



**ASIC**

Australian Securities & Investments Commission

PEOPLE & DEVELOPMENT

# Code of Conduct Policy

2014

## **About this policy**

This policy describes the APS Code of Conduct and outlines ASIC's procedures for handling suspected and determined breaches of the Code of Conduct.

## Policy ownership

The Employee Relations Manager is responsible for the development and implementation of this policy.

## Policy application

This policy applies to all APS employees and employees engaged under s. 120(3) of the ASIC Act, including ongoing and non-ongoing team members.

Policy application is subject to adoption by the Senior Executive Leader, People & Development.

## Policy approval

This policy has been reviewed and approved by the following parties on the following dates:

Version	Reviewer	Comments	Approved	Date
1.3	Helen O'Loughlin		Approved	3 July 2014

## Version history

Version	Details of changes	Date
1.3	Reflect amendments to the APS Code of Conduct to align with the Public Governance, Performance & Accountability Act 2013	1 July 2014

## Policy distribution

This policy has been distributed to the following parties on the following dates:

Version	Date	Distribution List
1.0	July 2013	National Consultative Committee
1.1	20 January 2014	ASIC Staff and National Consultative Committee
1.3	1 July 2014	Employee Relations Manager

## Policy location

This policy is published on [myASIC](#), People & Development.

## Contents

<b>A</b>	<b>What the policy is about?</b> .....	<b>4</b>
<b>B</b>	<b>Standards of conduct</b> .....	<b>5</b>
<b>C</b>	<b>Application</b> .....	<b>7</b>
<b>D</b>	<b>Procedure for determining a breach</b> .....	<b>8</b>
	Selection of decision maker.....	8
	Determination process to be informal.....	8
	Formal hearing not required .....	8
	Information to be given to team member before a determination is made .....	8
	Team member right to make a submission .....	9
	Determining whether a breach has occurred .....	9
	Sanctions under the PS Act.....	9
	Informing team member before a sanction is imposed .....	10
	Merit Protection Commissioner review .....	10
	Australian Public Service Commissioner review .....	10
	Procedure when an team member is to move to another Agency during an investigation.....	11
<b>E</b>	<b>Rights</b> .....	<b>12</b>
	Team member suspected of misconduct .....	12
	Whistleblowing provisions and reporting of misconduct.....	12
<b>F</b>	<b>Review of actions</b> .....	<b>13</b>
	<b>Annexure A: APS Values</b> .....	<b>14</b>
	<b>Annexure B: APS Employment Principles</b> .....	<b>15</b>
	<b>Key terms</b> .....	<b>16</b>
	<b>Related information</b> .....	<b>17</b>



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## A What the policy is about?

- 1 The Australian Public Service (APS) Code of Conduct (the Code) provides the standards of behaviour that are expected of Australian Public Service (APS) employees. This policy outlines the procedures for handling suspected and determined breaches of the Code.

### Further guidance

Further information on the APS Values, APS Employment Principles and sanctions under the Code is available at [www.apsc.gov.au](http://www.apsc.gov.au)

**A glossary of key terms is provided on page 16 of this policy.**

## B Standards of conduct

- 2 The Code sets out the standards of conduct required of team members in ASIC. The Code requires that team members must:

### APS Code of Conduct

- 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, must 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) in connection with the employee's APS employment 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:
  - 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
- 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 ASIC and the APS
- While on duty overseas, at all time behave in a way that upholds the reputation of Australia
- Comply with any other conduct requirement that is prescribed by the regulations

- Before being engaged as an APS employee, must not have:
    - a. Knowingly provided false or misleading information to another APS employee, or to a person acting on behalf of the Commonwealth; or
    - 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 to have reasonably known, was relevant; or
    - c. Otherwise failed to have behaved with honesty and with integrity
- in connection with their engagement as an APS employee
- In addition to the Code of Conduct, employees are required except in the course of their duties as an APS employee or with the Agency Head's express authority, not to give or disclose, directly or indirectly, any information about public business or anything of which the employee has official knowledge.

## C Application

- 3 The procedures outlined in Part D apply only in relation to a suspected breach of the Code by an APS employee or employee employed under s.120(3) of the ASIC Act (team member), or a former APS employee or former employee employed under s. 120(3) of the ASIC Act (former team member), in respect of which a determination is to be made.

The procedures must be complied with to determine whether a team member, or a former team member, has breached the Code.

- 4 Not all suspected breaches of the Code 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. This could include using the performance management system or using alternative forms of dispute resolution (such as mediation or counselling).

## D Procedure for determining a breach

5 The *Public Service Act 1999* (the PS Act) requires that an Agency Head must establish procedures to determine a breach of the Code and that these procedures must be in accordance with the *Public Service Commissioner's Directions 2013*.

6 Under sub-section 120(2)(b) of the *Australian Securities and Investments Commission Act 2001*, the Chairperson of the Australian Securities and Investments Commission has conferred on him or her the powers of a Statutory Agency Head.

The following procedures establish the requirements under subsection 15(3) of *the PS Act* and will be handled in a timely, systematic and effective manner and consistent with procedural fairness requirements.

### Selection of decision maker

7 To determine whether a team member has breached the Code, a decision-maker may be selected by the Chairperson or the Senior Executive Leader, People & Development. The person selected must be, and appear to be, independent and unbiased.

The selected decision-maker may determine whether there has been a breach of the Code or may nominate someone else to assist with examining the matter (an investigator). The person nominated to assist the decision maker may be an ASIC team member or an external party.

The tasks undertaken by the investigator in examining an alleged misconduct matter may be wide ranging but must not encompass making a finding on whether or not the Code has been breached, or recommending what sanction should be imposed. These matters are to be determined by the decision-maker.

### Determination process to be informal

8 The process for determining whether a team member has breached the Code must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.

### Formal hearing not required

9 For the purpose of determining whether a team member in ASIC has breached the Code, a formal hearing is not required.

### Information to be given to team member before a determination is made

- 10 Before a determination is made in relation to a suspected breach of the Code, the team member must be informed of:
- a) The details of the suspected breach of the Code (including any variation of those details), with enough detail to allow the team member to adequately respond, and
  - b) The sanctions that may be imposed on the team member 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).



## Team member right to make a submission

- 11 The team member:
- a) Must be given a reasonable opportunity to make a submission in relation to the suspected breach within seven days or any longer period as is reasonable as determined by the decision maker.
  - b) May elect to make an oral statement or written submission or a combination of both.
  - c) May seek assistance from other persons, including a union or employee representative, in making his or her statement or submission.
  - d) May seek an extension of time for the making of their statement or submission. In deciding whether or not to grant an extension, the decision maker must take into account the need to be fair to the team member and the requirement in section 8 of these procedures that the matter be dealt with expeditiously.
  - e) Who does not make a statement or submission in relation to the suspected breach is not, for that reason only, to be taken to have admitted committing the suspected breach.

## Determining whether a breach has occurred

- 12 In determining whether or not the Code has been breached, the decision-maker should undertake such inquiries as are considered necessary, and reach a conclusion with as little formality and as much expedition as a proper consideration of the matter allows.

## Sanctions under the PS Act

- 13 If a determination is made that the team member has breached the Code, the following sanctions under section 15 of the PS Act may be imposed:
- a reprimand
  - deductions from salary, by way of a fine of not more than 2% of the team member's annual salary
  - reduction in classification
  - re-assignment of duties
  - reduction in salary, or
  - termination of employment.
- 14 A decision can be made that other remedial action may be appropriate, including a warning, training, development or counselling.
- 15 The purpose of imposing a sanction is not to punish the team member, but to ensure adherence to the Code.

## Informing team member before a sanction is imposed

- 16 Where no breach of the Code is found to have occurred, the team member will be informed accordingly as soon as possible, and given a copy of the record of the basis for that decision.
- 17 If a determination is made that the team member has breached the Code, the team member must be informed of the determination, the sanction or sanctions and the factors that are under consideration in determining any sanction to be imposed. The *Archives Act 1983* and the *Privacy Act 1988* apply to a record made under this section.
- 18 The team member must be given the opportunity to make a further submission as to why the proposed sanction should not proceed (including any mitigating circumstances).
- 19 Where the team member makes further submissions as to why the sanction should not proceed, the decision maker must consider these submissions and make a decision as to whether or not to impose the sanction. The decision maker must inform the team member in writing of this decision as soon as practicable.

## Merit Protection Commissioner review

- 20 The Merit Protection Commissioner, at the request of the Chairperson and with the agreement of the affected team member or former team member, may inquire and determine whether a team member or a former team member has breached the Code of Conduct (PS Act Section 50A).

The affected team member will have no right of review under the Regulations of the Merit Protection Commissioner's determination as the investigation would be conducted by an expert body independent of the team member's agency. The outcome of any such determination may still be subject to judicial review.

The procedures to be followed by the Merit Protection Commissioner in making such a determination are provided for in Regulation 7.10. The Merit Protection Commissioner is able to charge a fee for this function, and it will be delivered on a fee-for-service basis.

## Australian Public Service Commissioner review

- 21 The Australian Public Service Commissioner (APS Commissioner) may inquire into and determine whether a team member or a former team member has breached the Code of Conduct if:
- a) the Chairman or the Prime Minister requests the APS Commissioner to do so; and
  - b) the APS Commissioner considers it would be appropriate to do so.

The APS Commissioner may exercise the same powers as the Chairman may exercise in determining whether an APS employee, or a former APS employee, in the Agency has breached the Code of Conduct.

## **Procedure when a team member is to move to another Agency during an investigation**

22

If:

- a) an ongoing team member in ASIC is suspected of having breached the Code; and
- b) the team member has been informed of the matters; and
- c) the matter has not yet been resolved; and
- d) a decision has been made, separate to this investigation, would result in the movement of that team member to another Agency (under section 26 of the PS Act).

unless the ASIC Chairman and the new Agency Head agree otherwise, movement (including on promotion) does not take effect until the matter is resolved. The matter is taken to be resolved when a determination has been made or it is decided that a determination is not necessary.

## E Rights

### Team member suspected of misconduct

- 23 The identity of the team member who has been accused of misconduct, and the detail of the allegations, 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*.
- 24 Although a team member is generally bound to answer fair and reasonable questions relating to their activities as an APS employee, a team member suspected of misconduct cannot be lawfully directed to answer questions relating to the matter where this could incriminate them. The PS Act framework, including the duty to obey lawful and reasonable directions, does not remove the common law privilege against self incrimination.

### Whistleblowing provisions and reporting of misconduct

- 25 The *Public Interest Disclosure Act 2013* (PID Act) provides protection for team members who make whistleblower reports of suspected misconduct.

The PID Act aims to:

- encourage and facilitate disclosure of information by public officials about suspected wrongdoing in the public sector
- ensure that public officials who make public interest disclosures are supported and protected from adverse consequences, and
- ensure that disclosures by public officials are properly investigated and dealt with.

The Commonwealth Ombudsman is responsible for promoting awareness and understanding of the PID Act and more information on this Act can be found on the Ombudsman's website at [www.ombudsman.gov.au](http://www.ombudsman.gov.au).

Further information may be found in ASIC's Public Interest Disclosures (Whistleblowing) Policy and Procedures.

## F Review of actions

- 26 An APS employee, with the exception of a Senior Executive Service (SES) employee, who has been found to have breached the Code and who wish to challenge either the determination that a breach has occurred or the sanction imposed (except in the case of termination of employment), may lodge an application for a Review of Actions under Division 5.3 of the Regulations. A decision to suspend a team member during an investigation can also be the subject of a review. More information is available in the ASIC Review of Actions Policy.
- 27 Termination of employment can only be reviewed under the provisions in the *Fair Work Act 2009*.

## Annexure A: APS Values

The APS Values are as follows:

- **Committed to service:** The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the Government.
- **Ethical:** The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.
- **Respectful:** The APS respects all people, including their rights and their heritage.
- **Accountable:** The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.
- **Impartial:** The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

## Annexure B: APS Employment Principles

The APS is a career-based public service that:

- a. makes fair employment decisions with a fair system of review
- b. recognises that the usual basis for engagement is as an ongoing APS employee
- c. makes decisions relating to engagement and promotion that are based on merit
- d. requires effective performance from each employee
- e. provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued
- f. provides workplaces that are free from discrimination, patronage and favouritism, and
- g. recognises the diversity of the Australian community and fosters diversity in the workplace.

## Key terms

Term	Meaning in this policy
<b>ASIC Act</b>	<i>Australian Securities and Investments Commission Act 2001</i>
<b>Australian law</b>	a) any 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.
<b>Chairperson</b>	ASIC Agency Head.
<b>Code</b>	The APS Code of Conduct as defined under the <i>Public Service Act 1999</i> .
<b>Material personal interest</b>	To be 'material', the personal interest of the team member must be a type that can give rise to a conflict of interest or a perception of a conflict of interest. A material personal interest, or a conflict of interest, can arise out of a work, private or social context.
<b>PS Act</b>	<i>Public Service Act 1999</i>
<b>Team member</b>	An APS employee and an employee employed under s. 120(3) of the ASIC Act, either ongoing or non-ongoing and including employees on probation.



## **Related information**

**ASIC Review of Actions Policy**

**Public Governance, Performance & Accountability Act  
2013**

**Public Interest Disclosure Act 2013**

**Public Interest Disclosures (Whistleblowing) Policy**

**Public Service Act 1999**

**Public Service Regulations 1999**

**Public Service Commissioner's Directions 2013**