches of the Code of Conduct and for Determining Sanction*'
- advice that the Breach Decision Maker may request coordination and secretarial services from the Workplace Relations, HR team
- where relevant and practicable, a reference to reassignment of duties or suspension from duties during the period of the investigation.

It might not always be possible to give you complete details of your suspected misconduct at the outset of an investigation. In that case, the letter will inform you that

- the investigation is only just beginning
- you will be given further detail about the allegations as the investigation progresses
- you will be given an opportunity to comment on the detailed allegations before any finding is made as to whether the Code has been breached.

Conducting an investigation

The investigation must follow the principles of procedural fairness. At a minimum, it must demonstrate that:

- you have been informed of the details of any allegation against you
- you have been given the opportunity to respond to any allegation
- you have been advised of any evidence giving rise to the allegation
- you have been given the opportunity to present any evidence you consider relevant to your defence of the allegation
- any decision or sanction has been determined in an impartial and reasonable manner, and only after giving full consideration to all of the evidence and relevant issues identified in the course of the investigation, and
- you have been informed about decisions made.

You are under no obligation to provide any response or assistance during the investigation. The Breach Decision Maker may not make any presumption or inference about your guilt or innocence on the basis of your decision not to respond or assist. Whatever you decide to do, the Breach Decision Maker will determine the matter on the basis of all evidence and information gathered.

Reassignment or suspension

At any time after the ACCC has identified that you may have breached the Code, the Delegate may decide that you should be reassigned to other duties, or suspended from duty altogether, until the matter is finalised. The Delegate will decide whether a suspension should be with or without pay. Usually, if it is proposed to reassign or suspend you, you will be advised of the reasons for the proposed action and given an opportunity to comment before action is taken. If urgent circumstances (for example, security considerations) necessitate your reassignment or suspension without prior advice, you will be given a subsequent opportunity to argue why the initial decision should be varied or set aside.

Sanctions

If the Breach Decision Maker decides that you have breached the Code, the Sanction Delegate, will then decide what sanction, if any, should be imposed on you.

If the Sanction Delegate decides that no sanction should be imposed, it is likely that you will at least be counselled about your conduct or another appropriate management action decided, such as requesting an apology or requiring remedial training (for example, in leadership or communication).

The *Public Service Act 1999* provides that the following sanctions are available:

- termination of your employment
- reduction in your classification
- your reassignment to other duties
- reduction in your salary
- deduction from your salary by way of fine, or
- a reprimand.

Rights of review

During the investigation you can raise concerns regarding any aspects associated with the conduct of the investigation either with the decision maker or the Director or Assistant Director, Workplace Relations in the HR Branch.

If at the conclusion of the investigation, you wish to have a decision that you have breached the Code reviewed and/or wish to object to a finding imposing a sanction, an application for review should be made in the first instance to the ACCC's Delegate.

You may also seek review from the APS Merit Protection Commissioner for a decision that you have breached the Code and/or wish to object to a finding imposing a sanction (other than termination of your employment). A decision to terminate your employment can only be reviewed by Fair Work Australia. APS employees are also able to apply for judicial review of termination decisions on the grounds of failure to comply with the requirements of administrative law.

While there is no strict time limit applying to the lodgement of a request for a review of action (relating to a decision that you have breached the Code or to the sanction imposed), the Merit Protection Commissioner is entitled to regard actions that are more than 12 months as non-reviewable.

The APSC can provide information to individuals about the review of actions process. However, the APSC cannot give advice on whether an application for review should be lodged in a particular case or particular circumstance.

Need more information?

If you want more information, you can contact Workplace Relations in the HR Branch, refer to s33 of the *Public Service Act 1999* or you can access APSC publications on their website at: www.apsc.gov.au , including:

- Handling misconduct: A human resources practitioner's guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct

Attachment D: Information and advice for Managers

Your role and responsibilities

As a manager, you are responsible for ensuring that the employees who work for you are familiar with the APS Code of Conduct (the Code) and APS Values. You should also be able to provide routine advice or guidance to employees on any issues that may arise about the application of the APS Code, the APS Values, and the ACCC Values.

Where a suspected breach of the Code occurs in the work area under your direct management control, you will have particular roles and responsibilities relating to the reporting, investigation and resolution of the alleged breach.

You may be called upon to provide evidence during the investigation. In addition, your role as the manager of staff involved and affected by the investigation will be to take into consideration the stress of the investigation, team morale and management of workloads, on any employees under your supervision.

You should maintain the highest level of confidentiality regarding all aspects of the investigation. You should ensure that only those people who need to be kept informed are provided with progress reports and only in terms, or a level of detail, which does not compromise the privacy of any individual involved and does not jeopardise the successful completion of the investigation.

You should support other employees in the work area who may become aware of the investigation, reinforce the need to maintain confidentiality and ensure that all employees are aware of the support that can be provided by the ACCC's Employee Assistance Provider.

The flow chart 'Steps in Handling Misconduct', on page 5 of this guidance document, summarises the key steps in handling a suspected breach.

The following information provides a guide to your role in helping to ensure that possible breaches of the Code are properly handled.

Suspected breach – preliminary assessment

When you become aware that an employee may have breached the Code, you should make a preliminary assessment of the kind of management response that is necessary.

Depending on the nature and circumstances of the employee's behaviour, there will be choice/s to be made from several possible responses. You should contact the Director or Assistant Director, Workplace Relations in the HR Branch to discuss the most appropriate option, or combination of options, from the following:

- informal discussion/counselling of the employee, including constructive criticism and suggestions for improvement and training
- formal counselling, where a written record is made and copied to the employee's Personnel file
- issuing a formal written warning to the employee, and copying it to the employee's Personnel file
- planning a performance improvement strategy using the ACCC Individual Performance Framework (IPF)
- referring the suspected breach to the Executive General Manager Corporate Division or Director HR, for possible formal investigation, or to the police where a criminal offence may have been committed.

Proposing a formal investigation

If your preliminary assessment shows that the apparent seriousness of the possible breach (including a possible criminal offence) may warrant immediate formal action, or where previous low-level resolution of inappropriate behaviour has been unsuccessful, you should formally refer the matter through the Director or Assistant Director, Workplace Relations, in the HR Branch if appropriate.

When you formally refer a matter, you should include or identify all relevant documentation, including material which outlines, or provides evidence of, the possible breach; and provides information and documentation about any prior attempts to address matters of concern about the employee's conduct.

Possible suspension or reassignment of an employee suspected of a breach

When you report a suspected breach you should also provide advice about whether there is a need to reassign the employee to other duties, or to suspend the employee from duty altogether until the matter is finalised.

The Delegate, under the authority of the Chairman, will decide whether there is a need either to reassign or suspend the affected employee. The Delegate will take account of the advice you provide in relation to the following considerations.

The formal grounds for a decision to suspend an employee are:

- the employee has, or may have, breached the Code, and
- the employee's suspension is in the public, or the ACCC's, interest.

A similar test is appropriate in deciding whether to temporarily reassign the employee to other duties.

Each case should be considered according to its own circumstances.

Factors relevant to the public interest or the ACCC's interest may include:

- the seriousness of the suspected breach (including where termination of employment may be a possible outcome)
- the effect that allowing the employee to remain on duty may have on the integrity and good reputation of the ACCC and the APS
- the effect that allowing the employee to remain on duty may have on the maintenance of a cohesive and effective workforce in the employee's particular workplace.

It is also appropriate to have regard to the circumstances of the affected employee and, in some cases, the circumstances of his or her family (for example, where relocation to another region may be involved).

The suspension or reassignment must convey no presumption of the employee's guilt or innocence, nor imply any presumption that the Code has been breached. A suspension or reassignment should be implemented to protect the interests of all parties, including the affected employee, pending the outcome of an investigation.

If possible, the affected employee should be notified before a suspension or reassignment decision is taken, and the employee should be given an opportunity to comment. Where urgent circumstances (for example security considerations or a real possibility the employee will destroy or tamper with evidence) have necessitated suspension or reassignment without any prior advice, the employee should nevertheless be given a subsequent opportunity to make representations as to why the initial decision should be varied or set aside.

The Director or Assistant Director, Workplace Relations, HR, can provide more information on issues associated with suspension or reassignment, including remuneration during suspension, etc.

Investigation findings and determination of sanctions

If the Breach Decision Maker finds that a breach has occurred and the Delegate determines that a sanction is to be imposed on the employee, you may be asked to ensure that the terms of the sanctions are met by the employee. This could include:

- conducting or overseeing regular counselling/feedback sessions
- ensuring any recommended training or specialist assistance is provided
- ensuring a performance improvement strategy using the IPF is implemented.

If an employee seeks a review of a finding and/or a sanction, the application for review does not stay the implementation of the sanction.

If the Breach Decision Maker finds that a breach has NOT occurred:

- the misconduct process ends, with a written record of the determination made and a copy given to the employee
- the Delegate may take administrative action – e.g. the manager may counsel or warn the employee and keep a written record of any such action

Related policies and guidelines; suggested reading for managers

ACCC publications:

- *Procedures for determining breaches of the APS Code of Conduct and for Determining Sanction*
- *Policy and procedure for dealing with whistleblower reports*
- *Harassment and discrimination-free workplace policy & procedure*
- *Work health & safety risk management, hazard & incident reporting, investigation & review*
- *Records and information management policies and procedures*
- *Individual Performance Framework.*

APSC publications on their website at: www.apsc.gov.au

- *Handling Misconduct: A human resources practitioner's guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct*

Need more information?

If you need more information, please contact the Assistant Director, Workplace Relations in the HR Branch.

Attachment E: Information for Breach Decision Makers and Sanction Delegates

These guidelines are for the person/s selected to determine whether or not an ACCC employee may have breached the APS Code of Conduct (the Code) and if so, the sanction to be imposed.

The guidance in this document deals with the principles and processes underpinning the conduct of an investigation. It is also important that the Breach Decision Maker and Sanction Delegate should access and understand the information in the following documents:

On the ACCC Intranet:

- *Procedures for determining breaches of the Code of Conduct and for Determining Sanction*

On the APSC website at www.apsc.gov.au :

- *APS Values and Code of Conduct in Practice*
- *Handling Misconduct: A human resources practitioner's guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct*

Introduction

Under section 15(3) of the *Public Service Act 1999* (the *PS Act*), the ACCC Chairman has established procedures for determining whether an ACCC employee has breached the APS Code of Conduct (the Code) and for determining an appropriate sanction.

Under authority from the Chairman, the 'Delegate', on receipt of the allegation, is to determine whether the allegation should be investigated under these procedures, or whether some other action (or no action) should be taken in respect of the allegation. If the Delegate decides to instigate an investigation, he/she may select a Breach Decision Maker to determine if there has been a breach of the Code and a Sanction Delegate to determine the appropriate sanction. The Delegate may also be appointed as the Sanction Delegate.

The Breach Decision Maker and Sanction Delegate must be, and should be seen to be, both independent and unbiased. Selection will be based on a common-sense evaluation of the circumstances of the investigation, such as ensuring that the Breach Decision Maker and Sanction Delegate is not someone who has had any past role or involvement in the matters under investigation. The Breach Decision Maker and the Sanction Delegate must advise the Delegate in writing if they consider that they may not be independent and unbiased or if they consider that they may reasonably be perceived not to be independent and unbiased; for example, if they are a witness in the matter.

Once selected, the Breach Decision Maker has final responsibility for adhering to the ACCC's procedures and processes, including procedural fairness.

The Breach Decision Maker may select a person to assist with the investigation and to report findings to the Breach Decision Maker. This person may be an ACCC employee, or an Investigator from outside the agency. The Breach Decision Maker should be actively involved in the planning of the investigation and ensuring the quality of the process. The Breach Decision Maker should approve the terms of reference for any investigation and may ask the Investigator for a recommendation, however there is no burden of obligation to agree with the Investigator's recommendation. It is the Breach Decision Maker who makes the determination as to whether the Code has been breached – not the Investigator.

General principles to be followed

The APS Code of Conduct and the APS Values are designed to protect the integrity of the APS and the ACCC, and thereby maintain public confidence in the ACCC's administration.

The misconduct provisions of the *PS Act* are intended to provide an appropriate remedy for inappropriate behaviour, not a punitive mechanism.

An investigation must follow the principles of natural justice and procedural fairness.

Natural justice principles

Employees will be informed about decisions or judgements that affect them.

No one may be a decision maker about matters that may affect them.

Decision makers must act and conduct themselves in a fair, just, and reasonable manner – without bias or any reasonable perception of bias.

All parties to a decision should be heard, and all relevant arguments, statements and facts considered, prior to a decision being made.

Employees must be given the opportunity to present their point of view prior to any decision being made that may affect them.

Employees must be given the opportunity to respond to any allegation, adverse material, or other issues that may influence a decision affecting them.

Procedural fairness

The process must be consistent with the principles of procedural fairness.

Procedural fairness generally requires that:

- the person suspected of breaching the Code is informed of the case against them (i.e. any material that is before the Breach Decision Maker that is adverse to the person or their interests and that is credible, relevant and significant)
- the person is provided with a reasonable opportunity to respond and put their case, in accordance with these procedures, before any decision is made on breach or sanction
- the Breach Decision Maker acts without bias or an appearance of bias
- there is logically probative evidence to support the making, on the balance of probabilities, of adverse findings.

Conducting the investigation

It is important that the Breach Decision Maker should undertake, and be seen to undertake, the investigation in accordance with the principles espoused by the APS Values and the APS Code of Conduct. The investigation will be conducted in line with the processes outlined in the APSC '*Handling Misconduct: a good practice guide*'.

Notification to the affected employee

The employee notification should normally be made as soon as practicable after the commencement of the process, although there may be cases where some level of prior preliminary inquiry is warranted, or where, for special or sensitive reasons, a substantive investigation should be undertaken before a notification is made.

The notification should be in the form of a letter from the Breach Decision Maker and must include:

- a description of the role/authority of the Breach Decision Maker
- a copy of the allegation and an outline of the apparent facts and circumstances that have given rise to the allegation
- where practicable and appropriate (in special cases, confidentiality factors may need to be considered), a reference to the manner in which these matters have come to attention (e.g. report from manager, reports or statements from other persons, other source material)
- the details of the suspected breach of the Code (including any subsequent variation to those details) and any particular element/s of the Code that are potentially relevant
- the options that are available in the event that a breach is determined to have occurred (this would include an outline of the various sanctions specified in section 15 of the *PS Act*, together with the alternatives of no action or of counselling. In the case of a non-ongoing employee, an indication should be given as to which of the sanctions, if any, are considered to be inapplicable because of the employee's employment arrangements)
- an invitation to the employee to make an oral and/or written statement, within seven (7) days or other specified and reasonable period, in response to the matters that have been raised
- advice to the employee that they are entitled to the support person of their choice, when responding to the notification and throughout the investigation (e.g. employees often choose to bring a support person with them to the interview)
- a copy of the ACCC's '*Procedures for determining breaches of the Code of Conduct and for Determining Sanction*', the ACCC's '*Guidelines for determining breaches of the Code of Conduct and for Determining Sanction*' and a copy of any documents or other material which you as the Breach Decision Maker may rely upon in making a decision
- advice that the Breach Decision Maker may request coordination and secretarial services from the Workplace Relations HR team
- where relevant and practicable, a reference to reassignment of duties or suspension from duties during the period of the investigation.

After the initial notification to the employee, it is possible that some of the details outlined in it will change - for example, after the Breach Decision Maker or person assisting with the investigation has made further inquiries. The employee should be informed of these changes, provided with a copy of any relevant documents, and invited to make a further statement.

Obtaining employee statements

An employee's response will often take the form of a written statement. However, it would normally be reasonable to agree if the employee asks to make an oral submission either in addition to, or instead of, a written submission. A record should be kept of any oral submission, and a copy given to the employee and signed by the employee if it is an agreed record. The employee should be made aware that the questions asked during the interview are made for official purposes in connection with their employment. Accordingly, if any answer provided is found to be false or misleading it could constitute a breach of the Code of Conduct.

Any statement or submission should preferably come directly from the employee personally. However, it is recognised that, for various reasons, employees may seek advice or support from other persons, whose reasonable direct or indirect assistance in the making of a statement or submission should usually be permitted. Employees and support people should be advised that as the matter is a formal grievance, adequate protection of all interested parties demands absolute confidentiality.

Any request by the employee for an extension of time should be considered on its merits, recognising the need to be fair to the employee, but also the requirements of timeliness.

The employee is not bound to say or do anything in response to the Breach Decision Maker's questions, suggestions, or allegations. The Breach Decision Maker should advise the employee of this at least informally at the earliest stages of the investigation, and also at any stage when further discussions between the parties are to take place.

An employee is under no obligation to provide assistance, or any response whether written or oral, during the course of the investigation. No presumption or inference may be drawn by the Breach Decision Maker or Investigator about the guilt or innocence of an employee on the basis of the employee's decision not to provide assistance or response to the Breach Decision Maker.

In such circumstances it may be appropriate for the Breach Decision Maker to advise the employee that the matter will be decided on the basis of all evidence and information elicited, whether with the assistance of the employee or not.

Reaching a decision about a suspected breach

The Breach Decision Maker should undertake such inquiries as they consider necessary and should reach conclusions with as little formality and as efficiently as a proper consideration of the matter allows. Once the Breach Decision Maker considers that the investigation process has been completed and all relevant evidence has been obtained, a determination should be made as to whether or not misconduct has occurred.

When a separate person has undertaken the investigation into suspected misconduct, the Breach Decision Maker must:

- play an important quality control role by reviewing the process, paperwork and recordkeeping of the case up to this point to ensure correct procedures have been followed
- be satisfied that the investigation has brought them to a point where they can make a fair, balanced and conscientious decision.

Identifying and rectifying flaws at this stage is much easier than dealing with the matter in a possible review process.

In the case where a separate Investigator has provided a recommendation regarding whether a breach has occurred, the Breach Decision Maker will need to ensure that they separately and independently exercise their decision-making power before forming any conclusion.

The relevant facts, circumstances and evidence specific to the matter under investigation must be the only consideration of the Breach Decision Maker when determining whether or not a breach has occurred. In most cases, the previous history of the employee has no relevance to whether the breach currently being investigated has or has not occurred.

However, findings that the employee has breached the Code on previous occasions may, under certain circumstances, be considered. This should arise only when the facts and circumstances of past breaches of the Code establish a systematic course of conduct on the part of the employee.

Other information

In the course of inquiries, the Breach Decision Maker may receive advice or opinion (including from the affected employee) on such matters as the employee's work record, other special or mitigating factors, or the seriousness with which the possible breach is viewed by the relevant manager(s). Care should be taken to avoid any appearance that irrelevant factors have been taken into account in deciding whether or not a breach has occurred. However, any such advice or opinion which has been received may well be relevant to the later separate decision as to what action should be taken, if there is a finding that the Code has been breached.

The level of proof required

In deciding whether or not the alleged breach has occurred, the available evidence and facts must be assessed by the Breach Decision Maker by applying a test on the balance of probabilities. That is, in order for the Breach Decision Maker to conclude that the Code has been breached, the evidence must satisfy the Breach Decision Maker that it is "more likely than not" that the breach occurred.

Record of decision on a suspected breach

The Breach Decision Maker should prepare a written record of the decision reached as to whether the Code has been breached (specifying the specific relevant element(s) of the Code), together with a summary of the basis for that decision. This decision record should include:

- a summary of the evidence obtained by the Investigator and any other sources of information and evidence
- an analysis of the evidence, noting where the Investigator's analysis and recommendations are accepted
- key findings of fact, including key issues where one version of events has been preferred to another
- a decision as to whether what happened was a breach of the Code and, if so, which elements of the Code have been breached
- the reasons for the decision.

Decision that misconduct did not occur

If it is clear that no breach has occurred, or that there is insufficient evidence to support a finding that a breach has occurred, the Breach Decision Maker should advise the suspect employee as soon as possible.

Decision that misconduct did occur

If the Breach Decision Maker decides that a breach has occurred, they should write to the employee informing them of the draft decision. The letter should:

- enclose a copy of the Investigator's report and the Breach Decision Maker's decision record, including the reasons for the decision
- inform the employee of
 - the name of the person who has been given the authority to determine any sanction (the Sanction Delegate)
 - the range of possible sanctions
- invite the employee to respond within 7 days to the draft decision.

Once any response from the employee has been received and considered, the Breach Decision Maker should make the final determination, advise the employee in writing of the final determination and their right to review of the determination under section 33 of the *Public Service Act*.

Deciding on the appropriate response to a breach – Sanction Delegate roles

Once a final determination has been made that an employee has breached the Code, the process of determining an appropriate sanction should begin.

The Breach Decision Maker may choose to recommend an appropriate sanction to the Sanction Delegate. If a decision is taken that no sanction should be imposed, there will most likely at the least be a need for some form of counselling of the employee.

The available sanctions prescribed in section 15 of the *Public Service Act* are:

- termination of employment
- reduction in classification
- re-assignment of duties

- reduction in salary
- deductions from salary, by way of fine, or
- a reprimand.

Given the remedial focus of the Code of Conduct provisions, normally a single sanction should be determined in respect of the matter under investigation. This means that although multiple instances of breaches may have been found, a single, appropriate sanction should normally be applied as remedy for the instances of inappropriate behaviour identified. In such cases, multiple breaches may necessitate consideration of a higher sanction if a systematic course of conduct has been found, but this does not of itself justify the imposition of multiple sanctions. However it is possible for more than one sanction to be applied to an employee found to have breached the Code if the person imposing the sanction is satisfied that more than one sanction is appropriate in the circumstances of the case and can give a proper reason for their decision. For example, an employee may be re-assigned duties and have a fine imposed.

Before or during consideration of the appropriate sanction, the Sanction Delegate should take into account issues such as the seriousness of the breach, any mitigating circumstances, and the level (or absence) of any contrition by the employee. The Sanction Delegate may need to seek advice on the detail or practicability of potential sanctions. The Director or Assistant Director, Workplace Relations, HR Branch is available to assist the Sanction Delegate's considerations.

A finding that the employee has breached the Code on previous occasions may be considered when determining a sanction. The previous history of the employee usually has no relevance as to whether the breach currently being investigated has or has not occurred, but may be relevant to the level of sanction imposed. The nature of previous breaches found against the employee may or may not be relevant to the current matter.

The decision in each case will depend very much on the circumstances of that particular case.

Notifying the employee

The legal principles of procedural fairness impose an obligation to advise the employee of the proposed sanction before the decision is taken. The employee has 7 days to respond to the advice of the proposed sanction.

Following receipt of an employee's comments concerning the sanction(s) that might be applied, the Delegate needs to decide if the employee's comments contain any information that would lead him or her to reconsider the proposed sanction. After making the final decision on the appropriate sanction, the Sanction Delegate should ensure that the decision and reasons for it, is documented and must take responsibility for ensuring the employee is promptly notified in writing of the sanction decision and a date for the sanction to come into effect.

In a case where termination of employment is being considered, the Sanction Delegate must consult the Director or Assistant Director, Workplace Relations, HR Branch to ensure that all relevant legal and procedural requirements have been met.

A sanction that involves a reassignment of duties or a relocation of the employee should be explored with the employee's potential new manager's area before a decision is taken.

The Delegate must be notified in writing that the matter has been closed, outlining the determination and any sanctions imposed.

Employee entitled to seek review

The Breach Decision Maker should ensure that the employee is advised, at the points outlined in this guidance, of their entitlement to seek a review of the determination that a breach has occurred, or the sanction imposed. A decision to suspend an employee can also be the subject of review.

If clarification is needed, please contact an Assistant Director in the Workplace Relations team, HR Branch.

Implementing sanctions

The Director Workplace Relations, HR Branch will be responsible for ensuring that a sanction decision is implemented.

Need more information?

If you would like more information, please contact the Workplace Relations team in the HR Branch.

Attachment F - What to expect as a Witness

If the Breach Decision Maker identifies you as a potential witness in relation to an alleged breach of the Code of Conduct, you will be contacted formally by the Investigator requesting you participate in an interview. Prior to the interview, the Investigator should advise you that:

- the interview is first and foremost, part of a formal investigation to determine the facts in relation to an alleged breach of the Code of Conduct
- the matter is a formal grievance which is taken seriously by the ACCC, as such adequate protection of all interested parties demands absolute confidentiality
- personal information relating to you may be disclosed to the employee alleged to have breached the Code and others where necessary and appropriate
- any personal information about any of the parties involved in the investigation will be handled in accordance with the ACCC's obligations under the *Privacy Act 1988*
- questions asked during the interview are requests for information made for official purposes in connection with your employment. Accordingly, if any answer provided is found to be false or misleading it could constitute a breach of the Code of Conduct
- you will be given an opportunity to review, comment, revise and sign the record of your interview which will then be placed on the Code of Conduct file.

Attachment G - Role of Support Person

An employee may be requested to participate in a meeting or interview in relation to an alleged Code of Conduct. In recognition of the ACCC's commitment to the principles of natural justice, an employee asked to participate in such a meeting or interview is entitled to have a support person attend.

For the purposes of these guidelines:

'Support person' means a person nominated by an employee to support the employee in meetings. A support person could be a friend, a colleague, or other nominated person.

The ACCC recognises that support persons may positively contribute in assisting employees in the resolution of workplace issues by:

- providing emotional support and reassurance
- taking notes or quietly prompting or giving advice to the employee
- explaining or clarifying questions asked and/or processes
- assisting in clarifying a response if the employee has difficulty communicating a response to the interviewer
- seeking breaks to assist employees.

A support person is not to be:

- a fellow employee whose involvement may result in an apparent or possible conflict of interest
- a person who speaks on behalf of the employee
- an advocate for the employee.