



# Suspected Breaches of the APS Code of Conduct Procedure

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## Purpose

The *Public Service Act 1999* (PS Act), section 15(3) requires that each agency has written procedures established for determining suspected breaches of the Australian Public Service (APS) Code of Conduct.

## Scope

All Bureau staff, engaged under the PS Act, the Chief Executive Officer and Director of Meteorology (CEO) and Senior Executive Service (SES) must comply with this Procedure. Failure to do so may result in disciplinary action being taken against you under the APS Code of Conduct (if you are an employee), or under the terms of your contract, and which may result in termination of your employment or engagement with the Bureau.

Although the sanctions within APS Code of Conduct cannot be applied to contractors, students, volunteers, and consultants, it is a requirement that whilst engaged by the Bureau they conduct themselves at all times in a way which is consistent with the APS Code of Conduct. Any reference below to a Bureau employee includes a reference to contractors, students, volunteers, and consultants.

## Procedures

1. These procedures outline the process to be followed for managing alleged and/or suspected breaches of the APS Code of Conduct; and to explain the rights of an employee who may be the subject of an allegation and/or may be suspected to have breached the APS Code of Conduct.

## Employee rights

2. Employees who are being investigated for suspected breaches of the Code are afforded the following rights:
  - a. The identity of the employee accused of the 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.
  - b. Bureau employees will not make statements that presume the guilt or otherwise of the employee under investigation.
  - c. Investigations will be handled in a timely, systematic and effective manner, and will be consistent with procedural fairness requirements.

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- d. Appropriate recordkeeping will be observed, including the disposal of misconduct records in accordance with the Bureau's Recordkeeping procedures and the National Archives of Australia Administrative Functions Disposal Authority 2000.
- e. Employees are generally bound to answer fair and reasonable questions about their activities as an APS employee, including any suspected misconduct.

## Procedural fairness

3. Section 15(3) of the PS Act requires the agency procedures to have due regard to procedural fairness. A determination may not be made in relation to a suspected breach of the Code by an APS employee unless reasonable steps have been taken to:
  - a. inform the employee of:
    - i. the details of the suspected breach (including any subsequent variation of those details); and
    - ii. the sanction that may be imposed on the employee under sub-section 15(1) of the PS Act; and
  - b. give the employee a reasonable opportunity to make a statement in relation to the suspected breach.
4. If a determination is made that an APS employee has breached the Code, a sanction may not be imposed unless reasonable steps have been taken to:
  - a. inform the employee of:
    - i. the determination; and
    - ii. the sanction or sanctions that are under consideration; and
    - iii. the factors that are under consideration in determining any sanction to be imposed; and
  - b. give the employee a reasonable opportunity to make a statement in relation to sanctions under consideration.
5. In the context of decisions associated with suspected misconduct, procedural fairness generally requires that there must be facts or information to support adverse findings (the 'evidence' rule).

## Preliminary inquiries

6. The Manager, People Services (MPS) has responsibility for making inquiries into allegations received by the Bureau about suspected breaches of the Code by an employee or former employee.
7. When allegations of suspected breaches of the Code are received, People Services staff will in most cases undertake discreet and confidential preliminary inquiries into the matter and make recommendations to MPS as to any further action that may be required or appropriate in the circumstances of the particular matter.
8. Initial preliminary inquiries by People Services are in most cases essential to enable an informed assessment whether the allegations may be frivolous, vexatious and/or lacking in

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substance. If further action is potentially required either through less formal mechanisms or through a formal Code process under these procedures.

9. The process for determining whether a person who is, or was, an APS employee in the Bureau has breached the Code must be carried out with as little formality, and with as much expedition, as a proper consideration of the matter allows.
10. It is important for employees to be aware that an allegation made that an employee is suspected to have breached the Code, does not automatically mean a formal Code process under these procedures is required. In many cases, less formal management action such as counselling, further training and/or other people management practices may be adopted where appropriate to the circumstances to resolve the matter. Examples include cases where the suspected breach is considered relatively minor in nature and the employee readily agrees their behaviour fell short of the Bureau's expectations and the Code.

### Formal Code of Conduct breach

#### Code of Conduct Notice issued

11. Where MPS considers that the circumstances of a particular matter warrant the commencement of a formal Code process under these procedures, the nominated Decision Maker (usually MPS or Assistant Manager Employee and Industrial Relations (AMEIR)) will provide a Code Notice to the employee who is the subject of the allegations setting out:
  - a. an outline of the matters which have given rise to concern;
  - b. the subsection/s of the Code that may have been breached if the allegation/s were found to be substantiated;
  - c. the sanctions specified in subsection 15(1) of the PS Act;
  - d. an indication of the next steps which will be taken in accordance with these procedures and who will be taking them (for example, an appointed investigator);
  - e. advice on the opportunity to participate in an interview to discuss the matter, should the employee wish to do so;
  - f. advice on the employee's entitlement to have a support person of their choice present during the interview; and
  - g. advice on the opportunity to provide a written statement about the suspected breaches of the Code within seven (7) days of receiving the Notice, should the employee wish to do so.
12. The employee does not have to respond, either in writing or orally, to the Code Notice, participate in an interview or provide a written statement if the employee does not wish to do so, however they must be aware a decisions will be made based on the available information.

#### Investigation/interview process

13. A person may be appointed to undertake the investigation on behalf of the Decision Maker, or the Decision Maker may undertake the investigation unsupported. The employee may agree to participate in an interview regarding the suspected breach of the Code or provide a written statement.

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14. Where an interview is arranged, the employee is entitled to have a person of their choice, such as a supervisor, another colleague, or a union or legal representative, present during any interview about the allegations if they wish to. However, this person's role is restricted to be one of support only and they will not be entitled to participate in the interview or advocate for the employee during the interview. The support person cannot be a person who is or may be either a potential witness, or is otherwise involved, in any of the matter/s subject of the interview.
15. If the details of the suspected breach/es of the Code vary during a formal Code process under these procedures, the employee will be informed of the variation of those details.
16. Upon completion of the investigation the nominated Decision Maker (usually MPS or AMEIR) must decide whether the employee has, or has not, breached the Code. This conclusion will be informed by the preparation of an investigation report and be reached applying the 'balance of probabilities' test.

#### Where no breach is determined / decision not to proceed

17. If the nominated Decision Maker forms the view that the employee has not breached the Code the Decision Maker will inform the delegate. The delegate will inform the employee in writing of the determination and the process will be finalised and closed.

#### Preliminary view that breach has occurred

18. If the nominated Decision Maker forms a preliminary view that the employee has breached the Code, the Decision Maker will provide the employee with a copy of the investigation report and written advice of the Decision Maker's preliminary views on breach/es of the Code. The Decision Makers written advice on preliminary views will also provide the employee with an opportunity to submit a written response, should the employee wish to do so.
19. The timeframe provided to an employee to submit a written response will be a period of seven (7) days, or a longer period as agreed to by the Decision Maker.

#### Final determination

20. Following the timeframe provided to the employee for the submission of a written response, and after considering any response received from the employee, the Decision Maker will make a final determination as to whether the employee has or has not breached the Code. The standard of proof used by the Decision Maker in determining whether a breach of the Code has or has not occurred is the 'balance of probabilities' civil standard of proof. The Decision Maker must be satisfied that a breach is more probable than not. This civil standard of proof differs from the criminal standard of proof which is 'beyond reasonable doubt'.
21. The Decision Maker will provide the employee with written advice as to the final determination. If the determination is that a breach of the Code has occurred, the Decision Maker will also advise the employee of their review rights under Section 33 of the PS Act and will then refer the case to a Sanctions Delegate.

#### Formal Code of Conduct Sanction

22. On receipt of the determination relating to the breach/es of the Code, the Sanctions Delegate will consider the employee's APS employment history, including any records of previous counselling or workplace conduct matters, and determine whether an appropriate sanction/s is warranted or whether other less formal action should be implemented.
23. The Sanctions that may be imposed, under section 15(1) of the PS Act, in relation to a breach of the Code include:

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- a. Termination of employment;
  - b. Reduction in classification;
  - c. Re-assignment of duties;
  - d. Reduction in salary;
  - e. Deductions from salary, by way of fine;
  - f. A reprimand.
24. Where a formal sanction under Section 15 of the PS Act is under consideration, the Sanctions Delegate will
- a. inform the employee of
    - i. the determination of breach/s; and
    - ii. the sanction/s that are under consideration; and
    - iii. the factors that are under consideration in determining any sanction to be imposed; and
  - b. give the employee a reasonable opportunity to make a statement in relation to sanction/s under consideration.
25. In relation to (b), the timeframe provided to an employee to submit a statement will be a period of seven (7) days, or a longer period as agreed to by the Sanctions Delegate.
26. Following receipt of the employee's statement, or at the expiration of time allowed for an employee to submit a statement, the Sanctions Delegate will finalise their decision. The decision must be documented, including the reasons for the decision and a date for the sanction/s to come into effect and the employee must be promptly notified in writing of the sanction decision. The Sanctions Delegate will also include, in this notification, the employee's review rights under Section 33 of the PS Act.

### Suspension from duties

27. The Public Service Regulations 1999 (the Regulations) provide that the CEO may suspend an APS employee if, on reasonable grounds, the CEO believes:
- a. the employee has, or may have breached the Code; and
  - b. suspension is in the public, or the Agency's, interest.
28. A Delegate of the CEO may give consideration to suspending an employee from duties, with or without remuneration or temporarily transferring the employee to another area of the Bureau, either prior to or after the commencement of a formal Code process.

### Use of personal information

29. Section 9.2 of the Regulations provides that the CEO may use personal information in their possession or control where the use is necessary or relevant to the exercise of the CEO's employer powers. This also enables the CEO to disclose personal information in the possession, or under the control, of the CEO if the disclosure is necessary for, or relevant to, the performance or exercise of the employer powers of the CEO or another Agency Head. This means:

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- a. use of employee misconduct information (decisions about breaches of the Code and imposition of sanctions) for the purposes of recruitment, including promotion decisions or movements between agencies;
  - b. use of employee personal information obtained in recruitment processes to commence or inform Code of Conduct investigations, where relevant;
  - c. use of relevant employee personal information to monitor compliance with internal agency policies (e.g. use of log in information to check attendance or whether an employee has been browsing client records);
  - d. use of relevant employee personal information to monitor inappropriate internet browsing;
  - e. use of relevant employee personal information for ensuring that employees satisfy conditions of engagement.
30. The Privacy Act 1988 and the Australian Privacy Principles (APP) regulate access to and the use and disclosure of personal information.
31. Personal information is defined in section 6 of the Privacy Act 1988 as: 'information or an opinion...about an individual...whose identity is apparent, or can reasonably be ascertained, from the information or opinion'.
32. During the course of preliminary inquiries, or formal investigations, into allegations of potential or suspected breaches of the Code, or after inquiries/investigations are completed, personal information about an employee subject of an allegation may, where necessary, appropriate and reasonable, be disclosed to others (in accordance with APP 2), including:
- a. other Commonwealth agencies and bodies who may have been involved in the matter, such as the Commonwealth Ombudsman and the Office of the Privacy Commissioner; and/or
  - b. an APS agency where the employee moves or seeks to move in the future.
33. During the course of preliminary inquiries, or formal investigations, into allegations of suspected breaches of the Code, or after inquiries/investigations are completed, in accordance with the principles of procedural fairness, the employee may be provided with personal information about an individual who is a party to the investigation including the evidence and/or information the individual has provided. These individuals may include the complainant and any witnesses to the matter.
34. Prior to disclosing any information about the outcomes of Code of Conduct inquiries and/or investigations, the Bureau will have due regard to the Regulation 9.2, the Privacy Act 1988 and Australian Privacy principles, to determine whether personal information can be disclosed and in what circumstances.
35. General information which contains no personal information may routinely be disclosed to others where the Bureau considers it necessary, appropriate and reasonable to do so.

## Recordkeeping

36. Where a formal Code process is instigated, records relating to the misconduct action are retained and kept separate from the employee's personal file. A cross-reference on the

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personal file should indicate the existence of a separate misconduct file. The following materials should be retained on the misconduct file:

- a. All correspondence with the employee suspected of the misconduct, and any associated attachments;
  - b. All relevant email correspondence relating to the investigation, decision-making or imposition of a sanction;
  - c. All material related to planning the investigation, such as records of emails organising interviews;
  - d. Copies of any draft material provided to the employee for comment;
  - e. The investigation report, with all relevant evidence; and
  - f. The employee's responses to correspondence.
37. The misconduct files are classified 'in confidence' and are kept in secure storage. Only those persons with a need-to-know are granted access to the misconduct file, including the Decision Maker and Sanctions Delegate.
38. The National Archives of Australia, in the Administrative Functions Disposal Authority of 2000, set out the minimum retention periods for records relating to misconduct. These minimum retention periods are detailed at Appendix B.

### Code of Conduct and Inter-agency Moves

39. Part five of the Commissioner's Directions provide for the following process:
40. If an ongoing APS employee in the Bureau is suspected of having breached the Code and
- a. the employee has been informed of the suspected breach and the sanctions that may be imposed; and
  - b. the matter has not yet been resolved; and
  - c. that employee has been selected for movement to another agency under Section 26 of the PS Act (including on promotion).
41. The APS employee under investigation must remain with the Bureau until the matter is resolved, unless the CEO and new Agency Head agree otherwise. "Resolved" means that a determination of breach is made, or it is decided that a determination is not necessary.

### Former APS employees

42. Where a person, as an APS employee, has engaged in conduct that is thought to have breached the code, the nominated Decision Maker will decide to cease or continue a formal process for determining if the person has breached the code even if that are no longer an APS employee. No sanction can be imposed on a person who is not an APS employee.

### Review of Actions

43. Employees have a right to fair treatment in the workplace. Under section 33 of the PS Act, non-SES employees may seek a review of a decision that relates to their employment, except in the case of termination of employment.

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44. Time limits for lodging applications for review are:
  - a. for applications for primary review of a decision that an employee has breached the Code, 60 days from the determination of the breach; or
  - b. for applications for primary review of a sanction imposed for breaching the Code, 60 days from the imposition of the sanction.
45. In the case of findings of Code breaches, and sanctions other than termination of employment imposed as a result of those findings, employees and former employees can apply for review directly to the Merit Protection Commissioner (MPC) or the Bureau.
46. If the application for review relates to a finding that an employee has breached the Code, or a sanction imposed for breaching the Code, the employee is required to lodge their application directly with the Merit Protection Commissioner (MPC), not through the Bureau.
47. Making an application for review does not prevent the Bureau from proceeding with an action, or implementing a decision, that is subject to a review application.
48. For further information please refer to the Bureau's [Review of APS employee related decisions and actions procedure](#) and the [APSC Merit Protection Commissioner's website](#).

## Responsibilities and Delegations

### People Services Section

49. The People Services Section is responsible for:
  - a. managing investigations into allegations of serious misconduct by employees in possible breach of the Code;
  - b. supporting and promoting the Bureau's ethical standards of conduct framework;
  - c. providing education, guidance and advice to employees and managers on the Code; and
  - d. reporting on trends and systemic policy, process and/or procedural deficiencies identified during investigations to positively assist with the Bureau's strategic direction.

### Manager People Services

50. The Manager, People Services has the responsibility for:
  - a. making preliminary inquiries into allegations received by the Bureau about suspected breaches of the Code by an employee determining if any further action may be required or appropriate in the circumstances of the particular matter.
  - b. making the determination to proceed to an investigation.

### Breach Decision Maker

51. The persons who occupy the following Bureau positions are nominated by the CEO to make determinations as to whether an APS employee or former employee has breached the Code and undertake the role of the breach Decision Maker:
  - a. Group Executive Corporate Services and Chief Operating Officer (GECS);
  - b. General Manager Organisational Development (GMOD);



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- c. Manager, People Services (MPS);
  - d. Assistant Manager, Employee Relations and Industrial Relations (AMEIR).
52. The CEO may, from time to time, nominate other persons to make determinations as to whether an employee or former employee has breached the Code.

#### Unbiased and Independent Reviewer

53. Reasonable steps must be taken to ensure that a person who determines whether there was a breach of the Code and a person who decides any sanction is, and appears to be, independent and unbiased. Care needs to be taken in selecting and appointing or delegating people to these role to ensure that decisions are not later invalidated owing to an incorrect appointment.
54. The breach Decision Maker and the Sanctions Delegate must advise the CEO or relevant 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.
55. Delegates nominated by the CEO as to be an independent and unbiased reviewer for SES and non-SES classifications include:
- a. CEO
56. Delegates for all classifications other than SES include:
- a. Group Executive Corporate Services & Chief Operating Officer;
  - b. General Manager, Organisational Development;
  - c. Manager, People Services.

#### Suspension Delegate

57. Delegates nominated by the CEO to suspend an employee on specified grounds with or without pay, review suspension at regular intervals and end the suspension under the Section 3.10 of the Regulations for SES and non-SES classifications include:
- a. Group Executive Corporate Services and Chief Operating Officer (GECS);
  - b. General Manager (Organisational Development) (GMOD);
  - c. Manager (People Services) (MPS).
58. Delegates for all classifications other than SES in their direct line of supervision include the below, however they must consult with one of the above Delegates before exercising delegation:
- a. Group Executives;
  - b. General Managers.

#### Sanctions Delegate

59. Section 15(1) of the PS Act empowers the CEO to impose sanctions on an APS employee in the Bureau who is found to have breached the Code as set out in section 13 of the PS Act.
60. Delegates of the CEO to impose sanctions on a Bureau employee for all classifications other than SES who is found to have breached the Code:

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- a. Group Executive Corporate Services and Chief Operating Officer (GECS);
  - b. General Manager (Organisational Development) (GMOD);
  - c. Manager (People Services) (MPS).
61. Delegates of the CEO for all classifications other than SES in their direct line of supervision include the below, however they must consult with one of the above Delegates before exercising delegation:
- a. Group Executives.

## Enquiries

62. Further information on the APS Values, Employment Principles and the Code is available from the Australian Public Service Commission's (the Commission) website at [www.apsc.gov.au](http://www.apsc.gov.au) and from the Ethics Advisory Service on 02 6202 3737 and [ethics@apsc.gov.au](mailto:ethics@apsc.gov.au).
63. Any enquiries in relation to this procedure should be directed to the Assistant Manager, Employee Relations and Industrial Relations via email to [EmployeeRelations@bom.gov.au](mailto:EmployeeRelations@bom.gov.au).

## Terminology

**The PS Act:** Refers to the [Public Service Act 1999](#), as amended.

**The Regulations:** Refers to the [Public Service Regulations 1999](#), as amended.

**Commissioner's Directions:** Refers to the [Australian Public Service Commissioner's Directions 2016](#).

**Employee:** Refers to a Bureau employee employed on an ongoing or non- ongoing basis, or where applicable, a former Bureau employee.

**Decision Maker:** Refers to the person nominated by the CEO to make determinations as to whether an APS employee has breached the Code.

**Sanctions Delegate:** Refers to the person who is the delegate of the CEO under s15(1) of the PS Act for the purpose to impose sanctions on an employee who is found to have breached the Code.

## Related requirements

<b>Supersedes</b>	Procedure for Suspected Breaches of the APS Code of Conduct V1.0
<b>Legislation</b>	<a href="#">Public Service Act 1999</a> <a href="#">Public Service Regulations 1999</a> <a href="#">Australian Public Service Commissioner's Directions 2016</a> <a href="#">Privacy Act 1988</a> <a href="#">Archives Act 1983</a>

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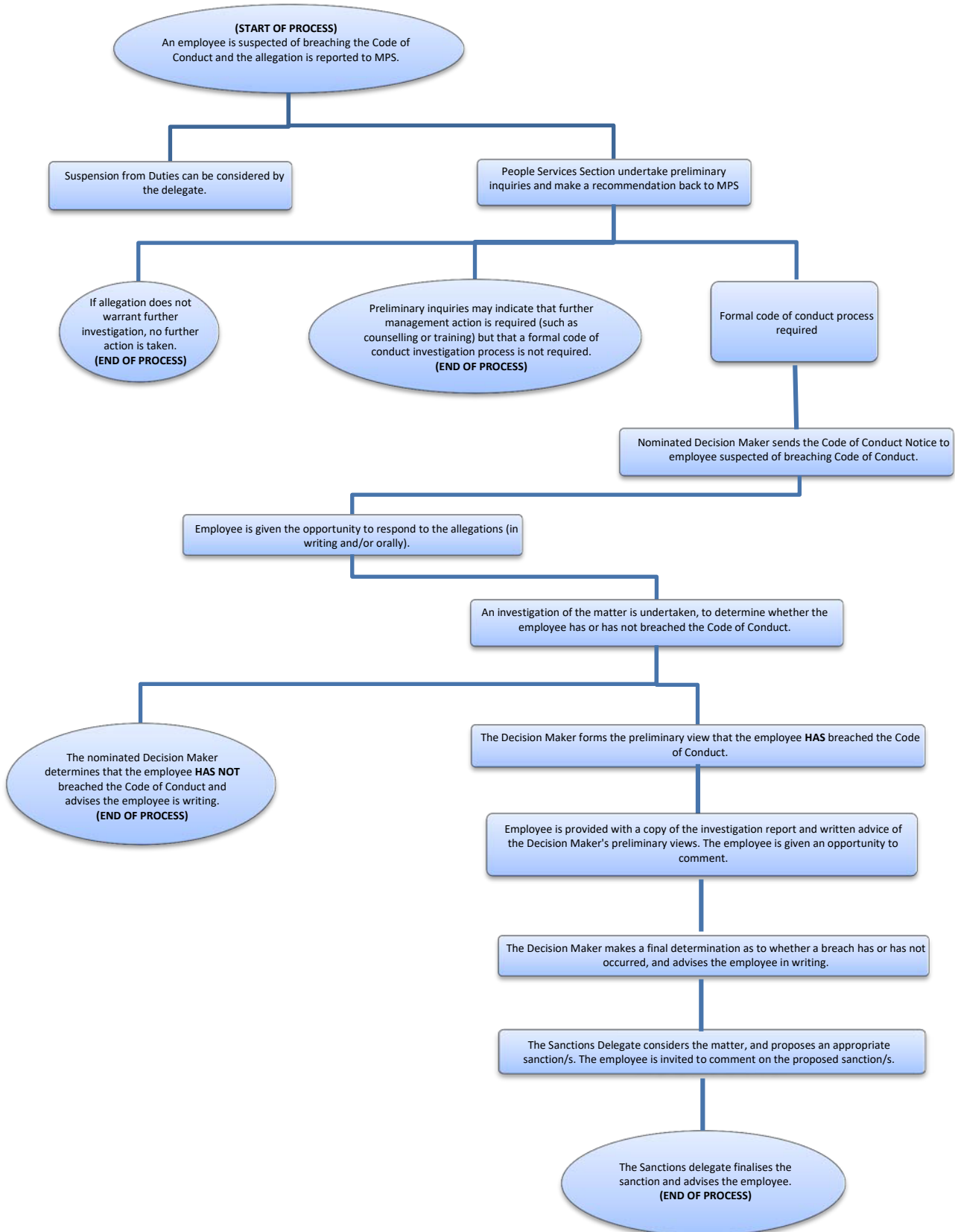
<b>Government policies</b>	<a href="#">Commonwealth Fraud Control Framework</a> <a href="#">Administrative Functions Disposal Authority</a>
<b>Standards</b>	<a href="#">APSC Values and Code of Conduct in Practice</a> <a href="#">APS Code of Conduct</a> <a href="#">Australian Privacy Principles</a>
<b>Bureau policies</b>	<a href="#">Bureau of Meteorology Enterprise Agreement (EA) 2018</a> Bureau's Authorisations and Delegations Instrument <a href="#">People Policy</a> <a href="#">Privacy Policy</a> <a href="#">Acceptable Use of ICT Resources Policy</a>
<b>Bureau procedures</b>	<a href="#">Fraud Control</a> <a href="#">Public Interest Disclosure Procedure</a> <a href="#">Gifts and Benefits Procedure</a> <a href="#">Outside Employment Procedure</a> <a href="#">Review of APS employee related decisions and actions procedure</a>
<b>Bureau guidelines</b>	Code of Conduct Guidelines

## Document control

<b>Version No.</b>	<b>Version date</b>	<b>Status</b>	<b>Author</b>	<b>Reviewed by</b>	<b>Review / change details</b>
<b>1.0</b>	June 2013	Initial Release	G Milner A Hall		
<b>1.1</b>	October 2018	Draft		S Jarash	New template
<b>1.2</b>	November 2018	Draft	B Jenkins	C Ward	Minor wording amendments
<b>1.3</b>	May 2019	Draft		C Ward D Sousa	Simplified language, updated to align with new Bureau Delegations, procedures and relevant APS guidance materials.
<b>2.0</b>	May 2019	Final Release		SRBCC	Approved

**Appendix A - Code of Conduct Process Flowchart**

This Flowchart is intended as an illustrative overview of the Code of Conduct process, and must be considered in conjunction with the steps outlined in these procedures.



**Appendix B - Recordkeeping and Retention Periods**

Relevant to these procedures, the National Archives of Australia (NAA) set out the following retention periods in the [Administrative Functions Disposal Authority](#) of 2000.

<b>NAA Reference</b>	<b>Description of Record</b>	<b>Disposal Action</b>
1702	Records documenting general counselling of employees, including counselling related to minor breaches of the Code of Conduct and work performance.	Destroy 2 years after action completed.
20962	Records documenting investigations of misconduct, which result in disciplinary action being taken.	Destroy 5 years after action completed.
1705	Records documenting allegations into misconduct where no follow-up investigation is made (i.e. where allegations are found to be frivolous or vexatious).	Destroy 18 months after action completed.
1706	Records documenting investigations of misconduct, where allegations are proved to be unfounded and the employee has requested the retention of the records.	Destroy 75 years after date of birth of employee, or 7 years after last action (whichever is later), or when requested by the employee.
1707	Records documenting investigations of misconduct, where allegations are proved to be unfounded and the employee has not requested the retention of the records.	Destroy 18 months after investigation completed.