

CODE OF CONDUCT

1 Principles

Employees will be informed of responsibilities under the Code of Conduct through the provision of information and induction packages, and through ongoing training.

Managers and employees will embody and promote ethical standards of behaviour in the workplace, including the promotion of the Australian Public Service (APS) Values, Employment Principles and the APS Code of Conduct.

The Chief Executive Officer (CEO) and Breach Decision Maker (BDM) will ensure procedural fairness is adhered to in the application of this policy by keeping employees informed, providing employees with the opportunity to be heard in response to allegations, and remaining independent and unbiased.

The process for determining whether an APS employee has breached the Code of Conduct will be carried out in a manner as expeditiously and with as little formality as a proper consideration of the matter allows. If several allegations of potential breaches of the Code of Conduct are made, these may be dealt with on a collective basis.

Appropriate records regarding breaches of the Code of Conduct must be kept.

For non-SES employees, decisions regarding misconduct will generally be subject to the possibility of review under the Public Service Act.

2 Introduction

Section 13 of the *Public Service Act 1999 (Cth) (PS Act)* contains the APS Code of Conduct (Code of Conduct), which sets out the standards of conduct and behaviour required of all APS employees. One element of the Code of Conduct requires that APS employees must at all times behave in a way that upholds APS Values (Values), which are set out in section 10 of the PS Act; and APS Employment Principles, which are set out in section 10A of the PS Act.

The Public Governance, Performance and Accountability Act 2013 (Cth) (PGPA Act) sets out in sections 25 to 29 general duties of APS employees that concern:

- a duty to act with care and diligence
- a duty to act honestly, in good faith and for a proper purpose
- duties concerning the use of position and information
- a duty to disclose interests.

These duties are similar to elements of the APS Code of Conduct, which has been amended to ensure consistency and alignment with the PGPA Act.

The *Public Interest Disclosure Act 2013 (PID Act)* promotes the integrity and accountability of the Commonwealth public service by establishing a framework for reporting, investigating and responding to wrongdoing by public officials in the Commonwealth. It also provides protection (including civil and criminal immunity) to those who make a report or complaint. The PID Act supplements existing Code of Conduct processes.

2.1 Procedures for Dealing with Potential Breaches of the APS Code of Conduct

2.1.1 Purpose of Procedures

These procedures are provided to assist all National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) employees to understand how the APS Code of Conduct will be applied, and set out the steps to be taken in instances of suspected breaches of the Code of Conduct.

The procedures also set out the steps in imposing a sanction on an employee who is found to have breached the Code of Conduct.

These procedures are designed to inform all NOPSEMA employees about the manner in which potential breaches of the Code of Conduct are to be handled. They are also to be used by BDMs appointed to investigate potential breaches of the Code of Conduct, to carry out their functions. The procedures will also be of assistance to employees against whom a breach of the Code of Conduct has been alleged.

These procedures satisfy the requirement under section 15(3) of the PS Act for APS agencies to establish procedures for handling reports of suspected breaches of the Code of Conduct.

2.1.2 Code of Conduct

All NOPSEMA employees are required to meet the standards of conduct embodied in the Code of Conduct. These standards are set out in section 13 of the PS Act and provide as follows:

- An APS employee must behave honestly and with integrity in connection with APS employment.
- An APS employee must act with care and diligence in connection with APS employment.
- An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.
- An APS employee, when acting in the connection with APS employment, must comply with all applicable Australian laws. For this purpose, Australian law means:
 - any Act (including this Act), or any instrument made under an Act; or
 - any law of a state or territory, including any instrument made under such a law.
- An APS employee must comply with any lawful and reasonable direction given by someone in the employee's agency who has authority to give the direction.
- An APS employee must maintain appropriate confidentiality about dealings with any Minister or Minister's member of staff.
- An APS employee must:
 - (a) take reasonable steps to avoid any conflict of interest (real or apparent) in connection with the employee's APS employment
 - (b) disclose details of any material personal interest of the employee in connection with the employee's APS employment.
- An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.
- An APS employee must 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.
- An APS employee must 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.

- An APS employee must 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 the employee's Agency and the APS.
- An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.
- An APS employee must comply with any other conduct requirement that is prescribed by the regulations.

2.1.3 Australian Public Service Values

The Code of Conduct operates within a set of Values that are set out in section 10 of the PS Act. NOPSEMA, its officers and employees strive to uphold the Values in every aspect of work. Further, subsection 13(11) of the PS Act requires APS employees to at all times behave in a way that upholds the Values. The APS Values are as follows:

Impartial

The APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence.

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.

Accountable

The APS is open and accountable to the Australian community under the law and within the framework of Ministerial responsibility.

Respectful

The APS respects all people, including their rights and their heritage.

Ethical

The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

2.1.4 APS Employment Principles

Subsection 13(11) of the PS Act also requires APS employees to at all times behave in a way that upholds the APS Employment Principles.

APS Employment Principles

The APS is a career based public service that:

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

Decisions based on merit

For the purposes of section 10A(1)(c) of the PS Act (that is, the third dot point in the list above), a decision relating to engagement or promotion is based on merit if:

- all eligible members of the community were given a reasonable opportunity to apply to perform the relevant duties
- an assessment is made of the relative suitability of the candidates to perform the relevant duties, using a competitive selection process
- the assessment is based on the relationship between the candidates' work related qualities and the work related qualities genuinely required to perform the relevant duties
- the assessment focuses on the relative capacity of the candidates to achieve outcomes related to the relevant duties
- the assessment is the primary consideration in making the decision.

2.1.5 Failure to Comply with the Code of Conduct

Where a determination is made, in accordance with these procedures, that an employee has breached the Code of Conduct, the CEO of NOPSEMA may impose the sanctions set out in the PS Act (see below at 4.5).

The Australian Public Service Commissioner (APS Commissioner) also has the power to inquire into and determine whether an APS employee, or former APS employee, has breached the Code of Conduct if:

- a. the CEO or the Prime Minister requests the APS Commissioner to do so
- b. the APS Commissioner believes that it is appropriate to do so.

Alternatively, the Merit Protection Commissioner may inquire into and determine whether an APS employee, or former APS employee, has breached the Code of Conduct if:

- a. the CEO requests the Merit Protection Commissioner to do so
- b. the Merit Protection Commissioner believes that it is appropriate to do so
- c. the APS employee, or former employee, agrees to this in writing.

2.1.6 Providing false or misleading information in connection with engagement as an APS Employee

Subsection 15(2A) of the PS Act also provides that an APS employee, or former APS employee, will also be taken to have breached the Code of Conduct if they are found to have done any of the following before being engaged as an APS employee:

- a. knowingly provided false or misleading information
- b. wilfully failed to disclose relevant information
- c. otherwise failed to behave honestly and with integrity.

3 Public Interest Disclosure Procedures

From 15 January 2014, the Public Interest Disclosure Act 2013 (PID Act) repeals s16 of the PS Act, which had previously protected whistle-blowers who report suspected breaches of the APS Code of Conduct.

The PID Act instead covers 'disclosable conduct' and includes:

- conduct that contravenes a Commonwealth law
- corruption or maladministration

- wastage of public money
- conduct that unreasonably endangers the health and safety of other people
- conduct that could give rise to disciplinary action/breach of the Code of Conduct.

A PID Act Investigation is a separate process to a Code of Conduct investigation.

3.1 Making a public interest disclosure

A 'public official' may make a public interest disclosure if they believe on reasonable grounds that there is information that tends to show one or more instances of 'disclosable conduct' by another public official. A public official includes a current or former NOPSEMA employee.

A NOPSEMA employee does not have to say that they are making a report under the PID Act for it to be a public interest disclosure.

Reports of disclosable conduct should be made to NOPSEMA's Authorised Officer or an employee's manager. If the manager believes that the information given to them concerns disclosable conduct, they must refer it to an Authorised Officer.

NOPSEMA has appointed Damien Cronin, Jeremy Dunster, Nicholas Page and Rhys Jones as Authorised Officers.

A disclosure may be made either orally or in writing. You may remain anonymous, however, this may affect whether the disclosable conduct can be properly investigated.

The Authorised Officer will make a decision as to whether the disclosure is of a kind covered by the PID Act, and if so, will allocate it within 14 days to the appropriate agency to investigate the matter. If the conduct relates to NOPSEMA, then it will be allocated to NOPSEMA as the investigating agency.

Reports of a breach of the Code of Conduct in NOPSEMA will usually constitute a report under the PID Act in the first instance.

3.2 Investigation of public interest disclosures

The CEO must investigate disclosures allocated to NOPSEMA, but can delegate their investigative powers and functions to other individuals.

Disclosures will be investigated within 90 days of being made and in accordance with the provisions in the PID Act and the Public Interest Disclosure Standard 2013 published by the Commonwealth Ombudsman (the Standards).

Where conduct is identified by an investigator that constitutes a breach of the APS Code of Conduct, an investigator may recommend that it be investigated under this Code of Conduct policy.

An investigator has discretion not to investigate disclosures for various reasons set out in s 48 of the PID Act, for example, if the disclosure is deemed to be frivolous or vexatious. The investigator must provide reasons if this discretion is exercised.

Investigators are required not to disclose or use information obtained in the course of an investigation under the PID Act.

After the investigation, a report is prepared by the investigator setting out the matters considered, length of time of investigation, findings, action recommended or taken, any claims or evidence of detrimental action to the discloser and NOPSEMA's response to those claims. A copy will be given to the discloser.

3.3 Rights of review

If a discloser is unhappy with NOPSEMA's decision, a decision was not completed or was inadequate, they may make an 'external disclosure', which is a disclosure to any person outside government. There are strict criteria for making external disclosures which must be followed.

A discloser may also complain about the PID process or NOPSEMA's handling of their disclosure to the Ombudsman.

More information on how to make an external disclosure or complaint is available at www.ombudsman.gov.au.

3.4 Protection of disclosers

If an individual makes a disclosure under the PID Act:

- they cannot be made the subject of any criminal, civil or administrative liability
- there are criminal penalties for reprisal action
- the individual's identity will be protected unless they consent to it being released
- workplace rights under the Fair Work Act 2009 are not affected.

3.5 Record keeping

A PID file must be established and maintained by the PID authorised officers on receipt of a public interest disclosure. This file will also be used for the investigation process and retained once the investigation is complete. The file must include:

- copies of all documents pertaining to the investigation, including evidence obtained for the purpose of the investigation
- the investigation report (by the CEO or delegated investigator).

Requirements under other legislation in relation to record management must be adhered to, including under:

- *Archives Act 1983 (Cth)*;
- *Freedom of Information Act 1982 (Cth)*; and
- *Privacy Act 1988 (Cth)*.

4 Code of Conduct Procedures

4.1 Initial Handling of Suspected Breach

When a complaint is made that a NOPSEMA employee or a person working on a NOPSEMA site is suspected to have breached the Code of Conduct, the conduct is to be reported to the Human Resources Manager/Senior Human Resources Advisor: This is regardless of whether the complaint is oral or in writing. If it is not practical to initially report the incident to the Human Resources Manager/Senior Human Resources Advisor, the NOPSEMA employee is required to report the incident to his/her manager. The manager should then follow up by reporting the incident to the Human Resources Manager/Senior Human Resources Advisor or directly to the CEO.

4.1.1 Obligations of NOPSEMA Managers and Employees

NOPSEMA managers are required to report any behaviour that they are aware of that may amount to a suspected breach of the Code of Conduct to the CEO or the Human Resources Manager/Senior Human Resources Advisor. NOPSEMA managers should use their discretion in relation to how they report the suspected breach. For example, if a complainant expresses a desire not to formalise the complaint, it may be appropriate for the NOPSEMA manager to report the incident on an anonymous basis whilst explaining to the complainant that the lack of a written signed complaint will limit NOPSEMA's capacity to conduct a Code of Conduct investigation if appropriate.

NOPSEMA employees who become aware of allegations of suspected misconduct and do not report them or refer the matter to the appropriate management level may, in certain circumstances, be in breach of their obligations to uphold the Values.

4.1.2 Details of the Complaint

After receiving a complaint, the Human Resources Manager/Senior HR Advisor should meet with the person making the complaint, and discuss the complaint. The Human Resources Manager/Senior HR Advisor should notify the complainant that in order for the complaint to be investigated, it must be provided in writing and signed.

The Human Resources Manager/Senior HR Advisor should also advise the complainant that the written complaint should contain as much detail about the complaint as possible and include the following information, if available:

- the name(s) of the employee(s) suspected of breaching the Code of Conduct
- the date(s) the incident(s) occurred
- the name(s) of any witnesses to the incidents.

At this point, the Human Resources Manager/Senior HR Advisor should inform the complainant that absolute guarantees with respect to confidentiality cannot be made, for the reasons outlined 4.1.3 below.

If the nature of the complaint is such that urgent action is required, it may be appropriate for NOPSEMA to take action on the basis of an oral complaint. In this situation, a written, signed complaint must be obtained from the complainant as soon as practicable.

The Human Resources Manager/Senior HR Advisor should advise the complainant that they should also, where appropriate:

- make notes on what the complainant has seen or heard
- record any action the complainant has taken
- keep all relevant documents such as emails or other correspondence and ensure that no notes or annotations are made on the documents.

Where there is no written, signed complaint, the extent of the action that may be applied by NOPSEMA will be limited.

4.1.3 Confidentiality and Privacy

The designated NOPSEMA officer should not give the complainant any guarantees as to confidentiality of the information they have provided. Although confidentiality will be maintained as far as possible, the person that is the subject of the complaint is likely to be provided with material related to the complaint to ensure that they are given procedural fairness. Further, in some circumstances NOPSEMA may be required to disclose details of the complaint to a third party, for example to a relevant Court or Tribunal, the Australian Federal Police or to Comcare if the matter proceeds in alternate jurisdictions.

The complaint will be dealt with in accordance with the Information Privacy Principles under the *Privacy Act 1988 (Cth)*, however to the extent that the giving of information or the production of a document to the APS Commissioner and/or the Merit Protection Commissioner involves a disclosure of personal information, the disclosure is authorised by the PS Act for the purposes of the *Privacy Act 1988*. The PS Regulations also prescribe circumstances where disclosure or use of personal information to another APS agency is authorised under the Privacy Act.

4.1.4 Decision on How to Proceed

On receipt of a written, signed complaint of a suspected breach of the Code of Conduct (or in exceptional circumstances, an oral complaint), the Human Resources Manager/Senior HR Advisor will refer the matter to the CEO to make a decision as to whether an investigation is warranted. Factors to be considered when making this decision include:

- the nature of the suspected conduct
- the seriousness of the suspected conduct
- the sensitivity of the issue
- the parties involved
- public interest considerations, including the impact of investigating or not investigating the complaint on the reputation or operations of NOPSEMA.

If the CEO determines that a Code of Conduct investigation is required, the CEO is to appoint a BDM to conduct the investigation and make a determination as to breach, or make a recommendation to the CEO as to whether the CEO should make a determination as to breach. Where a BDM has been appointed to investigate and make recommendations to the CEO, it is open to the CEO to accept or reject the recommendations made.

4.1.5 Appointing a BDM

Reasonable steps must be taken to ensure that the BDM appointed to investigate a suspected breach in all cases is, and appears to be, independent and unbiased. For example, an employee who has knowledge of the issue which is the subject of the complaint, or who has conducted a previous Code of Conduct investigation in relation to the employee in question would not normally be appointed. In some circumstances, it may be appropriate to appoint an external investigator as a BDM to conduct the investigation and make a determination as to breach, or a recommendation to the CEO as to whether a breach of the Code of Conduct has occurred. Where this happens, an appropriate NOPSEMA officer should be appointed as the main point of contact between NOPSEMA and the external investigator.

4.1.6 Opening a Misconduct File

At the time the decision is made to investigate a suspected breach of the Code of Conduct, a misconduct investigation file should be created by the Human Resources Team. This file must be maintained throughout the course of the investigation, and records kept in accordance with the requirements outlined at 4.7 below.

4.2 Conducting the Investigation

4.2.1 Undertaking the Investigation

There are a number of basic principles that must be adhered to in all investigations into suspected breaches of the Code of Conduct. All investigations must be carried out:

- as expeditiously as possible in the circumstances
- as informally as possible in the circumstances
- in accordance with procedural fairness principles.

These procedures set out how a Code of Conduct investigation is to be carried out. Beyond this, the format and procedure of an investigation should be determined in light of the nature of the suspected conduct and the circumstances of the particular case. A formal hearing may not be required, particularly for less serious allegations.

BDMs should refer to the Australian Public Service Commission document 'Handling misconduct: A human resources practitioner's guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct' for guidance.

4.2.2 Suspension or Temporary Reassignment

The CEO may suspend a NOPSEMA employee from duties if the CEO believes on reasonable grounds that:

- an employee is suspected of breaching the Code of Conduct
- that employee's suspension is in the public or in NOPSEMA's interest.

Suspension may be with or without pay.

Before suspending an employee, procedural fairness requires that the CEO must normally provide the employee with an opportunity to comment on the suspension decision. This enables an affected employee to provide evidence that may affect the suspension decision. For example, an employee to be suspended without pay would have an opportunity to provide evidence of significant financial hardship, and in response the CEO may determine that suspension on part or full pay is more appropriate in the circumstances. At all stages of the investigation process the employee has a right to make use of a representative.

In some circumstances it may not be appropriate to provide the employee with an opportunity to comment on the proposed decision regarding suspension. For example, if there is a real risk the employee may destroy evidence, or if there is an imminent serious threat to the safety of other employees.

The suspension of an employee must be reviewed by the CEO at regular intervals.

The maximum period an employee can be suspended without remuneration is 30 days, unless exceptional circumstances exist.

The CEO must immediately end the suspension if the CEO no longer believes on reasonable grounds that the employee has or may have breached the Code of Conduct, or the suspension of the employee is no longer in the public or in NOPSEMA's interest.

The suspension must end as soon as a sanction is imposed on an employee for a breach of the Code of Conduct.

A temporary re-assignment of duties is carried out under section 25 of the PS Act.

When considering whether to suspend an employee from duty, the CEO may also consider whether it would be appropriate, as an alternative to suspension, to temporarily re-assign the employee to other duties. If the CEO is proposing to temporarily re-assign the duties of the employee it will generally be appropriate for the CEO to give the employee an opportunity to be heard in relation to the proposed re-assignment of duties. If the circumstances of the matter do not permit this, then the employee should be invited to comment on the decision as soon as it has been made.



4.2.3 Notifying the Employee of the Suspected Breach

After a decision has been made to conduct a Code of Conduct investigation, the employee must be notified in writing of the suspected breach. Notification to the employee must include:

- details of the action or omission that makes up the suspected breach, and the specific provision of the Code of Conduct that it is alleged that the employee has breached
- the list of the sanctions that may be imposed under section 15(1) of the PS Act if a breach is proved
- notification that the employee has a reasonable opportunity to provide a statement in relation to the suspected breach within a reasonable timeframe
- notification that the employee may have the assistance of, or be represented by, a legal representative or a union nominee or a friend or relative if the employee wishes
- a copy of this Policy
- a reference to suspension or reassignment of duties if appropriate
- the role/authority of the author of the notification.

If at any point in the investigation the allegations are varied, the CEO must provide written notice to the employee, detailing the variation. The employee must be provided with a right to respond to the varied allegations.

4.2.4 Employee's Right to Respond

In keeping with procedural fairness, an employee suspected of having breached the Code of Conduct must be provided with a reasonable opportunity to respond to the allegations.

What amounts to a 'reasonable opportunity' will depend on the circumstances. In setting a timeframe for the employee to respond, the CEO's considerations should include the following:

- the complexity and seriousness of the allegations
- whether the employee has time to access material that might assist in determining the matter
- whether the employee has time to consult with a support person
- whether it is appropriate for the employee to be provided with time away from work duties to prepare a response.

The employee must be allowed to provide his/her response either orally or in writing. If the employee provides an oral response, the employee must be advised of his/her right to have a representative or support person of his/her choosing present during the oral response. However, it is important that the representative or support person is independent of the matter being determined. Where the matter being determined is of a sensitive nature, the BDM must obtain a written statement from the representative or support person to the effect that the representative or support person will maintain confidentiality of the investigation process, and place it on the Code of Conduct investigation file.

4.3 Making a Determination

In order to make breach determination, or a recommendation to the CEO that a breach determination be made, the BDM must be satisfied to the civil standard of the 'balance of probabilities' that a breach of the Code of Conduct occurred. This requires that the BDM be satisfied that it was more probable than not that the breach occurred, and that the employee in question was responsible for the breach.

For more serious suspected breaches, the 'Briginshaw' principle applies. This requires that the more serious the suspected breach, and the more grave the consequences for the employee in question if the breach is proved, then the greater the level of probability required for the BDM to be satisfied that a breach occurred.

In general, the BDM should only consider the conduct or omissions alleged in recommending or determining a breach of the Code of Conduct. However, in some cases it may be appropriate for the BDM to consider an employee's prior conduct. For example, evidence of similar facts, or evidence showing the employee had a particular tendency to act in a certain way. If, in making a recommendation or a determination, the BDM plans to take into account an employee's prior conduct, the employee must be advised of that and provided with an opportunity to comment on the prior conduct.

Where an employee is alleged to have breached multiple aspects of the Code of Conduct, a BDM need only identify that the employee breached one aspect of the Code of Conduct to determine breach or recommend that breach be determined.

The BDM must prepare a written report of their findings of fact, and their breach determination, or their recommendation as to breach, and provide a copy to the CEO and to the employee who is the subject of the complaint.

Where the BDM has recommended to the CEO that breach be found, and the CEO determines that the employee who is the subject of the complaint has breached the Code of Conduct, the CEO must give the employee a copy of the breach determination.

4.4 Action Following Determination

4.4.1 If a Breach Has Not Been Proved

Where the BDM or the CEO has determined that no breach of the Code of Conduct occurred, the employee must be provided with a copy of the BDM's report and the determination of no breach.

If the employee has been suspended from work as a result of the investigation, the suspension must cease immediately upon the finding being made. If the employee has been suspended without pay, the employee must be remunerated for the period of the suspension.

4.4.2 If a Breach Has Been Proved

If a finding has been made under these procedures, or under procedures made under section 41B(3) or section 50A(2) of the Public Service Act, that the employee has breached the Code of Conduct, the CEO or delegate (the sanction decision maker) must decide what sanction, if any, is appropriate.

The options open to the decision maker include:

- to take no further action
- for the NOPSEMA employee to be informally counselled
- to impose one or more of the sanctions specified in section 15(1) of the PS Act.

A decision not to take further action, notwithstanding that a breach of the Code of Conduct has been proven, must be objectively justifiable in the circumstances. There may be mitigating circumstances warranting no further action being taken.

Informally counselling the employee is not a sanction. Rather, it is a discussion with the employee about the standards required of NOPSEMA employees under the Code of Conduct, Values and Employment Principles, and how those standards apply in practice. Informal counselling may also be used as an opportunity to warn employees that any further breach of the Code of Conduct will result in a sanction being applied.

4.5 Imposing Sanctions

A sanction can only be applied under section 15(1) of the PS Act if an employee has been found to have breached the Code of Conduct. The sanctions available under the PS Act are as follows:

- a reprimand

- deductions from salary, by way of a fine (which must not be more than 2% of the employee's annual salary)
- reduction in classification
- re-assignment of duties
- reduction in salary
- termination of employment.

A sanction may not be imposed on an employee who has been determined to have breached the Code of Conduct unless reasonable steps have been taken to:

- a) inform the employee of:
 - (i) the determination
 - (ii) the sanction or sanctions that are under consideration
 - (iii) the factors that are under consideration in determining any sanction to be imposed.
- b) give the employee a reasonable opportunity to make a statement in relation to the sanctions under consideration.

A written statement in relation to the sanctions under consideration should be provided by the employee within seven calendar days of a preliminary decision, or any longer period that is allowed by the sanction decision maker. The sanction decision maker may also allow an employee to make an oral statement within the same seven day period on whatever conditions the sanction decision maker considers reasonable, including requiring that an oral statement be recorded and that the statement be given at a particular time and place.

The sanction decision maker must be, and must appear to be, independent and unbiased in the matter.

4.6 Rights of Review

4.6.1 Employee's Rights of Review

A non-SES employee who is found to have breached the Code of Conduct may challenge either the determination that they breached the Code of Conduct or the sanction imposed by applying to the Merit Protection Commissioner for review of the CEO's action.

However, under the PS Act and PS Regulations, an SES employee is excluded from seeking a review of actions, including in relation to action resulting from a Code of Conduct investigation and any sanctions imposed.

Where an employee's employment has been terminated as a result of a finding that they have breached the Code of Conduct, the only avenue of review is to make a claim of unfair dismissal to the Fair Work Commission under the *Fair Work Act 2009* (Cth). However, most SES employees are not eligible to bring a claim of unfair dismissal under the Fair Work Act.

An avenue for review that is open to any employee who has been found to have breached the Code of Conduct is to the Federal Court or Federal Circuit Court under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

4.6.2 Complainant's Rights of Review

A person who has made a complaint alleging another NOPSEMA employee has potentially breached the Code of Conduct (a Complainant) may have a right to seek review of the outcome of the Code of Conduct investigation under the PS Act and in other jurisdictions.

Under the PS Act, the Complainant may apply to the CEO of NOPSEMA in writing for review. However, the application must be made to the Merit Protection Commissioner if the application is for review of a sanction imposed for breach of the Code of Conduct.

Further, the Complainant may have a right to have their complaint considered by the Public Service Commissioner or the Merit Protection Commissioner if they are not satisfied with NOPSEMA's decision regarding the handling of the report.

If the Code of Conduct complaint relates to unlawful discrimination or harassment in the workplace, the Complainant may also have a right to lodge a complaint with the Australian Human Rights Commission.

4.7 Record Keeping Requirements

4.7.1 Misconduct File

A misconduct investigation file must be established and maintained by the Human Resources Manager or Senior HR Advisor throughout the investigation process and retained once the investigation is complete. The file must include:

- the initial written, signed complaint that prompted the investigation
- copies of all documents pertaining to the investigation (for example, documents to the employee outlining potential breaches, and any written material provided by the employee in response)
- evidence collected by the BDM in the course of the investigation, or copies of such evidence
- the report to the CEO from the BDM (if applicable)
- a record of the BDM's or the CEO's determination in respect of the suspected breach
- a record of the actions taken, including any sanction or sanctions imposed.

Requirements under other legislation in relation to record management must be adhered to, including under:

- *Archives Act 1983 (Cth)*
- *Freedom of Information Act 1982 (Cth)*
- *Privacy Act 1988 (Cth)*.

4.7.2 Employee's Personnel File

The Code of Conduct investigation file should be kept separate from the employee's personnel file.

However, records relating to the Code of Conduct investigation should be kept on the employee's personnel file if:

- the allegations of investigations into misconduct are unfounded and the employee requests that the misconduct records be retained
- the employee is found to have breached the Code of Conduct and the breach results in disciplinary action.

5 Other Related Matters

The following paragraphs deal with the application of the Code of Conduct to some situations which may be of particular relevance to NOPSEMA employees.

Section 13(4) of the Code of Conduct requires that an APS employee, when acting in connection with APS employment, must comply with all applicable Australian laws. The following paragraphs also mention

provisions in the *Crimes Act 1914 (Cth)* which may be of relevance to the work of NOPSEMA in some situations.

5.1 Conflict of Interest

NOPSEMA employees are required to ensure that their private interests, both financial and personal, do not give rise to any actual or perceived conflict of interest with the work they perform for NOPSEMA.

If any actual or perceived conflict arises, employees are required to disclose the matter to their manager and, in consultation with their manager, to take appropriate action to avoid the conflict.

If an employee is unsure about whether a conflict of interest arises, he/she should discuss the issue with his/her manager.

5.2 Conduct with Industry and Members of the Public

Many employees of NOPSEMA are involved in decisions which can have a major impact on stakeholders, including individuals, particular firms or even whole industries. It is imperative that NOPSEMA has a reputation for professionalism, fairness and impartiality in making decisions that impact upon stakeholders.

NOPSEMA employees should be aware that actions which could jeopardise NOPSEMA's reputation may amount to breaches of the Code of Conduct. Employees must therefore be professional, fair and impartial in all their dealings with people outside NOPSEMA.

5.3 Outside Employment

Employees must not perform work outside NOPSEMA, either paid or unpaid, if it:

- would conflict or would be perceived to conflict with official duties and/or
- is likely to interfere with the performance of official duties.

Employees must have the approval of the CEO before performing any work outside NOPSEMA, and should consult their manager to discuss the process for seeking approval for outside employment.

If there is any doubt about a conflict of interest, employees should advise the CEO of the nature of the work and discuss whether or not the work would give rise to a conflict or perceived conflict of interest.

5.4 Gifts and Other Benefits

Gifts may be given or received by officials for any number of reasons. The acceptance or offer of gifts, including entertainment, requires careful judgement, because with it comes the possible perception of undue benefit or conflict of interest. This in turn can have a profound effect on the reputation of NOPSEMA and the APS in general.

5.5 Fair and Equitable Decisions

Employees are required to treat members of the public and other employees equitably, regardless of gender, age, language, ethnicity, cultural background, disability, sexual preference, religion and family responsibility.

Employees are required to abide by the NOPSEMA Promoting a workplace where all staff are treated with respect policy and Grievance procedures and must comply with obligations under relevant laws, including the *Sex Discrimination Act 1984 (Cth)*, *Age Discrimination Act 2004 (Cth)*, *Disability Discrimination Act 1992 (Cth)* and the *Racial Discrimination Act 1975 (Cth)*.

5.6 Official Information

Employees must exercise reasonable skill and diligence in their work, particularly in relation to giving information or advice. Employees must take reasonable steps to ensure any information or advice they give on behalf of NOPSEMA is, to the best of their knowledge, accurate. NOPSEMA employees must not disclose any information obtained or generated in connection with their employment if it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government, including the formulation or implementation of policies or programs.

Further, NOPSEMA employees must not disclose information which they obtain or generate in connection with their employment if the information:

- was, or is to be, communicated in confidence within the government; or
- was received in confidence by the government from a person or persons outside the government; whether or not the disclosure would be found to be an action for breach of confidence.

Exceptions to the rules above apply if the CEO has expressly authorised disclosure, or if disclosure is required by law.