POLICY STATEMENT

CODE OF CONDUCT

It is the Department’s (Innovation’s) policy to set acceptable standards of conduct, in line with the Australian Public Service (APS) Values and Code of Conduct. All employees must adhere to these standards within the workplace.

Principles

- Employees will be informed of responsibilities under the Code of Conduct through the 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.
- Managers and delegates must ensure procedural fairness is adhered to in the application of this policy by keeping employees informed, providing employees with the opportunity to discuss issues and remaining independent and unbiased.
- 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 General Manager, Human Resources & Facilities must be consulted on all matters relating to misconduct, including determination of a sanction.

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INTRODUCTION

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

Code of Conduct

The Australian Public Service (APS) Code of Conduct has been adopted by Innovation and requires all employees to meet the following standards of conduct:

1. An APS employee must behave honestly and with integrity in the course of APS employment.

2. An APS employee must act with care and diligence in the course of APS employment.

3. An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.

4. An APS employee, when acting in the course of 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.

5. 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.

6. An APS employee must maintain appropriate confidentiality about dealings with any Minister or Minister's member of staff.

7. An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.

8. An APS employee must use Commonwealth resources in a proper manner.

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.

10. An APS employee must not make improper use of:
    (a) inside information; or
    (b) the employee's duties, status, power or authority;
    in order to gain, or seek to gain, a benefit or advantage for the employee or any other person.
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(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.

(12) An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.

(13) An APS employee must comply with any other conduct requirement that is prescribed by the regulations.

**Failure to comply with requirements**

Where an employee is found to have breached the code of conduct, the Secretary may decide to take misconduct action.

**Delegation**

In relation to "Outside Employment" and "Gifts and other benefits" the Secretary has delegated his powers in relation to these issues to Deputy Secretaries, Heads of Divisions, General Managers and State Managers.

In dealing with "Breaches of the Code of the Conduct" the Secretary has delegated his powers to Deputy Secretaries, Heads of Division and the General Manager, Human Resources & Facilities.

**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 Innovation. They also mention provisions in the Crimes Act which are relevant in some situations.

**Conflict of interests**

Employees are required to ensure that their private interests, both financial and personal, do not give rise to any actual or perceived conflict of interests. If any conflict does arise, employees are required to disclose the matter to their supervisor and to take action to avoid the conflict.

**Conduct with industry and members of the public**

Many employees of Innovation, and particularly those in the program 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 Innovation has a reputation for professionalism, fairness and impartiality in making such decisions. Actions which could call that reputation into question are breaches of the Code of Conduct. This could include an action which is perceived to be an improper connection with or disposition against an applicant for a grant, even if no such message was intended. Employees must therefore be professional, fair and impartial in all their dealings with people outside Innovation.
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Outside employment

Employees must not perform work outside Innovation 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 Secretary (or the Secretary’s delegate) before performing any paid work outside Innovation.

Employees do not need approval to perform unpaid voluntary work.

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

Gifts and other benefits

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, substantial hospitality and entertainment. Where employees are offered a gift or benefit, it may be accepted if it is in accordance with Chief Executive Instructions (CEIs).

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

For further information refer to the Workplace Diversity Program.

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 that is accurate and may be relied on.

Official Information

APS employees must not disclose information which the APS employee obtains or generates in connection with the APS employee’s employment if it is reasonably
Procedures for Code of Conduct

foreseeable that the disclosure could be prejudicial to the effective working of government, including the formulation or implementation of policies or programs. 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 found an action for breach of confidence. Disclosure is however permitted in the course of an employee’s duties, or with the Agency Head’s express authority, or if 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 Innovation 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 of Conduct by one or more employees in Innovation.

For further information refer to the Whistleblowing Policy and Procedures.

AUSTRALIAN PUBLIC SERVICE VALUES

The Code of Conduct operates within a set of Australian Public Service (APS) Values adopted by Innovation.

The APS Values are as follows:

(a) the APS is apolitical, performing its functions in an impartial and professional manner;
(b) the APS is a public service in which employment decisions are based on merit;
(c) the APS provides a workplace which is free from discrimination and recognises and utilises the diversity of the Australian community it serves;
(d) the APS has the highest ethical standards;
(e) the APS is openly accountable for its actions, within the framework of Ministerial responsibility to the Government, the Parliament and the Australian public;
(f) the APS is responsive to the Government in providing frank, honest, comprehensive, accurate and timely advice and in implementing the Government’s policies and programs;
(g) the APS delivers services fairly, effectively, impartially and courteously to the Australian public and is sensitive to the diversity of the Australian public;
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(h) the APS has leadership of the highest quality;
(i) the APS establishes cooperative workplace relations that value communication, consultation, co-operation and input from employees on matters that affect their workplace;
(j) the APS provides a fair, flexible, safe and rewarding workplace; and
(k) the APS focuses on achieving results and managing performance.
(l) the APS promotes equity in employment;
(m) the APS provides a reasonable opportunity to all eligible members of the community to apply for APS employment;
(n) the APS is a career-based service to enhance the effectiveness and cohesion of Australia’s democratic system of government;
(o) the APS provides a fair system of review of decisions taken in respect of APS employees.

BREACHES OF THE CODE OF CONDUCT

Misconduct is the breach of the Code of Conduct (the Code). This section addresses the process attached to managing breaches of the Code. Employees may have a support person present during any discussions included in the process.

Suspected breaches of the Code should generally be dealt with as follows. But if the Secretary or a delegate decides that one or more steps in the following procedures are impractical or inappropriate in the particular circumstances of the case, including an admission by the employee that they did the act complained of and/or that they have breached the Code of Conduct, or that the matter can be resolved informally, that step may be omitted. In these cases, the employee should be advised in writing of the omission and the reasons for the omission.

The Secretary or a delegate may at any stage suspend the employee (with or without pay) or assign the employees to other duties, if the Secretary or delegate considers such action to be necessary to protect the interests of Innovation or other employees. The Secretary or 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 police investigation into the matter is commenced. The procedures may be resumed only after the police investigation is completed and any criminal charges dealt with.

The manager should meet with the employee. The employee may have a support person at this meeting. The manager should inform the employee of evidence that there has been a suspected breach of the Code. The manager should invite the employee to respond.

If after 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.
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The employee may have a representative involved in the process from this point on.

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

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 Secretary or delegate. The Secretary or delegate must consider the investigator’s report and decide whether a breach of the Code has occurred.

Once the Secretary or delegate has decided whether the employee has breached the Code, the Secretary or delegate must write to the employee to set out the decision on whether there has been a breach, 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.

After considering those representations, the Secretary or delegate must decide what if any sanctions are to be applied. The Secretary or delegate must then write to the employee, setting out the decision on sanctions and the reasons for that decision.

Appropriate procedures if basis of APS employee’s engagement in an Agency changes or moves to a different Agency

If:

(a) an APS employee in an Agency is suspected of having breached the Code of Conduct; and

(b) before any determination is made in relation to the suspected breach:

   (i) the basis of the employee’s engagement in the Agency changes; or
   (ii) the employee moves to a different Agency.

A determination (if any) in relation to the suspected breach must be made:

(a) if the basis of the employee’s engagement in the Agency has changed -- in accordance with the procedures applicable to the basis of the employee’s engagement in the Agency at the time the process for determining whether the employee has breached the Code of Conduct is commenced; and

(b) if the employee has moved to a different Agency -- in accordance with the procedures applicable in the Agency to which the employee has moved at the time the process for determining whether the employee has breached the Code of Conduct is commenced.

Note: Examples of a change in the basis of an APS employee’s engagement in an Agency are as follows:

(a) a change from engagement for a specified term, or for the duration of a specified task, to engagement as an ongoing APS employee;

(b) a change from engagement for duties that are irregular or intermittent to engagement as an ongoing APS employee.
SANCTIONS

The following 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.

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.

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

Disclosure of Personal Information in Relation to Conduct Allegations

If an employee

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

then information about the breach or allegation may be disclosed to any prospective or new employer. It is the usual practice of Innovation to pass such information to another employer where Innovation 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; and
- decisions as to whether or not an employee has breached the Code and whether or not they should be sanctioned for any breach that is determined.