

Code of Conduct

Document No: N-12000-PL0339 A15821

Date: 23/06/2020

1. Purpose

The Australian Public Service (APS) Code of Conduct (Code of Conduct) sets out the standards of conduct and behaviour required of all APS employees as defined in section 13 of the *Public Service Act 1999* (Cth) (PS Act). This includes upholding the APS Values (Values) which are set out in section 10 of the PS Act and the APS Employment Principles (Employment Principles) which are set out in section 10A of the PS Act. The Code of Conduct, Values and Employment Principles are not aspirational statements; they have a clear and legal application to NOPSEMA employees.

This Policy outlines the application of the Code of Conduct in NOPSEMA and should be applied in conjunction with the N-12000-SOP1863 Code of Conduct Procedure.

2. Scope

This Policy applies to all ongoing and non-ongoing employees and former employees employed by NOPSEMA under the PS Act.

3. Principles

3.1. Code of Conduct

Employees are required to meet the standards of conduct embodied in the Code of Conduct as set out in section 13 of the PS Act 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:
 - (a) any Act (including this 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.
- 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.

3.2. APS Values

NOPSEMA employees are required by section 13(11) of the PS Act to uphold the APS Values as set out in section 10 of the PS Act:

- 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.

3.3. APS Employment Principles

All NOPSEMA employees are required by section 13(11) of the PS Act to uphold the APS Employment Principles as set out in subsection 10A of the PS Act.

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; and
- recognises the diversity of the Australian community and fosters diversity in the workplace.

Note that 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; and
- the assessment is the primary consideration in making the decision.

3.4. Prior to engagement as an APS Employee

Employees who, prior to engagement as an APS employee:

- knowingly provided false or misleading information to another APS employee, or to a person acting on behalf of the Commonwealth;
- 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 reasonably to have known, was relevant; or
- otherwise failed to behave honestly and with integrity, in connection with their engagement as an APS employee, may be taken to have breached the Code of Conduct as set out in subsection 15(2A) of the PS Act.

3.5. Other legal obligations

Employees should be aware of other legal obligations regarding behaviour and conduct in the workplace which may interact with and/or overlap with the Code of Conduct. These include certain types of conduct and behaviour which, although not dealt with specifically in this Policy, are governed by NOPSEMA policies and procedures:

- N-07400-PL1786 Accountable Authority Instructions;
- N-07400-PL1476 NOPSEMA Fraud and Corruption Control Plan;
- N-07400-SOP1685 Giving and Receiving Hospitality, Gifts and Benefits Procedure;
- N-15200-PL0546 ICT Systems and Social Media Usage;
- N-12000-PL5806 Managing Conflicts of Interest Policy;
- N-12000-PL1506 Promoting Respect in the Workplace Policy; and
- N-12100-PL1901 Public Interest Disclosure Policy.

4. Definitions

Breach Decision Maker means the person appointed to determine if there has been a breach of the Code of Conduct (for more details refer to the N-12000-SOP1863 Code of Conduct Procedure).

Complainant means an employee who makes a complaint alleging that another NOPSEMA employee has potentially breached the Code of Conduct.

Employee has the same meaning as 'APS Employee' under section 7 of the PS Act.

Misconduct means any action or behaviour of employees which has been determined to breach of the Code of Conduct. Reference will be made to alleged misconduct until such time that a decision is made on whether there has been a breach of the Code of Conduct.

Former employee means that an employee who was, but is no longer, an ongoing or non-ongoing employee of NOPSEMA.

Merit Protection Commissioner means the Merit Protection Commissioner (MPC) appointed under the PS Act.

Sanction Decision Maker means the person appointed by the Chief Executive Officer (CEO) to decide on the appropriate sanction following a decision that there has been a breach of the Code of Conduct by the Breach Decision Maker.

Senior Executive Service (SES) means those NOPSEMA employees who are classified as SES employees under the APS Classification rules.

Support person means a person nominated by the employee to support them during attendance at interviews that form part of the investigation. They cannot participate or advocate for the employee during the interview. The support person cannot be a witness or potential witness for the investigation.

5. Responsibilities

5.1. Employees

Employees are responsible for:

- understanding their ethical obligations under the Code of Conduct;
- ensuring that their conduct is consistent with the Code of Conduct; and
- reporting any alleged breaches of the Code of Conduct.

5.2. Managers

Managers are also responsible for:

- promoting the Code of Conduct;
- guiding and assisting employees to comply with the Code of Conduct; and
- consistently reflecting the Code of Conduct in their own behaviour.

SES managers have additional obligations to promote the Values, Employment Principles and compliance with the Code of Conduct by personal example and other appropriate means as set out in subsection 35(3)(c) of the PS Act.

5.3. NOPSEMA

NOPSEMA will:

- make the N-12000-PL0339 Code of Conduct Policy and N-12000-SOP1863 Code of Conduct Procedure available to all employees through publication of these documents on NOPSEMA's intranet;
- inform and educate new employees of their responsibilities through provision of information and training during their induction;
- inform and educate current employees through regular provision of information and training; and

- manage any alleged breaches of the Code of Conduct in accordance with the N-12000-SOP1863 Code of Conduct Procedure, including ensuring adherence to procedural fairness.

6. Failure to comply with Code of Conduct

Employees who are suspected of breaching the Code of Conduct may be investigated by NOPSEMA and, if proven, their behaviour and/or actions may attract a sanction from NOPSEMA under subsection 15(1) of the PS Act. These sanctions include:

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

In addition, the APS Commissioner has the power to inquire into and determine whether an employee, or former employee, has breached the Code of Conduct if:

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

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

- the CEO requests the MPC to do so;
- the MPC believes that it is appropriate to do so; and
- the APS employee, or former employee, agrees to this in writing.

7. Procedures

NOPSEMA will handle suspected breaches of the Code of Conduct in accordance with N-12000-SOP1863 Code of Conduct Procedure established under section 15(3) of the PS Act.

NOPSEMA may decide not to investigate an alleged breach of the Code of Conduct where:

- the allegation is clearly frivolous, vexatious, false, malicious or lacks substance;
- the allegation has already been the subject of a proper examination by NOPSEMA;
- the allegation is handled under another legislative process, for example the *Public Governance, Performance and Accountability Act 2013* (Cth) or the *Public Interest Disclosure Act 2013* (Cth); or
- the allegation can be resolved more appropriately through other mechanisms, for example informal workplace resolution options or performance management processes.

If the alleged breach involves unlawful or criminal conduct, NOPSEMA may decide to refer the alleged breach to the relevant law enforcement authority. Whilst this does not automatically preclude NOPSEMA from conducting its own investigation into the alleged breach, NOPSEMA may decide to defer misconduct action pending the outcome of any criminal investigation or prosecution.

8. Right of review

8.1. Employee's right 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 MPC for review of the CEO's action as outlined in N-12000-PL0800 Resolving Workplace Issues Policy. The only exception is where the employee has been terminated from their employment in which it may be open to the former employee to challenge this decision through an unfair dismissal claim to the Fair Work Commission under the *Fair Work Act 2009* (Cth) (FW Act) and/or seek review of the termination decision under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

SES employees are excluded from seeking a review of action, including in relation to action resulting from a Code of Conduct investigation and any sanctions imposed, in accordance with the PS Act and Public Service Regulations 1999 (Cth) (PS Regulations). Depending on the circumstances, it may be open to SES employees to seek a review of the termination under the *Administrative Decisions (Judicial Review) Act 1977*.

Note that employees who earn in excess of the high income threshold set by the Fair Work Commission are not eligible to make a claim for unfair dismissal in accordance with section 382 of the FW Act.

Employees are entitled to seek independent legal advice on other avenues for review in relation to decisions made under the PS Act.

8.2. Complainant's Rights of Review and Protection

Complainants may have a right to seek review of the outcome of a Code of Conduct investigation under the PS Act. They can apply to the CEO in writing for a review under the PS Act but, if the application is for review of a sanction imposed for breach of the Code of Conduct, then it must be made to the MPC. Refer to NOPSEMA's N-12000-PL0800 Resolving Workplace Issues Policy for further information.

Complainants may also:

- have a right to have their complaint considered by the APS Commissioner or the MPC if they are not satisfied with NOPSEMA's decision regarding the handling of the report;
- have a right to take action under provisions in the FW Act; and/or
- have a right to lodge a complaint with the Australian Human Rights Commission.

In addition to these rights, if a complainant is also a 'discloser' under the PID Act; they have immunities from legal liability and protection from reprisals (refer to sections 9 to 24 of the PID Act). The discloser's identity also has special protection under section 20 of the PID Act. These protections will continue to apply to the discloser (complainant) where a code of conduct investigation arises from a PID disclosure.

9. Access to information

Use and disclosure of personal information of employees relating to misconduct is subject to the requirements of the *Privacy Act 1988* (Cth). Regulation 9.2 of the PS Regulations authorises misconduct records to be used and disclosed where:

- the use is relevant or necessary for the exercise of any employer power; and
- the use or disclosure is consistent with any guidelines issued by the APS Commissioner.

Misconduct records may also exist in relation to matters handled under the PID Act. Where a particular Code of Conduct matter has also been the subject of a public interest disclosure, the PID Act may restrict the disclosure of information in certain circumstances to protect the identity of participants in that process.

Keeping in mind the PID Act restrictions on use and disclosure of identity information, NOPSEMA will provide access to information as follows:

- the CEO, Head of Division Regulatory Services, Manager Human Resources, Assistant Manager Human Resources and Senior Human Resources Adviser will have access to information for the purposes of exercising their responsibilities in relation to investigations, decisions and actions;
- the employee's Head of Division and manager will be informed of the alleged misconduct, progress of the investigation and the outcome of the investigation; and
- the complainant/s will be provided with general information about the outcome of any investigations and any decision about the further release of any personal information to the complainant will be made on a case-by-case basis.

Retention and destruction of misconduct records is managed in accordance with the approved Commonwealth Records Authority and *Archives Act 1983* (Cth).

10. Related Documents

Administrative Decisions (Judicial Review) Act 1977 (Cth)

Archives Act 1983 (Cth)

Fair Work Act 2009 (Cth)

Privacy Act 1988 (Cth)

Public Governance, Performance and Accountability Act 2013 (Cth)

Public Interest Disclosure Act 2013 (Cth)

Public Service Act 1999 (Cth)

Public Service Regulations 1999 (Cth)

Australian Public Service Commissioner's Directions 2016

Australian Public Service Commission Circular 2008/3: Providing information on Code of Conduct investigation outcomes to complainants

Australian Public Service Commission "Handling Misconduct: A Human Resource's Manager's Guide".

N-07400-PL1786 Accountable Authority Instructions

N-12000-PL0797 Employee Assistance Program

N-07400-PL1476 NOPSEMA Fraud and Corruption Control Plan

N-07400-SOP1685 Giving and Receiving Hospitality, Gifts and Benefits Procedure

N-15200-PL0546 ICT Systems and Social Media Usage

N-12000-PL0856 Managing Conflicts of Interest Policy

N-15300-PL0545 NOPSEMA's Privacy Policy

N-12000-PL1056 Promoting Respect in the Workplace Policy

N-17000-PL1505 Public Interest Disclosure Policy

N-12000-PL0800 Resolving Workplace Issues Policy

N-12000-SOP1863 Code of Conduct Procedure

N-12000-FM1873 Workplace Investigation Plan