

**From:** [Leanne Smith](#)  
**To:** [Jane Fraser](#)  
**Subject:** FW: Cultural safety in our workplace [SEC=OFFICIAL]  
**Date:** Wednesday, 20 December 2023 12:42:23 PM

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**From:** Leanne Smith  
**Sent:** Friday, April 8, 2022 5:32 PM  
**To:** All Commission <allcommission@humanrights.gov.au>  
**Cc:** Cultural Safety <culturalsafety@humanrights.gov.au>  
**Subject:** Cultural safety in our workplace [SEC=OFFICIAL]

Dear colleagues,

One last email from me this week!

I know that the Commission has long been committed to workplace inclusion – it is at the heart of what we do. As defined by the APSC, workplace inclusion is: *achieved when people feel that their whole self is understood, respected for who they are, included at work, and they are not just seen as a one dimensional stereotype. Contemporary literature on diversity and inclusion is increasingly acknowledging the importance of inclusion to create a sense of belonging.*

Since I have taken up the role of Chief Executive, I have been listening to staff feedback and working with the management team to think about the different ways that we can actively demonstrate this across the organisation, and within our teams. Over the next 12 months, we're committing to refreshing our Workplace Diversity Plans with a focus on increasing employment opportunities for a diverse range of candidates, enhancing learning opportunities and looking for appropriate support strategies for all staff within our workplace.

One such new initiative is the creation of the cultural safety email address (cc-ed here) for any staff who feel that there is a concern emerging, or existing, within our organisation that needs to be brought to light and addressed. Staff can use this mechanism anonymously and reach me and the incoming Director of Corporate Services (DCS) – no one else has access, all correspondence will be treated as confidential. Staff may of course also choose to speak with their managers or myself and the DCS directly and we'd encourage staff to use whichever mechanism feels best.

This is the new email address: [culturalsafety@humanrights.gov.au](mailto:culturalsafety@humanrights.gov.au)

I'd also encourage staff who have creative ideas about how we could/should refresh our Diversity Plans to send those through as well so that these can be considered and prioritised within our budget limitations.

I've attached a link to the APSC Workplace Inclusion material, in case you aren't aware of or haven't seen these external resources.

<https://www.apsc.gov.au/publication/commonwealth-aboriginal-and-torres-strait->

islander-workforce-strategy-2020-2024#workplace-inclusion

I hope this is helpful and am very glad to discuss your ideas on how we can make the Commission a workplace we all feel safe and welcome in. Thanks to those who have already shared their feedback with me.

Have a great weekend,

Leanne

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**Leanne Smith**

Chief Executive

**Australian Human Rights Commission**

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**Human rights: everyone, everywhere, everyday**

We acknowledge the traditional custodians of this land, the Gadigal peoples of the Eora Nation, and pay our respects to their Elders, past, present and future.

The Australian Human Rights Commission remains committed to safeguarding the human rights of everyone in our community. We have closed our offices and our staff are working remotely until further notice. For more information on our work during the COVID-19 pandemic, please [visit our website](#).





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# Breaches of the Code of Conduct procedures

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## **1 Statement from Agency Head**

I, Rosalind Croucher, Agency Head and President of the Australian Human Rights Commission (the Commission), establish these procedures under subsection 15 (3) of the *Public Service Act, 1999* (the Act) and the *Public Service Amendment Act 2013*.

Rosalind Croucher  
President, Australian Human Rights Commission

## **2 Standards of Conduct**

The APS Code of Conduct sets out the standards of conduct required of APS employees. These are set out in the *Public Service Act 1999*, the *Public Service Amendment Act 2013*, the Commission's Enterprise Agreement and listed on the Human Resources intranet site.

## **3 Application and availability of procedures**

All Commission employees, the President and Commissioners, ongoing and non-ongoing, are subject to the APS Code of Conduct (the Code).

These procedures apply in determining :-

- i. whether a person who is an APS employee in the Commission, or who is a former APS employee who was employed in the Commission at the time of the suspected misconduct, has breached the Code.
- ii. any sanction to be imposed on an employee in the Commission who has been found to have breached the Code.

In these procedures, a reference to a breach of the Code includes reference to conduct set out in subsection 15 (2A) of the Act in connection with their engagement as an employee.

As provided for in subsection 15 (7) of the Act, these procedures are publicly available on the Commission's website.

## **4 What is a Breach of the Code of Conduct**

A person whose conduct does not comply with an element of the Code can be found to have breached the Code. Where a provision of the Code contains more than one element, it may not be necessary for a person to have breached all elements in order for a breach of the Code to be determined.

The Code specifies different levels of connectedness between the standard of conduct and APS employment as follows:

- in connection with employment;
- at all times.

## **5 Commission Based Codes**

The Commission has specified additional codes of conduct in the Enterprise Agreement that are to be observed by Commission staff. These outline the expected conduct standards required. If there is a breach of the Commission's Code it will be linked to a particular element in the APS Code of Conduct if misconduct procedures are instigated.

## **6 Suspension and Temporary Reassignment of Duties**

Section 28 of the PS Act and regulations 3.14 and 3.15 set out the legislative basis for suspending an employee who is suspected of having breached the Code. Employees may be suspended with or without pay if the President or delegate believes on reasonable grounds that an employee has breached the Code and where suspension is in the public or Commission interest.

As an alternative to suspension, the President or delegate, may decide that it is more appropriate to temporarily reassign the employee's duties.

## **7 Decision-maker and sanction delegate**

As soon as practicable, the President or delegate has decided to deal with the suspected breach under these procedures, the President or delegate will appoint a decision maker to make a determination.

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

The decision maker may seek the assistance of an investigator with matters including investigating the alleged breach, gathering evidence and making a report of recommended factual findings to the decision maker.

The decision maker must hold a delegation of the power under the Act to impose sanctions ('the sanction delegate').

The decision maker may also be the sanction delegate in the same matter where they have the relevant delegations under section 15 and/or 29 under the Act.

## **8 Independence**

The decision maker and the sanction delegate must be, and must appear to be, independent and unbiased. They should have no previous reporting responsibilities in relation to the matters raised in the suspected breach.

They must advise the President in writing if they consider that they may not be independent and unbiased, or if they consider that they may reasonably be perceived not to be independent and unbiased, for example if they are a witness in the matter.

## **9 Determination process**

The process for determining whether a person has breached the Code must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.

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

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

- a) Inform the person of:
  - i. The details of the suspected breach of the Code (including any subsequent variation of those details); and
  - ii. the sanctions that may be imposed on them under subsection 15 (1) of the Act;

and

- b) Give the person reasonable opportunity to make a written statement, or provide further evidence in relation to the suspected breach, within 7 calendar days or any longer period that is allowed.

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.

For the purpose of determining whether a person has breached the Code, a formal hearing is not required.

Where the decision maker is conducting a meeting or interview with a person suspected of breaching the Code and they request to have a support person

present and it is considered reasonable in the circumstances, this request should be granted.

## **10 Sanctions**

Sanctions are intended to be proportionate to the nature of the breach and cannot be imposed unless it has been determined that a breach has occurred. More than one sanction may be imposed.

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

If a sanction is to be imposed on an employee, the employee must:

1. Be given a written statement setting out:
  - a. the determination
  - b. the sanction or sanctions that are under consideration
  - c. the factors that are under consideration in determining any sanction to be imposed; and
2. Be given reasonable opportunity to make a written statement in relation to sanctions under consideration within 7 calendar days, or any longer period that is allowed by the sanction delegate. (Note: the sanction delegate may decide to give the employee the opportunity to make both a written and oral statement.)

The President or delegate may impose the following sanctions where an employee of the Commission is found to have breached the Code of Conduct:

- termination of employment;
- reduction in classification;
- re-assignment of duties;
- reduction in salary;
- deductions from salary, by way of fine;
- a reprimand.

Sanctions may not be imposed on former employees.

## **11 Record of determination and sanction**

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

- a) the suspected breach; and
- b) the determination; and
- c) any sanctions imposed as a result of a determination that the employee has breached the Code; and
- d) If a statement of reasons was given to the employee - that statement of reasons.

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

## **12 Moving to a different Agency during a breach allegation/investigation**

Movement between agencies (including on promotion) for employees suspected of a breach of the Code, will not take effect until the matter is resolved, unless agreed by Agency heads.

Resolution is by:

- a. a determination being made; or
- b. it is decided that a determination is not necessary.

Should the Agency Heads agree to a move prior to the resolution of a suspected breach of the Code, the receiving Agency may continue an investigation and/or impose a sanction based on the losing Agency's investigation.

## **13 Resignation during the misconduct investigation**

Where an employee resigns during the course of an investigation the President or delegate may choose to discontinue the process depending on the circumstances. The legislative framework does not permit action to be taken against former employees.

## **14 Review Rights**

Non-SES employees who have been found to have breached the Code and who wish to challenge either the determination that a breach has occurred or the sanction imposed (except in the case of termination) may lodge an application under Part 4 of the Regulations. The making of an application for review does not stay the action. An application for review of a determination that an employee has breached the Code or a sanction imposed as a result of the breach must be made to the Merit Protection Commissioner. Applications for a review of

a suspension action in relation to a suspected breach would generally in the first instance be made to the President or delegate.

Both the Australian Public Service Commissioner and the Merit Protection Commissioner may enquire into and determine an alleged breach of the Code by an APS employee:-

- if the President so requests; and
- if the Australian Public Service Commissioner or Merit Protection Commissioner considers that it would be appropriate to do so; and
- if the APS employee agrees, in writing, to the Merit Protection Commissioner doing so.

An employee who has been dismissed may have the right under the unfair dismissal provisions of the *Fair Work Act 2009* for a remedy.

## **15 Criminal Matters**

Where it comes to light that an employee through their private actions has been charged with a criminal offence and where the charge relates to behaviour that could have an impact on the person's ability to maintain honesty and integrity in their APS employment, or it is likely that the employee's behaviour is otherwise inconsistent with the APS Values or is likely to damage the integrity and/or good reputation of the APS, it may be appropriate to investigate the matter as a possible breach of the Code.

## **16 Record Keeping**

Records relating to misconduct should not be placed on the employee's personal file but kept on a separate misconduct file and held in secure storage.

## **17 References**

- *Public Service Act 1999*
- *Public Service Amendment Act 2013*
- APS Commissioner's Directions 2013
- Australian Human Rights Commission Enterprise Agreement 2016-2019
- Public Service Regulations 2023
- *Handling Misconduct: A human resources practitioner's guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct - APSC website*
- *Social media – protocols and guidelines*

- *Whistleblowing Procedures*
- *APS Values and Code of Conduct in Practice: a guide to official conduct for APS employees and Agency Heads.*



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# Workplace Solution Guide

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Practical resolution of workplace issues

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## **1 Statement by the President**

The Commission is a workplace that values the contributions of each and every one of its employees. We expect and enjoy respectful conversations, lively debate and robust discussion. We will not always agree but we will respect our right to hold different views and ultimately decision makers will be accountable for the decisions that we make.

But even in the most positive of organisational cultures, problems can still occur. This guide is intended to give all staff a consistent framework for the resolution of workplace issues and a practical guide to getting the best outcome in a wide range of circumstances.

The guide draws upon our *'Good practice guidelines for internal complaint practices'* and relies upon the goodwill and positive focus of all parties to come to workable and pragmatic solutions.

We've chosen positive mindset language deliberately to avoid the negative stereotypes associated with grievance processes and to signal our clear intention to work towards resolution rather than engage with conflict which can be damaging to individuals and to the overall organisational culture.

While we have specific policies in relation to dealing with specific matters, this guide is to inform our approach to the myriad of other issues that may arise that may not fit comfortably within those other policy areas.

Emeritus Professor Rosalind Croucher AM  
President, Australian Human Rights Commission

## **2 Why have a workplace solution guide?**

In every workplace there will be at any given time some disagreement about something. It may be high level, such as the strategic priorities of the organisation or more individual such as a rejection of a leave request. In all circumstances, we seek to ensure that there is clarity, transparency, consistency and fairness at the core of our responses.

All Commission employees are employed under the *Australian Public Service Act* and as such are required to conduct themselves in accordance with the APS Code of Conduct, the APS Employment Principles and the APS Values.

In many cases, the solution pathways may be very similar but it's important that all employees know who to talk to, what happens when they do and that we will approach the raising of issues consistently and with intent to resolve.

Our aim is to develop and maintain a conflict resilient workplace in which everyone can feel free to raise issues and confident that the organisation will deal with those issues in a fair and reasonable manner.

Conflict resilient workplaces are characterised by these features:

- Proactivity in creating a culture of open communication
- Prevention of issues arising through best practice workplace processes and delivery
- Responsiveness when issues do arise
- Compliant with all relevant legislation, organisational policies and procedures
- Include principles of natural justice and procedural fairness

Our workplace solution guide will help us to identify ways to improve our workplace practices and policies, improve morale, productivity and retention and help to avoid the need for complaints to external agencies and/or legal action.

## **3 Types of issues that might arise**

- Review of Actions (promotion/recruitment)
- Code of Conduct breaches
- Disputes relating to the Enterprise Agreement
- Whistleblowing
- Employment decisions
- Sensitive disclosures

## **4 Characteristics of a good workplace solution process**

**Fair** – each party to the complaint or issue has an opportunity to present their perspective and the opportunity to respond to any matters raised. The decision maker must be impartial in their management of the process.

**Confidential** – Information about the complaint or issue is only available to those with a genuine need to know so that the matter can be dealt with appropriately.

**Transparent** – the process must be clear, the outcomes explained, the progress notified and the reasons underlying any decisions taken conveyed.

**Accessible** – the process should be easy to access and understand and everyone should be able to participate equally.

**Efficient** – the process should be conducted as quickly as possible to reduce impact on the parties and the Commission.

## **5 Pathways to resolution**

From the outset, we will approach any issues raised with flexibility and sensitivity and work towards the earliest resolution possible in the given circumstances. We will consider all the available options, including:

- Early intervention with multiple entry points for ease of access
- Identifying the root cause of problems in addition to symptoms and try to deal with issues holistically
- Use of alternative dispute resolution methods (feedback, conversation, mediation, facilitation) that protect workplace relationships

- Self-resolution (with support)
- Learning lessons to prevent future issues arising and where appropriate sharing this with employees and/or managers
- Considering education and policy review for future and emerging trends

## **6 Informal resolution process**

### ***Self-managed***

Where an issue has arisen, employees are encouraged to be pro-active in finding a resolution. This can be empowering, can reduce the time for resolution and minimise the impact for all concerned. Examples of self-management include:

- Approaching a colleague or supervisor directly where the issue involves two employees (and this is appropriate in the circumstances)

### ***Assisted***

- Seek advice from a supervisor, manager, human resources, WHS representative, Harassment Contact Officer or knowledgeable/experienced colleague
- Seek informal intervention/resolution with assistance from a supervisor, manager, human resources
- Seek informal support/assistance from a Senior Executive including the Chief Executive

These options may be particularly well suited to circumstances where there has been a misunderstanding or miscommunication.

In these circumstances, an impartial third person could help to clarify the issues and see pathways to resolution.

### **Public Interest Disclosures**

The Public Interest Disclosure Act 2013 applies when people report a suspected breach of the Code of Conduct to an authorised person. The Act offers protections to those making such disclosures and requires agencies to take action in relation to the alleged breach. Allegations of

such breaches may include reports made by employees who believe that bullying is occurring, even where there is no formal complaint from the person(s) being bullied.

### ***Responsibilities of managers and supervisors***

In particular, managers and supervisors have a responsibility to:

- adhere to, support and promote the APS Code of Conduct and APS Values;
- support the Commission's policy on workplace solutions and ensure that their own conduct is above reproach;
- ensure that staff in their work teams are familiar with the Commission's policy and are aware of the appropriate and acceptable standards of behaviour at work;
- take early corrective action to deal with any aberrant behaviour;
- stop aberrant behaviour in the work area;
- deal promptly with any issues or problems, if possible before a complaint is made;
- where a complaint has been made, take action to ensure that the complaint is properly resolved and that there is no repetition of the behaviour or victimisation of the complainant;
- maintain confidentiality about any complaint.

Depending on the circumstances, the actions that managers and supervisors could take when they become aware of any issues or problems at work may include:

- talking with the staff member about the issue and listening to their concerns;
- explaining any decision and the underlying reasons;
- referring a staff member to a support mechanism as necessary, such as the Commission's Employee Assistance Program (Converge International);
- providing options dealing with the issue or concern both internally and, as necessary, externally
  - referring the matter to the Manager Human Resources or Chief Executive for consideration as to what action should be taken if the

matter is not resolved.

Situations may arise where the supervisor is part, or all, of the problem being raised. Where this is the case the supervisor's manager, Senior Executive, the Manager Human Resources or the Chief Executive should assume the responsibility to assist with and/or deal with the situation.

## **7 Formal Resolution process**

At any time, the affected staff member may choose to

- discontinue a complaint
- seek formal resolution through designated process in this guide or in the Enterprise Agreement
- seek external advice from a subject matter expert or agency

If an affected staff member wishes to pursue a formal resolution, the following steps should be followed:

### **a. Obtain information from the staff member making the complaint**

The person handling the complaint (the complaint officer) should:

- provide information about the complaint process, potential outcomes, options for assistance/support and protections from victimisation
- ensure the allegations are documented, either by the complainant or the complaint officer
- explain that the process is confidential, what this means and why it is important
- explain what records of the complaint will be kept, for how long and where
- explain the action that may be taken if the complaint is found to be vexatious or malicious
- ask the complainant to provide relevant documents or details of witnesses that may support the allegations.

Where there is a concern about supporting information being destroyed or compromised, the complaint officer should try to obtain this information before taking any further action.

## **b. Advise the respondent about the complaint**

The complaint officer should:

- advise the respondent that a complaint has been made against him or her and provide as much information as possible about the allegations and supporting information (where applicable)
- confirm that they will be given the opportunity to respond to the allegations in writing or through an interview
- provide information about the complaint process, potential outcomes and options for assistance/support
- explain that the process is confidential, what this means and why it is important
- explain what records of the complaints will be kept, for how long and where
- explain that it is unacceptable to victimise someone who has made a complaint.

## **c. Assess the information**

If the respondent confirms that he or she did what is alleged to have occurred, and if this behaviour would be considered discrimination or harassment as defined in the Commission's policy, the next step is to consider an appropriate outcome (see below). It is recommended that the respondent is provided with the opportunity to comment on any proposed decision and outcome before a final decision is made.

If there is disagreement about what happened, the complaint officer should consider whether there is other information that will help to determine what happened. It is generally understood that the person making the decision should be satisfied that it is 'more probable than not' that what is alleged to have happened did happen.

Given the nature of some complaints, there may often be no direct witnesses or documents to support the complainant's version of events. This does not mean that the allegation is untrue. In these situations the complainant should be given the opportunity to comment on the information that has been provided by the respondent and to provide any other information to support his or her allegations before a final decision is made.

## **Outcomes**

Depending on the severity of the matter, responses to either informal or formal complaints may include an apology, change of workplace decision, counselling, internal movement, dismissal, demotion or other forms of disciplinary action.

## **8 Other issues**

### **Confidentiality**

All approaches to Human Resources will be treated in confidence unless there is a legislated requirement to report to an external party or there is a genuinely held concern for health safety and wellbeing of the person raising the issue or another employee.

### **Impact**

### **Keeping of records**

It is good management practice that records are kept of any formal complaints and of any follow-up action. Because of the sensitivity of this material, special care is taken to protect the confidentiality of such records. Records will be kept in accordance with the Commission's policy on record keeping and with Privacy legislation.

### **Further information**

Additional information regarding the process for reporting and resolving workplace issues is available from the Manager Human Resources.

Relevant references and links include:

- Public Service Act 1999 [www.apsc.gov.au](http://www.apsc.gov.au)
- Public Service Regulations 1999
- Public Service Directions 1999
- APS Code of Conduct and APS Values (available on the Human Resources Intranet site and in the Enterprise Agreement )
- APS Values and Code of Conduct in Practice
- <http://www.apsc.gov.au/aps-employment-policy-and-advice/aps-values-and-code-of-conduct/aps-values-and-code-of-conduct-in-practice>
- Enterprise Agreement 2016-19 (available on the Human Resources Intranet site)

- Breaches to the Code of Conduct (available on the Human Resources Intranet site)
- Workplace Diversity Plan (available on the Human Resources Intranet site)
- The proper use of the Commission's ICT Facilities (available on the ICT Intranet site)
- Sex Discrimination Act 1984
- Australian Human Rights Commission Act 1986
- Work Health and Safety (Commonwealth Employment) Act 2011
- Public Interest Disclosure Act 2013

Other Contacts

Employee Assistance Program – Converge International – Tel: 1300 687 327