



Procedures for determining breaches of the Code of Conduct and for determining sanction

I, Michael Lye, the Secretary of the Department of Social Services ('the department'), establish these procedures under subsection 15(3) of the *Public Service Act 1999* (Cth) ('the Act').

These procedures commence on the date signed.

These procedures supersede the previous procedures, dated 24 March 2022, made for the Department of Social Services under subsection 15(3) of the Act, but the previous procedures may continue to apply for transitional purposes.

A handwritten signature in black ink, appearing to read 'M Lye', written over a horizontal line.

Michael Lye

Dated this 20 day of March 2026.



Application of procedures

- 1.1 These procedures apply in determining whether a person who is an Australian Public Service (APS) employee in 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 Act.
- 1.2 These procedures apply in determining any sanction to be imposed on an APS employee in the department who has been found to have breached the Code.
- 1.3 These procedures do not apply to an investigation into a suspected breach of the Code that commenced prior to the commencement date of these procedures. In such circumstances, the previous procedures dated 24 March 2022 apply.
- 1.4 These procedures, as they apply to determining any sanction for breach of the Code, apply where a sanction decision is under consideration on or after the date these procedures commence.
- 1.5 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.
- 1.6 In accordance with section 64 of the *Australian Public Service Commissioner's Directions 2022* ('the Directions'), if an SES employee in an agency is suspected of breaching the Code, the Agency Head must consult with the Australian Public Service Commissioner ('the Commissioner') on the process for determining whether the SES employee has breached the Code and, if considering imposing a sanction, before any sanction is imposed.

Note: 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 by way of formal direction, counselling, warning or performance management.

Availability of procedures

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

Breach decision-maker and sanction delegate

- 3.1 As soon as practicable after a suspected breach of the Code has been identified and the Secretary of the department ('the Secretary'), or one of the following departmental employees:
 - the Chief Operating Officer;
 - the Group Manager, Corporate and Government Services Group;
 - the Branch Manager, People Services Branch; or
 - the Director, Workplace Relations, People Services Branch



has decided to deal with the suspected breach under these procedures, the Secretary or that employee will appoint a decision maker ('the breach decision-maker') to make a determination under these procedures.

Note: The Directions provide that where the conduct of an APS employee may breach the Code or raises concerns relating to effective performance, the Agency Head must have regard to any relevant standards and guidance issued by the Commissioner when deciding whether to initiate an inquiry or a formal investigation under the procedures set out in subsection 15(3) of the Act.

- 3.2 Subject to the breach decision maker being, and appearing to be, independent and unbiased, nothing prevents the Secretary or the above employees from appointing themselves as the breach decision-maker.
- 3.3 The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
- 3.4 The breach decision-maker may seek the assistance of an investigator with matters including investigating the alleged breach, gathering evidence and making a report of recommended factual findings to the breach decision-maker.
- 3.5 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 power under section 15(1) of the Act to impose sanctions ('the sanction delegate').
- 3.6 These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.

Note: Any delegation of powers under the Act that is proposed to be made to a person who is not an APS employee must be approved in writing in advance by the Commissioner. This is required by subsection 78(8) of the Act. This would include delegation of power under subsection 15(1) to impose a sanction.

Note: Appointment as a breach decision-maker under these procedures does not empower the breach decision-maker to make a decision regarding sanction. Only the Secretary or a person who has been delegated the power under section 15(1) of the Act and related powers, such as under section 29 of the Act, may make a sanction decision.

Person or persons making breach determination and/or imposing any sanction to be independent and unbiased

- 4.1 The Secretary or one of the employees listed in clause 3.1 of these procedures will take reasonable steps to ensure that the breach decision-maker and the sanction delegate is, and appears to be, independent and unbiased.
- 4.2 The breach decision-maker and the sanction delegate must advise the Director, Workplace Relations, or the employee taking action under clause 3.1 of these procedures, in writing 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, or where a close past or current working relationship exists with parties subject to the investigation.

Suspension delegate

- 5.1 The delegate determining whether an APS employee should be reassigned or 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 Act and section 14 of the [Public Service Regulations 2023](#) (Cth) ('PS Regulations').
- 5.2 Where reassignment or suspension from duties is being considered, appointing a separate suspension delegate from the breach decision-maker is preferable.
- 5.3 The same requirements placed on the breach decision-maker and sanction delegate regarding independence and bias, equally apply to the suspension delegate.

Decision to commence investigation

- 6.1 As soon as practicable after a suspected breach of the Code has been identified, the Secretary or one of the employees listed in clause 3.1 of these procedures 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.

Note: Procedural fairness obligations do not apply to a decision about whether to commence a formal misconduct investigation.

Reassignment of duties or suspension from duty

- 7.1 A current APS employee who is under investigation for a suspected breach of the Code may be:
 - reassigned to alternative duties, either for a temporary period or on an ongoing basis, under section 25 of the Act; or
 - suspended from duty by the suspension delegate under section 28 of the Act and section 14 of the PS Regulations.
- 7.2 To remove any doubt, this clause also applies to SES employees.
- 7.3 In suspending or reassigning duties of a current APS employee who is under investigation, the suspension delegate will:
 - notify the current APS employee who is under investigation of the proposal to reassign or suspend them from duties; and
 - give the APS employee a reasonable opportunity (usually, 7 calendar days) to respond before making any decision to reassign or suspend.
- 7.4 Sometimes urgent action may be required that will not allow for notification and response to a decision to reassign or suspend an APS employee from duties as outlined at subclause 7.3.



In such cases, the suspension delegate should give the APS employee an opportunity to respond to the decision to reassign or suspend them from duties, following the decision made. If a response is given, the suspension delegate has the flexibility to consider alternative arrangements, including the decision to proceed with the reassignment or suspension from duties.

- 7.5 In accordance with the PS Regulations, the suspension may be with or without pay, and must be reviewed on a regular basis.
- 7.6 Suspension without pay must not be more than 30 days unless exceptional circumstances apply.

The determination process

- 8.1 The process for determining whether a person who is, or was, an APS employee in the department has breached the Code must be carried out with as little formality, and with as much expedition, as 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 APS employee or former APS employee suspected of breaching the Code is informed of the case against them (i.e. any material that is before the breach decision-maker that is adverse to the person or their interests and that is credible, relevant and significant);
- the APS employee or former APS employee is provided with a reasonable opportunity to respond and state their case, in accordance with these procedures, before any decision is made on breach or sanction;
- the breach decision-maker and sanction delegate act without bias or an appearance of bias;
- there is logically probative evidence to support the making, on the balance of probabilities, of adverse findings.

Note: Procedural fairness does not require disclosure of the investigation report. Any access request will be assessed under the department's privacy and legal obligations.

- 8.3 A determination may not be made in relation to a suspected breach of the Code by an APS employee or former APS employee unless reasonable steps have been taken to:
- a) inform the APS employee or former APS employee of:
 - i. the details of the suspected breach of the Code, including any subsequent variation of those details; and
 - ii. where the person is a current APS employee, the sanctions that may be imposed on them under subsection 15(1) of the Act; and

- b) provide the APS employee or former APS employee with a reasonable opportunity within 7 calendar days, or a longer period allowed by the decision-maker, to submit a written statement and, if considered appropriate by the decision-maker, an oral statement, or to provide additional evidence regarding the suspected breach.

Note: This clause ensures that by the time the breach decision-maker makes a determination, the APS employee or former APS employee has been reasonably informed of the case against them. It is good practice to give the APS employee or former APS employee early notice of the key details of the suspected breach that are available at the time, along with which elements of the Code are suspected to have been breached.

- 8.4 An APS employee or former APS employee's decision not to make a statement about the suspected breach does not, by itself, indicate that they admit to committing the suspected breach.
- 8.5 A formal hearing is not required to determine whether an APS employee or former APS employee has breached the Code.
- 8.6 The breach decision-maker, or the investigator where relevant, must agree to an APS employee or former APS employee's request to have a support person present at any meeting or interview, provided that the request is reasonable in the circumstances.

Sanctions

- 9.1 The process for deciding on sanction must comply with the principles of procedural fairness requirements.
- 11.1 If a determination is made that an APS employee in the department has breached the Code, a sanction may not be imposed on the APS employee unless reasonable steps have been taken to:
 - a) inform the APS employee of:
 - i. the determination that there has been a breach of the Code;
 - ii. the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the Act;
 - iii. the factors that are under consideration in determining any sanction or sanctions to be imposed; and
 - b) provide the APS employee with 7 calendar days, or any longer period approved by the sanction delegate, to submit a written and, if considered appropriate by the sanction delegate, an oral statement about the proposed sanction or sanctions under consideration.



Note: The sanction delegate may decide to give the employee the opportunity to make both a written and an oral statement. A sanction cannot be imposed on a person who is a former APS employee.

- 9.2 The purpose of imposing a sanction or sanctions is not to punish the APS employee, but to uphold expected standards of conduct by APS employees. Sanctions must be proportionate to the nature of the breach and provide a clear message to the APS employee that their behaviour was unacceptable.
- 9.3 A sanction also acts as a deterrent to others and signals that misconduct will not be tolerated by the department.

Record of determination and sanction

- 11.2 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 include:
- a) details of the suspected breach;
 - b) the determination made;
 - c) any sanction(s) imposed for a current APS employee, as a result of a determination that they breached the Code; and
 - d) any statement of reasons provided to the APS employee or former APS employee about the determination in relation to a suspected breach of the Code, and for a current APS employee, any statement of reasons regarding the sanction decision.

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

Procedure when an ongoing APS employee is to move to another agency

- 11.3 This clause applies if:
- a) a current ongoing APS employee in the department:
 - i. is suspected of having breached the Code;
 - ii. has been informed of the matters mentioned in subclause 8.3(a) of these procedures; and
 - b) the matter has not yet been resolved; and
 - c) a decision has been made that, apart from this clause, the current ongoing APS employee would move to another agency in accordance with section 26 of the Act (including on promotion).
- 11.4 Unless the Secretary and the new Agency Head agree otherwise, the movement (including on promotion) will not take effect until the matter is resolved.
- 11.5 For the purpose of this clause, the matter is taken to be resolved when:



- a) a determination in relation to suspected breach of the Code is made in accordance with these procedures; or
- b) the Secretary decides that a determination is not necessary.

Review of Action

- 12.1 An APS employee may be eligible to seek a review of an employment related decision or action through the department's *'Review of Employment Actions Policy'*.
- 12.2 Individuals may also have access to external review mechanisms under applicable legislation. Those rights operate independently of this procedure.

