



# Procedure

## Procedures for Determining Breaches of the Australian Public Service Code of Conduct, Suspensions and the Imposition of Sanctions

I, Gordon de Brouwer, Agency Head of the Australian Public Service Commission (**the Commission**), have established these procedures in accordance with subsection 15(3) of the *Public Service Act 1999* (Cth) (**PS Act**).

These procedures commence on 8 December 2023.

### 1 Application

1.1 These procedures must be complied with when determining:

whether a person who is an Australian Public Service (**APS**) employee in the Commission, or who is a former APS employee who was employed in the Commission at the time of the suspected misconduct, has breached the APS Code of Conduct (**the Code**) in section 13 of the PS Act; and

any sanction/s to be imposed on a current APS employee in the Commission, in accordance with subsection 15(1), where a breach of the Code has been determined.

1.2 These procedures apply in relation to a suspected breach of the Code by a current or former APS employee in the Commission, or the actions of a current or former APS employee prior to commencing employment in the Commission, in respect of which a determination is to be made.

1.3 Not all suspected breaches of the Code may need to be dealt with by way of a determination. In particular circumstances, another way of addressing a suspected breach of the Code may be more appropriate.

1.4 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 PS Act in connection with their engagement as an APS employee.

1.5 In these procedures, powers afforded to the Agency Head or the APS Commissioner under legislation (e.g. powers to suspend or reassign duties or determine a breach) may be delegated to other employees of the Commission. For information about delegations, this procedure should be read along with the Commission's *Human Resources Delegation and Authorisation Instrument*.

### 2 Availability of Procedures

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

### **3 Breach decision-maker**

- 3.1 The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
- 3.2 These procedures do not prevent the Agency Head, or a person listed at subclause 7.1 of these procedures, from appointing themselves as the breach decision-maker.
- 3.3 The breach decision-maker may undertake the investigation, or seek the assistance of an investigator, who may be external to the Commission. The investigator may investigate the alleged breach, gather evidence and make a report of recommended findings to the breach decision-maker.

### **4 Sanction delegate**

- 4.1 The delegate determining whether a sanction should be imposed for any breach of the Code is referred to in these procedures as the sanction delegate and will hold a delegation of the power under subsection 15(1) of the PS Act.
- 4.2 These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.

### **5 Suspension delegate**

- 5.1 The delegate determining whether an employee should be suspended from duties is referred to in these procedures as the suspension delegate and will hold a delegation of the powers and functions under section 28 of the PS Act and section 14 of the [Public Service Regulations 2023](#) (Cth) (**PS Regulations**).
- 5.2 Where suspension from duties is being considered, appointing a separate delegate from the breach decision-maker is preferable.

### **6 Breach decision-maker and sanction delegate to be independent and unbiased**

- 6.1 The Agency Head or that employee taking action under subclause 7.1 will take reasonable steps to ensure that:
  - a. the person who determines whether a current or former APS employee in the Commission has breached the Code is, and appears to be, independent and unbiased; and

the person who determines any sanction to be imposed is, and appears to be, independent and unbiased.

- 6.2 The breach decision-maker and sanction delegate must advise the Agency Head or that employee taking action under subclause 7.1 in writing if they consider that they may not be independent or unbiased or if they consider that they may reasonably be perceived not to be independent or unbiased; for example, if they are a witness in the matter.

### **7 Decision to commence investigation**

- 7.1 As soon as practicable after a suspected breach of the Code has been identified, the Agency Head or one of the following Commission employees will consider if it is appropriate for a preliminary assessment to be conducted to assess whether the suspected breach of the Code should be formally investigated under these procedures:
- a. any Deputy Commissioner
  - b. any First Assistant Commissioner
  - c. Assistant Commissioner, Enabling Services.
- 7.2 Once a decision is made to formally investigate the suspected breach under these procedures, the Agency Head or that employee taking action under subclause 7.1 will appoint a decision-maker (the 'breach decision-maker') to make a determination under these procedures.

## **8 Reassignment of duties or suspension from duty**

- 8.1 A current APS employee who is under investigation for a suspected breach of the Code may be:
- a. reassigned to alternative duties, either for a temporary period or on an ongoing basis, under section 25 of the PS Act
  - b. suspended from duty by the suspension delegate under section 28 of the PS Act and section 14 of the PS Regulations.
- 8.2 To remove any doubt, this clause also applies to SES employees.
- 8.3 In reassigning duties of a current APS employee who is under investigation, the suspension delegate will:
- a. notify the current APS employee who is under investigation of the proposal; and
  - b. give the person reasonable opportunity (usually, 7 calendar days) to respond before any decision to suspend is taken.
- 8.4 Sometimes urgent action may be required that will not allow for notification and response outlined at subclause 8.3. In such cases, the suspension delegate may invite the current APS employee who is under investigation to comment after the decision has been made. Depending on their response, the suspension delegate has the flexibility to consider alternative arrangements, including suspension.
- 8.5 In suspending a current APS employee who is under investigation, the suspension delegate will:
- a. notify the current APS employee, in writing, of the Commission's preliminary intention to suspend them, and the reasons for this proposal; and
  - b. give the person responsible opportunity to respond (usually, 7 calendar days) before any decision to suspend is taken.
- 8.6 Sometimes urgent action may be required that will not allow for notification and response outlined at subclause 8.5. In such cases, the suspension delegate may invite the current APS employee who is under investigation to comment after the decision has been made.

## **9 Breach determination process**

- 9.1 The process for determining whether a current or former APS employee in the Commission has breached the Code must be carried out with as little formality, and as much expedition, as a proper consideration of the matter allows.
- 9.2 The process must be consistent with the principles of procedural fairness.
- 9.3 A determination may not be made in relation to a suspected breach of the Code by a current or former APS employee in the Commission unless reasonable steps have been taken to:
- a. inform the employee or former employee of:
    - i. the details of the suspected breach (including any subsequent variation of those details); and
    - ii. in the case of a current APS employee in the Commission, the sanctions that may be imposed on the employee under subsection 15(1) of the PS Act; and
- give the employee or former employee a reasonable opportunity to make a statement in relation to each suspected breach (or subsequent variation to any initially suspected breach).
- 9.4 The statement referred to at paragraph 9.3(b) may be a written or oral statement and must be provided within 7 calendar days or any longer period that is allowed by the breach decision-maker.

## 10 Variation in investigation

- 10.1 If during the course of an investigation it becomes evident that there is a material variation in the nature or extent of the alleged breach notified to the employee, the employee must be notified in writing of the variation and any variation in the range of sanctions that may be imposed if the employee is found to have breached the Code of Conduct.
- 10.2 The employee must be provided with a reasonable opportunity (usually, 7 calendar days) to make a further statement or provide further evidence before a determination is made.

## 11 Sanctions

- 11.1 The process for imposing a sanction must be consistent with the principles of procedural fairness.
- 11.2 If a determination is made that a current APS employee in the Commission has breached the Code, a sanction may not be imposed on the employee unless reasonable steps have been taken to:
- b. inform the employee of:
    - i. the determination of a breach of the Code; and
    - ii. the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the PS Act; and
    - iii. the factors that are under consideration in determining any sanction to be imposed; and
    - iv. give the employee a reasonable opportunity to make a statement in relation to each sanction/s under consideration.
- 11.3 The statement referred to at paragraph 11.2(b) may be a written or oral statement and must be provided within 7 calendar days or any longer period that is allowed by the sanction delegate.

## 12 Record of determination and sanction

- 12.1 If a determination is made in relation to a suspected breach of the Code by a current or former APS employee in the Commission, a written record must be made of:
- a. the suspected breach;
  - b. the determination;
  - c. in the case of a current APS employee in the Commission, any sanctions imposed as a result of the determination that the employee breached the Code; and
  - d. if a statement of reasons was given to the employee or former employee regarding the determination in relation to a suspected breach of the Code, or, in the case of a current employee, regarding the sanction decision, that statement of reasons or those statements of reasons.

## 13 Additional procedural requirement for current Commission Senior Executive Service employees

- 13.1 If a current Senior Executive Service (**SES**) employee in the Commission is suspected of breaching the Code, the Commissioner as the Agency Head of the Commission, or a delegate of the Commissioner as Agency Head, must comply with the requirements at section 64 of the *Australian Public Service Commissioner's Directions 2022 (Directions)* to consult, with either the Commissioner as the APS Commissioner, or a delegate of the Commissioner for the purposes of this requirement:
- a. on the process for determining whether the employee has breached the Code; and
  - b. if considering imposing a sanction, before imposing the sanction.

## 14 Procedure when an employee seeks to move to another APS agency during investigation

- 14.1 This clause applies if a current APS employee in the Commission seeks to move to another APS agency after they have been formally notified that they are suspected of breaching the Code but before the matter has been resolved.
- 14.2 In this circumstance, any move between APS agencies will generally be deferred, under subsections 42A(1) and 46(5) of the Directions, until after a decision has been made about whether or not the employee has breached the Code, or it is decided that such a determination is not necessary.



Gordon de Brouwer  
APS Commissioner  
8 December 2023