



Australian Government

**Department of Resources,
Energy and Tourism**

Code of Conduct Framework

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References:

Public Service Act 1999

Public Service Regulations 1999

Fair Work Act 2009

APS Commissioner's Directions 1999

APSC Handling Misconduct – Good Practice Guide 2008

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Introduction

Section 13 of the *Public Service Act 1999* (Cth) (**PS Act**) contains the Australian Public Service Code of Conduct (**Code of Conduct**), which sets out the standards of conduct and behaviour required of all Australian Public Service (**APS**) employees. One element of the Code of Conduct requires that APS employees must at all times behave in a way that upholds APS Values (**Values**), which are set out in section 10(1) of the PS Act.

All RET employees must adhere to the standards set out in the APS Values and Code of Conduct, both in the workplace and at other appropriate times. It is RET's policy to actively promote the Values and Code of Conduct and ensure RET employees comply with these standards, by dealing with potential breaches in accordance with the RET Procedures for Handling Suspected Breaches of the Code of Conduct.

Principles

- ❑ Employees will be informed of responsibilities under the Code of Conduct through the provision of information and induction packages, and ongoing training as appropriate.
- ❑ Managers and employees will embody and promote ethical standards of behaviour in the workplace including the promotion of APS Values and Code of Conduct.
- ❑ Managers and Delegates must ensure procedural fairness is adhered to in the application of this Policy by keeping employees informed, providing employees with the opportunity to be heard in response to allegations, and remaining independent and unbiased.
- ❑ The process for determining whether an APS employee has breached the Code of Conduct must be carried out in a manner as expeditiously and with as little formality as a proper consideration of the matter allows. If several allegations of potential breaches of the Code of Conduct are made, these may be dealt with on a collective basis.
- ❑ Appropriate records regarding breaches of the Code of Conduct must be kept.
- ❑ Decisions regarding misconduct will be subject to review.
- ❑ The Chief Financial Officer/Head of Corporate Services or their nominee must be consulted on all matters relating to potential breaches of the Code of Conduct.

Procedures for Dealing with Potential Breaches of the APS Code of Conduct

1. Introduction

1.1 Purpose of Procedures

These Procedures are provided to assist all Department of Resources, Energy and Tourism (**RET**) employees understand how the APS Code of Conduct (**Code of Conduct**) will be applied, and set out the steps to be taken in instances of suspected breaches of the Code of Conduct.

The Procedures also set out the steps in imposing a sanction on an employee who is found to have breached the Code of Conduct.

Steps required by the *Public Service Act 1999* (Cth) (**PS Act**) and *Public Service Regulations 1999* (Cth) (**PS Regulations**) are identified with an arrow (▶). Of the steps not required by legislation, some steps may be omitted depending on the severity and nature of the suspected breach of the Code of Conduct and if admissions as to liability are provided.

These Procedures are designed to inform all RET employees about the manner in which potential breaches of the Code of Conduct are to be handled. They are also to be used as a guide for delegates appointed to determine potential breaches of the Code of Conduct, and independent investigators appointed to investigate suspected breaches, to carry out their functions. The Procedures will also be of assistance for employees against whom a breach of the Code of Conduct has been alleged.

These Procedures satisfy the requirement under section 15(3) of the PS Act and Regulation 2.4 of the PS Regulations for APS Departments to establish procedures for handling reports of suspected breaches of the Code of Conduct.

1.2 Code of Conduct

All RET employees are required to meet the standards of conduct embodied in the Code of Conduct. These standards are set out in section 13 of the PS Act and provide as follows:

- (1) An APS employee must behave honestly and with integrity in the course of APS employment.
- (2) An APS employee must act with care and diligence in the course of APS employment.
- (3) An APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment.
- (4) An APS employee, when acting in the course of APS employment, must comply with all applicable Australian laws. For this purpose, **Australian Law** means:
 - (a) any act (including this Act), or any instrument made under an Act, or

- (b) any law of a state or territory, including any instrument made under such a law.
- (5) An APS employee must comply with any lawful and reasonable direction given by someone in the employee's agency who has authority to give the direction.
- (6) An APS employee must maintain appropriate confidentiality about dealings with any Minister or Minister's member of staff.
- (7) An APS employee must disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent) in connection with APS employment.
- (8) An APS employee must use Commonwealth resources in a proper manner.
- (9) An APS employee must not provide false or misleading information in response to a request for information that is made for official purposes in connection with the employee's APS employment.
- (10) An APS employee must not make improper use of:
 - (a) inside information, or
 - (b) the employee's duties, status, power or authority
 in order to gain, or seek to gain, a benefit or advantage for the employee or any other person.
- (11) An APS employee must at all times behave in a way that upholds the APS Values and the integrity and good reputation of the APS.
- (12) An APS employee on duty overseas must at all times behave in a way that upholds the good reputation of Australia.
- (13) An APS employee must comply with any other conduct requirement that is prescribed by the regulations.

1.3 Australian Public Service Values

The Code of Conduct operates within a set of Values that are set out in section 10 of the PS Act. RET, its officers and employees strive to uphold the Values in every aspect of work.

Further, subsection 13(11) of the PS Act (part 11 of the Code of Conduct) requires APS employees to at all times behave in a way that upholds the Values.

The APS Values are as follows:

- (a) the APS is apolitical, performing its functions in an impartial and professional manner;
- (b) the APS is a public service in which employment decisions are based on merit;
- (c) the APS provides a workplace which is free from discrimination and recognises and utilises the diversity of the Australian community it serves;
- (d) the APS has the highest ethical standards;

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

1.4 Failure to Comply with the Code of Conduct

Where a determination is made, in accordance with these Procedures, that an employee has breached the Code of Conduct, the Secretary of RET, or a Delegate of the Secretary may impose the sanctions set out in the PS Act.

1.5 Delegations

The Secretary of RET has delegated his powers in relation to dealing with breaches of the Code of Conduct to the Deputy Secretary, Heads of Division and the Chief Financial Officer/Head of Corporate Services.

The scope of the delegation can include the authority to:

- appoint a Delegate;
- set the terms of reference to be given to a Delegate;
- receive reports of potential breaches of the Code of Conduct;
- suspend an employee pending determination of a breach of the Code of Conduct; and/or
- impose a sanction on an employee who is found to have breached the Code of Conduct.

The Secretary of RET may from time to time, delegate his powers in relation to investigating and determining breaches of the Code of Conduct to other RET employees or officers external to RET.

2. Code of Conduct Procedures

2.1 Initial Handling of Suspected Breach

When a complaint is made that a RET employee or a person working on a RET site is suspected to have breached the Code of Conduct, the conduct is to be reported to the General Manager, Human Resource Management, who is trained in dealing with suspected breaches of the Code of Conduct. This is regardless of whether the complaint is oral or in writing. Contact details for the General Manager, Human Resource Management can be found on the RET intranet.

If it is not practicable to initially report the incident to the General Manager, Human Resource Management, the RET employee is required to report the incident to their manager. The manager should then follow up on reporting the incident to the General Manager Human Resource Management or the Chief Financial Officer/Head of Corporate Services.

2.1.1 Obligations on RET managers and employees

SES officers and RET managers are required to report any behaviour that they are aware of that may amount to a suspected breach of the Code of Conduct to the General Manager, Human Resource Management. SES officers and RET managers should use their discretion in relation to how they report the suspected breach, for example, if a complainant expresses a desire not to formalise the complaint, it may be appropriate for the SES officer / RET manager to report the incident on an anonymous basis whilst explaining to the complainant that the lack of a written signed complaint will limit RET's capacity to conduct a Code of Conduct investigation if appropriate.

RET employees who become aware of allegations of suspected misconduct and do not report them or refer the matter to the appropriate management level may, in certain circumstances, be in breach of their obligations to uphold the Values.

2.1.2 Details of the complaint

After receiving a complaint, the General Manager, Human Resource Management should meet with the person making the complaint, and discuss the complaint. The General Manager, Human Resource Management should notify the complainant that in order for the complaint to be investigated, it must be provided in writing and signed.

The General Manager, Human Resource Management should also advise the complainant that the written complaint should contain as much detail about the complaint as possible and include the following information, if available:

- the name(s) of the employee(s) suspected of breaching the Code of Conduct;
- the date(s) the incident(s) occurred; and
- the name(s) of any witnesses to the incidents.

At this point, the General Manager, Human Resource Management should inform the complainant that absolute guarantees with respect to confidentiality cannot be made, for the reasons outlined at 2.1.3 below.

If the nature of the complaint is such that urgent action is required, it may be appropriate for RET to take action on the basis of an oral complaint. In this situation, a written, signed complaint must be obtained from the complainant as soon as practicable.

The General Manager, Human Resource Management should advise the complainant that they should also, where appropriate:

- make notes on what the complainant has seen or heard;
- record any action the complainant has taken; and
- keep all relevant documents such as emails or other correspondence and ensure that no notes or annotations are made on the documents.

Where there is no written, signed complaint, the extent of the action that may be applied by RET will be limited.

2.1.3 Confidentiality

The designated RET officer should not give the complainant any absolute guarantees as to confidentiality. Although confidentiality will be maintained as far as possible, in some circumstances RET may be required to disclose details of the complaint to a third party, for example to a relevant Court or Tribunal, the Australian Federal Police or to Comcare if the matter proceeds in alternate jurisdictions. However, the complaint will be dealt with in accordance with the *Information Privacy Principles* under the *Privacy Act 1988* (Cth).

2.1.4 Decision on how to proceed

On receipt of a written, signed complaint of a suspected breach of the Code of Conduct (or in exceptional circumstances, an oral complaint), the General Manager, Human Resource Management should make a decision as to whether an investigation is warranted.

Factors to be considered when making this decision include:

- the nature of the suspected conduct;
- the seriousness of the suspected conduct;
- the sensitivity of the issue;
- the parties involved; and
- public interest considerations, including the impact of investigating or not investigating the complaint on the reputation or operations of RET.

If the General Manager, Human Resource Management determines that a Code of Conduct investigation is required, a Delegate is to be appointed and will have carriage of the complaint and determine if an investigation is required as a first step. If a Delegate determines that an investigation is required, the Delegate will determine the extent of investigation, and the resources required.

The complaint must be in writing and signed by the complainant prior to an investigation commencing (unless urgency dictates action prior to the written complaint being obtained), and/or before the substance of a complaint is put to the alleged perpetrator.

2.1.5 Whether to start a misconduct action

Not all suspected misconduct is best dealt with via formal procedures. In less serious cases, for example, or in some cases involving personality clashes, other approaches such as using RET's performance management system or conciliation may be the most effective first option. Where appropriate, using informal procedures can often resolve problems more quickly and effectively than by applying the misconduct procedures.

In considering whether or not to use these procedures, the nature of the suspected misconduct should be examined. As a general rule, formal procedures should be used if it is considered likely that a sanction be imposed if the suspected misconduct resulted in a determination of a breach of the Code of Conduct.

Once a decision has been made that it is not appropriate to handle the suspected misconduct through these procedures, managers have a number of alternative options:

- deal with the conduct through the RET performance management system if appropriate, including specifying the standard of future conduct required
- improve the employee's awareness of required standards of conduct such as by access to training
- close monitoring of, and advice/assistance on, future conduct
- provide appropriate counselling
- consider assigning new duties—however, care must be taken to ensure that this is not perceived as a *de facto* sanction imposed without a proper process
- for conduct involving interpersonal issues, alternative dispute resolution approaches such as mediation or conciliation.

Any decision to conduct an **informal** investigation into suspected misconduct requires the approval of the Deputy Secretary prior to the investigation commencing.

2.1.5(a) Records of employee discussions

Where one of the alternative approaches set out above is taken, the key discussions and outcomes must be documented. A file note should be prepared recording the content of any meetings, particularly where agreement is reached on any conduct and the remedial action, if any, to be taken. File notes concerning any follow-up discussions/counselling should also be prepared, agreed and retained. These records should be signed by both the employee and the manager/supervisor, with copies being retained by both parties.

The agency copy should be retained by the manager/supervisor. The employee should be informed that where their conduct is maintained at a satisfactory level for a specified period of time, the records relating to the matter will be destroyed. The employee should also be advised that the records will only be relied on if further allegations of misconduct arise during the specified document retention period.

2.1.5(b) What to do if conduct does not improve or deteriorates

Where alternative action does not satisfactorily resolve concerns about an employee's conduct, and/or a further suspected breach occurs, careful consideration should be given to whether formal procedures should be applied on the basis that a repeating or continuous pattern of suspected misconduct has developed, albeit that the initial incident(s) were relatively minor or did not warrant action under the misconduct procedures.

2.1.6 Appointing a Delegate

► Reasonable steps must be taken to ensure the Delegate appointed to investigate a suspected breach in all cases is, and appears to be, independent and unbiased.

For example, an employee who has knowledge of the issue the subject of the complaint, or an employee that has conducted previous Code of Conduct investigations in relation to the employee in question should not normally be appointed.

In some circumstances, it may be appropriate to appoint an external investigator as a Delegate to conduct the investigation and make a determination as to whether a breach of the Code of Conduct has occurred. Depending on the scope of the Delegation, this external investigator may be required to make a recommendation as to settling the complaint or applying a sanction under the PS Act. If RET deems this to be appropriate, RET must insure that the external investigator has the appropriate delegations from the Secretary of RET to carry out the functions required. Further, an appropriate RET officer should be appointed as the main point of contact between RET and the external investigators.

2.1.7 Suspension or temporary reassignment

The decision to suspend or temporarily reassign duties may be taken at any time prior to, or during, the process of determining whether a breach of the Code has occurred and applying a sanction. Generally, the decision will be made at the same time as the decision to commence misconduct procedures. Suspension or reassignment of duties may also be imposed later during the process should further developments come to light during the investigation.

► A Delegate may suspend a RET employee from duties if the Delegate believes on reasonable grounds that:

- an employee is suspected of breaching the Code of Conduct; and
- that employee's suspension is in the public, or in RET's interest.

Suspension may be with or without pay.

► Before suspending an employee, procedural fairness requires that the Delegate must normally provide the employee with an opportunity to comment on the suspension decision. This enables an affected employee to provide evidence that may affect the suspension decision – for example, an employee to be suspended without pay would have an opportunity to provide evidence of significant financial hardship, and in response a Delegate may determine that suspension on part of full pay is more appropriate in the circumstances.

In some circumstances it may not be appropriate to provide the employee with an opportunity to comment on the decision regarding suspension – for example, if there is a real risk the employee may destroy evidence, or if there is an imminent serious threat to the safety of other employees.

The suspension of an employee must be reviewed by the Delegate at regular intervals.

► The maximum period an employee can be suspended without remuneration is 30 days, unless exceptional circumstances exist.

▶ The Delegate must immediately end the suspension if they no longer believe on reasonable grounds that the employee has or may have breached the Code of Conduct, or the suspension of the employee is no longer in the public or in RET's interest.

▶ The suspension must end as soon as a sanction is imposed on an employee for a breach of the Code of Conduct.

2.1.8 Opening a misconduct file

At the time the decision is made to investigate a suspected breach of the Code of Conduct, a misconduct investigation file should be created by the Human Resource Management Team, classified staff-in-confidence. This file must be maintained throughout the course of the investigation, and records kept in accordance with the requirements outlined at 2.7 below.

2.1.9 Whistleblower protections

▶ Under section 16 of the PS Act, all reports of suspected breaches of Code of Conduct are considered 'whistleblower reports', regardless of whether the person making the report considers the report to be such.

▶ Section 16 of the PS Act provides that a person performing functions in or for an Agency must not victimise, or discriminate against, an APS employee because the APS employee has reported breaches (or suspected breaches) of the Code of Conduct.

▶ The Delegate has a number of obligations arising under the whistleblower provision of the PS Act, in that they must insure the person reporting a suspected breach of the Code of Conduct:

- is aware of the protection against victimisation or discrimination contained in section 16 of the PS Act;
- is advised as to whether RET has decided to conduct an investigation into the suspected breach of the Code of Conduct; and
- is made aware of their right to have their report looked in to by the Public Service Commissioner of the Merit Protection Commissioner if they are not satisfied with RET's decision regarding the handling of the report.

Further, the Delegate should advise the person reporting the suspected breach of the Code of Conduct that if the report is found to be frivolous, vexatious or lacking in substance they may face disciplinary action.

2.2 Conducting the Investigation

2.2.1 Undertaking the Investigation

▶ There are a number of basic principles that must be adhered to in all investigations into suspected breaches of the Code of Conduct. All investigations must be carried out:

- as expeditiously as possible in the circumstances;
- as informally as possible in the circumstances; and
- in accordance with procedural fairness principles.

Beyond adhering to these basic principles there is no set requirements as to how a Code of Conduct investigation should be carried out. The format and procedure of an investigation should be determined in light of the nature of the suspected conduct and the circumstances of the particular case. A formal hearing may not be required, particularly for less serious allegations.

In appropriate circumstances, RET may appoint an external investigator to carry out the investigation and report to the Delegate on whether, in the investigator's view, the breach occurred. The Delegate may, but is not required to, accept the investigator's findings. An external investigator must not make a determination as to whether a breach of the Code of Conduct occurred or a determination on the sanction to be imposed, unless the investigator has been delegated the appropriate powers by the Secretary of RET.

Delegates should also refer to the Australian Public Service Commission document *Handling misconduct: A human resources practitioner's guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct* for further guidance.

2.2.2 Representation

At all stages of the investigation process the employee has a right to make use of a representative or support person of their choosing. The representative may be a person provided by the employee representative organisation (union) or a legal representative. However, the employee can select a friend or relative if that is preferred.

2.2.3 Notifying the employee of the suspected breach

► Once a decision has been made to conduct a Code of Conduct investigation, the employee must be notified in writing of the suspected breach. Notification to the employee must include:

- details of the action or omission that makes up the suspected breach, and the specific provision of the Code of Conduct that it is alleged that they have breached;
- the sanctions that may be imposed under section 15(1) of the PS Act if a breach is proved;
- notification that the employee has a reasonable opportunity to provide a statement in relation to the suspected breach within a reasonable timeframe;
- notification that the employee may have the assistance of, or be represented by, a legal representative or a union nominee or a friend or relative if the employee wishes;
- a copy of the RET Code of Conduct Framework;
- a reference to suspension or reassignment of duties if appropriate; and
- the role/authority of the author.

► If at any point in the investigation, the allegations are varied, the Delegate must provide written notice to the employee, detailing the extent of the variation. The employee must be provided with a right to respond to the varied allegations.

2.2.4 Employee's right to respond

► In keeping with procedural fairness, an employee suspected of having breached the Code of Conduct must be provided with a reasonable opportunity to respond to the allegations.

What amounts to a 'reasonable opportunity' will depend on the circumstances.

If setting a timeframe for the employee to respond, the Delegate's considerations should include the following:

- the complexity and seriousness of the allegations;
- whether the employee has time to access material that might assist in determining the matter;
- whether the employee has time to consult with a support person; and
- whether it is appropriate for the employee to be provided with time away from work duties to prepare a response.

The employee must be allowed to provide their response either orally or in writing. If the employee provides an oral response, the employee must be advised of their right to have a representative or support person of their choosing present during the oral response. However, it is important that the representative or support person is independent of the matter being determined. Where the matter being determined is of a sensitive nature, the Delegate must obtain a written statement from the representative or support person to the effect that the representative or support person will maintain confidentiality of the investigation process, and place it on the Code of Conduct investigation file.

2.3 Making a Determination

► A Delegate must be satisfied to the civil standard of the 'balance of probabilities' that a breach of the Code of Conduct occurred. This requires the Delegate be satisfied that it was more probable than not that the breach occurred, and that the employee in question was responsible for the breach.

► For more serious suspected breaches, the 'Briginshaw' principle applies. This requires that the more serious the suspected breach, and the more grave the consequences for the employee in question if the breach is proved, then the greater the level of probability required for the Delegate to be satisfied that a breach occurred.

In general, a Delegate should only consider the conduct or omissions alleged, in determining a breach of the Code of Conduct. However, in some cases it may be appropriate to consider an employee's prior conduct – for example, evidence of similar facts, or evidence showing the employee had a particular tendency to act in a certain way. If, in making a determination, a Delegate plans to take into account an employee's prior conduct, the employee must be advised of that and provided with an opportunity to comment on the prior conduct.

Where an employee is alleged to have breached multiple aspects of the Code of Conduct, a Delegate need only find that the employee breached one aspect of the Code of Conduct for a finding to be made that a breach occurred.

► The Delegate must prepare a written determination of their findings in relation to the investigation, and provide a copy to the employee.

2.4 Action Following Determination

2.4.1 If a breach has not been proved

If a finding is made that no breach of the Code of Conduct was proved, the employee must be provided with a copy of the Delegate's written determination to that effect.

If the employee had been suspended from work as a result of the investigation, the suspension must cease immediately upon the finding being made. If the employee had been suspended without pay, employee must be remunerated for the period of the suspension.

2.4.2 If a breach has been proved

► If a finding is made that a breach of the Code of Conduct occurred, the employee must be provided with a copy of the Delegate's written determination to that effect.

Where a Delegate has determined that a RET employee has breached the Code of Conduct, the Delegate must decide what sanction, if any, is appropriate.

The options open to the Delegate include:

- to take no further action;
- for the RET employee to be informally counselled; or
- to impose one or more of the sanctions specified in section 15(1) of the PS Act.

A decision to take no further action, notwithstanding that a breach of the Code of Conduct has been proved must be objectively justifiable in the circumstances. There may be mitigating circumstances warranting no further action being taken.

Informally counselling the employee is not a sanction. Rather, it is a discussion with the employee about the standards required of RET employees under the Code of Conduct and Values, and how those standards apply in practice. Informal counselling may also be used as an opportunity to warn employees that any further breach of the Code of Conduct will result in a sanction being applied.

2.5 Imposing Sanctions

► A sanction can only be applied under section 15(1) of the PS Act if an employee has been found to have breached the Code of Conduct.

The sanctions available under the PS Act are as follows:

- a reprimand;
- deductions from salary, by way of a fine of not more than 2 per cent of the employee's annual salary;
- reduction in classification;
- re-assignment of duties;
- reduction in salary; or

- termination of employment.

To ensure sanctions are applied across RET in a consistent manner, Delegates should seek advice from the General Manager, Human Resource Management as to the appropriateness of the proposed sanction.

2.6 Rights of Review

2.6.1 Employee's right of review

▶ A non-SES employee who is found to have breached the Code of Conduct may challenge either the determination that they breached the Code, or the sanction imposed by applying to the Merit Protection Commissioner for review of the Delegate's action. This application must be made within 60 days from the determination of the breach.

▶ However, under the PS Act and PS Regulations, an employee who holds an SES appointment is excluded from seeking review of actions resulting from a Code of Conduct investigation and any sanctions imposed.

▶ Where an employee has been terminated as a result of a finding that they have breached the Code of Conduct, the only avenue of review is to make a claim of unfair dismissal with Fair Work Australia under the *Fair Work Act 2009* (Cth).

Another avenue for review open to both an employee the subject of a complaint and a Complainant is the Federal Court or Federal Magistrate's Court under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

2.6.2 Complainant's right of review

▶ A person who has made a complaint alleging another RET employee has potentially breached the Code of Conduct (**a Complainant**) also has a right to seek review of the outcome of the Code of Conduct investigation under the PS Act and in other jurisdictions.

▶ Under the PS Act, the Complainant may apply to the Secretary of RET in writing for review. However, the application must be made to the Merit Protection Commissioner if the application is for review of a sanction imposed for breach of the Code of Conduct.

▶ Further, in the context of the protection for whistleblower provisions of the PS Act, the Complainant has a right to have their complaint looked in to by the Public Service Commissioner of the Merit Protection Commissioner if they are not satisfied with RET's decision regarding the handling of the report.

▶ If the Code of Conduct complaint relates to unlawful discrimination or harassment in the workplace, the Complainant may have a right to lodge a complaint with the Human Rights and Equal Opportunity Commission.

Another avenue for review open to both an employee the subject of a complaint and a Complainant is the Federal Court or Federal Magistrate's Court under the *Administrative Decisions (Judicial Review) Act 1977* (Cth).

2.7 Record Keeping Requirements

2.7.1 Misconduct file

A misconduct investigation file must be established and maintained by the General Manager, Human Resource Management throughout the investigation process and retained once the investigation is complete. The file must include:

- the initial written, signed complaint that prompted the investigation;
- copies of all documents pertaining to the investigation (for example, documents to employee outlining potential breaches, and any written material provided by the employee in response);
- evidence collected by the Delegate in the course of the investigation, or copies of such evidence;
- the report to the Delegate from the investigator/s (if appropriate); and
- a record of the Delegate's determination in respect of the suspected breach and the actions taken.

The file must be classified *staff-in-confidence*.

► Requirements under other legislation in relation to record keeping must be adhered to, including under:

- *Archives Act 1983 (Cth)*;
- *Freedom of Information Act 1982 (Cth)*; and
- *Privacy Act 1988(Cth)*.

2.7.2 Employee's personnel file

Importantly, the Code of Conduct investigation file should be kept and remain separate from the employee's personnel file. Records relating to the Code of Conduct investigation should not be kept on the employee's personnel file. Reference to the Code of Conduct investigation file should be made apparent by way of cross reference.

In cases where a breach of the Code of Conduct has been established, a document containing the following information must be placed on the employee's personnel file:

- that the employee has breached the Code of Conduct;
- when the breach occurred; and
- where the Code of Conduct investigation file is stored.

Note that this document must not state the nature of the breach of the Code of Conduct.

2.8 Appropriate Procedures if Basis of APS Employee's Engagement in RET Changes or Moves to a Different Agency

► If, before a determination is made, the basis of employment changes for a RET employee suspected of breaching the Code of Conduct, RET may be required to make a determination in relation to the suspected breach. If this is the case, the determination must be made at the time of that change of employment status. This requirement applies in two circumstances:

► If the basis of the employee's engagement in RET changes (for example, an employee previously on contract at RET is engaged as an ongoing employee), a determination must be made in accordance with the RET Procedures that applied at the time the Code of Conduct investigation commenced.

► If the employee moves from RET to another APS Agency, a determination must be made in accordance with the Code of Conduct Procedures applicable in the receiving Agency at the time the RET Code of Conduct investigation commenced.

3. Other Related Matters

The following paragraphs deal with the application of the Code of Conduct to some situations which may be of particular relevance to RET employees.

Section 13(4) of the Code of Conduct requires that an APS employee, when acting in the course of APS employment, must comply with all applicable Australian laws. The following paragraphs also mention provisions in the *Crimes Act 1914* (Cth) which may be of relevance to the work of RET in some situations.

3.1 Conflict of Interest

RET employees are required to ensure that their private interests, both financial and personal, do not give rise to any actual or perceived conflict of interests with the work they perform for RET.

If any actual or perceived conflict arises, employees are required to disclose the matter to their supervisor and, in consultation with their supervisor, to take appropriate action to avoid the conflict.

If an employee is unsure about whether a conflict of interest arises, they should discuss the issue with their supervisor.

3.2 Conduct with Industry and Members of the Public

Many employees of RET are involved in decisions which can have a major impact on stakeholders, including individuals, particular firms or even whole industries.

It is imperative that RET has a reputation for professionalism, fairness and impartiality in making decisions that impact upon stakeholders.

RET employees should be aware that actions which could jeopardise RET's reputation may amount to breaches of the Code of Conduct. Employees must therefore be professional, fair and impartial in **all** their dealings with people outside RET.

3.3 Gifts and Other Benefits

Gifts may be given or received by officials for any number of reasons. The acceptance or offer of gifts, including entertainment, requires careful judgement, because with it comes the possible perception of undue benefit or conflict of interest. This in turn can have a profound effect on the reputation of the Department and the Public Service in general. For further information of gifts and benefits please refer to Giving and Receiving Gifts –Procedural Rules (including Sponsorship).

3.4 Fair and Equitable Decisions

Employees are required to treat members of the public and other employees equitably, regardless of gender, age, language, ethnicity, cultural background, disability, sexual preference, religion and family responsibility.

Employees are required to abide by the RET Workplace Harassment Policy and Procedures and must comply with obligations under relevant laws, including the *Sex Discrimination Act 1984* (Cth), *Age Discrimination Act 2004* (Cth), *Disability Discrimination Act 1992* (Cth) and *Racial Discrimination Act 1975* (Cth).

For further information refer to the RET Workplace Diversity Program.

3.5 Duty of Care

Employees must exercise reasonable skill and diligence in their work, particularly in relation to giving information or advice. Employees must take reasonable steps to ensure any information or advice they give on behalf of RET is, to the best of their knowledge, accurate.

3.6 Official Information

RET employees must not disclose any information obtained or generated in connection with their employment if it is reasonably foreseeable that the disclosure could be prejudicial to the effective working of government, including the formulation or implementation of policies or programs.

Further, a RET employee must not disclose information which they obtain or generate in connection with their employment if the information:

- (a) was, or is to be, communicated in confidence within the government; or
- (b) was received in confidence by the government from a person or persons outside the government;

whether or not the disclosure would found an action for breach of confidence.

Exceptions to the rules above apply if the Secretary has expressly authorised disclosure, or if disclosure is required by law.