

## Managing Misconduct Procedures

I, Dr Marie-Louise Ayres, Director-General of the National Library of Australia, establish these procedures under subsection 15(3) of the *Public Service Act 1999*.

These procedures commence on 21 February 2022.

*M-L. Ayres*

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Director-General, National Library of Australia

Dated: 15 February 2022

Review due: 3 years from date of approval

## Contents

1.	<i>Introduction</i> .....	3
2.	<i>Procedure aims</i> .....	3
3.	<i>Availability of procedures</i> .....	3
4.	<i>Definitions</i> .....	4
5.	<i>Policy statement</i> .....	5
6.	<i>Key roles and responsibilities</i> .....	6
7.	<i>Informal or formal process</i> .....	8
8.	<i>Procedural fairness</i> .....	9
9.	<i>Breach Decision-Maker and Sanction Delegate</i> .....	9
10.	<i>Suspension and temporary reassignment of duties</i> .....	10
11.	<i>Formal determination process</i> .....	10
12.	<i>Sanctions</i> .....	10
13.	<i>Record of determination and sanction</i> .....	11
14.	<i>Moving to a different agency or resignation</i> .....	11
15.	<i>Review rights</i> .....	12
16.	<i>Review of the procedures</i> .....	12
17.	<i>References and related documents</i> .....	12
	<i>ATTACHMENT A</i> .....	14
	<i>ATTACHMENT B</i> .....	17

## 1. Introduction

- 1.1. The standards of conduct required of National Library of Australia (Library) employees as Australian Public Services (APS) employees are set out in the *Public Service Act 1999* (the PS Act) and the *Public Service Regulations 1999* (the Regulations). These standards of conduct are provided by the APS Values, Employment Principles and the APS Code of Conduct (the Code). These are outlined in [Attachment A](#).
- 1.2. Broadly:
  - a. the APS Values set out the standards and outcomes that are expected of APS employees
  - b. the Employment Principles guide employee and workplace relationships in the APS, and
  - c. the Code, under section 13 of the PS Act, sets out the behaviours expected of individual APS employees.
- 1.3. The Code applies to all APS employees engaged under the PS Act. In addition, the Code also extends to behaviour when applying for employment in the APS, for example, applicants who provide false and misleading information, wilfully fail to disclose relevant information, or fail to act with honesty and integrity in connection with their engagement as an APS employee.
- 1.4. Employees should be aware that certain requirements in the Code apply “at all times” and other requirements apply “in connection with” an employee’s employment.
- 1.5. The aim of misconduct action is to maintain proper standards of conduct by all Library employees and to protect the reputation of the APS and maintain public confidence, rather than punish the employee.
- 1.6. A summary of the main steps in handling suspected misconduct matters are outlined in [Attachment B](#).

## 2. Procedure aims

- 2.1. This document is established for the purpose of subsection 15(3) of the PS Act. As such, it sets out the procedures that must be complied with in determining:
  - a. whether an APS employee, or former APS employee who was employed in the Library at the time of the suspected misconduct, has breached the Code, and
  - b. what sanction, if any, should be imposed on an APS employee who is found to have breached the Code.

## 3. Availability of procedures

- 3.1. As prescribed in subsection 15(7) of the PS Act, the Director-General has ensured that these procedures are made publicly available on the Library’s website.

## 4. Definitions

<b>Code</b>	The APS Code of Conduct as prescribed in section 13 of the <i>Public Service Act 1999</i> .
<b>Delegate</b>	<p>A person who is a delegate of the Director-General, or who is authorised to make decisions or act on behalf of the Director-General. Delegations and authorisations referenced in this procedure are in relation to determining whether or not an employee has breached the code of conduct, sanction applied and suspension of the employee as provided by the <i>National Library of Australia Personnel Management Instrument 2021</i> (Personnel Management Instrument).<sup>1</sup></p> <p>These roles (Breach Decision-Maker, Sanction Delegates, Suspension Delegate and Reassignment Delegate) can also be delegated to a specific Code case of suspected or alleged misconduct. The Breach Decision-Maker and Sanction Delegate can be the same person, and the Suspension Delegate and Reassignment Delegate can also be the same person. The Suspension Delegate will generally only be either the Director-General or the Chief Operating Officer.</p>
<b>Employee</b>	A current or former APS employee who is suspected of having breached the Code while an employee of the Library.
<b>Investigation</b>	The process by which allegations of misconduct are examined, leading to a report to the Breach Decision-Maker to determine if a breach of the Code is proven.
<b>Investigator</b>	A suitably qualified and impartial person who is appointed to investigate a matter.
<b>Manager or supervisor</b>	The person to whom the employee is directly accountable to. They administer and steer work objectives and priorities on behalf of their section/Branch.
<b>Misconduct</b>	Actions and/or behaviours that are in breach of the Code. Before such a determination is made, the conduct is referred to as suspected or alleged misconduct.

<sup>1</sup> Or the current instrument providing for delegations and authorisations for personnel management related legislative powers, such as under the *Public Service Act 1999*

<b>Sanction</b>	<p>A sanction in subsection 15(1) of the <i>Public Service Act 1999</i>, which may be imposed if the Code is determined to have been breached including:</p> <ul style="list-style-type: none"> <li>• a reprimand</li> <li>• a deduction from salary, by way of fine</li> <li>• reduction in salary</li> <li>• re-assignment of duties</li> <li>• reduction in classification</li> <li>• termination of employment.</li> </ul>
<b>Support person</b>	<p>A person chosen by the employee to accompany them to interviews or offer advice and assistance during the course of the investigation. That may include another employee, a representative from their union or another person of their choice. Generally, the support person does not speak on the employee's behalf.</p> <p>Employees are required to advise the key parties involved in the process prior to any meetings or discussions if they will be accompanied by a support person.</p>

## 5. Policy statement

- 5.1. The Library is committed to promoting standards of conduct and behaviours that are required of all APS employees by the APS Values, Employment Principles and Code of Conduct. This commitment extends to creating and sustaining a healthy and safe working environment for all workers and visitors. The Library supports a workplace culture which is respectful, flexible, inclusive, safe, fair, productive, and that is free from all forms of discrimination, bullying and harassment, and where people can expect physical and psychological safety.
- 5.2. The Library takes seriously any instances of suspected misconduct and responds promptly, impartially and confidentially.
- 5.3. Consistent with the PS Regulations (section 3.16), the Library requires that each APS employee inform themselves about the PS Act, the PS Regulations and the *Australian Public Service Commissioners Directions 2022* (the Commissioner's Directions).
- 5.4. The Commissioner's Directions requires all APS employees to report misconduct. Having regard to an individual's duties and responsibilities, there is also an obligation to report and address misconduct and other unacceptable behaviour in a fair, timely and effective way.
- 5.5. These procedures apply to any suspected breach of the Code where a Breach Decision-Maker is appointed from the date that these procedures are approved.

## 6. Key roles and responsibilities

<b>Director-General</b>	<p>The Director-General is responsible for:</p> <ul style="list-style-type: none"> <li>• upholding and promoting the APS Values and Employment Principles, and</li> <li>• establishing written procedures to determine whether a breach of the Code has occurred and what sanction, if any, should be applied.</li> </ul>
<b>NLA Executive (SES Officers)</b>	<p>The NLA Executive are responsible for promoting the APS Values and Employment Principles, and compliance with the Code by personal example and by other appropriate means.</p>
<b>Breach Decision-Maker</b>	<p>The Breach Decision-Maker is a delegate under the Personnel Management Instrument, or a person appointed to the role by the Director-General under these procedures for a specific case of suspected breach of the Code or alleged misconduct.</p> <p>The Breach Decision-Maker, who may also be the Sanction Delegate, is responsible for:</p> <ul style="list-style-type: none"> <li>• investigating or appointing an Investigator to investigate a case of suspected or alleged misconduct. Where an Investigator is appointed, the Breach Decision-Maker will consider their findings and recommendations</li> <li>• determining whether the employee has been found to have breached the Code, and</li> <li>• recording their decision in a written statement of reasons, and advising the Director-General and the employee of the breach decision determination.</li> </ul>
<b>Sanction Delegate</b>	<p>The Sanction Delegate is a delegate under the Personnel Management Instrument, or a person specifically delegated with the power to impose sanctions under subsection 15(1) of the PS Act by the Director-General, for a specific case of suspected breach of the Code or alleged misconduct.</p> <p>Where it has been determined that a breach of the Code has occurred, the Sanction Delegate is responsible for determining what sanction should be applied and advising both the Director-General and the employee of the sanction determination.</p>

<p><b>Suspension Delegate</b></p>	<p>The Suspension Delegate is a delegate under the Personnel Management Instrument, or a person specifically delegated with the power to suspend an employee by the Director-General, for a specific case of suspected breach of the Code or alleged misconduct.</p> <p>The Suspension Delegate is responsible for suspending an employee if they believe on reasonable grounds that the employee has, or may have, breached the Code and where the suspension is in the public or the Library's interest.</p> <p>The Suspension Delegate, who may also be the Reassignment Delegate, is responsible for consulting with the Breach Decision-Maker and:</p> <ul style="list-style-type: none"> <li>• determining if it is necessary and appropriate to suspend an employee during a misconduct investigation, and</li> <li>• if suspension is determined appropriate, consulting with the Suspension Delegate before deciding whether this is with or without remuneration.</li> </ul>
<p><b>Reassignment Delegate</b></p>	<p>The Reassignment Delegate is a delegate under the Personnel Management Instrument, or a person specifically delegated with the power to reassign an employee by the Director-General, for a specific case of suspected breach of the Code or alleged misconduct.</p> <p>If a Suspension Delegate has decided that it is not appropriate to suspend an employee, the Reassignment Delegate is responsible for determining if it is necessary and appropriate to reassign an employee's duties during a misconduct investigation.</p>
<p><b>Managers</b></p>	<p>Managers are responsible for:</p> <ul style="list-style-type: none"> <li>• modelling the appropriate standard of behaviours and promoting the APS Values, Employment Principles and the Code</li> <li>• consulting with the Director HR about options for handling suspected or alleged misconduct. If resolution will be managed informally, in consultation with the Director HR, considering options, and</li> <li>• directly addressing behaviours within their team which are inconsistent with the APS Values, Employment Principles and the Code.</li> </ul>

<b>Employees</b>	<p>Employees are responsible for:</p> <ul style="list-style-type: none"> <li>• abiding by the APS Values, Employment Principles and the Code</li> <li>• reporting observed instances of suspected misconduct through their management line, and</li> <li>• observing confidentiality requirements related to managing misconduct matters.</li> </ul> <p>An employee who has been advised that they are suspected of breaching the Code is responsible for deciding whether it is appropriate or necessary to seek independent legal advice at their own expense and on their own time.</p>
<b>Human Resources</b>	<p>The Human Resources team are responsible for:</p> <ul style="list-style-type: none"> <li>• providing advice to managers, decision makers, delegates, investigators and employees about the Code and the handling of cases suspected or alleged misconduct</li> <li>• providing support and assistance with risk assessments relating to the managing misconduct and breaches of the Code process</li> <li>• managing the storage of confidential records relating to Code matters as well as a central record of Code matters to assist with consistency in the application of sanctions, and</li> <li>• maintaining and updating this document.</li> </ul>

## 7. Informal or formal process

- 7.1. If the Director-General, SES officers, the Director Human Resources, or another person delegated by the Director-General to decide such matters, becomes aware of a suspected breach of the Code by an employee, they may deal with the suspected breach using these procedures to determine whether there has been a breach.
- 7.2. Some matters, however, may be considered minor, if proven, and therefore not all suspected breaches of the Code need to be dealt with by way of determination. These matters are generally handled informally using Managing Differences and Disagreements in the Workplace Guidelines.
- 7.3. Depending on the nature of the suspected breach, it may be more appropriate to deal with the matter through alternate processes such as the Library's Performance Management process. Dealing with the matter through these other mechanisms may include taking administrative action, such as directing the employee's manager to counsel or warn the employee and to keep a written record of this action.



## 8. Procedural fairness

- 8.1. Procedural fairness (natural justice) will be observed at all stages of the Managing Misconduct process (both formal and informal). Procedural fairness applies to the person against whom an adverse finding may be made. Usually this is confined to the employee suspected of misconduct, and not to a witness or other interested parties.
- 8.2. Procedural fairness requires decision-makers to ensure the decision-making process is reasonable, fair, just and transparent. In general terms this means that:
  - a. a person whose interests will be adversely affected by a decision is given an opportunity to be heard and to hear the case against them
  - b. the decision is made by the decision-maker without bias or the appearance of bias, and
  - c. there must be facts or information to support findings.

## 9. Breach Decision-Maker and Sanction Delegate

- 9.1. As soon as practicable after a suspected breach of the Code has been identified and the Director-General or delegate has decided to formally investigate the matter and under these procedures, they will appoint a decision-maker to make a determination under these procedures ('Breach Decision-Maker').
- 9.2. The role of the Breach Decision-Maker is to determine in writing whether a breach of the Code has occurred.
- 9.3. 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.
- 9.4. The investigating officer may be a Library employee or another person.
- 9.5. The person who is to decide what, if any, sanction is to be imposed on a current Library employee who is found to have breached the Code will be delegated with the powers under the PS Act to impose sanctions.
- 9.6. These procedures do not prevent the Breach Decision-Maker from being the Sanction Delegate in the same matter.
- 9.7. The Breach 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.
- 9.8. The Breach Decision-Maker and the Sanction Delegate must advise the Director-General in writing if they consider that they may not be independent and unbiased or if they consider that they may likely be perceived not to be independent and unbiased; for example, if they are a witness in the matter.

## 10. Suspension and temporary reassignment of duties

- 10.1. Employees may be suspended with or without pay if the Director-General or Suspension Delegate believes on reasonable grounds that an employee has breached the Code and where suspension is in the public or Library interest.
- 10.2. As an alternative to suspension, the Director-General or Reassignment Delegate (who may be the same person as the Suspension Delegate, depending on the circumstances) may decide that it is more appropriate to temporarily reassign the employee to an alternative role within the Library.

## 11. Formal determination process

- 11.1. The process for determining whether a Library employee has breached the Code must be carried out with as little formality, and as expeditiously, as proper consideration of the matter allows.
- 11.2. The process must provide procedural fairness to the employee, as outlined in clause 8 of this document.
- 11.3. A determination may not be made in relation to a suspected breach of the Code by an employee unless reasonable steps have been taken to:
  - a. inform the employee of:
    - i. the details of the suspected breach of the Code, including any subsequent variation of those details, and
    - ii. where the employee is a current Library employee, the sanctions that may be imposed on them under subsection 15(1) of the Act, and
  - b. give the employee a reasonable opportunity to make a written statement in relation to the suspected breach.
- 11.4. The written statement should be provided within seven (7) calendar days of the employee being notified of the suspected breach, or any longer period that is allowed by the Breach Decision-Maker.
- 11.5. An employee 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.
- 11.6. For the purpose of determining whether a Library employee has breached the Code, a formal hearing is not required.

## 12. Sanctions

- 12.1. The process for imposing a sanction must provide procedural fairness to the employee, as outlined in clause 8 of this document.
- 12.2. If a determination is made that a current Library employee has breached the Code, a sanction may not be imposed on them unless reasonable steps have been taken to:
  - a. inform them of:

- i. the determination that has been made
  - ii. the sanction or sanctions that are under consideration
  - iii. the factors that are under consideration in determining any sanction imposed (statement of reasons), and
- b. give the employee a reasonable opportunity to make a statement in relation to the sanction or sanctions under consideration. The written statement should be provided within seven (7) calendar days of the employee being notified of the sanctions under consideration, or any longer period allowed by the sanction delegate.

12.3. Sanctions cannot be imposed on former employees.

### **13. Record of determination and sanction**

13.1. If a determination is made in relation to a suspected breach of the Code by a Library employee, a notice of decision must be provided to the employee, accompanied by a statement of reasons.

13.2. A written record must be made of:

- a. the suspected breach
- b. the determination
- c. any sanctions imposed as a result of the determination that the employee has breached the Code, and
- d. a statement of reasons in relation to the determination and/or the sanction decision.

### **14. Moving to a different agency or resignation**

14.1. 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 the Agency Heads.

14.2. Resolution is by:

- a. a determination being made, or
- b. a decision that a determination is not necessary.

14.3. 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 Library's investigation.

14.4. Where an employee resigns during the course of an investigation the Director-General or delegate may choose, depending on the circumstances, to discontinue the process.

## 15. Review rights

- 15.1. Non-SES employees who have been determined to have breached the Code and 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 Division 5.3 of the Regulations for a review. Making an application for review does not stay the action.
- 15.2. An application for review of any action that relates to a person's APS employment including suspension (excluding a determination that they have breached the Code or a sanction imposed), would generally be made to the Director-General or delegate in the first instance.
- 15.3. 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 under Division 5.3 of the Regulations.
- 15.4. There are time limits, and other limitations that apply for Review of Action applications.
- 15.5. Further information on review rights is provided by the Library's Review of Actions Procedures.
- 15.6. An employee who has been dismissed may have the right under the unfair dismissal provisions of the *Fair Work Act 2009* for a remedy. For further information, see the website of the Fair Work Commission.

## 16. Review of the procedures

- 16.1. This document is current until replaced or updated. The Library aims to review within three years from the date of effect, or earlier where required.
- 16.2. If major changes to this document are recommended by the Executive or Human Resources, Library staff will be consulted through their representatives on the Consultative Committee.
- 16.3. Minor changes to the procedures can be approved by the Director-General or the Chief Operating Officer.

## 17. References and related documents

- 17.1. The following documents and/or legislation were considered when developing this procedural document:
  - a. [Public Service Act 1999](#) (PS Act)
  - b. [Public Service Regulations 1999](#) (PS Regulations)
  - c. [Australian Public Service Commissioner's Directions 2022](#) (Commissioner's Directions)
  - d. [Fair Work Act 2009](#) (FW Act)
  - e. [National Library of Australia Enterprise Agreement 2017-2020](#) (NLA EA)
  - f. [National Library of Australia Personnel Management Instrument 2021](#)<sup>2</sup>

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<sup>2</sup> Or the current instrument providing for delegations and authorisations for personnel management related legislative powers, such as under the *Public Service Act 1999*.

- g. [Handling Misconduct: a human resource manager's guide](#) (APSC Publication)
- h. [Values and Code of Conduct in Practice](#) (APSC Publication)

## The APS Values

Section 10 of the *Public Service Act 1999* sets out the following APS Values:

**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.

Further details and examples of behaviour and standards of conduct under the APS Values are contained in the Australian Public Service Commissioner's Directions 2022.

## APS Employment Principles

Section 10A of the *Public Service Act 1999* sets out the APS Employment Principles, as follows:

The APS is a career-based public service that:

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

## The APS Code of Conduct

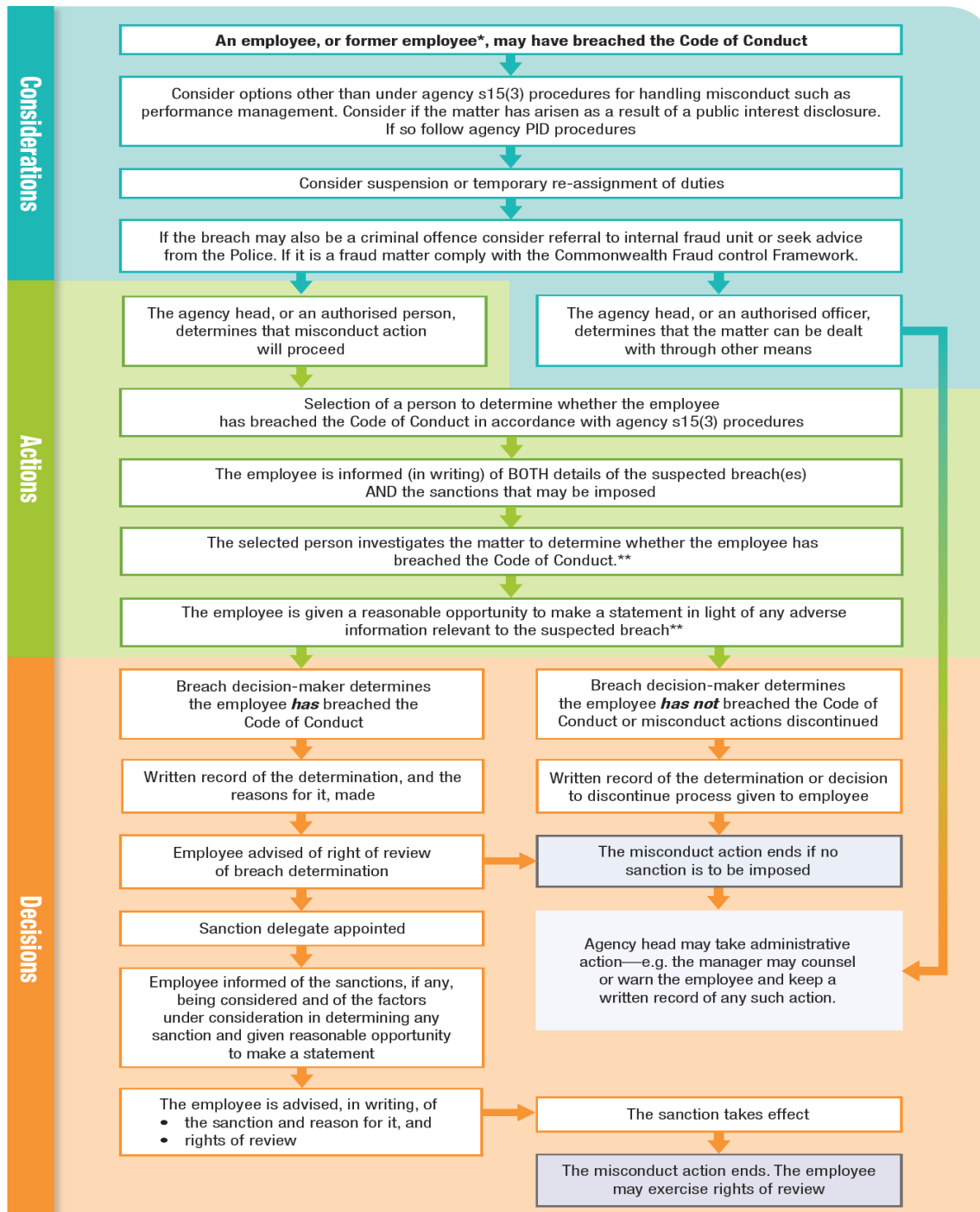
Section 13 of the *Public Service Act 1999* sets out the APS Code of Conduct:

1. An APS employee must behave honestly and with integrity in connection with APS employment.
2. An APS employee must act with care and diligence in connection with APS employment. Code of Conduct Guidelines and Procedures 5/30
3. An APS employee, when acting in connection with APS employment, must treat everyone with respect and courtesy, and without harassment.
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 the *Public Service Act 1999*), 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 that the employee has with any Minister or Minister's member of staff.
7. 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; and
  - b. disclose details of any material personal interest of the employee in connection with the employee's APS employment.
8. An APS employee must use Commonwealth resources in a proper manner and for a proper purpose.
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 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.
11. 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.
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.



●●● Main steps in handling suspected misconduct



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 \*For the purposes of this diagram, subsequent references to employees in consideration and breach determination include former employees. Sanctions cannot be imposed in relation to former employees.  
 \*\*There are ongoing procedural fairness obligations in the misconduct process. See Part II of the guide for further information.

<sup>3</sup> Extract from APSC Publication – Handling Misconduct: A human resource manager’s guide