



Procedures for Determining Breaches of the APS Code of Conduct and the Imposition of Sanctions

I, Paul McCormack, Acting Chief Executive Officer of the National Mental Health Commission ('the Commission'), establish these Procedures under subsection 15(3) of the *Public Service Act 1999* ('the Act').

Purpose

The Act requires Agency Heads to establish written procedures for determining whether an APS employee or a former APS employee has breached the APS Code of Conduct ('the Code') in section 13 of the Act and the sanction (if any) to be imposed if a breach is determined.

These procedures should be read in the context of the APSC [Handling Misconduct](#) guide for HR practitioners. Note that in the event of a breach of the Code of Conduct being determined and a sanction applied, the [Review of Actions](#) guidance might apply.

Application of Procedures

These Procedures must be complied with in determining whether a current APS employee in the Commission, or a former APS employee in the Commission who was employed in the Commission at the time of the suspected misconduct, has breached the Code.

Note: These Procedures apply only in relation to a suspected breach of the Code by an APS employee in respect of which a determination is to be made. Not all suspected breaches need to be dealt with by way of a determination. In particular circumstances another way of dealing with a suspected breach may be more appropriate.

Selection of Decision Maker

1. As soon as practicable after a suspected breach of the Code has been identified and a decision has been made to deal with the suspected breach under these Procedures, the CEO or their delegate will appoint a decision maker who will determine whether an APS employee has breached the Code. (Note: the Chief Operating Officer (COO) is currently a delegate but is required to exercise their delegation in consultation with the CEO.)

Note: The APS Commissioner's Directions 2022 provide that where the conduct of an APS employee raises concerns that relate to possible breaches of the Code, the CEO (or delegate) must, before making a decision to commence formal misconduct action, have regard to any relevant standards and guidance issued by the APS Commissioner.

Formal Hearing Not Required

2. For the purpose of determining whether an APS employee in an Agency has breached the Code of Conduct, a formal hearing is not required.

Information to be given to Employee before Determination is Made

3. Before a determination is made in relation to a suspected breach of the Code by an APS employee, the employee must:
 - a. be informed of:
 - i. the details of the suspected breach of the Code (including any subsequent variation of those details)
 - ii. the sanctions that may be imposed on the employee under subsection 15(1) of the Act (including any limitations on that power contained in regulations made for the purposes of subsection 15(2) of the Act)
 - b. be given reasonable opportunity to make a statement, in writing, in relation to the suspected breach within 7 days or any longer period as is allowed.
4. If the employee makes a written statement within 7 days (or, if allowed, any longer period) of being given the opportunity to do so, the employee must also be given the opportunity to make an oral statement in relation to the suspected breach.
5. An employee who does not make a written statement in relation to the suspected breach is not, only for that reason, to be taken to have admitted committing the suspected breach.

Determination Process to be Informal

6. The process for determining whether an APS employee has breached the Code must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.
7. Note: the decision-maker is required to provide natural justice in making his or her determination, notwithstanding that he or she may have decided that no further investigation of the facts is required before determining whether a breach has occurred.

Person Making Determination to be Independent and Unbiased

8. The CEO will take reasonable steps to ensure that the person who determines whether an APS employee has breached the Code is, and appears to be, independent and unbiased.
9. In particular, a person must not determine whether the employee has breached the Code if the person has previously made a report in relation to any of the matters suspected of constituting a breach by the employee of the Code.

Sanction decision process

10. If a determination is made in accordance with these procedures that an APS employee has breached the Code a copy of that determination will be provided to the sanction delegate for consideration of an appropriate sanction.
11. The CEO will delegate the power conferred by reg 14 of the *Public Service Regulations 2023* to the person who will be the sanction delegate. The CEO will take reasonable steps to ensure that the sanction delegate is, and appears to be, independent and unbiased.

12. Before the sanction delegate makes a decision as to the sanction to be imposed reasonable steps must be taken to:
- a) inform the APS employee of the breach decision, the sanction or sanctions that are under consideration and the factors that are under consideration in determining any sanctions to be imposed; and
 - b) give the APS employee a reasonable opportunity to make a statement in response, before a sanction decision is made.

Record of Determination

13. After a determination in relation to a suspected breach of the Code is made, a written record stating whether the employee has been found to have breached the Code must be prepared. After a decision whether to impose a sanction has been made a written record of the sanction decision must be made.

Note: The *Archives Act 1983* and the *Privacy Act 1988* apply to a record made under this clause.

APS Employee Moves or Changes Agency

14. This clause applies if:
- a. an APS employee in an Agency is suspected of having breached the Code of Conduct;
 - b. the employee has been informed of the suspected breach and the sanctions that may be imposed if the misconduct is found.
15. Unless the original Agency Head and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved. For this clause, the matter is taken to be resolved when:
- a. a determination is made; or
 - b. it is decided that a determination is not necessary.

National Anti-Corruption Commission

16. The National Anti-Corruption Commission (NACC) commenced on 1 July 2023. The NACC investigates allegations of serious or systemic corrupt conduct in the Australian Government public sector.
17. Where the NACC investigates a corruption issue that concerns a Commission employee, the Commission will consider:
- the NACC Commissioner’s findings (including the evidence), and
 - any recommendations of the NACC Commissioner to the Commission, including to take specific action against an employee (e.g. termination)
- prior to commencing Code of Conduct proceedings against an employee.
18. While the [Public Service Regulations 2023](#) provide a ground for termination of an employee on the basis of a recommendation from the NACC Commissioner, agencies are expected to provide procedural fairness to an employee before a decision is made to terminate their employment on this ground.

Communication

These procedures are accessible to all workers on TRIM.

Monitoring and Review

This policy will be reviewed by management at least every three years. Reviews may be initiated by the CEO earlier if required, including on the basis of advice from the ARC, the Executive Committee or another source. Reviews will be informed by feedback from staff where appropriate.

Legislation

- [Public Service Act 1999](#)
- [Public Service Regulations 2023](#)
- [APSC Directions 2022](#)
- [Privacy Act 1988](#)
- [National Anti-Corruption Commission Act 2022](#)

Attachments – Guidance Material and Templates

19. A flow chart describing the process for investigation is at Attachment 1.
20. To assist the Commission to carry out an investigation into suspected misconduct, the attached form letters (Attachments 2- 10) are for guidance purposes only.

List of Attachments

Attachment 1:	Flowchart
Attachment 2:	Initial notice of suspected breach(es) from CEO to employee
Attachment 3:	Instrument of Appointment of decision maker by CEO
Attachment 4:	Letter to decision maker re appointment
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Attachment 9:	Notification by CEO to Employee of Sanction Decision
Attachment 10:	Letter to complainant advising the outcome of a Code of Conduct investigation
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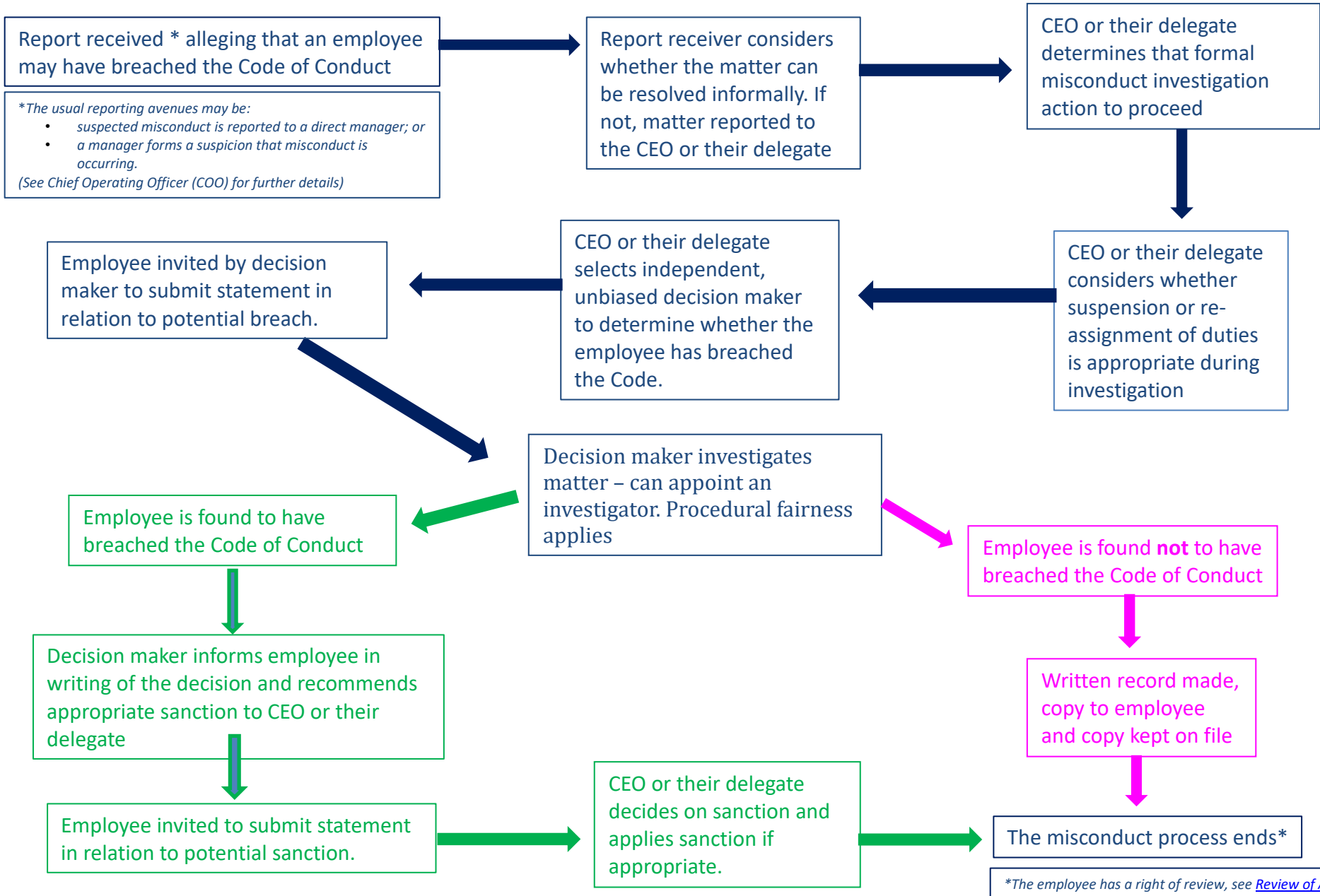
Revision and Approval

Version	Date	Author	Authorisation
1.0	22 June 2017	Senior Projects Officer	Chief Executive Officer
2.0	November 2022	Chief Operating Officer	Christine Morgan, Chief Executive Officer

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2.1	September 2023	Manager Compliance and Reporting	Acting Chief Executive Officer
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ATTACHMENT 1: MANAGING MISCONDUCT – DETERMINING BREACHES OF THE APS CODE OF CONDUCT FLOWCHART



**The employee has a right of review, see [Review of Actions Guideline](#)*



[Employee's name]
[Employee's address]

Dear [Employee's name]

Notice of suspected breach(es) of the APS Code of Conduct

An allegation and supporting documentation has been provided to me concerning [a] suspected breach(es) of the APS Code of Conduct arising out of **[insert details of incident]**.

I have considered the information provided to me and, pursuant to subsection 15(3) of the *Public Service Act 1999*, have decided that the conduct may give rise to breach(es) of the Code of Conduct and should be investigated.

This notice is to advise you that, in accordance with the provisions of the National Mental Health Commission's *Procedures for Determining Breaches of the APS Code of Conduct*, I have allocated to **[insert decision maker's name and position]** the following task(s) to perform in relation to the suspected breach(es) of the APS Code of Conduct:

[delete if not applicable]

- to determine using the resources and people at the decision maker's disposal whether you breached the APS Code of Conduct and
- if a breach of the Code of Conduct is determined, to, in their discretion, make a recommendation as to what, if any, sanction(s) should be imposed as a result of the determination.

As part of this process, your personal information may be collected for the purposes of conducting the investigation and certain personal information may be disclosed to other parties, where necessary and appropriate, including to other agencies, law enforcement agencies and, where appropriate and reasonable, the complainant.

You will be provided with formal notification from the decision maker regarding the details of the allegations that you may have breached the APS Code of Conduct. You will also be provided with an opportunity to make a statement in relation to the allegations orally and/or in writing. You cannot directly contact witnesses identified by the decision maker or that you suspect are involved once you consider the details of the allegation. Any action by you to contact witnesses will in itself constitute serious misconduct and could result in termination of your employment.

A copy of the Commission's *Procedures for Determining Breaches of the APS Code of Conduct* is attached.

If you require any further information in relation to the contents of this letter or the details of the suspected breach please contact me.

[insert decision maker's name] will contact you in due course.

Yours sincerely,
CEO
[Date]



Australian Government

National Mental Health Commission

ATTACHMENT 3

Instrument of Selection and Authorisation of Decision Maker

I, **[name]**, Chief Executive Officer, National Mental Health Commission

HEREBY SELECT

[insert Decision Maker's name]

and authorise that person to determine whether **[insert employee's name and section]** has breached of the APS Code of Conduct and to make a recommendation as to the appropriate sanction or sanctions (if any) to be imposed, in accordance with the National Mental Health Commission's *Procedures for Determining Breaches of the APS Code of Conduct* established under subsection 15(3) of the *Public Service Act 1999*.

[Date]



**[Decision Maker's name
title/branch/division/address]**

Dear **[Decision Maker]**

Notice of suspected breach(es) of the APS Code of Conduct

An allegation and supporting documentation has been provided to me concerning [a] suspected breach[es] of the APS Code of Conduct arising out of **[insert details of incident]**.

[Employees Name] is suspected of breaching the APS Code of Conduct (section 13 of the *Public Service Act 1999*).

I have considered the information provided to me and decided that, pursuant to subsection 15(3) of the *Public Service Act 1999*, the conduct may give rise to breach(es) of the Code of Conduct and should be investigated.

I am writing to advise that I am appointing you as a decision maker in accordance with the National Mental Health Commission's *Procedures for Determining Breaches of the APS Code of Conduct*.

[Employee's Name] has been advised that you have been appointed as the decision maker for this investigation and that you will be in contact with **him/her** shortly.

Please note that as decision maker, you are:

1. to determine, using the resources and people at your disposal, whether **[Employees Name]** has breached the APS Code of Conduct; and
2. if a breach of the Code of Conduct is determined, to make a recommendation to me as to what, if any, sanction(s) should be imposed as a result of the determination.

As part of this process, you may collect personal information for the purposes of conducting the investigation and where necessary and appropriate, you may disclose certain personal information to other parties, including to other agencies, law enforcement agencies and, where appropriate and reasonable, the complainant.

If you require any further information in relation to the contents of this letter or the details of the suspected breach please contact me.

Yours sincerely,

CEO
[Date]



NB *[INVITES A RESPONSE FOR CONSIDERATION]*

[Employee's name]
[Employee's address]

Dear **[Employee's name]**

Notice of possible suspension of duties under Public Service Regulation 14

I have received a report regarding suspected breach(es) of the Australian Public Service (APS) Code of Conduct concerning **[insert nature of breach(es) and dates]**. I am of the opinion that the nature of the suspected breach(es) may warrant a suspension from duties on the grounds that it would be in the public interest **[and/or]** the interest of the National Mental Health Commission.

[optional – Suspension may also be in your interests and the interests of your fellow employees.]

[select appropriate text]

Therefore, this notice is to advise you that I am considering suspending you from your duties.

However, before the decision is made, you have the opportunity to make a statement regarding the questions of:

- whether to suspend you; and
- if the decision to suspend you is made, whether the suspension is to be with or without remuneration.

If you wish to make a statement, it must reach me by **[insert date – at least 7 days]**. You are also advised that if a decision to suspend you is made, such a decision is not prejudging the matter of the suspected breach(es) of the APS Code of Conduct.

Being on suspension does not alleviate you from your obligations to be ready, willing and able to attend interviews as directed by the decision maker or me.

[or]

Having regard to the seriousness of the conduct alleged to have occurred, I would normally request you provide a written response to my consideration of responding to you. However, I have spoken with you and having considered what was said, suspend you immediately from your duties.

Yours sincerely

CEO

[Date]





[Employee's name]
[Employee's address]

Dear [Employee's name]

Notice of suspension from duties under Public Service Regulation 14

I have received a report regarding a suspected breach of the Australian Public Service (APS) Code of Conduct concerning **[insert nature of breach(es) and dates]**.

I have considered **[delete as appropriate]** your comments and/or the statement provided by you regarding the suspension and have reached the decision that I believe on reasonable grounds that your suspension from duties is in the public interest and the interest of the National Mental Health Commission (the Commission). **[Optional – I also believe that the suspension is in your interests and the interests of your fellow employees.]**

Accordingly, I inform you that I am suspending you from duties pursuant to regulation 3.10 (section 28 of the *Public Service Act 1999*) with effect from the time of delivery of this notice to you. I also draw the following matter to your attention:

****[Delete whichever of the following paragraphs regarding remuneration is not applicable.]****

- The period of suspension is without remuneration, and will be reviewed by **[insert a date of either not more than 30 days, or a longer period if exceptional circumstances exist]**. The reasons for my decision to suspend you without remuneration are **[insert reasons, including the exceptional circumstances if relevant]**.

[or]

- The period of suspension is with remuneration, and will be reviewed by **[insert a date of either not more than 30 days, or a longer period if exceptional circumstances exist]**. The amount per fortnight is **[insert amount]**. I will end the suspension immediately if I no longer believe on reasonable grounds that you have, or may have, breached the Code of Conduct, or that your suspension is not in the public or the Commission's interests.

I will end the suspension within 48 hours if a sanction is imposed on you for a breach of the Code of Conduct. In deciding to suspend you I am not prejudging the matter of the suspected breach(es) of the APS Code of Conduct.

You should note that you may apply for permission to engage in outside employment during the period of suspension, but not for any period where you may be receiving remuneration. Should you seek approval to engage in outside employment, you must be ready to attend any interviews or meetings requested by the Commission concerning the investigation or your previous duties.

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Yours sincerely

CEO

[Date]





[Employee's name]
[Employee's address]

Dear [Employee's name]

Notice of review of suspension of duties under Public Service Regulation 14(5)

You were notified in the notice of suspension from duties, dated **[insert date of Att 5(b) letter]**, that your suspension would be reviewed by **[insert date]**. Accordingly, before the decision whether to extend your suspension is made, you have the opportunity to make a statement regarding the questions of:

1. whether your suspension should be extended; and
2. if the decision to extend your suspension is made, whether the suspension is to be with or without remuneration.

If you wish to make a statement, it must reach me by **[insert date]**.

You are also advised that if a decision to continue your suspension is made, such a decision is not prejudging the matter of the suspected breach(es) of the APS Code of Conduct.

Yours sincerely

CEO
[Date]



[Employee's name]
[Employee's address]

Dear [Employee's name]

Notice of extension of suspension from duties under Public Service Regulation 14

Under paragraph 14(5) of the Public Service Regulations I am required to review your suspension from duties at reasonable intervals. I have reviewed your suspension and considered your comments and/or the statement furnished by you regarding the prospect of your suspension being extended and have reached the decision that your suspension from duties should continue.

My reasons for this are that I believe on reasonable grounds that an extension of your suspension from duties is in the public interest and the interest of the National Mental Health Commission (the Commission). **[Optional – I also believe that the suspension is in your interests and the interests of your fellow employees.]**

Accordingly, I hereby give notice that that I am extending your suspension from duties pursuant to regulation 14 (section 28 of the *Public Service Act 1999*) with effect from **[insert date]**.

I also draw the following matter to your attention:

[Delete whichever of the following paragraphs regarding remuneration is not applicable.]

- The period of suspension is without remuneration, and will be reviewed by **[insert a date of either not more than 30 days, or a longer period if exceptional circumstances exist]**.

[or]

- The period of suspension is with remuneration, and will be reviewed by **[insert a date of either not more than 30 days, or a longer period if exceptional circumstances exist]**. The amount per fortnight is **[insert amount]**.

I will end the suspension immediately if:

- I no longer believe on reasonable grounds that you have breached the Code of Conduct; or
- that your suspension is not in the public or the Commission's interests.

My decision to suspend does not indicate that I am prejudging the matter of the suspected breach(es) of the APS Code of Conduct.

You should note that you may apply for permission to engage in outside employment during the period of suspension but not for any period where you may be receiving remuneration. Should you seek approval to engage in outside employment, you must be ready to attend

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any interviews or meetings requested by the Commission concerning the investigation or your previous duties.

Yours sincerely





[Employee's name]
[Employee's address]

Dear [Employee's name]

Notice of cessation of suspension of duties under Public Service Regulation 14

This notice is to advise you that your suspension from duties will cease with effect from [insert date].

The reason for the cessation of your suspension is: * [insert appropriate clause from the text below]

- * that I no longer believe that you have, or may have, breached the Code of Conduct.
- * that your suspension is no longer in the public or the National Mental Health Commission's interest.
- * that the suspected breach of the Code of Conduct has been determined and a sanction under section 15 of the *Public Service Act 1999* has been imposed.

Yours sincerely

CEO
Date



Formal notification by decision maker to employee of suspected breach

[Employee's name]
[Employee's address]

Dear [Employee's name]

Suspected breach(es) of the APS Code of Conduct

I have been appointed as the decision maker for the purpose of determining whether there has been breach(es) of the Australian Public Service (APS) Code of Conduct.

As you are aware, an allegation and supporting documentation have been provided to the Chief Executive Officer, National Mental Health Commission concerning suspected breach(es) of the APS Code of Conduct arising out of [insert details of incident].

APS Code of Conduct

Based on the information provided to me, you are suspected of breaching the following part(s) of the APS Code of Conduct (section 13 of the *Public Service Act 1999*):

[insert relevant part(s) of the Code]

The details of the suspected breach(es) are:

[Insert date and details of alleged breach(es). The description should not be legalistic but it must be detailed enough and contain sufficient information for the employee to understand what is being alleged and to enable the employee to respond appropriately to the allegation.]

Authority to investigate allegations

I have been authorised to:

- (i) determine whether you have breached the APS Code of Conduct using the resources and people that are at my disposal
- (ii) if a breach of the Code of Conduct is determined, make a recommendation as to what, if any, sanction(s) should be imposed under section 15 of the *Public Service Act 1999* as a result of the determination

Sanctions that may be imposed pursuant to subsection 15(1) of the *Public Service Act 1999* are:

- (a) termination of employment
- (b) reduction in classification
- (c) re-assignment of duties
- (d) reduction in salary
- (e) deductions from salary, by way of fine
- (f) a reprimand

Documents relied upon

The information and documents which I considered in formulating the details of the suspected breaches include:

[Insert details of information and documents relied on (do not include witness statements). For example:

- **the *Public Service Act 1999* and *Public Service Regulations 2023*; and**
- **National Mental Health Commission's *Procedures for Determining Breaches of the APS Code of Conduct*.**

A copy of the above information and documents is enclosed for your information.

Statement

If you wish to make a statement in relation to the suspected breach(es) you have until **[insert date – must be at least 7 days]** to provide a written response to me.

Please advise me as soon as possible if you do not intend to make a written statement. You will separately be invited by **[the CEO or delegate]** to make a statement in relation to the appropriate sanction (if any) to be imposed.

You are entitled to seek the assistance of a support person in responding to the notification and throughout the investigation, at your own cost.

If you wish to make an oral statement, you have the right to do so whether you furnish a written statement or not. This must be done within the same timeframe as that given to you to provide a written response.

No determination will be made in relation to the suspected breach(es) until after the period for you to make a statement has ended and any statement that you make has been considered.

If you decide not to make a statement, it will not be taken to mean that you have admitted committing the breach(es). However, you should understand that I will consider the information that has been placed before me without having any opposing view put by you in making my determination.

If you require any further information in relation to contents of this letter or the details of the suspected breach please contact me. As noted above, if you wish to lodge a written statement in relation to the suspected breach(es) of the Code, please do so by **[insert date]**.

Yours sincerely

[insert decision maker's name and position]

[Date]





[Employee's name]
[Employee's address]

Dear [Employee's name]

Determination in relation to suspected breach(es) of the APS Code of Conduct

I refer to my letter dated [insert date of] in which you were advised of suspected breach(es) of the Australian Public Service (APS) Code of Conduct.

This letter is to advise you that [select appropriate text]

it has been determined that the breach(es) of the APS Code of Conduct identified in the letter to you dated [insert date] are not proven.

[or]

it has been determined that the breach(es) of the APS Code of Conduct identified in the letter to you dated [insert date] have been proven based on the evidence before me.

[Use the following sections only if a breach is determined.]

Summary of allegations

[insert summary]

Reasons for determination

My reasons and findings for the determination are [insert reasons] or refer to an attached statement of reasons].

Recommendation on sanction

I will also make a recommendation to the Chief Executive Officer on the appropriate sanction to be imposed as a consequence of the breach(es).

Possible sanctions

You will recall that the sanctions that may be imposed pursuant to subsection 15(1) of the *Public Service Act 1999* (the PS Act) are:

- (a) termination of employment
- (b) reduction in classification
- (c) re-assignment of duties
- (d) reduction in salary
- (e) deductions from salary, by way of fine

(f) a reprimand

I carefully considered the sanctions set out in subsection 15(1), and **[insert reasoning as to why sanctions are not appropriate or why the recommended sanction is appropriate]**.

My recommendation as to the action to be taken as a consequence of the breaches is **[insert detail of proposed recommendation]**, as provided for by subsection 15(1) of the PS Act.

Given the nature of the breaches, I believe that **[insert recommendation]** is an appropriate sanction.

I have taken account of the following matters in making this recommendation:

[Insert matters taken into consideration]

I have also considered the following alternatives to the sanctions listed in subsection 15(1) of the PS Act:

- the probation provisions
- deferral of increments
- denial of promotion or removal from temporary performance of higher duties
- re-assignment of duties (i.e. transfer) **[Please note that this alternative is different to the sanction of 're-assignment of duties' which does not involve transfer, listed in subsection 15(1) of the PS Act]**
- redeployment and retirement on the grounds of failure to exercise reasonable care and skill
- resignation

In the circumstances none of these alternatives are appropriate. **[if applicable]**

Statement

The decision as to what sanction(s) (if any) will be imposed as a consequence of the breach(es) will be made by the Chief Executive Officer, National Mental Health Commission.

You will be given an opportunity to provide your view on the proposed sanction(s) to the CEO prior to any sanction being imposed. I anticipate that the CEO will be writing to you in the near future.

If you require any further information in the meantime please contact me.

Yours sincerely

[insert decision maker name and position]

[Date]





[Employee's name]
[Employee's address]

Dear [Employee's name]

Request for statement as to sanction for breach(es) of the APS Code of Conduct

On [insert date – Att 7 letter], [insert decision maker's name] made a determination that you had breached certain parts of the Australian Public Service (APS) Code of Conduct set out in section 13 of the *Public Service Act 1999* (PS Act) identified in the letter to you dated [insert date – Att 5 letter].

I must now make a determination on the appropriate sanction(s) to be imposed as a consequence of the breach(es).

[insert decision maker's name] has provided me with a recommendation as to the appropriate sanction, which [he/she] considers to be [insert sanction description].

Having reviewed the relevant materials, my preliminary view as to the action to be taken as a consequence of the breach(es) is to agree with [insert decision maker's name]'s recommendation, which is for the imposition of the following sanction(s) as provided for by subsection 15(1) of the PS Act:

[select the appropriate sanction(s)]

- termination of employment
- reduction in classification
- re-assignment of duties
- reduction in salary
- deductions from salary, by way of fine [insert amount]
- a reprimand

Reasons

The reasons for my preliminary view that this is an appropriate sanction are [insert brief statement of reasons or refer to an attached statement of reasons].

Opportunity to make a submission

Before making a decision as to the appropriate sanction, I am inviting you to make a statement, either in writing or orally, in relation to my preliminary view as to the appropriate sanction to be imposed. You have until [insert date – at least 7 days] to provide such a statement to me. Please advise me as soon as possible if you do not intend to make a statement.

I will make no decision as to sanction(s) until after the period for you to make a statement has ended, and any statement that you make has been considered by me. After this time will I advise you in writing of my decision.

Yours sincerely

CEO
Date



www.mentalhealthcommission.gov.au

ABN 83 537 016 476

PO Box R1463 Royal Exchange NSW 1225
Phone 02 8229 7550



[Employee's name]
[Employee's address]

Dear [Employee's name]

Determination of sanction for breach(es) of the APS Code of Conduct

I refer to [insert name of decision maker]'s letter dated [insert date of letter] in which [he/she] determined that that you had breached certain parts of the Australian Public Service (APS) Code of Conduct set out in section 13 of the *Public Service Act 1999* (PS Act).

The reasons for the determination are set out in the letter to you dated [insert date], a copy of which is attached. **[attach a copy of decision maker's letter to employee]**

On [insert date] I advised you of my preliminary view as to the appropriate sanction to be imposed as a consequence of the breach(es).

You were invited to make a statement to me, either orally or in writing, in relation to my preliminary view, no later than [insert date]. On [insert date] you sent [insert detail as appropriate].

[If it is decided to impose a sanction or sanctions, insert the following.]

In accordance with subsection 15(1) of the PS Act, I have decided that the appropriate action to be taken as a consequence of the breach(es) is to impose the following sanction(s) as provided for by subsection 15(1) of the PS Act:

[select the appropriate sanction(s)]

- termination of employment
- reduction in classification
- re-assignment of duties
- reduction in salary
- deductions from salary, by way of fine [insert amount]
- a reprimand

Reasons for decision

The reasons for my decision regarding the appropriate sanction were set out in my letter dated [insert date of Att 7 and attach copy of letter], a copy of which is attached. Following consideration of your submissions, if any, my views as to the appropriate sanction **[have/have not]** changed.

[select appropriate text]

The sanction(s) are effective on [insert date].

[or]

You will be advised soon of how and when the sanction(s) will come into effect.

Rights of review

A decision to impose a sanction other than termination of employment is a decision that may be reviewed in accordance with Public Service Regulation 38(2) directly to the Merit Protection Commissioner.

[Where the sanction imposed is termination of employment], right of review available to the employee under the *Fair Work Act 2009*.

Yours sincerely

CEO
[Date]



Letter to complainant advising the outcome of a Code of Conduct investigation

Note: Only use this letter if the decision maker or CEO has determined that it is appropriate to disclose the outcome of the investigation to other third parties, such as the complainant – it may be appropriate and possible to provide general information about the handling of the complaint to the complainant without disclosing personal information about the employee.

Disclosure of either a sanction to be imposed or the fact that no breach of the Code of Conduct was found would amount to disclosure of personal information under the *Privacy Act 1988*.

[Complainant's name]
[Complainant's address]

Dear [Complainant's name]

Determination regarding alleged breach(es) of the APS Code of Conduct

I am writing in relation to your complaint about [insert nature of complaint], which you forwarded to the National Mental Health Commission on [insert date].

An investigation of this matter has been conducted in accordance with the Commission's Code of Conduct investigation procedures. This investigation has now been finalised.

[select appropriate text]

As a result, a breach of the Code of Conduct was found and a sanction imposed under section 15 of the *Public Service Act 1999*.

In addition, the Commission will undertake to [describe remedial action, e.g. train staff, improve agency procedures] to ensure this situation does not arise in the future.

[or]

As a result, no breach of the Code of Conduct was found in this case. However, the Commission will undertake to [describe remedial action, e.g. train staff, improve agency procedures] to ensure the possibility of the same or similar situation does not arise in the future.

[or]

As a result, no breach of the Code of Conduct was found in this case.

Thank you for raising this matter with the Commission. If you require any further information please contact [x] on [insert telephone number]

Yours sincerely

CEO
[Date]