



PROCEDURES FOR DETERMINING BREACHES OF THE CODE OF CONDUCT AND SANCTIONS

I, Anna Hughes, Chief Executive Officer of the Australian Office of Financial Management:

- a) under subsection 15(3) of the [Public Service Act 1999](#), establish these procedures for determining whether an Australian Public Service (APS) employee, or a former APS employee, has breached the Code of Conduct, and
- b) revoke all previous procedures made under subsection 15(3) of the [Public Service Act 1999](#).

These procedures commence on the date they are made.

A handwritten signature in black ink that reads "A Hughes".

Anna Hughes
Chief Executive Officer
Australian Office of Financial Management

Dated: 20 March 2025

Definitions

In these Procedures:

AOFM means the Australian Office of Financial Management.

the Act means the [Public Service Act 1999](#).

the Code of Conduct means the APS Code of Conduct in section 13 of the [Public Service Act 1999](#).

the Directions means the [Australian Public Service Commissioner's Directions 2022](#).

CEO means the Chief Executive Officer of the AOFM

Employee refers to a current APS employee at the AOFM or a former AOFM employee who was employed at the AOFM at the time of a suspected breach, irrespective of whether they are a current or former APS employee.

Procedures means these Procedures for Determining Breaches of the Code of Conduct.

the Regulations refers to the [Public Service Regulations 2023](#).

Breach decision-maker is a person appointed to determine whether a breach of the Code of Conduct has occurred.

Suspension decision-maker is a person appointed to determine whether an employee may be suspended from duties, with or without pay, while an investigation is underway.

Sanction decision-maker is a person appointed to consider a sanction to be imposed where a determination has been made that an employee has breached the Code of Conduct.

Scope

1. Application of the Procedures

1.1 These Procedures apply in determining:

- whether an employee, or former employee, breached the Code of Conduct and
- any sanction to be imposed under subsection 15(1) of [the Act](#) on an employee who has been found to have breached the Code of Conduct.

Note: Sanctions may not be imposed on former employees.

1.2 In these Procedures, a reference to a breach of the Code of Conduct by an employee includes conduct set out in subsection 15(2A) of [the Act](#) in connection with their engagement as an employee.

1.3 As provided in subsection 15(7) of [the Act](#), these procedures are publicly available on the AOFM's website.

1.4. The process for determining whether an employee has breached the Code of Conduct should be carried out with as little formality and as much expedition as proper consideration of the matter allows and must have due regard to procedural fairness.

1.5. Not all suspected breaches of the Code of Conduct 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.

1.6. Persons involved with determining a breach under these Procedures must, as far as practicable, maintain the confidentiality of all parties involved.

1.7. All records relating to these Procedures will be managed and stored in accordance with the *Archives Act 1983* and the *Privacy Act 1988*.

1.8. Relevant guidance from the APS Commissioner will be considered where an employee has engaged in conduct that may breach the Code of Conduct and raises concerns relating to effective performance.

Note: See section 52 of [the Directions](#) which deals with managing performance in cases of a potential breach of the Code of Conduct.

1.9. If an SES employee is suspected of breaching the Code of Conduct, the CEO or Chief People Officer (CPO), will consult with the APS Commissioner.

Note: See section 64 of [the Directions](#) which deals with the role of the Commissioner in the case of SES employees suspected of breaching the Code of Conduct.

Determining if a breach of the Code of Conduct has occurred

2. Selection of breach decision-maker

2.1 As soon as practicable after a suspected breach of the Code of Conduct has been identified, the Chief Operating Officer (COO) or CPO will decide:

- whether the conduct is to be investigated under these Procedures and
- if the conduct is to be investigated under these Procedures, appoint a breach decision-maker.

2.2 The breach decision-maker:

- must be an APS employee
- must act in accordance with Part 7 of [the Directions](#) which deals with handling suspected breaches of the Code of Conduct
- must be, and appear to be, independent and unbiased, have an open mind about the matters under investigation, and weigh the evidence fairly and dispassionately
- must advise the CPO in writing if they do not consider themselves to be independent and unbiased, or may reasonably be perceived not to be independent or unbiased
- where practical, should not also be the suspension decision-maker or the sanction decision-maker and
- may undertake an investigation, or seek the assistance of an investigator (who may be external to the AOFM) with matters including investigating the alleged breach, gathering evidence and making a report of recommended factual findings.

Note: these procedures do not prevent the CEO, or a person listed at clause 2.1, from appointing themselves as the breach decision maker.

3. Suspension of duties

3.1. The COO or CPO will decide whether to appoint a suspension decision-maker.

Note: The CEO can delegate the power to suspend an APS employee who is suspected of breaching the Code of Conduct.

3.2. The suspension decision-maker:

- must act in accordance with section 28 of [the Act](#) and section 14 of the Regulations which deal with 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 decision-maker
- may consider alternative actions such as temporary re-assignment of duties and
- may seek the assistance of an investigator who may be external to the AOFM.

3.3 Employees may be suspended, with or without remuneration, where the COO, CPO or the suspension decision-maker believes on reasonable grounds, that an employee may have breached the Code of Conduct and where suspension is in the public interest or the AOFM's interest.

3.4 Where possible, the employee will be informed, in writing, of the AOFM's preliminary intention to suspend them, including reasons for this proposal, and will be provided with reasonable opportunity to respond before a decision to suspend is taken.

The employee may not be required for duty during the period in which are provided to respond.

Where an employee is suspended without first being given the opportunity to comment, they will be advised of the reasons for the suspension decision, and for proceeding without seeking their comments, and invited to comment. On receipt of the employee's comments, a review of the decision to suspend may occur.

3.5 The suspension decision maker is required to review the suspension at regular intervals.

3.6 If the suspension is to be without remuneration, the period without remuneration must not be more than 30 days unless exceptional circumstances apply.

3.7 A suspension decision-maker may make necessary inquiries to decide whether suspension is appropriate in the circumstances.

4. Information to be given to the employee before a determination is made

4.1. Before a determination is made, the breach decision-maker must take reasonable steps to:

- inform the employee of the details of the suspected breach of the Code of Conduct, including any subsequent variation of those details
- inform the employee of the sanctions that may be imposed on them under subsection 15(1) of [the Act](#) (including any limitations on that power contained in the Regulations made for the purpose of subsection 15(2) of [the Act](#)) and

- provide the employee with reasonable opportunity to make a statement in relation to the suspected breach.

4.2. An employee who does not make a statement in relation to the suspected breach is not, only for that reason, to be taken to have admitted to committing the suspected breach.

4.3 The breach-decision maker must, where the request can be reasonably accommodated, agree to a request made by the person who is suspected of breaching the Code of Conduct to have a support person present in a meeting or interview they conduct.

Imposing a sanction

5. Sanction decision-maker

5.1. Where a breach of the Code of Conduct has been determined, the COO or CPO will appoint a sanction decision-maker.

Note: Under the AOFM's Human Resource Delegations, the CEO has delegated the power to impose a sanction on an APS employee who is found to have breached the Code of Conduct.

5.2. The sanction decision-maker:

- must act in accordance with Part 7 of [the Directions](#) which deals with handling suspected breaches of the Code of Conduct
- must be, and appear to be, independent and unbiased and
- where practical, should not also be the breach decision-maker or the suspension decision-maker.

6. Information to be given to the employee before a sanction is imposed

6.1. Before a sanction is imposed, the sanction decision-maker must take reasonable steps to:

- inform the employee of the determination that has been made
- inform the employee of any sanctions that are under consideration
- inform the employee of the factors that are under consideration in determining any sanctions to be imposed and
- provide the employee with reasonable opportunity to make a statement in relation to any sanctions under consideration.

6.2 A sanction cannot be imposed on a former employee, however where the respondent remains an APS employee, the respondent's current APS agency may be provided with information relevant to make a decision on sanction(s) to be imposed under their own s15(3) procedures.

Record of determination and sanction

7. Where a determination is made in relation to a suspected breach of the Code of Conduct by an employee, a written record must be made of:

- the suspected breach
- the determination
- where the employee is a current APS employee, any sanctions imposed as a result of the determination and
- any statement of reasons provided to the employee.

Note: See section 63 of [the Directions](#).

Mobility

8. Moving within the APS during a suspected breach of the Code of Conduct

8.1. [The Directions](#) provide that moves within the APS (including on promotion) do not take effect while a Code of Conduct investigation is underway.

Note: See sections 42A and 46 of [the Directions](#).

Review

9. Where a determination has been made that an employee has breached the Code of Conduct, they may be eligible to seek a review of the action under section 33 of [the Act](#).

9.1. A review may also be sought in respect of a sanction decision, unless the sanction was termination of employment.

- In the event of termination, an eligible employee may raise an unfair dismissal claim with the [Fair Work Commission](#).

9.2. Applications for review should be made [to the Merit Protection Commission directly](#) within [the statutory timeframe](#).

9.3. Further information on reviews can be found in the Review of action policy.

Further information

10. The People team provides advice and assistance about employee conduct within the AOFM. For further assistance, contact the People team at HR@aofm.gov.au.