



CLIMATE
CHANGE
AUTHORITY

Code of Conduct Policy and Guidelines

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Australian Government
Climate Change Authority

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INTRODUCTION

It is the Authority's policy to provide a reporting framework which enables employees to disclose, and take reasonable steps to avoid, any conflicts of interest in connection with their APS employment. This policy promotes good practice and consistency in decisions relating to conduct issues, recognising that each circumstance is different and it is not desirable or practical to prescribe rigid rules to apply in all cases.

Part 1 conveys the requirements and expectations on Authority staff in relation to employee code of conduct.

Part 2 deals with breaches of the code of conduct.

SCOPE

This policy applies to all employees covered by the Authority's Enterprise Agreement, their managers, supervisors and their delegates.

PART 1 – REQUIREMENTS AND EXPECTATIONS OF AUTHORITY STAFF

PURPOSE

The purpose of Part 1 of this policy is to emphasise the requirements and expectations of Authority staff with respect to their conduct as officials of the Authority and the Australian Public Service.

Section 13 of the [Public Service Act 2019](#) establishes the code of conduct rules applicable to all Authority employees. These rules are the cornerstone of the Authority's code of conduct policy and guidelines. The Authority's policy and guidance must not be inconsistent with the requirements of Section 13 of the [Public Service Act 2019](#).

PRINCIPLES

The [Public Governance, Performance and Accountability Act 2013](#) (the PGPA Act) establishes standards of behavior for officials in the form of a set of general duties:

Employees are required to exercise their powers, perform their functions and discharge their duties with the same degree of care and diligence that a reasonable person would exercise if they were an official of the entity and occupied that position (section 25 of the [PGPA Act](#)).

To act honestly, in good faith and for a proper purpose (section 26 of the [PGPA Act](#)) means that an official must act in a sincere or honest way for a purpose that they are employed to do so and empowered to undertake. In doing so, an official is required to manage or use public resources in an efficient, effective, economical and ethical (proper) purpose.

In practice, an official could think of their duty to act in good faith and for a proper purpose, by considering whether an informed person would deem an action to be appropriate. This means that the official is performing an action consistent with the purposes of the entity in an efficient, effective, economical and ethical way.

Employees must not improperly use power conferred through their positions to gain, or seek to gain, a benefit or an advantage for themselves or for another person, or cause, or seek to cause, detriment to the Authority, to the Commonwealth more broadly or to any other person (section 27 of the [PGPA Act](#)).

Employees contravene this duty when they engage in conduct with the intention of obtaining an advantage or causing detriment, regardless of whether the benefit or detriment actually occurs.

Employees official must not improperly use information accessed, gained or made available by virtue of their employment with the Authority to gain, or seek to gain, a benefit or an advantage for themselves or for another person (section 28 of the [PGPA Act](#)). An official contravenes this duty if they:

- engage in conduct involving information gained through their employment with the intention of obtaining an advantage or causing detriment, regardless of whether the benefit or detriment actually occurs
- provide information to a third party who is not entitled to have the information and who gains

an advantage or causes detriment because they have the information.

Misuse of information may also involve a breach of the duty of care and diligence, the duty to act in good faith and for a proper purpose, and the duty in relation to the use of position and could also breach other legal obligations (e.g. the [Privacy Act 1988](#)).

Employees are required to report material personal interests in relation to the affairs of the entity they work for (section 29 of the PGPA Act). Material personal interests could directly relate to an official's personal role or, more broadly, to the overall purpose of the entity. The [Public Governance, Performance and Accountability Rule 2014](#) (PGPA Rule) details how and when officials need to disclose material personal interests, and the circumstances when the duty to disclose does not apply (sections 12-16D of the [PGPA Rule](#)).

The overriding principle for a declaration of a material personal interest should be: if in doubt, declare the interest in accordance with the appropriate process. Taking this step should protect both the official and the Commonwealth entity.

Employees who breach the general duties in the [PGPA Act](#) can be subject to employment sanctions under their Code of Conduct Guidelines including termination of employment (for staff) or termination of appointment (for board members or office holders).

ADMINISTRATOIN

- Employees will be informed of responsibilities under the Climate Change Authority's (CCA) Code of Conduct (the Code) through provision of information and induction packages.
- Managers will promote ethical standards of behaviour in the workplace including the promotion of APS Values and Code of Conduct.
- Any administrative process should be streamlined and not involve unnecessary steps. If several allegations of breaches are made, these should be dealt with on a collective basis.
- An alleged breach of the Code of Conduct must be dealt with in accordance with due process.
- Appropriate records regarding misconduct must be kept.
- Decisions regarding misconduct will be subject to review.
- The CFO should be consulted on all matters relating to misconduct.
- If the CFO is the subject of misconduct the CEO should be consulted in relation to the alleged misconduct.

GUIDELINES

The Code of Conduct Guidelines is provided to assist in understanding the policy and steps to be taken for alleged breaches. It also helps to identify and address issues associated with behavioral standards that are often integrally linked to performance problems.

The Authority has based its Guidelines on the [Public Service Act 1999](#) and requires all employees to meet the following standards of conduct:

1. An APS employee must behave honestly and with integrity in connection with APS employment.	8. An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.
2. An APS employee must act with care and diligence in connection with APS employment.	9. 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.
3. An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.	10. An APS employee must not improperly use inside information or the employee's duties, status, power or authority: <ul style="list-style-type: none"> 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.
4. An APS employee, when acting in 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.	11. An APS employee must at all times behave in a way that upholds the APS values and the integrity and good reputation of the APS.
5. An APS employee must comply with any lawful and reasonable direction given by someone in the employee's agency who has the authority to give the direction.	12. An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.
6. An APS employee must maintain appropriate confidentiality about dealings with any Minister or Minister's member of staff.	13. An APS employee must comply with any other conduct requirement that is prescribed by the Public Service Regulations 1999 or by CCA.
7. An APS employee must: a. Take reasonable steps to avoid a conflict of interest (real or apparent) in connection with the employee's APS employment; and b. Disclose details of any material personal interest of the employee in connection with the employee's APS employment	

Failure to comply with requirements

Where any employee is found to have breached the Code, the CEO (or the CEO's delegate) may decide to take misconduct action. Refer, **Attachment A** – Breach Decision Maker and Sanctions Delegate Guidance. The decision maker will decide if a breach has occurred.

Delegation

In dealing with "Breaches of the Code of Conduct" the CEO has delegated powers in relation to this issue, refer to HR Delegations.

OTHER RELATED MATTERS

The following paragraphs deal with the application of the Code to some situations which may be of particular relevance to CCA. They also mention provisions of the *Crimes Act 1914* which are relevant to some situations.

Conflict of Interest

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. If any conflict does arise, employees are required to disclose the matter to their supervisor and to take action to avoid the conflict. Employees are required to update their Conflict of Interest disclosures annually, when changing work areas or when relevant personal circumstances change.

Conduct with Industry and Members of the Public

Many employees, and particularly those in programme and corporate areas, are involved in decisions which can have a major impact on individual firms and people or even whole industries. It is imperative that CCA has a reputation for professionalism, fairness and impartiality in making such decisions. Actions which could call that reputation into question may be breaches of the Code. This could include any action which is perceived to be an improper connection with or disposition

against an industry, business or individual, even if no such message was intended. Employees must therefore be professional, fair and impartial in all their dealings with people outside CCA.

Outside Employment

Employees must not perform work outside CCA if it:

- would conflict or 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 (or the CEO's delegate) before performing any paid work outside of CCA.

Employees do not need approval to perform unpaid voluntary work.

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

Pre-employment

Employees should always behave in a way that upholds the integrity and good reputation of CCA as well as the APS. Action may be taken in relation to employees who have, before engagement, provided false or misleading information, failed to provide relevant information or failed to act with integrity or honesty in connection with their engagement.

Gifts and other benefits

Acceptance of a gift or benefit that is connected with an employee's employment can create a real or apparent conflict of interest that should be avoided. Employees must not use their official position to obtain a benefit for themselves or anyone else. Benefits include gifts, sponsored travel, personal benefits under frequent flyer schemes, hospitality and entertainment. The Authority [Gifts and Benefits Policy](#) contains directions in relations acceptance of gifts and benefits. Under this policy you must have approval prior to acceptance.

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 responsibilities. Employees must also not behave in a way that constitutes workplace harassment or sexual harassment.

Patronage, Favouritism and Unjustified Discrimination

Decisions made in relation to the engagement, transfer or promotion of a person under the [Public Service Act 1999](#), must be free of patronage, favouritism or unjustified discrimination.

Duty of Care

Employees must exercise reasonable skill and diligence in giving information or advice.

Official Information

APS employees must not disclose information which the APS employee obtains or generates 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 programmes. Further, an APS employee must not disclose information which the APS employee obtains or generates in connection with the APS employee's employment if the information:

- a. was, or is to be, communicated in confidence within the Government; or
- b. was received in confidence by the Government from a person or persons outside the Government;

whether or not the disclosure would be found an action for breach of confidence. Disclosure is however permitted in the course of an employee's duties, or with the CEO's express authority, or if a disclosure is required by law.

Post separation employment

Under section 70(2) of the [Crimes Act 1914](#), employees must not disclose any official information

after leaving employment with CCA where it was their duty not to disclose such information.

WHISTLEBLOWING

Whistleblowing refers to the reporting, in the public interest, of information that alleges a breach of the Code by one or more employees in CCA.

For further information refer to the [Public Interest Disclosure Scheme](#).

APS VALUES AND EMPLOYMENT PRINCIPLES

The Code operates within a set of [APS Values](#) adopted by the CCA.

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.*

PART 2 - BREACHES OF THE CODE OF CONDUCT

PURPOSE

Misconduct is the breach of the Code. Part 2 addresses the process attached to reporting and managing breaches of the Code. Employees may have a support person present during any discussions included in the process.

REPORTING SUSPECTED MISCONDUCT

Obligation to Report

Authority employees have a responsibility to report misconduct, and not to turn a blind eye to unacceptable behavior. Clause 1.3(f) of the [Australian Public Service Commissioner's Directions 2013](#) (the Directions) require all APS employees, having regard to their duties and responsibilities, to report and address misconduct and other unacceptable behaviour by public servants in a fair, timely and effective way. Failure to report suspected misconduct may itself warrant consideration as a potential breach of the Code.

How they should report misconduct will depend on the circumstances. More serious misconduct should normally be reported and dealt with in a more serious and more formal way. In some cases, especially those involving relatively minor matters, it may be most appropriate to raise the matter directly with the employee concerned in the first instance. This will be a matter of judgement. If in doubt employees should discuss the matter with their manager or someone in authority in the Authority.

Making a Report

In most cases it will be appropriate for an Authority employee to bring suspected misconduct to the attention of their line manager in the first instance. If the line manager is involved in the matter, the report can be made to another senior employee.

When making a report an Authority employee must ensure they uphold the APS Values, the Code, and all privacy and non-disclosure law. An employee should avoid discussing the matter after lodging the report other than where it is necessary for the report to be considered or investigated.

A report of suspected misconduct may contain allegations that are misconceived, without substance, or vexatious. Where there are concerns about the way, or the circumstances, in which a particular employee has reported misconduct, the report may in itself constitute a breach of the Code.

PROCEDURE FOR HANDLING A REPORT OF SUSPECTED BREACHES

Suspected breaches of the Code should generally be dealt with as follows. But if the CEO (or the CEO's delegate) decides that one or more steps in the following procedures are impractical or inappropriate in the particular circumstances of the case or that the matter can be resolved informally, that step may be omitted. If a step is considered inappropriate the delegate may omit one or more steps if the employee has conceded, in writing that they did the act complained of and/or that they have breached the Code. In these cases, the employee should be advised in writing of the omission and the reason for the omission.

The CEO (or the CEO's delegate) may at any stage suspend the employee (with or without pay) or assign the employee to other duties, if the CEO (or the CEO's delegate) considers such action to be necessary to protect the interest of CCA or other employees. The CEO (or the CEO's delegate) must notify the employee of any such decision and the reasons for that decision.

The following procedures may be suspended if at any stage a policy investigation into the matter is commenced. The procedures may be resumed only after the police investigation is complete and any criminal charges are dealt with.

1. The manager should meet with the employee. The manager should inform the employee of the evidence that there is a suspected breach of the Code. The manager should invite the employee to respond.
2. If after the considering the employee's response, the manager considers that there may have

been a breach, the manager should inform the employee in writing of this fact, the relevant provisions in the Code, the sanctions that may be imposed on the employee under subsection 15(1) of the *Public Service Act 1999* and the procedures for dealing with breaches of the Code. The employee should be given seven days to respond. The employee may have a representative involved in the process from this point on.

3. After considering the employee's written response to the manager's information, the CEO (or the CEO's delegate) must either decide themselves whether there has been a breach of the Code or appoint an independent and unbiased person to investigate whether there has been a breach of the Code. The investigator may be external to CCA.

An investigator has the right to seek and review all relevant documents and to interview all relevant persons. The investigator must provide the employee with the opportunity to make written and oral representations about the matter before finalising a report for the CEO (or the CEO's delegate). The CEO (or the CEO's delegate) must consider the investigator's report and decide whether a breach of the Code has occurred.

Decision making is a formal process requiring the decision maker to comply with the guidance set out in **Attachment B** - Determining Breach of Code of Conduct.

4. Once the CEO, (or the CEO's delegate) has decided whether the employee has breached the Code, the CEO (or the CEO's delegate) must write to the employee to set out the decision on whether there has been a breach. The correspondence should outline the reasons for that decision and the sanctions available for the breach and invite the employee to make written or oral representations in relation to the suspected breach. Determinations can be made in relation to former employees.
5. After considering those representations, the CEO (or the CEO's delegate) must decide if any sanctions are to be applied. If sanctions are to be applied the CEO (or the CEO's delegate) must decide what sanctions are to be applied. The CEO (or the CEO's delegate) must then write to the employee, setting out the decision on sanctions and the reasons for that decision.

STATUTORY OFFICE HOLDERS (SoH)

Statutory Office Holders (SoHs) who are not agency heads are bound by the APS Code of Conduct when they are acting in relation to their direct or indirect supervision of APS employees.

If an employee makes an allegation within the CCA of misconduct by a SoH, the CCA will refer the matter to the Public Service Commissioner for enquiry.

CONDUCT OUTSIDE OF EMPLOYMENT

Employees should at all times behave in such a way that upholds the integrity and good reputation of their agency, as well as the APS.

SANCTIONS

The sanctions can be imposed:

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

Refer, **Attachment A** – Breach Decision Maker and Sanctions Delegate Guidance. The Decision Maker will decide what sanctions to apply if any.

RIGHT OF REVIEW

The employee must be advised of their rights of review.

Termination of employment can only be reviewed under the provisions in the [Fair Work Act 2009](#).

The employee can seek a review of actions of the decision in relation to a determination that an employee has breached the Code and also in relation to a sanction imposed (other than termination of employment) for a breach of the Code. Under the [Public Service Regulations 1999](#), the application for review must be made to the Merit Protection Commissioner.

PERSONAL INFORMATION

If an employee:

- becomes the subject of conduct allegations and leaves CCA before the matter is resolved; or
- is found to have a breach of the Code and leaves the CCA before a decision about imposing a sanction is made; or
- is found to have breached the Code and been sanctioned and subsequently leaves CCA;

then information about the breach or allegation may be disclosed to any prospective or new employer. It is the usual practice of CCA to pass such information to another employer where CCA believes that the information might be relevant to employment related decisions which might need to be considered or made by the other employers, including (where relevant):

- recruitment decisions;
- decisions as to whether or not the employee has breached the Code and whether or not the employee should be sanctioned for any breach that is determined; and
- decisions as to whether or not the employee should be sanctioned in relation to a breach of the Code.

FURTHER INFORMATION

[Public Governance, Performance and Accountability Act 2013](#)

[Privacy Act 1988](#)

[APS Code of Conduct](#)

[APSC Values and Code of Conduct in Practice](#)

For further assistance or information on this policy, please contact the Corporate Services team.

ATTACHMENT A - BREACH DECISION MAKER AND SANCTION DELEGATE

As soon as practicable after a suspected breach of the Code has been identified and the CEO, or their delegate, has decided to deal with the suspected breach under these procedures, the CEO or their delegate will appoint a decision maker ('the breach decision maker') to make a determination under these procedures.

Note: The Australian Public Service Commissioner's Directions 2016 provide that where the conduct of an APS employee raises concerns that relate both to effective performance and possible breaches of the Code, the Agency Head must, before making a decision to commence formal misconduct Procedures for determining breaches of the Code of Conduct and for determining sanction 5 action, have regard to any relevant standards and guidance issued by the APS Commissioner (clause 40).

The role of the breach decision maker is to determine in writing whether a breach of the Code has occurred.

The breach decision maker may undertake the investigation, or seek the assistance of an investigator. The investigator may investigate the alleged breach, gather evidence and make a report of recommended findings of fact to the breach decision maker. An investigator may be a person from an external organisation.

The person who is to decide what, if any, sanction is to be imposed on an APS employee who is found to have breached the Code must hold a delegation of the power under the Act to impose sanctions ('the sanction delegate').

These procedures do not prevent the breach decision maker from being the sanction delegate in the same matter.

Note: Any delegation of powers under the Act that is proposed to be made to a person who is not an APS employee must be approved in writing in advance by the APS Commissioner. This is required by subsection 78 (8) of the Act. This would include delegation of the power under subsection 15 (1) to impose a sanction.

Note: Appointment as a breach decision maker under these procedures does not empower the breach decision maker to make a decision regarding sanction. Only the CEO or a person delegated the power under section 15 of the Act, and related powers, such as under section 29 of the Act, may make a sanction decision.

PERSON OR PERSONS MAKING BREACH DETERMINATION AND IMPOSING ANY SANCTION TO BE INDEPENDENT AND UNBIASED

The breach decision maker and the sanction delegate must be, and must appear to be, independent and unbiased.

The breach decision maker and the sanction delegate must advise the CEO in writing, and within a reasonable timeframe, 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.

The breach decision maker may be an employee from another APS agency.

THE DETERMINATION PROCESS

The process for determining whether a person who is, or was, an APS employee in the Commission 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.

The process must be consistent with the principles of procedural fairness.

Note: Procedural fairness steps that are generally required:

- The person suspected of breaching the Code is informed of the case against them (i.e. is informed of any material that is before the decision maker that is adverse to the person or their interests and that is credible, relevant and significant)

- The person is given a reasonable opportunity to respond and put their case, in accordance with these procedures, before any decision is made on breach or sanction
- The decision maker acts without bias or an appearance of bias
- There is logically probative evidence to support the making, on the balance of probabilities, of adverse findings.

A determination may not be made in relation to a suspected breach of the Code by a person unless reasonable steps have been taken:

- Inform the person of:
 - a. The details of the suspected breach of the Code (including any subsequent variation of those details); and
 - b. Where the person is an APS employee, the sanctions that may be imposed on them under subsection 15 (1) of the Act
- Give the person a reasonable opportunity to make a written or oral statement, or provide further evidence in relation to the suspected breach, within seven calendar days or any longer period that is allowed by the breach decision maker.

Note: This clause is designed to ensure that by the time the breach decision maker comes to make a determination, reasonable steps have been taken for the person suspected of breaching the Code to be informed of the case against them. It will generally be good practice to give the person a summary of the details of the suspected breach that are available at that time and notice of the elements of the Code that are suspected to have been breached.

A person who does not make a statement in relation to the suspected breach is not, for that reason alone, to be taken to have admitted to committing the suspected breach.

The breach decision maker (or the person assisting the breach decision maker, if any) may agree to a request made by the person who is suspected of breaching the Code to have a support person present in a meeting or interview they conduct.

SANCTIONS

Sanctions that may be imposed on an APS employee who is found to have breached the Code include:

The process for deciding on sanction must be consistent with the principles of procedural fairness.

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

1. Inform the employee of:
 - a. The determination that has been made; and
 - b. The sanction or sanctions that are under consideration; and
 - c. The factors that are under consideration in determining any sanction to be imposed; and
2. Give the employee a reasonable opportunity to make a written or oral statement in relation to the sanction or sanctions under consideration within seven calendar days, or any longer period that is allowed by the sanction delegate.

RECORD OF DETERMINATION AND SANCTION

If a determination in relation to a suspected breach of the Code by a person who is, or was, an APS employee in the Commission is made, a written record must be made of:

1. The suspected breach; and
2. The determination; and
3. Where the person is an APS employee – any sanctions imposed as a result of a determination that the employee has breached the Code; and
4. If a statement of reasons was given to the person regarding the determination in relation

to suspected breach of the Code, or, in the case of an employee, regarding the sanction decision

Note: The Archives Act 1983 and the Privacy Act 1988 apply to Commission records.

PROCEDURE WHEN AN ONGOING EMPLOYEE IS TO MOVE TO ANOTHER AGENCY

This clause applies if:

1. A person who is an ongoing APS employee in the Authority is suspected of having breached the Code, and
2. The employee has been informed of the matters mentioned; and
3. The matter has not yet been resolved, and
4. A decision has been made that, apart from this clause, the employee would move to another agency in accordance with section 26 of the Act (including on promotion).

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

For the purpose of this clause the matter is taken to be resolved when:

1. A determination in relation to a suspected breach of the Code is made in accordance with these procedures; or
2. The CEO decides that a determination is not necessary.

DOCUMENT HISTORY

Version	Date	Summary of Change	Completed By	Review Due
0.1	2021	Draft	Tracey Vassallo	
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