



Procedures for determining breaches of the APS Code of Conduct and the imposition of sanctions

I, Cristy England, Chief People Officer, People Branch, Department of the Prime Minister and Cabinet (Department), have established these procedures in accordance with subsection 15(3) of the *Public Service Act 1999* (PS Act).

These procedures supersede the previous procedures made under subsection 15(3) of the PS Act.

Cristy England
Chief People Officer
People Branch

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Signed copy held on file

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1. PM&C commitment

- 1.1 The Department of the Prime Minister and Cabinet (Department) is committed to enabling a safe and respectful working environment, characterised by a workforce that upholds the highest standards of ethical and accountable conduct. Where allegations of wrongdoing are considered under these *Procedures for determining breaches of the APS Code of Conduct and the imposition of sanctions* (procedures), the principles of natural justice and procedural fairness are fundamental to the process.

2. Application of procedures

- 2.1 These procedures apply in determining:
- whether an employee of the Department, or a former employee who was employed in the Department at the time of the suspected misconduct, has breached the APS Code of Conduct (Code) in section 13 of the *Public Service Act 1999* (PS Act)
 - any sanction to be imposed on an employee, in accordance with subsection 15(1) of the PS Act, who has been found to have breached the Code. Note: Sanctions may not be imposed on a former employee.
- 2.2 In these procedures, a reference to a breach of the Code includes a reference to an employee who has engaged in conduct set out in subsection 15(2A) of the PS Act in connection with their engagement as an APS employee.
- 2.3 Note: Not all suspected breaches of the Code are required to be addressed through these procedures. Depending on the nature of the suspected breach, there may be a range of more appropriate actions, such as:
- matters of suspected corrupt conduct by an employee within the meaning of section 8 of the *National Anti-Corruption Commission Act 2022* may be referred to the National Anti-Corruption Commission; and
 - matters of suspected serious or complex crime may be referred to the Australian Federal Police.
- 2.4 Persons involved with determining a breach under these procedures must, as far as practicable, maintain the confidentiality of all parties involved.
- 2.5 All records relating to these procedures will be managed and stored in accordance with the *Archives Act 1983*, the *Privacy Act 1988* and any applicable provision under the Protective Security Policy Framework.
- 2.6 Relevant guidance from the Australian Public Service Commissioner (Commissioner) will be considered where an employee has engaged in conduct that may breach the Code and raises concerns relating to effective performance.
- 2.7 Note: See section 52 of the *Australian Public Service Commissioner's Directions 2022* (Directions) which relates to managing effective performance in the case of a potential breach of the Code.
- 2.8 If a Senior Executive Service (SES) employee in the Department is suspected of breaching the Code, the Secretary or delegate will consult with the Commissioner in accordance with section 64 of the Directions.

3. Availability of procedures

- 3.1 These procedures are made publicly available on the Department's website in accordance with subsection 15(7) of the PS Act.

4. Contact and support

- 4.1 The Professional Standards Team in People Branch is available to provide further guidance on these procedures as required.
- 4.2 The Employee Assistance Program (EAP) phone 1300 307 912 provides confidential, free counselling and coaching on a wide range of topics to Department employees, and their family members. Managers may also access EAP's Manager Assist, which offers support to help work through any workplace issue or challenge.

5. Breach decision maker

- 5.1 As soon as practicable after a suspected breach of the Code has been identified, the Secretary of the Department (Secretary) or delegate will decide whether the conduct is to be investigated under these procedures.
- 5.2 Once a decision is made to formally investigate the suspected breach, the Secretary or delegate will either appoint a breach decision maker, or the Secretary or delegate may appoint themselves as the breach decision maker.
- 5.3 The breach decision maker:
- must act in accordance with Part 7 of the Directions 'Handling suspected breaches of the Code of Conduct';
 - must be, and appear to be, independent and unbiased;
 - where practical, should not also be the suspension decision maker or the sanction decision maker; however, if required, these procedures do not prevent the breach decision maker from being the sanction delegate in the same matter;
 - 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 findings of fact to the breach decision maker.

6. Suspension delegate

- 6.1 The Secretary or delegate will decide, based on the risk to the Department, whether to appoint a suspension delegate.
- 6.2 Under the Department's Human Resources Delegations, the Secretary has [delegated](#) the power to suspend an employee who is suspected of breaching the Code.
- 6.3 The suspension delegate:

- must act in accordance with section 14 of the *Public Service Regulations 2023* (Regulations) 'Suspension from duties';
- must be, and appear to be, independent and unbiased;
- where practical, should not also be the breach decision maker or the sanction delegate;
- may consider alternative actions to suspension, such as temporary re-assignment of duties.

7. Sanction delegate

7.1 Where a breach of the code has been determined, the Secretary or delegate will appoint a sanction delegate.

7.1 The sanction delegate:

- must act in accordance with Part 7 of the Directions 'Handling suspected breaches of the Code of Conduct';
- must be, and appear to be, independent and unbiased;
- where practical, should not also be the breach decision maker or the suspension delegate; however, if required, these procedures do not prevent the breach decision maker from being the sanction delegate in the same matter.

8. Breach decision maker and sanction delegate to be independent and unbiased

8.1 The Department will take reasonable steps to ensure the breach decision maker and the sanction delegate are, and appear to be, independent and unbiased.

9. The determination process

9.1 The process for determining whether an employee has breached the Code must be carried out with as little formality, and with as much expedition, as proper consideration of the matter allows.

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

9.3 Before a determination is made in relation to a suspected breach of the Code, the Department must take reasonable steps to:

- a) inform the employee of:
 - the details of the suspected breach of the Code (including any subsequent variation of those details); and
 - the sanctions that may be imposed on the employee under subsection 15(1) of the PS Act.
- b) give the employee a reasonable opportunity to make a statement in relation to the suspected breach.

10. Sanction

10.1 The process for imposing a sanction must be consistent with the principles of procedural fairness.

10.2 Sanctions may not be imposed on a former employee.

10.3 If a determination is made that a current employee 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 that has been made; and
 - the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the PS Act; and
 - the factors that are under consideration in determining any sanction to be imposed.
- b) give the employee a reasonable opportunity to make a statement in relation to the sanction/s under consideration.

10.4 If a determination is made that a current employee has breached the Code, the following sanctions may be imposed under subsection 15(1) of the PS Act:

- a reprimand
- deduction from salary, by way of a fine
- reduction in salary
- re-assignment of duties
- reduction in classification
- termination of employment.

11. Support person

11.1 An employee who is under investigation for a suspected breach of the Code may bring a support person with them to formal meetings. The support person can support and assist the person under investigation, but is not permitted to advocate or speak on the employee's behalf. The employee under investigation should advise the investigator, or the breach decision maker, who the support person is before the meeting.

11.2 The support person should not be someone who may also be involved in the investigation, such as a witness. While the investigator should seek to accommodate the availability of the employee's support person, the support person's unavailability will not generally provide a reason to delay the investigation.

12. Right of representation

12.1 In matters relating to their employment, and to the operation of the Department's Enterprise Agreement, including in a Code process, employees have the right to be represented by a Department workplace delegate (under section 350A of the *Fair Work Act 2009*), or a legal or union representative. Distinct from a support person, a representative may speak on behalf of the employee(s) they are representing.

13. Reassignment of duties or suspension from duty

12.2 An employee suspected of breaching the Code may be reassigned to alternative duties pursuant to section 25 of the PS Act, or may be suspended from duty by the suspension delegate pursuant to subsection 14(2) of the Regulations.

14. Record of determination and sanction

13.1 If a determination is made in relation to a suspected breach of the Code, a written record must be made of:

- the suspected breach; and
- the determination; and
- any sanctions imposed as a result of the determination (current employees only); and
- any statement of reasons provided to the employee.

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

15. Movement between agencies during an investigation

14.1 This clause applies if:

- an employee is suspected of having breached the Code; and
- reasonable steps have been taken to formally advise the employee of the suspected breach in accordance with section 9 of these procedures; and
- a decision is made to promote an employee and the matter to which the suspected breach relates has not yet been resolved before the employee moves to take up the promotion; or
- a decision has been made, apart from these procedures, that would result in the movement of the employee under section 26 of the PS Act to another Agency.

14.2 Unless the losing Agency Head and the gaining Agency Head agree otherwise, the movement (including on promotion) will not take effect until the matter is resolved.

14.3 For this clause, the matter is taken to be resolved when:

- a determination is made as to whether the employee has breached the Code; or
- it is decided that such a determination is not necessary.

16. SES employees

15.1 In accordance with section 64 of the Directions, the delegate will consult with the Commissioner on the process for determining whether an SES employee has breached the Code, and before any sanction is imposed.

15.2 Under section 38 of the PS Act, an Agency Head cannot terminate the employment of an SES employee unless the Commissioner has issued a certificate stating that all relevant requirements of the Directions made under subsection 11A(1) of the PS Act have been satisfied in respect of the proposed termination; and the Commissioner is of the opinion that the termination is in the public interest.

17. Seeking a review of decision

- 16.1 Where a determination has been made that a current or former non-SES employee has breached the Code, the employee may be eligible to seek a review of the action under section 33 of the PS Act. A current employee may also seek a review of decision by the Merit Protection Commissioner (MPC) in respect of a finding that the employee has breached the Code, or a decision to impose a sanction, unless the sanction is termination of employment. The MPC cannot review a decision to terminate an employee's employment. An application for a review of decision should be made to the MPC directly within the statutory timeframe.