



Procedures for Determining Breaches of the Code of Conduct

I, Steven Kennedy, Secretary to the Treasury:

- 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*.

This instrument commences the day after it is signed.

Steven Kennedy

Secretary
Department of the Treasury

Dated: 22/11/2023

Definitions

In these Procedures:

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*.

Employee refers to a current APS employee at Treasury or a former APS employee who was employed at Treasury at the time of a suspected breach.

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 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. 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.

1.4. 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.
- 1.5. Persons involved with determining a breach under these Procedures must, as far as practicable, maintain the confidentiality of all parties involved.
- 1.6. All records relating to these Procedures will be managed and stored in accordance with the *Archives Act 1983*, the *Privacy Act 1988* and any applicable provision under the *Protective Security Policy Framework*.
- 1.7. 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.

- 1.8. If an SES employee in an Agency is suspected of breaching the Code of Conduct, the Secretary 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 Secretary, a Deputy Secretary or the Chief Operating Officer 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 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;
 - 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 Treasury.
- 2.3 As soon as practicable after a suspected breach of the Code of Conduct has been identified, Treasury's Security Team should be consulted in order to consider personnel security obligations under the *Protective Security Policy Framework*.

3. Suspension of duties

- 3.1. The Secretary, a Deputy Secretary or the Chief Operating Officer will decide whether to appoint a suspension decision-maker.

Note: Under Treasury's Human Resources Delegations, the Secretary has delegated 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 14 of the Regulations which deals 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 Treasury.

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.

Imposing a sanction

5. Sanction decision-maker

- 5.1. Where a breach of the Code of Conduct has been determined, the Secretary, a Deputy Secretary or the Chief Operating Officer will appoint a sanction decision-maker.

Note: Under Treasury's Human Resources Delegations, the Secretary 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;
- 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.

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;
- 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.

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