



Complaint Handling Process Factsheet

Purpose

This factsheet provides general information to employees about key steps and principles that govern the Department's employee conduct complaint handling process.

Preliminary Assessment

Once a formal complaint is received by the Professional Standards Team (People Branch), a preliminary assessment of the facts is undertaken. During the preliminary assessment, the Professional Standards Team gathers and reviews available evidence and information, and provides a recommendation to the delegate as to what action (if any) should be taken to address the matter.

Not all complaints alleging workplace misconduct need to be handled by way of a formal investigation. Depending on the circumstances, the Team may recommend that some other informal action is more appropriate to address the matter, for example counselling, mediation, written warning or training.

The department aims to deal with complaints with as little formality and as much expedition as proper consideration of the matter allows.

Formal investigations

Once a matter has been referred for formal investigation, a Breach Decision Maker is assigned to the case and the respondent is notified (in writing) of the commencement of the investigation and the allegations against them. It is the role of the Breach Decision Maker to determine whether the employee may have breached the Code. The investigation may be conducted by either an internal employee or an external service provider who will gather evidence and provide a report to the Breach Decision Maker. Persons involved in the investigation process are independent and unbiased.

Formal investigations into suspected breaches of the APS Code of Conduct (the Code) are conducted in accordance with the department's [procedures for determining breaches of the APS Code of Conduct and the imposition of sanctions](#) (the procedures).

Determination of breach

Once the Breach Decision Maker has considered the investigation report, they need to make a preliminary determination whether the employee has breached the Code.

If the Breach Decision Maker decides that the employee has not breached the Code, the parties involved will be advised of the decision and the matter will be closed.

If the Breach Decision Maker forms a preliminary view that the employee may have breached the Code, the Breach Decision Maker will write to the employee providing them with a reasonable opportunity to respond to the Breach Decision Maker's preliminary view. Following receipt of any response from the employee, the Breach Decision Maker will then make a decision as to whether or not the employee has breached the Code. The employee will then be notified of the final breach decision in writing.

Determination of sanction

If it is found that an employee has breached the Code, the matter will be referred to a 'Sanction Delegate' to determine what sanction (if any) should be imposed as a consequence of the employee breaching the Code.

Sanctions are intended to be proportionate to the nature of the breach, to be a deterrent to the employee and others, and to demonstrate that misconduct is not tolerated in the Department. It is also intended to provide a clear message to the employee that their behaviour was not acceptable.

The Sanction delegate may impose one or more of the following sanctions:

- A reprimand
- Deductions from salary, by way of fine
- Reduction in salary
- Re-assignment of duties
- Reduction in classification
- Termination of employment

If a Sanction Delegate forms the view that imposing a sanction is necessary, the delegate will provide the employee with an opportunity to respond to the proposed sanction before making a final decision. Following receipt of any response from the employee, the delegate will then make a decision as to whether or not an imposition of a sanction should proceed. After a decision is made, the delegate will notify the employee.

Outcome notification to other parties

Complainants often have an interest in knowing that their concerns have been addressed. When considering what information is provided to complainants about the outcome of investigations the department needs to balance:

- individual employees' right to privacy, the protection of personal information about individual employees and the agencies' obligations in regard to this information under the Privacy Act 1988 (Privacy Act); and
- the need to take reasonable steps to be transparent and accountable to parties involved.

Timing

The timing of processes will vary and can depend on a number of factors, including:

- the seriousness and complexity of the complaint
- identifying sources of information and evidence, and whether these are readily accessible to the case officer
- the availability of witness(es), and providing them with sufficient time to provide information to the case officer
- allowing decision-makers and delegates sufficient time to consider the facts and make informed decisions; and
- coordinating and implementing the decisions made.

Despite the above mentioned factors impacting on the timing of processes, all efforts will be made to finalise complaints as quickly as possible.

Reporting breaches to other APS agencies

Current and former APS employees applying for employment or transfer (whether temporarily or permanently) within the APS must always be honest when responding to questions in the recruitment process, this includes any questions asking whether they have been found to have breached the Code or have been the subject of a formal investigation. If they knowingly provide false or misleading information during the course of an APS recruitment process, their conduct may result in a formal investigation as a possible breach of the Code.

Reviews

If an employee is dissatisfied with the outcome of the complaint, they may be eligible to request a review of action. Further information relating to [reviews of action](#), is located on the department's intranet and through the Office of the Merit Protection Commissioner.

Privacy

All personal information is collected, stored, used and disclosed in strict confidence and in accordance with the *Privacy Act 1988*.

The assessment and formal investigation of complaints may involve the collection of personal information. Personal information may be disclosed (where necessary and appropriate) to people to verify statements and information obtained, these people may include, but are not limited to:

- Witnesses
- PM&C Security Team
- PM&C IT Security Section
- Supervisors/Managers
- Senior Executive Service Officers

Formal directions may be given to people involved in the complaint to ensure that the privacy and confidentiality of the complaint, and the integrity of the assessment and investigation is maintained.

If a formal investigation has commenced, an employee's personal information may also be disclosed to an APS agency to which the employee has moved or seeks to move in the future. Personal information may also be disclosed where otherwise required or authorised by law.

Support

Employees are entitled to seek the assistance and support of a friend, family member, colleague, union representative or legal representative throughout the complaint handling process. An employee's [support person](#) should not be someone who may be interviewed in the same matter.

The department provides access to a free, confidential and professional counselling service for employees and their families through the employee assistance program. The EAP can be contacted on 1300 360 364.

Further information

Further information relating to the assessment and formal investigation of complaints can be located on the [intranet](#), or by contacting HR Help on 02 6271 6000 or HR@help.pmc.gov.au.



Australian Government

Department of the Prime Minister and Cabinet

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

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

Dated: June 2017

1 Application

1.1 These Procedures must be complied with in determining:

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

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

2 Availability of procedures

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

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

3.1 A determination may not be made in relation to a suspected breach of the Code of Conduct by an APS employee, or former APS employee, unless reasonable steps have been taken to:

- a) inform the person of:
 - i. the details of the suspected breach (including any subsequent variation of those details); and
 - ii. the sanctions that may be imposed on the APS employee under subsection 15(1) of the Act
- b) give the person a reasonable opportunity to make a statement in relation to the suspected breach.

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

4.1 If a determination is made that an APS employee has breached the Code of Conduct, a sanction may not be imposed on the APS employee unless reasonable steps have been taken to:

- a) inform the APS employee of:
 - i. the details of the determination of breach of the Code of Conduct; and
 - ii. the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the Act; and
 - iii. the factors that are under consideration in determining any sanction to be imposed; and
- b) give the APS employee reasonable opportunity to make a statement in relation to the sanction/s under consideration.

5 Person making determination to be independent and unbiased

5.1 The department will take reasonable steps to ensure that:

- a) the person who determines whether an APS employee, or former APS employee, has breached the Code of Conduct is, and appears to be, independent and unbiased; and
- b) the person who determines any sanction to be imposed is, and appears to be, independent and unbiased.

6 Determination process to be informal

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

7 Record of determination and sanction

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

- a) the suspected breach; and
- b) the determination; and
- c) any sanctions imposed as a result of the determination that the APS employee breached the Code of Conduct; and
- d) any statement of reasons provided to the employee.

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

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

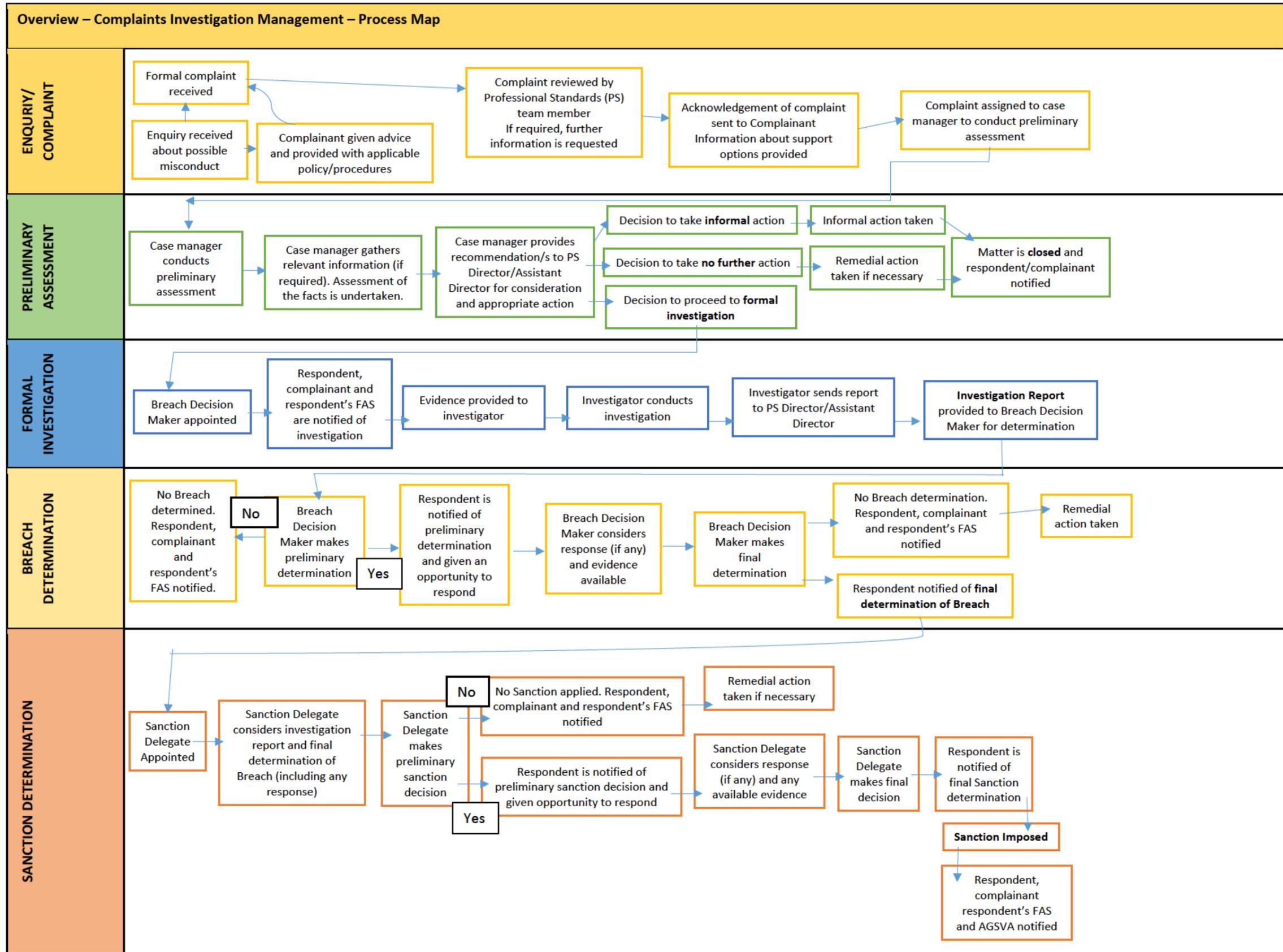
8.1 This clause applies if:

- a) an APS employee in the department is suspected of having breached the Code of Conduct; and
- b) reasonable steps have been taken to formally advise the APS employee of the suspected breach in accordance with clause 3.1; and
- c) a decision is made to promote an APS employee and the matter to which the suspected breach relates has not yet been resolved before the employee moves to take up the promotion; or
- d) a decision has been made, apart from these procedures, that would result in the movement of the employee under section 26 of the Act to another Agency.

8.2 Unless the original Agency Head and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.

8.3 For this clause, the matter is taken to be resolved when:

- a) a determination is made as to whether the APS employee has breached the Code of Conduct; or
- b) it is decided that such a determination is not necessary.





Checklist

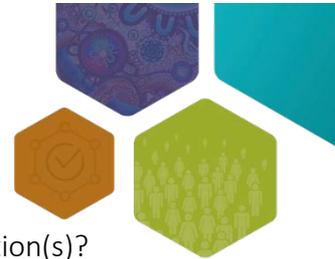
Making a sanction decision

Initial considerations

- ❑ Do you have the power to make the sanction decision?
 - Have you been delegated the role of sanction decision-maker and relevant powers by the head of the agency consistent with the agency's policies and s.78 of the PS Act?
 - Have you been delegated powers to impose the sanction—e.g. transfer at level, reduction in classification or termination of employment?
 - If you are outside the APS, has the Commissioner's consent been given to the delegation?
- ❑ Have you declared any potential conflicts of interest that might arise from or in making a sanction decision?
- ❑ Are you satisfied that you will be able to bring an independent and unbiased mind to this inquiry and that a reasonable bystander would agree?
 - If in doubt, you may wish to discuss with your manager, HR area, or the Ethics Advisory Service.
- ❑ Have you read your agency's s.15(3) procedures and other guidance material?
- ❑ Are you aware of the sanctions available under s.15(1) of the PS Act?
- ❑ If you have any concerns that the determination of breach of the Code was not made in accordance with legal requirements, such as your agency's s.15(3) procedures, have you raised this with the relevant person within your agency?

Advice to the employee who has breached the Code before making a decision

- ❑ Have reasonable steps been taken to inform the employee who has been found to have breached the Code:
 - that a determination has been made that they have breached the Code?
 - of the proposed sanction(s) under consideration?



- of the factors that are under consideration in determining any sanction(s)?
- ❑ Has the employee who has breached the Code been provided with a reasonable opportunity to make a statement in relation to the proposed sanction(s) under consideration and the factors relating to it?

Considerations in deciding a sanction

Sanctions are intended to correct behaviour and maintain public confidence in the APS. Sanctions should therefore be proportionate to the misconduct. Before deciding what sanction, if any, to impose, have you considered:

- ❑ the nature and seriousness of the breach?
- ❑ the degree of relevance of the misconduct to the employee's duties?
- ❑ the likely impact on the reputation of the agency and the APS if the misconduct were a matter of public knowledge?
- ❑ whether the misconduct was uncharacteristic of the employee or whether there is evidence of past behaviour of a similar nature, including past findings of a breach of the Code for similar matters?
- ❑ any remorse or willingness to take responsibility for the breach, or understanding of the seriousness of the breach, by the employee?
- ❑ any mitigating factors, including any such factors raised by the employee?
- ❑ any previous sanctions imposed on the employee for a similar breaches of the Code, if the employee has previously breached the Code?
- ❑ what sanction, if any, is necessary for the employee to understand the gravity of the situation and for you to be confident that they are unlikely to breach the Code again?
- ❑ any information or guidance from your agency on sanction decisions to ensure consistency where circumstances are essentially similar?

Preparing a decision record

- ❑ If you have decided to impose a sanction(s), have you made a written record of your decision?
- ❑ Does the sanction record comply with agency s.15(3) procedures?

Does the record include:

- ❑ a description of the relevant actions and behaviours, and the elements of the Code that were breached?
- ❑ your assessment of the seriousness of the breach?
- ❑ your assessment of aggravating and mitigating factors, if any?



- ❑ the decision on whether or not a sanction needs to be imposed, and, if not, the factors you consider relevant to taking other management action as an alternative?
- ❑ the sanction to be imposed?

Advising the employee who has breached the Code of your decision

- ❑ Have you taken reasonable steps to inform the employee
 - of your decision on the sanction(s) to be imposed, if any, consistent with relevant requirements in your agency's s.15(3) procedures, and
 - when the sanction or sanctions will take effect?
- ❑ Have you ensured that the employee has been advised of any right to seek review of your decision under s.33 of the PS Act (or other review rights), noting that seeking a review will not operate to stay the imposition of the sanctions?