



Reporting Breaches of the Code of Conduct Procedure

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1. Background to Procedures

Prior to 15 January 2014 the *Public Service Act 1999* (s.16) established the legal framework within which allegations of breaches of the APS Code of Conduct could be raised. The *Public Service Act 1999* provided for such allegations to be raised with: the Australian Public Service Commissioner; the Merit Protection Commissioner; or the Agency Head or a person authorised by the Agency Head.

The *Public Service Regulations 1999* and the *Australian Public Service Commissioner's Directions 2013* required an agency head to establish procedures for dealing with such reports of misconduct (whistleblower provisions).

From 15 January 2014 the *whistleblower* provisions contained within s16 of the *Public Service Act 1999* were repealed and the protections for APS employees when reporting a breach of the APS Code of Conduct are now contained within the *Public Interest Disclosure Act 2013* (PID Act).

2. Scope

The *Public Service Commissioner's Directions 2013* require that the APS demonstrates leadership, is trustworthy, and acts with integrity in all that it does by “*reporting and addressing misconduct and other unacceptable behaviour by public servants in a fair, timely and effective way*”.

In the Australian Public Service (the APS) employees have special obligations by virtue of the APS Code of Conduct (the Code), the APS Values (the Values) and the APS Employment Principles. The Code, the Values and Employment Principles establish that:

- Impartial - *the APS is apolitical and provides the Government with advice that is frank, honest, timely and based on the best available evidence* (s. 10(5)).
- Ethical- *an APS employee must behave honestly and with integrity in the connection of APS employment* (section 13(1)).
- An APS employee must at all times behave in a way that upholds the Values and Employment Principles and the integrity and good reputation an employee's agency and of the APS (s. 13(11)).

AFMA considers that the provisions of the Code, the Values and the Employment Principles impose a reporting obligation on all APS employees with regard to suspected breaches of the Code. In some circumstances it could be a breach of the Code for an employee does not to report a suspected breach.

3. Public Interest Disclosure

From 15 January 2014 the protections available to APS employees when disclosing a breach of the APS Code of Conduct will be provided for within the *Public Interest Disclosure Act 2013* (PID Act).

The PID Act is designed to:

- promote the integrity and accountability of the Commonwealth public sector; and



- encourage and facilitate the making of public interest disclosures by [public officials](#); and
- ensure that public officials who make public interest disclosures are supported and are protected from adverse consequences relating to the disclosures; and
- ensure that disclosures by public officials are properly investigated and dealt with.

Under the PID Act all AFMA staff, and some AFMA service providers, will fall within the definition of [public official](#) and may make a Public Interest Disclosure and will be afforded protection under the PID Act in relation to the public interest disclosure.

AFMA staff are encouraged to read *Making a Public Interest Disclosure* (available on the Intranet). The document contains guidance in the making of a public interest disclosure, the process involved once a public interest disclosure is made and the protections available to AFMA staff following the making of a public interest disclosure.

Further information with regard to these Procedures can be obtained from the human Resources Section.

4. Reporting Breaches

4.1 Internal

An APS employee may report a possible breach of the Code of Conduct either verbally, in writing or by e-mail. The report should provide full details of the alleged breach to the extent known by the employee. The report may be made anonymously.

An employee may make a report to the Chief Executive Officer (CEO) or to a person authorised by the CEO. A list of the persons within AFMA authorised by the CEO to receive disclosures is available through on the AFMA intranet.

It is recommended that a report of a breach of the Code of Conduct be made directly to on of the authorised officers listed in the above link.

Where appropriate, minor matters should be firstly raised with relevant section managers. The appropriateness of raising the matter with the Harassment Contact Officer network should also be considered.

Under the PID Act, if the reported breach of the Code of Conduct is a *Public Interest Disclosure* it will be investigated in accordance with the PID Act.

An investigation report under the PID Act may, as one of its findings, recommend that a reported breach of the Code of Conduct be referred for further investigation. If this occurs, the Senior Manager, Human Resources or the General Manager, Corporate Services will determine the nature of the investigation to be undertaken. Such further investigation will be conducted in accordance with the procedures established under s 15(3) of the *Public Service Act* and any further requirements of the *Public Service Regulations 1999* and the *Australian Public Service Commissioner's Directions 2013*.



4.2 External

If an employee considers the matter to be of such sensitivity that he/she feels unable or unwilling to disclose it to an authorised officer of AFMA, a disclosure can be made directly to the Commonwealth Ombudsman (the Ombudsman) (or to a person authorised by the Ombudsman), Australian Public Service Commissioner (the Commissioner) (or to a person authorised by the Commissioner) or to the Merit Protection Commissioner (MPC) (or to a person authorised by the MPC).

When a disclosure of a breach of the *Code of Conduct* is made to the Ombudsman, Commissioner or the MPC (or to a person authorised by the Ombudsman or one of the Commissioners to receive disclosures), the relevant authorised person is required to deal with the disclosure in accordance with the provisions of the PID Act.

