WORKPLACE RESPECT POLICY

Purpose

The Department of the Environment (the Department) is firmly committed to the APS Values, Employment Principles and Code of Conduct in promoting a positive workplace culture and environment which is free from all forms of inappropriate workplace behaviours including bullying and harassment. The Department demonstrates this commitment from the Agency Head and Senior Executive levels down by articulating and modelling appropriate workplace behaviour and by decisively addressing and resolving incidents of improper workplace behaviour that occur.

Treating others with a lack of respect and courtesy and bullying and harassing behaviours are potential breaches of the APS Values, Employment Principles and Code of Conduct and are not tolerated in the Department. The serious consequences for employees found to have engaged in any form of inappropriate workplace behaviour during the course of their APS employment include the likelihood of facing disciplinary proceedings which may also result in the imposition of sanctions under Section 15(1) of the Public Service Act 1999. Sanctions include the termination of employment.

Relationship to other Department of the Environment Policies

To obtain a full picture of your responsibilities and rights under the department’s Conduct and Ethical Behaviour Framework, this policy document should be read in conjunction with related Chief Executive Instructions (CEI’s), Departmental Instructions and Department policy documents available on the Department’s Intranet including:

- Code of Conduct Guidelines
- Procedures for Suspected Breaches of the APS Code of Conduct
- Allegations of Fraud and Criminal Behaviour by Departmental Employees
- Public Interest Disclosures Procedures

Responsibilities and Obligations

All Department employees have shared obligations for creating a respectful and courteous workplace. Department employees must treat everyone with respect and courtesy. This includes colleagues, APS employees in other agencies, clients and other members of the public. It also includes treating everyone with civility and tact even when others may display behaviour which is critical, hostile or rude towards them. Employees must uphold these same values during all employment/work related social activities whether outside of normal work hours, when undertaking business travel or otherwise.

Application

The Workplace Respect Policy applies to all ongoing and non-ongoing employees of the Department of the Environment. This includes all part time, casual, irregular and intermittent
employees who are employed with the department under section 22 of the Public Service Act 1999.

Legislation

Agency Heads have a specific obligation under section 12 of the Public Service Act 1999 to ‘uphold and promote the APS Values and the APS Employment Principles’ while Senior Executive Service employees have a specific obligation under subsection 35(2)(c) to promote the APS Values, the APS Employment Principles and compliance with the Code of Conduct by ‘personal example and other appropriate means’.

The following subsections of sections 10, 10A and 13 of the Public Service Act 1999 (the APS Values, Employment Principles and the APS Code of Conduct) are relevant to workplace bullying and harassment:

- ‘The APS respects all people, including their rights and their heritage’ - subsection 10(3)
- ‘provides flexible, safe and rewarding workplaces where communication, consultation, cooperation and input from employees on matters that affect their workplaces are valued’ – subsection 10A(1)(e)
- ‘provides workplaces that are free from discrimination, patronage and favouritism’ - subsection 10A(1)(f)
- ‘an APS employee, when acting in connection with APS employment must treat everyone with respect and courtesy, and without harassment’ - subsection 13(3)
- An APS employee must at all times behave in a way that upholds
  (a) the APS Values and APS Employment Principles
  (b) the integrity and good reputation of the employee’s agency and the APS – subsection 13(11).

The Work Health and Safety Act 2011 (WH&S Act) and the Safety, Rehabilitation and Compensation Act 1988 (SRC Act) also impose the following obligations on APS agencies as employers:

- a duty of care, so far as is reasonably practical to ensure “the provision and maintenance of a work environment without risks to health and safety.” – subsection 19 (3)(a) of the WH&S Act
- responsibilities of Agency Heads in relation to employees who are suffering from injuries ‘arising out of or in the course of employment’ - section 6 of the SRC Act.

Other relevant legislation includes:

- Sex Discrimination Act 1984
- Age Discrimination Act 2004
- Disability Discrimination Act 1992
- Australian Human Rights Commission Act 1986
- Racial Discrimination Act 1975
The Workplace Behaviour and Conduct Unit

The Workplace Behaviour and Conduct Unit (WBCU):

- provides assistance to managers and employees with concerns raised about the workplace conduct and behaviour of departmental employees and supports the Department's legal and ethical standards of conduct

- conducts preliminary inquiries and assessments of allegations made about the conduct and behaviour of departmental employees and makes recommendations to the Director, Capability and Performance Section (CPS) and the Primary Delegate about any further action that may be required in the circumstances

- closely liaises with all areas of the Department and other Commonwealth agencies including the Australian Public Service Commission and the Merit Protection Commissioner, about APS Code of Conduct and ethical behaviour issues

- provides education, guidance and advice to departmental employees and managers on the APS Code of Conduct, Public Interest Disclosures and Fraud awareness initiatives to promote integrity in the performance of employees duties, in departmental processes and procedures and in the use of the Department’s resources and Information and Communications Technology (ICT) systems

- reports on trends and systemic policy, process and/or procedural deficiencies identified during investigations to positively assist with the Department’s strategic direction.

What are inappropriate workplace behaviours?

Subsection 13(3) of the Public Service Act 1999 provides that an APS employee, when acting in the course of APS employment, must treat everyone with respect and courtesy, and without harassment. The Australian Public Service Commission (APSC) adopts the Macquarie Dictionary definitions of respect and courtesy. Respect is defined as 'esteem or deferential regard felt or shown' and courtesy as 'excellence of manners or behaviour; politeness'.

While there is no standard definition of workplace bullying, it is a form of harassment and does not show respect and courtesy. The term ‘bullying’ is generally used to describe repeated workplace behaviour that could reasonably be considered to be humiliating, intimidating, threatening or demeaning to an individual or a group of individuals.

Workplace harassment includes offensive, belittling or threatening behaviour towards an individual or group of employees. The behaviour is unwelcome, unsolicited, usually unreciprocated, and often repeated.

Even if the harassing behaviour is not deliberate, it can still be harassment where a reasonable person would conclude that it would humiliate, offend, intimidate or cause a person unnecessary hurt or distress. It can also be unlawful under anti-discrimination legislation (such as sexual harassment or racial vilification).
Combining the two terms of bullying and harassment means that it includes behaviour that is:

- offensive
- abusive
- belittling
- threatening behaviour

which is:

- unwelcome
- unsolicited
- unreciprocated
- usually, but not always, repeated.

Bullying and harassing behaviour can be:

- intended: where actions were intended to humiliate, offend, intimidate or distress, whether or not the behaviour did in fact have that effect
- unintended: where although not intended to humiliate, offend, intimidate or distress, did have that effect and should reasonably have been expected to have had that effect.

Bullying and harassing behaviour may take the form of overt actions and may include:

- physical assaults, intimidating or aggressive body language
- verbal abuse and offensive language or derogatory remarks about another’s lifestyle choices, physical or mental abilities, or background (race, ethnicity, social status)
- inappropriate behaviour or language that threatens, frightens, humiliates or degrades, such as shouting and screaming, sarcasm and insults (whether face to face, by email or other media)
- interfering with a person’s personal effects, work space or equipment
- inappropriate and unfair application of work policies and rules eg: access to leave, training and/or development opportunities.

Bullying and harassing behaviour may also be more subtle and include:

- ostracism – eg: physical or social isolation, exclusion from work-related activities, not acknowledging or responding to an individual’s presence or comments
- undermining – eg: persistent and baseless criticism, ridicule, taunts, spreading gossip and rumours (either verbally, by email or other media), belittling or derogatory remarks and/or actions that are intended to diminish a person’s dignity (eg: eye rolling responses)
- sabotage – eg: deliberately giving meaningless tasks, deliberately giving contradictory instructions, inappropriately and frequently changing deadlines, deliberately
withholding important information and/or deliberately failing to complete tasks or miss deadlines.

These types of inappropriate workplace behaviours are sometimes focused on the sex, cultural or racial background or disability of an individual worker or group of workers. Work pressures or stresses are never acceptable explanations for inappropriate workplace behaviour that constitutes a lack of respect and courtesy or bullying and/or harassment.

Everyone reacts differently to what happens in the workplace. It may be that the person treated with a lack of respect and courtesy or subjected to bullying or harassing behaviour does not complain because the incident was isolated, of a minor or inconsequential nature and/or does not have any particular impact upon them. Alternatively, the individual may not have the confidence to speak up, feels intimidated, fears reprisal or is too embarrassed to complain.

It can also mean that the same behaviour may have a different impact on different people. What one person may find offensive may not have an effect on another. Often people of different social and cultural backgrounds can perceive the same conduct and behaviour very differently.

**What is NOT inappropriate workplace behaviour or bullying and harassment?**

Legitimate management comment and feedback to employees does **NOT** constitute a lack of respect and courtesy or bullying and harassment. There are circumstances in which normal exchanges in the workplace between managers and employees, and between colleagues, may cause distress or anguish to individuals. However, workplace bullying and harassment **must not** be confused with legitimate comment and advice from managers on an employee’s work performance or work related behaviour which is consistent with the department’s performance management and/or conduct and ethical behaviour framework. Nor should it be confused with legitimate and courteous comment and/or feedback on working arrangements, whether originating from managers to staff or from staff to managers.

Legitimate feedback from managers on work performance or work related behaviour differs from being treated with a lack of respect and courtesy or bullying and harassing behaviour in that the feedback is intended to assist employees to improve their work performance or the standard of their behaviour. It is absolutely essential that comment on an employee’s work performance and behaviour does not become comment on the employee's person and that objectivity is always maintained in any formal or informal work performance counselling.

Managers must realise that receiving negative feedback can cause distress to employees, and managers must conduct these processes with sensitivity and care, recognising the diverse backgrounds of employees and in strict accordance with the Department’s policies and guidelines on the appropriate management of underperformance.

Employees must be careful to distinguish legitimate and constructive comment, delivered in a respectful and courteous manner about their work performance or behaviour, from bullying and harassment. Discussion of career development and planning during performance feedback, whether formal or informal, is a legitimate role for managers whereas attempts or threats to diminish the career prospects or development opportunities of an employee can never be legitimate.
In the same way that legitimate management action taken in a reasonable and courteous way does not constitute a lack of respect and courtesy or workplace bullying and harassment, lawful and reasonable decisions that employees make that may have a negative impact on departmental clients does not constitute a lack of respect and courtesy or bullying and harassment.

What is sexual harassment?

Sexual harassment is unwelcome sexual conduct and is a form of workplace bullying and harassment which makes a person feel offended, humiliated and/or intimidated where a reasonable person would anticipate that reaction in the circumstances.

Whether the behaviour is unwelcome is a subjective test: it looks at how the conduct in question was perceived and experienced by the recipient, rather than the intention behind it.

Whether the behaviour was offensive, humiliating or intimidating is an objective test: it looks at whether a reasonable person would have anticipated that the behaviour would have this effect.

The Sex Discrimination Act 1984 defines the nature and circumstances in which sexual harassment is unlawful and prohibited in all work-related activity. Sexual harassment is prohibited at the workplace, during working hours and at work-related activities such as training courses, conferences, field trips, work functions and office Christmas parties. An employer can be held vicariously liable for sexual harassment committed by an employee. It is also unlawful for a person to be victimised for making, or proposing to make, a complaint of sexual harassment to the Australian Human Rights Commission.

Sexual harassment in the workplace can take various forms and may involve:

- unwelcome sexual advances
- unwelcome touching, hugging or kissing
- sexually suggestive comments or jokes
- unwanted and/or persistent invitations to go out on dates
- insults based upon gender
- sexually explicit emails or SMS messages
- inappropriate staring or leering of a sexual nature
- unwelcome requests for sexual favours
- conduct of a sexual nature including making statements of a sexual nature either orally or in writing that offends, humiliates or intimidates.

What is NOT sexual harassment?

Sexual harassment is NOT sexual interaction, flirtation, attraction or friendship which is invited, mutual, consensual and reciprocated.
Can sexual harassment constitute criminal behaviour?

Some types of sexual harassment may also constitute offences under criminal law. These include incidents involving:

- indecent exposure
- sexual assault
- stalking
- obscene communications (telephone calls, letters, etc).

If an employee suspects that an incident/act occurring in the workplace may have potentially constituted a criminal offence, the individual must immediately report the matter directly to the Workplace Behaviour and Conduct Unit who will provide the employee subject of the alleged criminal behaviour with all necessary support, assistance and advice. This includes providing the employee with information and advice concerning their rights and their options about reporting the matter to the Police.

How Inappropriate Workplace Behaviours can Occur

Inappropriate workplace behaviours can occur:

- on a person-to-person basis
- between employees at the same or different classifications
- between employees of the same or opposite gender
- between employees in the same or different work area or agency
- between employees and contractors, consultants or labour hire staff
- via the telephone
- via email
- via third parties
- during work-organised events or outside normal work hours
- while off-site eg external meetings, on regional or interstate/overseas business trips or on overseas postings.

What are the Effects of these Types of Inappropriate Workplace Behaviours?

Inappropriate workplace behaviours towards others can make a workplace or association with work unpleasant, humiliating or intimidating for an individual or group targeted by this behaviour. It can also make it very difficult for effective and productive work to be accomplished.
The consequences can include:

- actual or potential disadvantage to an individual’s employment opportunities in engagement to the Australian Public Service, promotion, transfer or development
- a lack of self-esteem or confidence in carrying out tasks
  - lowered self-esteem and confidence can also affect employees outside of the workplace and result in social issues
  - this in turn may lead to increased employee absences on sick and other leave and hence even further lower performance and productivity
- adverse effects on individual or group work output with implications for the achievement of individual or team goals and on their Performance and Development Scheme (PDS) assessments and ratings
- impacts to the health and well being of the employee including illness
- an intimidating, hostile environment where employees other than the victim of the bullying and harassment may also suffer
- an increase in employee separation rates
- negatively impact on the reputation of the department.

Who can I talk to?

If an employee is a witness to, or subject to inappropriate workplace behaviour they should consider:

- discussing the issue with the colleague
- discussing the issue with their Executive Level, or higher, manager
- seeking the advice of a Workplace Contact Officer (WCO)
- seeking advice from the department’s Employee Assistance Program (EAP) provider
- discussing the issue with the Workplace Behaviour and Conduct Unit
- consider reporting the behaviour under the Public Interest Disclosure Procedures

Steps for Managers

A manager who receives a complaint of inappropriate workplace behaviour by one of their staff members must take each of the following steps:

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<th>Step</th>
<th>What to do</th>
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<tr>
<td>1</td>
<td>Identify whether or not the inappropriate workplace behaviour could be considered to be disclosable conduct under the Public Interest Disclosure Act 2013.</td>
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</table>
- To assist you with making this decision please refer to Attachment 1 which defines what disclosable conduct includes. You can also refer to the Public Interest Disclosure Procedures.
- Further information is available on the Code of Conduct and Ethics page of the intranet.
- If you are still unsure, you can contact Workplace Behaviour and Conduct Unit (WBCU) on (02) 6274 1116. Please note that due to strict privacy restrictions **you must de-identify the information** when seeking advice.

The easiest way to ensure that the information is de-identified is to utilise a meeting room phone to contact the WBCU and use your first name only. When referring to involved parties you can refer to the ‘discloser’ as the person who has provided the information, and the ‘subject person’ as the person accused of acting inappropriately.

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<td>2</td>
<td>If the inappropriate workplace behaviour is disclosable conduct under the Public Interest Disclosure Act 2013 you <strong>must</strong> follow the procedures outlined for managers in the Public Interest Disclosure Procedures.</td>
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<td>3</td>
<td>If the inappropriate workplace behaviour is not disclosable conduct under the Public Interest Disclosure Act 2013 then take time to sensitively discuss the matter with the employee making the complaint. Listen to the complaint seriously with respect, treat the complaint in the strictest of confidence and make an accurate written record of the discussion.</td>
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<td>4</td>
<td>Advise the complainant employee not to further discuss the issue with others in the workplace with the exception of the Workplace Behaviour and Conduct Unit, the Workplace Contact Officer network (WCO) and/or the Employee Assistance Provider (EAP).</td>
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<td>5</td>
<td>Before moving to any of the next steps - contact the Workplace Behaviour and Conduct Unit to seek assistance and guidance to manage the situation appropriately and according to the particular circumstances of the matter. <strong>NOTE:</strong> With assistance of the Workplace Behaviour and Conduct Unit, in the vast majority of cases complaints of inappropriate workplace behaviour can be effectively and efficiently managed and resolved in the workplace by the line area manager.</td>
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<td>6</td>
<td>Sensitively discuss the matter with the employee alleged to be behaving inappropriately to give them the opportunity to respond to the concerns raised about their behaviour.</td>
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<td>7</td>
<td>Aim to resolve the issue in the workplace through appropriate counselling, training or conciliation/mediation and where ever possible if appropriate/warranted in the circumstances, seek an apology from the relevant employee to the complainant.</td>
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<td>8</td>
<td>Take all reasonable steps necessary to ensure that the matter does not occur again.</td>
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<td>9</td>
<td>Take all reasonable steps necessary to ensure that the matter does not become an item of office gossip. The Workplace Behaviour and Conduct Unit can assist managers with appropriate strategies to achieve this.</td>
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<td>10</td>
<td>Prevent victimisation and discrimination of the parties concerned. The Workplace Behaviour and Conduct Unit can assist managers with appropriate strategies to achieve this.</td>
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<td>11</td>
<td>Maintain a written record of all action taken and conversations that occur in the course of trying to resolve the complaint.</td>
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<td>12</td>
<td>If the matter appears to involve serious potential/suspected breaches of the APS Code of Conduct or is not resolvable through informal approaches, formal referral of the matter to the Workplace Behaviour and Conduct Unit will be necessary.</td>
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**Why don’t I just transfer the complainant employee or the employee behaving inappropriately to another work location?**

The transfer of the complainant employee or the employee behaving inappropriately towards another employee to another work location does not usually resolve the matter in the absence of taking each of the above important steps.

While in some circumstances it may provide temporary relief from the immediate situation, it can also mean that the employee behaving inappropriately may go on to behave in a similar way towards other employees, or other employees may develop the incorrect perception that the complainant employee who reported the behaviour is being penalised, victimised or discriminated against by the manager or the department for doing so. The manager’s reputation may also be damaged through perceptions of a failure to properly address and manage the situation.

**Follow up Action**

There may be occasions when it becomes apparent that a complaint about inappropriate workplace behaviour was made in good faith but is possibly untrue, perhaps because the behaviour in question did not actually amount to any inappropriate workplace behaviour.

Nevertheless, the complainant employee's distress may well be genuine or the specific complaint may be a symptom of other problems among staff in a particular work area. Therefore, even if no remedial action is required or taken with regard to the original complaint, there may be a need for other decisive action to clear the air and improve employee relationships within the work group such as counselling and mediation through the Employee Assistance Provider.
**Workplace Contact Officer Network**

The Workplace Contact Officer (WCO) Network is a network of departmental officers who are trained to help employees deal with issues that may arise in the workplace. These may be work or matters of a personal nature. This would usually involve advice or feedback on issues and may include accompanying employees to interviews or meetings if required. There is a list of Workplace Contact Officers available on the Department’s Intranet.

The following links may also be of assistance:

- [Workplace Contact Officer Policy](#)
- [People/obligations/employeeassistance](#)
- [Australian Human Rights Commission](#)
- [Code of Conduct and Ethics intranet page](#)
- [Australian Public Service Commission](#)
- [APSC Ethics Advisory Service](#)
- [Public Interest Disclosure Procedures](#)

**The Employee Assistance Program (EAP)**

Davidson Trahaire Corpsych is contracted by the department to provide an [Employee Assistance Program](#) (EAP). The EAP provides discreet counselling services for employees who may be in need of assistance. The EAP is available to employees at no cost and is voluntary and confidential.

Employees can contact the EAP:

- by telephone on **1300 360 364**
- or online at [EAPDIRECT](#).

To use the EAP online service:

- please press the 'New User' link and complete the online form before using the login and password
- you will be required to enter the Login: dehmg
- then enter the Password: password
- you will then be asked to insert a new login and password that only you will have access to.

**Need More Advice?**

The Workplace Behaviour and Conduct Unit within the People Strategies Branch can assist employees and managers with inappropriate workplace behaviour issues and other workplace conflict and ethical dilemma situations and concerns.
The Workplace Behaviour and Conduct Unit can be contacted:

- on their Hotline number: (02) 6274 1116
- or via email at: behaviourandconduct@environment.gov.au
- or by normal mail marked ‘Private and Confidential’ addressed to:

  Workplace Behaviour and Conduct Unit
  GPO Box 787
  Canberra ACT 2601

This policy setting out the Department of the Environment's firm commitment to the APS Values, Employment Principles and Code of Conduct to promote a positive workplace culture and environment free from all forms of inappropriate workplace behaviours including bullying and harassment has been established by me in accordance with Sections 10, 12, 13 and 35 of the Public Service Act 1999. All Department employees are required to comply with this policy.

Mr Malcolm Thompson
Acting Secretary
Department of the Environment

Date

Revision History

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<tr>
<th>Date</th>
<th>Version</th>
<th>Description</th>
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<tr>
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<td>1.0</td>
<td>Previous policy document version - Workplace Bullying and Harassment Policy - full policy review</td>
<td>Carl Murphy</td>
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<td>26.9.2011</td>
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<td>Michelle Wicks</td>
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<td>Final incorporating further comments by Deputy Secretary Thompson</td>
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<td>Final for Secretary’s approval</td>
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<td>Final</td>
<td>Secretary – Dr Paul Grimes</td>
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<tr>
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<td>Draft for Senior Executive Review due to legislative changes and structural changes.</td>
<td>Michelle Wicks</td>
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<tr>
<td>13.01.2014</td>
<td>7.0</td>
<td>Final</td>
<td>Malcolm Thompson</td>
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What is a Public Interest Disclosure?

A public interest disclosure may be an **internal** disclosure when:

- a person who is or has been a public official
- discloses to their supervisor or manager, or an authorised officer of an agency
- information which tends to show, or the discloser believes on reasonable grounds tend to show, one or more instances of disclosable conduct.

What can be disclosed?

The full definition of disclosable conduct is set out in section 29 of the PID Act. In summary terms, disclosable conduct is conduct by an agency or by a public official that:

a. contravenes a law of the Commonwealth, a State or a Territory, or  
b. occurs in a foreign country and contravenes a law in force in that country that applies to the agency or public official and that corresponds to a law in force in the Australian Capital Territory, or  
c. perverts, or attempts to pervert, the course of justice or involves corruption of any other kind, or  
d. constitutes maladministration, including conduct that:  
   - is based on improper motives  
   - is unreasonable, unjust or oppressive, or  
   - is negligent, or  

e. is an abuse of public trust, or  
f. is fabrication, falsification, or deception in relation to scientific research, or misconduct in relation to scientific work, or  
g. results in the wastage of public money or public property or of the money or property of an authority covered by the PID Act, or  
h. unreasonably results in a danger to the health and safety of a person or unreasonably results in or increases the risk of a danger to the health and safety of a person, or  
i. results in a danger to the environment or results in or increases the risk of a danger to the environment, or  
j. is prescribed by the PID Rules, or  
k. is engaged in by a public official that:  
   - involves abuse of the public official’s position, or  
   - could, if proved, give reasonable grounds for disciplinary action against the public official.

It does not matter whether disclosable conduct occurred before or after 15 January 2014. It does not matter whether the public official who carried out the alleged conduct has ceased to be a public official since the time the conduct is alleged to have occurred, but it is necessary that they carried out the conduct in connection with their position as a public official.
What is not disclosable conduct?

Individual grievances or workplace conflicts would generally be appropriately dealt with by other existing agency and public sector mechanisms than be the subject of investigation under the PID Act.

Conduct that is wholly private and has no bearing on the position as a public official is not disclosable conduct. Matters that reflect private or personal interest are generally not matters of public interest:

- personal disagreement with a government policy or proposed policy
- personal disagreement with an action or proposed action by a minister, the Speaker of the House of Representatives or the President of the Senate
- expenditure or proposed expenditure related to such policy or action (s 31).
Disclosure by a **current or former public official**

Of information that tends to show, or that the public official reasonably believes tends to show **disclosable conduct**

Made to an **appropriate person within government**

OR

Made to anybody (other than a foreign official) under limited circumstances

Includes public servants and parliamentary service employees, service providers under a Commonwealth contract, statutory office holders, staff of Commonwealth companies etc

Conduct engaged in by an agency, public official or contracted service provider

Types include illegal conduct, corruption, maladministration, abuse of public trust, deception relating to scientific research, wastage of public money, unreasonable danger to health or safety, and danger to the environment

- A supervisor or authorised officer
- The Commonwealth Ombudsman
- The IGIS (if an intelligence matter)
- A prescribed investigative agency

If the disclosure does not include intelligence or sensitive law enforcement information

**AND**

- an investigation was conducted and the public official reasonably believes the investigation or the agency response was inadequate, or the investigation was not completed within time
- the disclosure is not contrary to the public interest

OR

- the public official believes on reasonable grounds that there is a substantial and imminent danger to health, safety or the environment