

NATIONAL PORTRAIT GALLERY

National Portrait Gallery of Australia

General Policy Advice

*Human Resource Management Series:
The APS Values and Code of Conduct and
Procedures for dealing with reports of breaches*

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Human Resource Management Series:

APS VALUES AND CODE OF CONDUCT AND PROCEDURES FOR DEALING WITH REPORTS OF BREACHES

Purpose

This policy states the Gallery's commitment to upholding and promoting the Australian Public Service (APS) Values and Code of Conduct (the Code), which are embodied in the *Public Service Act 1999* (the PS Act). It also defines the procedures that must be followed when determining whether an APS employee has breached the Code. The policy covers employees (both ongoing and non-ongoing) and contractors.

Policy

The APS Values and the Code describe the standards of behaviour expected of all employees of the Gallery. The Gallery is committed to creating and maintaining a workplace that upholds the APS Values and the Code and in which breaches are properly handled in a timely way. All breaches and suspected breaches of the Code must be handled in accordance with the procedures set out in this document and must comply with confidentiality and privacy requirements.

Responsibilities

All employees

The APS Values and Code are contained in the PS Act and are available on the Australian Public Service Commission's (APSC's) website (www.apsc.gov.au). All employees must:

- familiarise themselves with the content of the Values and the Code
- uphold the Values and the Code, and
- report any suspected breaches of the Code consistent with these procedures.

All staff must treat others with respect and courtesy at all times. Employees must not victimise or harass any employee who alleges a breach or is a witness to a suspected breach of the Code.

Employees who need guidance on the application or interpretation of the Code may consult their manager/supervisor. They may also seek

advice from Corporate Services, or consult the APSC's Ethics Advisory Service or the guidance materials on the APSC's website.

Corporate Services

Corporate Services has an important role to play in promoting knowledge and understanding of the Values and the Code through induction and other learning and development activities. The unit also provides advice to employees and managers/supervisors on the application of the Code in particular workplace situations and ensures that suspected breaches of the Code are handled according to these procedures.

Managers and supervisors

Managers and supervisors have an important role to play in embedding the Values and promoting the Code in the Gallery.

They should:

- lead by example and model behaviours that are consistent with the APS Values and the Code
- remind staff of appropriate behaviours as necessary
- consider whether unsatisfactory behaviour requires formal misconduct procedures or alternative forms of management (see further below)
- seek the advice of the Corporate Section when they believe that formal misconduct procedures may be required
- ensure that employees who make complaints of Code breaches, or who are witnesses in Code investigations, are treated with respect and courtesy and without harassment.

Managers/supervisors should also be aware that the Code is also applied to contractors under contractual arrangements used by the Gallery. Contract managers are expected to monitor contractor compliance with the Code and are responsible for taking appropriate action where they suspect a breach of the Code by a contractor.

Public Service Commissioner and Merit Protection Commissioner

If it is not possible to satisfy the requirement for an independent and unbiased decision maker from within the Gallery, the Public Service Commissioner or the Merit Protection Commissioner may accept the report of a suspected breach and conduct an investigation or otherwise deal with the matter.

Investigators

Persons (investigators) may be authorised to investigate alleged breaches, for example by examining relevant documents and

conducting interviews to identify the facts, evaluating the evidence and making findings, drawing conclusions and making recommendations in relation to the suspected breaches, possible remedies and sanctions. Investigators may be employees of the Gallery or other persons. In undertaking their roles they must comply with this policy and procedure and the principles of procedural fairness. Investigators are not decision makers. The role of investigators is to assist the Director or delegate to make a fair decision, having considered the available, relevant evidence.

Unsatisfactory performance or misconduct?

Managers/supervisors must consider each case of unsatisfactory behaviour on its merits to determine whether a matter would best be handled through formal misconduct procedures for suspected breach of the Code, or through other procedures.

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 (such as performance feedback, mediation or counselling) may be more appropriate. In less serious cases the focus should be on providing constructive feedback and prompt— preferably agreed— remedial action. Such action should aim to ensure that conduct returns to a satisfactory standard as soon as possible. In many cases it may be sufficient to clarify expectations about required standards of behaviour. In some cases it may be necessary to warn the employee that any further similar conduct could lead to formal action.

Care should be taken not to refer a complaint for formal action that is frivolous or vexatious and cannot be substantiated. Disciplinary action may be warranted against employees who make frivolous or vexatious complaints.

For these reasons, where a manager/supervisor becomes aware of a possible breach of the Code, they should discuss their concerns with the Chief Operating Officer and HR Services so that the best course of action can be identified. If a suspected breach may also be a criminal offence, it should be notified to the Compliance and Risk Management Advisor as soon as practicable.

Procedures for Determining Breaches

The procedures for determining whether a Gallery employee has breached the Code of Conduct are outlined at Attachment A. They are based on the overriding principle that the determination of suspected breach of the Code must be handled with procedural fairness.

Procedural fairness requires a hearing appropriate to the circumstances. In particular, a person must be informed of any allegations against them

in as much detail as possible, given a reasonable opportunity for a right of reply, and have their case properly considered before a decision is made. Procedural fairness also requires that investigators and decision makers act fairly and impartially. They must establish the facts based on evidence, hear all parties to a matter, inquire into matters in dispute, and make a decision that follows logically from consideration of the relevant facts.

Confidentiality

Reports about suspected breaches of the Code of Conduct must be dealt with in a confidential manner. Only those with a genuine need to know should be made aware of the report. However, information may need to be divulged to other parties should the matter be the subject of a formal Code of Conduct, Police or Work, Health and Safety investigation.

Related Policies

Employees may wish to make disclosures about illegal, immoral or illegitimate practices under the control of their employer, or about suspected or alleged wrongdoing that affects matters of public interest. Such “whistleblower reports” should be handled under the Gallery’s Policy and procedures for dealing with whistleblower reports. These procedures are designed to ensure that such reports are properly dealt with and that whistleblowers are protected from reprisals.

Other related policies include:

- Review of actions
- Conflicts of interest
- Offers of gifts and benefits
- Outside employment

Further Information

Advice on the application and interpretation of the Code of Conduct is available from the Ethics Advisory Service of the Australian Public Service Commission (www.apsc.gov.au/ethics).

Further guidance in relation to the Code of Conduct and whistleblower reports is also available on the Australian Public Service Commission website (www.apsc.gov.au).

ATTACHMENT A

Procedures for Determining the Breaches of the APS Code of Conduct

Application of procedures

These Procedures must be complied with in determining whether an APS employee of the Gallery has breached the Code of Conduct.

Consideration of options other than a formal process

Not all suspected breaches of the Code of Conduct may need to be dealt with by way of a determination. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate. Managers/supervisors and employees who suspect that an employee may have breached the Code of Conduct are strongly advised to seek the advice of HR Services so that the most appropriate form of action can be identified.

Making a report

Allegations of a breach of the Code of Conduct by any Gallery employee should be made in writing and submitted to the Chief Operating Officer, except for:

- whistleblower reports, which should be made in accordance with the Policy and procedures for dealing with whistleblower reports, and
- bullying and harassment complaints, which should be lodged directly to HR Services

If a suspected breach involves the Director; the Public Service Commissioner or the Merit Protection Commissioner may accept the report and conduct an investigation or otherwise deal with the matter.

It is important that a report includes sufficient information to enable a preliminary assessment to be made of the nature and severity of the suspected breach and the people involved. Where the information is available, the report should include:

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

Deciding whether to commence formal misconduct procedures

The decision whether to commence formal misconduct procedure/s rests with the Board in the case of suspected misconduct by SES employees, and with the Chief Operating Officer (COO) in relation to non-SES employees.

Decision whether to suspend or temporarily re-assign

Action 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. *Section 28* of the *PS Act* sets out the legislative basis for suspension and *section 25* provides for general assignment of duties.

Selection of a decision maker

Reasonable steps must be taken to ensure that a person who determines whether a Code of Conduct breach has occurred is, and is seen to be, both independent and unbiased. For example, a person should not be involved in determining whether a breach of the Code has occurred if they have:

- previously made a report in relation to any of the matters suspected of constituting a breach, or
- been involved in any of the matters suspected of constituting a breach, or
- a personal, financial or family relationship with the person claimed to have breached the Code.

To ensure that the most appropriate person determines whether an alleged breach or breaches has occurred, all suspected breaches of the Code of Conduct by non-SES employees should be referred to the Chief Operating Officer (COO). The COO will take reasonable steps to ensure that the person who determines whether a breach has occurred is independent and unbiased. The COO will either determine whether a breach has occurred, or refer the matter to another authorised person to determine.

In the case of suspected breaches of the Code of Conduct by SES employees, the Board will either determine whether a breach has occurred, or authorise another person to determine the matter.

Determination process to be informal

The process of determining whether an APS employee in the Gallery has breached the Code of Conduct should be carried out with as little

formality and as much expedition as proper consideration of the matter allows. A formal hearing is not required.

Information to be given to the employee before a determination is made

Before a determination is made in relation to a suspected breach of the Code of Conduct by an APS employee, the employee must be informed in writing of:

- details of the suspected breach of the Code (including any variations of those details)
- the sanctions that may be imposed under subsection 15(1) of the *PS Act* (including any limitations on that power contained in regulations made for the purposes of subsection 15(2) of the *PS Act*).

The employee must be given a reasonable opportunity to make a statement (in writing or orally), in relation to the suspected breach. Such a statement should be made within 7 days after being informed of the opportunity (or any longer period as is allowed by the delegate).

An employee who does not make a statement in relation to the suspected breach is not, only for that reason, to be taken to have admitted committing the suspected breach.

Information to be given to the employee before the report is finalised

Where an investigator concludes that there has been a breach of the Code of Conduct, the employee must be advised, in writing, of their findings and conclusions in relation to the alleged breach or breaches.

The employee must be given an opportunity to provide comments on the investigator's findings and conclusions before the report is finalised and submitted to the delegate for consideration.

Record of investigation and determination

After a determination is made, a written record stating whether the employee has been found to have breached the Code of Conduct must be prepared. The record should set out:

- the determination that has been made about whether the employee has breached the Code of Conduct
- the reasons for any determination that has been made
- details of the sanction (if any) to be imposed and the reasons for the sanction, and

- details of the employee's right to have the determination reviewed.

A copy of the record must be provided to the employee who was the subject of the investigation. The *Archives Act 1983* and the *Privacy Act 1988* apply to such a record.

Action that may be taken if a breach is found

If a determination is made that an APS employee has breached the Code of Conduct, the employee may be counselled in respect of the breach or a sanction may be imposed on the employee under section 15 of the *Public Service Act 1999*.

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

- termination of employment
- reduction in classification
- re-assignment of duties
- reduction in salary
- deductions from salary, by way of fine, and/or • a reprimand.

Review of Actions

An application for review of a determination that a non-SES employee has breached the Code of Conduct or a sanction imposed for breach of the Code of Conduct (other than termination of employment) may be made, in writing, to the Merit Protection Commissioner.

The *Fair Work Act 2009* provides a review process for termination of employment.

Appropriate procedures if basis of APS employee's engagement in an agency changes or employee moves to a different agency

This clause applies if:

- an APS employee in the Gallery is suspected of having breached the Code of Conduct, and
- before any determination is made in relation to the suspected breach the basis of the employee's engagement in the Gallery changes, or the employee moves to a different agency.

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

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

- a change from engagement for duties that are irregular or intermittent to engagement as an ongoing APS employee.

If the basis of the employee's engagement in the agency has changed, then a determination (if any) in relation to the suspected breach must be made in accordance with the procedures applicable to the employee's engagement in the agency at the time the process for determining whether the employee has breached the Code of Conduct commenced.

If the employee has moved to a different agency, then a determination (if any) in relation to the suspected breach must be made in accordance with the procedures applicable in the agency to which the employee has moved at the time the process for determining whether the employee has breached the Code of Conduct commenced.