



Australian Government
Department of Employment
and Workplace Relations

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

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1. Application of procedures

- 1.1 These procedures apply in determining whether a person who is an Australian Public Service **(APS)** employee in the Department of Employment and Workplace Relations **(the department)**, or who is a former APS employee who was employed in the department at the time of the suspected misconduct, has breached the APS Code of Conduct **(the Code)** in section 13 of the *Public Service Act 1999 (the Act)*.
- 1.2 These procedures also apply in determining any sanction to be imposed on a current APS employee in the department who has been found to have breached the Code.
- 1.3 In these procedures, a reference to a breach of the Code by a person includes a reference to a person engaging in conduct set out in subsection 15(2A) of the Act in connection with their engagement as an APS employee.
- 1.4 These procedures adhere to the Act and the *Australian Public Service Commissioner's Directions 2022*.

2. Availability of procedures of effect

- 2.1 As provided for in subsection 15(7) of the Act, these procedures are publicly available on the department's website.

3. Decision to initiate Code process

- 3.1 As soon as practicable after a suspected breach of the Code has been identified, the Secretary or a person occupying one of the following roles will consider if it is appropriate to assess whether the suspected breach of the Code should be formally investigated under these procedures **(initial decision-maker)**:

- Deputy Secretary/Chief Operating Officer, Corporate and Enabling Services Group
- First Assistant Secretary/Chief People Officer, People and Communication Division
- Assistant Secretary, HR
- Director, People Branch.

- 3.2 If an APS employee in the department has engaged in conduct that may breach the Code and raises concerns relating to effective performance, the initial decision-maker must, before deciding to initiate an inquiry under these procedures, have regard to any relevant standards and guidance issued by the APS Commissioner.

Note: This reflects the requirements under section 52 of the Australian Public Service Commissioner's Directions 2022. The standards and guidance are set out in Chapter 4 of the APS Commission's publication "Handling Misconduct: a human resource manager's guide".

3.3 Not all suspected breaches of the Code need to be dealt with by way of determination under these procedures. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate, including performance management.

4. Breach decision-maker

4.1 . Once a decision is made to formally investigate the suspected breach of the Code under these procedures, the initial decision-maker will appoint a decision-maker (**the breach decision-maker**) to make a determination under these procedures.

4.2 The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.

4.3 These procedures do not prevent the initial decision-maker from appointing themselves as the breach decision-maker in the same matter.

4.4 The breach decision-maker may undertake the investigation or seek the assistance of an investigator who may be external to the department. The investigator may investigate the alleged breach, gather evidence and make a report of recommended factual findings to the breach decision maker. The investigator may make recommendations to the breach decision-maker as to whether breaches of the Code have occurred, however it remains the responsibility of the breach decision-maker to ultimately determine whether a breach of the Code has occurred.

4.5 The breach decision-maker must have regard to the APS Commission's publication, 'Handling Misconduct: A human resource manager's guide' in making the determination.

5. Sanction Delegate

5.1 The person who is to decide what, if any, sanction is to be imposed on an APS employee who is found to have breached the Code must hold a delegation of the power under section 15(1) of the Act to impose sanctions (**the sanction delegate**).

5.2 These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.

5.3 The sanction delegate must have regard to the APS Commission's publication, 'Handling Misconduct: A human resource manager's guide' in making the sanction decision.

6. Suspension Delegate

6.1 The person who determines whether an employee should be suspended from duties, with or without remuneration, in accordance with section 28 of the Act (**the suspension delegate**) must hold a delegation of the powers and functions under that section and under section 14 of

the *Public Service Regulations 2023* (**the Regulations**). The suspension delegate will act consistently with section 14 of the Regulations.

6.2 Where suspension from duties is being considered, appointing a separate delegate from the breach decision-maker is preferable.

7. Breach decision-maker and sanction delegate to be independent and unbiased

7.1 The breach decision-maker and the sanction delegate must be, and appear to be, independent and unbiased.

7.2 The breach decision maker and the sanction delegate must, in writing, advise the Secretary or the initial decision-maker if they consider that they may not be independent and unbiased or if they consider that they may reasonably be perceived not to be independent and unbiased, for example, if they are a witness in the matter.

8. The determination process

8.1 The process for determining whether a person who a current or former APS employee in the department has breached the Code must be carried out with as little formality, and with as much expedition, as a proper consideration of the matter allows.

8.2 The process must be consistent with the principles of procedural fairness.

Note: Procedural fairness generally requires that:

- *the person suspected of breaching the Code is informed of the case against them (that is, any material that is before the decision maker that is adverse to the person or their interests and that is credible, relevant and significant)*
- *the person is provided with a reasonable opportunity to respond and put their case, in accordance with these procedures, before any decision is made on breach or sanction*
- *the decision maker acts without bias or an appearance of bias*
- *there is logically probative evidence to support the making, on the balance of probabilities, of adverse findings.*

8.3 A determination may not be made in relation to a suspected breach of the Code by a current or former APS employee in the department unless reasonable steps have been taken to:

a. inform the person of:

- the details of the suspected breach of the Code (including any subsequent variation of those details); and

- where the person is a current APS employee in the department, the sanctions that may be imposed on them under subsection 15(1) of the Act; and
- b. give the employee or former employee a reasonable opportunity of not less than 7 calendar days to make a statement in relation to the suspected breach (or subsequent variation to any initially suspected breach).

8.4 A person who does not make a statement in relation to the suspected breach is not, for that reason alone, to be taken to have admitted to committing the suspected breach.

8.5 For the purpose of determining whether a current or former APS employee in the department has breached the Code, a formal hearing is not required.

8.6 The breach decision-maker or an investigator assisting the breach decision-maker, where they consider in all the circumstances that the request is reasonable, must agree to a request made by the person who is suspected of breaching the Code to have a support person present in a meeting or interview they conduct.

9. Sanctions

9.1 The process for deciding on sanctions must be consistent with the principles of procedural fairness.

9.2 If a determination is made that a current APS employee in the department has breached the Code, a sanction may not be imposed on the employee unless reasonable steps have been taken to:

- a. inform the employee of:
 - the determination of the breach of the Code that has been made; and
 - the sanction or sanctions that are under consideration; and
 - the factors that are under consideration in determining any sanction to be imposed; and
- b. give the employee a reasonable opportunity to make a written statement in relation to the sanction or sanctions under consideration within 7 calendar days, or any longer period that is allowed by the sanction delegate.

10. Record of determination and sanction

10.1 If a determination is made in relation to a suspected breach of the Code by a current or former APS employee in the department, a written record must be made of:

- the suspected breach; and
- the determination; and

- any sanctions, where applicable, imposed as a result of a determination; and
- any statement of reasons given to the person.

10.2 The *Archives Act 1983* and the *Privacy Act 1988* apply to departmental records.

11. Additional procedural requirement for SES employees

11.1 In accordance with section 64 of the *Australian Public Service Commissioner's Directions 2022*, the delegate will consult with the APS Commissioner on the process for determining whether an SES employee has breached the Code, and before any sanction is imposed.

12. Movement between agencies during an investigation

12.1 This clause applies if:

- a current APS employee in the department is suspected of having breached the Code; and
- the employee has been informed of the suspected breach in accordance with these procedures; and
- the matter to which the suspected breach relates has not yet been resolved; and
- a decision has been made that, apart from this clause, would result in the movement of the employee under section 26 of the Act to another agency (including on promotion).

12.2 Unless the Secretary or delegate and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.

12.3 For the purpose of this clause the matter is taken to be resolved when:

- a determination is made as to whether the APS employee has breached the Code; or
- the Secretary or delegate decides that a determination is not necessary.

Note: This clause reflects the requirements of sections 42A, 46(5) and 46(6) of the Australian Public Service Commissioner's Directions 2022.

13. Contact

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14. Document details

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