

Procedures for determining breaches of the Code of Conduct

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Australian Government

Aged Care Quality and Safety Commission

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I, Janet Anderson, Commissioner of the Aged Care Quality and Safety Commission (the Commission), establish these procedures under subsection 15 (3) of the Public Service Act 1999 (the Act).

These procedures commence on 13 August 2021.

1 Application of procedures

- 1.1. These procedures apply in determining whether a person who is a current 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 Act.
- 1.2. These procedures apply in determining any sanction to be imposed on a current APS employee in the Commission who has been found to have breached the Code. A sanction cannot be imposed on a former APS employee of the Commission.
- 1.3. For the avoidance of doubt, these procedures do not apply to individuals working in the Commission as contractors or consultants who are not APS employees.
- 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 Act in connection with their engagement as an APS employee.
- 1.5. Practical guidance and further information on the application of these procedures can be found in the APSC publication: Handling Misconduct: a human resource manager's guide.

Note: Not all suspected breaches of the Code need to be dealt with by way of the making of a 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.

2 Availability of these procedures

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



3 Breach decision maker and sanction delegate

- 3.1. Where the conduct of an APS employee raises concerns that relate to a possible breach of the Code, the Commissioner or the person delegated by the Commissioner under the Commission's Human Resources Delegations, must have regard to any relevant standards and guidance issued by the Australian Public Service Commissioner before making a decision to deal with the suspected breach under these procedures.
- 3.2. As soon as practicable after a suspected breach of the Code has been identified and the Commissioner, or their delegate, has decided to deal with the suspected breach under these procedures, that person will appoint a decision maker (the breach decision maker) to make a determination under these procedures.
- 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 the power under the Act and the Commission's HR Delegations, 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 Australian Public Service Commissioner. This is required by subsection 78 (8) of the Act. This would include delegation of the 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 Commissioner or a person who has been delegated the power under section 15 of the Act and related powers, such as under section 29 or 78 of the Act, may make a sanction decision.



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

- 4.1. The breach decision maker must be, and must appear to be, independent and unbiased.
- 4.2. The breach decision maker must advise the Commissioner 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.
- 4.3. The sanction delegate must be, and must appear to be, independent and unbiased.
- 4.4. The sanction delegate must advise the Commissioner 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.

5 The determination process

- 5.1. The process for determining whether a person who is, or was, an APS employee in the Commission 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.
- 5.2. 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 (i.e. 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 and 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 the findings.



- 5.3. A determination may not be made in relation to a suspected breach of the Code by a person unless reasonable steps have been taken to:
- a) inform the person of:
 - i. the details of the suspected breach of the Code (including any subsequent variation of those details); and
 - ii. where the person is an APS employee, the sanctions that may be imposed on them under subsection 15 (1) of the Act;
- and
- b) give the person a reasonable opportunity to make a written statement or provide further evidence in relation to the suspected breach, within 7 calendar days or any longer period that is allowed.

Note: This clause is designed to ensure that by the time the breach decision maker comes to make a determination, reasonable steps have been taken for the person suspected of the breach to be informed of the case against them. It will generally also be good practice to give the person notice at an early stage in the process of a summary of the details of the suspected breach that are available at that time and notice of the elements of the Code that are suspected to have been breached.

Note: The breach decision maker may decide to give the person the opportunity to make both a written and an oral statement.

- 5.4. 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.
- 5.5. For the purpose of determining whether a person who is, or was, an APS employee in the Commission has breached the Code, a formal hearing is not required.
- 5.6. The breach decision maker (or the person assisting the breach decision maker, if any) 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.
- 5.7. The breach decision maker must take all reasonable steps to provide the employee or former employee suspected of the breach with a copy of the breach determination and the reasons for it.



6 Sanctions

- 6.1. The process for deciding on sanction must be consistent with the principles of procedural fairness.
- 6.2. If a determination is made that an 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:
- a) inform the employee of:
 - i. the determination that has been made;
 - ii. the sanction or sanctions that are under consideration; and
 - iii. 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.
- Note:** The sanction delegate may decide to give the employee the opportunity to make both a written and an oral statement.
- 6.3. Where a determination is made that an APS employee in the Commission has breached the Code and a sanction is warranted, the sanction delegate may only impose a sanction or sanctions set out in subsection 15(1) of the Act.

7 Record of determination and sanction

- 7.1. If a determination is made in relation to a suspected breach of the Code by a person who is, or was, an APS employee in the Commission, a written record must be made of:
- a) the suspected breach; and
 - b) the determination; and
 - c) where the person is an APS employee--any sanctions imposed as a result of a determination that the employee has breached the Code; and
 - d) a statement of reasons regarding the determination in relation to suspected breach of the Code, or, in the case of an employee, regarding the sanction decision--that statement of reasons.

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



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

8.1. This clause applies if:

- a) a person who is an ongoing APS employee in the Commission is suspected of having breached the Code, and
- b) the employee has been informed of the matters mentioned in clause 5.3(a); and
- c) the matter has not yet been resolved, and
- d) a decision has been made that, apart from this clause, the employee would move to another agency in accordance with section 26 of the Act (including on promotion), and
- e) the Commission has informed the other agency of the matter in accordance with sections 37 and 38 of the Australian Public Service Commissioner's Directions 2016.

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

8.3. 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 Commissioner decides that a determination is not necessary.

9 References

Public Service Act 1999

Public Service Regulations 1999

Australian Public Service Commissioner's Directions 2016

APSC Handling Misconduct: a human resource manager's guide



10 Delegations

Information on delegations covered by this policy can be located in the Human Resources Delegations Schedules.

11 Authority

Director, HR Services

12 History Record

Date	Version	Author	Description of Change
13/8/2021	1.0	Director, HR Services	First release for the Commission

Janet Anderson PSM

Commissioner, Aged Care Quality and Safety Commission

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