



Australian Government

Professional Services Review

**PROCEDURES FOR DETERMINING
BREACHES OF THE APS CODE OF
CONDUCT AND THE IMPOSITION OF
SANCTIONS**

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

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

I, Associate Professor Antonio Di Dio, Director and Agency Head of Professional Services Review (PSR), establish these procedures under subsection 15(3) of the [Public Service Act 1999](#) (PS Act).

These procedures commence on 1 July 2025 and supersede any previous procedures made under subsection 15(3) of the PS Act.

1. Application of procedures

- 1.1 These procedures apply in determining:
- whether a current Australian Public Service (APS) employee, or a former APS employee who was employed at PSR at the time of 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 PSR, in accordance with subsection 15(1) of the PS Act, who has been found to have breached the Code.
- 1.3 These procedures apply where an investigation into a suspected breach of the Code commences after 1 July 2025. For investigations commencing prior to this date, the former procedures dated 5 January 2023 apply.
- 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 Not all suspected breaches of the Code are required to be addressed through these procedures. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate. Whether these procedures are used in any particular case will be determined by the procedure set out in section 3.1.
- 1.6 Relevant guidance from the APS Commissioner (Commissioner) will be considered where an employee has engaged in conduct that may breach the Code and raises concerns relating to effective performance. See section 52 of the [Australian Public Service Commissioner's Directions 2022](#) (Directions) which relate to managing effective performance in the case of a potential breach of the Code.

2. Availability of procedures

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

3. Consideration of suspected breaches and the appointment of a breach decision maker

- 3.1 As soon as practicable after a suspected breach of the Code has been identified, the Director or one of the following PSR employees will consider whether it is appropriate

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for a preliminary assessment to be conducted of whether the suspected breach of the Code should be formally investigated under these procedures:

- General Manager
- Chief Operating Officer
- HR Manager.

- 3.2 If a decision is made to formally investigate the suspected breach under these procedures, the Director or employee listed at section 3.1, will appoint a breach decision maker. The role of the breach decision maker is to make a determination in writing under these procedures of whether a breach of the Code has occurred.
- 3.3 These procedures do not prevent the Director or employee listed at section 3.1 from appointing themselves as the breach decision maker.
- 3.4 The breach decision maker:
- must be, and must appear to be, independent and unbiased
 - must advise the Director or employee listed at section 3.1 in writing if they consider they may not be independent and unbiased or if they consider they may reasonably be perceived not to be independent and unbiased, for example if they are a witness in the matter and then the Director will make a decision on whether they can continue to be the breach decision maker
 - may undertake the investigation or seek the assistance of an investigator who may be external to PSR. The investigator may investigate the alleged breach, gather evidence and make a report of recommended findings of fact to the breach decision maker.

4. Suspension delegate

- 4.1 The Director or an employee listed at section 3.1 will decide, based on the risk to PSR, whether to appoint a suspension delegate. The suspension delegate determines whether an employee should be suspended from duties. Any suspension delegation must hold a delegation under s14 of the [Public Service Regulations 2023](#) (Regulations).¹
- 4.2 The suspension delegate:
- must act in accordance with all aspects of the Regulations including section 14 'Suspension from duties'
 - must be, and appear to be, independent and unbiased
 - must advise the Director or employee listed at section 3.1 in writing if they consider they may not be independent and unbiased or if they consider they may reasonably be perceived not to be independent and unbiased, for example if they are a witness in the matter and then the Director will make a decision on whether they can continue to be the suspension delegate.

¹ Refer to PSR's Human Resources Delegations, currently HR Delegations 2024 ([CM 23/17053D](#)).

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- where practical, should not also be the breach decision maker or the sanction delegate. However, if required, these procedures do not prevent the breach decision maker from being the suspension delegate in the same matter
- may consider alternative actions to suspension, such as temporary re-assignment of duties.

5. Sanction delegate

- 5.1 Where a breach of the Code has been determined, the Director or employee listed at section 3.1 will appoint a sanction delegate. The sanction delegate determines whether a sanction should be imposed for any breach of the Code. The sanction delegate must hold a delegation of power under subsection 15(1) of the PS Act.
- 5.2 The sanction delegate:
- must be, and must appear to be, independent and unbiased
 - must advise the Director or employee listed at section 3.1 in writing if they consider they may not be independent and unbiased or if they consider they may reasonably be perceived not to be independent and unbiased, for example if they are a witness in the matter
 - 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.

6. Breach determination process

- 6.1 The process for determining whether a person has breached the Code must be carried out with as little formality, and with as much expedition, as proper consideration of the matter allows.
- 6.2 The process must be consistent with the principles of procedural fairness.
- 6.3 A determination will not be made in relation to a suspected breach of the Code by a person unless reasonable steps have been taken to:
- 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 an APS employee – the sanctions that may be imposed on them under subsection 15(1) of the PS Act, and
 - give the person a reasonable opportunity to make a statement in relation to the suspected breach (or subsequent variation to any initially suspected breach).
- 6.4 The statement may be either a written or an oral statement and should be provided within 7 calendar days or any longer period that is allowed by the breach decision maker.

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7. Variation in investigation

- 7.1 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.
- 7.2 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.

8. Sanction determination process

- 8.1 The process for imposing a sanction must be consistent with the principles of procedural fairness.
- 8.2 If a determination is made that a current APS employee in PSR has breached the Code, a sanction cannot be imposed on the employee unless reasonable steps have been made to:
- inform the employee of:
 - the determination that has been made
 - 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, and
 - give the employee a reasonable opportunity to make a statement in relation to the sanction/s under consideration.
- 8.3 The statement may be either a written or an oral statement and should be provided within 7 calendar days or any longer period that is allowed by the sanction delegate.
- 8.4 A sanction cannot be imposed on a former employee.

9. Record of determination and sanction

- 9.1 If a determination in relation to a suspected breach of the Code is made, a written record must be made of:
- the suspected breach, and
 - the determination, and
 - where the person is an APS employee - any sanctions imposed as a result of a determination that the employee has breached the Code, and
 - if a statement of reasons was given to the person - the statement of reasons.²

² The [Archives Act 1983](#) and the [Privacy Act 1988](#) apply to a record made under this section.

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10. Suspension or reassignment of duties

- 10.1 A current APS employee in PSR 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 PS Act
 - suspended from duty under section 28 of the PS Act and section 14(2) of the Regulations.
- 10.2 To remove any doubt, this section also applies to SES employees.
- 10.3 In 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, and
 - give the personal reasonable opportunity (usually 7 calendar days) to respond before any decision to reassign duties is taken.
- 10.4 Sometimes urgent action may be required that will not allow for notification and response outlined at section 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.
- 10.5 In suspending a current APS employee who is under investigation, the suspension delegate will:
- notify the current APS employee who is under investigation of the proposal, and
 - give the personal reasonable opportunity (usually 7 calendar days) to respond before any decision to suspend is taken.
- 10.6 Sometimes urgent action may be required that will not allow for notification and response outlined at section 10.5. In such cases, the suspension delegate may invite the current APS employee who is under investigation to comment after the decision has been made.

11. Movement between agencies during an investigation

- 11.1 This section applies if:
- an employee is suspected of having breached the Code, and
 - the employee has been informed of the matters mentioned in section 7.2 of these procedures, and
 - the matter has not been resolved, and
 - a decision has been made that, apart from these procedures, would result in the movement of the employee under section 26 of the PS Act to another

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APS Agency (including on promotion).

- 11.2 Unless the Director and the gaining Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.
- 11.3 For this section, the matter is taken to be resolved when:
- a determination is made as to whether the employee has breached the Code, or
 - the Director decides that a determination is not necessary.

12. Additional procedural requirements for SES employees

- 12.1 If a current SES employee in PSR is suspected of breaching the Code, the Director must:
- consult with the APS Commissioner on the process for determining whether the employee has breached the Code, and
 - if considering imposing a sanction – consult with the APS Commissioner before imposing the sanction.

13. Legislation and further information

LEGISLATION

The relevant legislation for this procedure is:

- [Public Service Act 1999](#)
- [Australian Public Service Commissioner's Directions 2022](#)
- [Public Service Regulations 2023](#)
- [Fair Work Act 2009](#)
- [Archives Act 1983](#)
- [Privacy Act 1988](#)

FURTHER INFORMATION AND RELATED DOCUMENTS

Further information can be found at the following:

- Human Resources Delegations 2024 ([CM 23/17053D](#))
- [APS Code of Conduct](#)
- [APSC Handling Misconduct - A Human Resource Manager's Guide](#)

For further guidance and assistance on these procedures, please contact [HR Enquiries](#).

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14. Document Review

The *Procedures for Determining Breaches of the APS Code of Conduct and the imposition of Sanctions* was reviewed and endorsed by the PSR Executive Management Team at the Management Meeting held on 24 June 2025.

This procedure will be reviewed every two years from the date of endorsement. In addition, the procedure will be reviewed after events that might affect the contents, such as legislative or major administrative changes.

VERSION CONTROL

Version No	Date of Issue	Responsible Area	Description of Change	Review by date
1	January 2023	HR	New Policy	January 2025
2	1 July 2025	HR	Document reviewed and updated against relevant legislation	July 2025