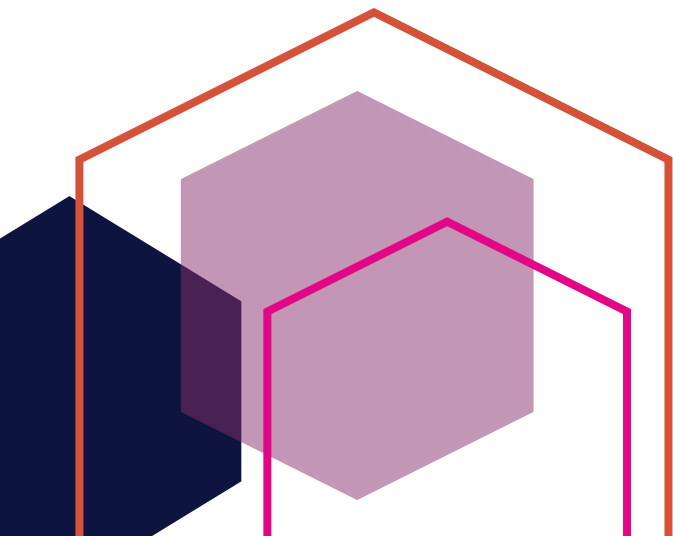




Australian Government

Professional Services Review

**PROCEDURES FOR MANAGING ALLEGED
BREACHES OF THE APS CODE OF
CONDUCT AND DECIDING SANCTIONS**



Procedures for Managing Alleged Breaches of the APS Code of Conduct and Deciding Sanctions

1. Procedures for managing alleged breaches of the APS Code of Conduct and deciding sanctions

I, Dr Antonio Di Dio, Acting Director of the Professional Services Review Agency ('PSR'), establish these Procedures under subsection 15(3) of the *Public Service Act 1999* ('the Act').

These Procedures commence on 5 January 2023.

1. APPLICATION OF PROCEDURES

- 1.1. These Procedures apply in determining whether a current Australian Public Service ('APS') employee in PSR, or a former APS employee in PSR who was employed in PSR at the time of the suspected misconduct, has breached the APS Code of Conduct ('the Code') in section 13 of the Act.

Note: These Procedures apply only in relation to a suspected breach of the Code of Conduct by an APS employee or former APS employee in respect of which a determination is to be made. Not all suspected breaches of the Code of Conduct may need to be dealt with by way of a determination. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate.

- 1.2. These Procedures also apply in determining any sanction to be imposed on an APS employee in PSR who has been found to have breached the Code.
- 1.3. These procedures, as they apply to determining whether there has been a breach of the Code, apply to any suspected breach of the Code except where a decision has been made, before 5 January 2023, to begin an investigation to determine whether there had been a breach of the Code.
- 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.

2. AVAILABILITY OF PROCEDURES

- 2.1 As provided for in subsection 15(7) of the Act, these procedures are publicly available on the PSR internet.

3. BREACH DECISION MAKER AND SANCTION DELEGATE

- 3.1. As soon as practicable after a suspected breach of the Code has been identified and the Director, the Executive Officer or a person authorised by the Director 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.
- 3.2 A breach decision maker can be appointed from inside or outside PSR.

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- 3.2. The role of the breach decision maker is to determine in writing whether a breach of the Code has occurred.
- 3.3. 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 findings to the breach decision maker.
- 3.4. 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 ('the sanction delegate') will generally be the Director or the Executive Officer. The sanction delegate must hold a delegation of the power under the Act to impose sanctions.

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 Director. 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 Director or a person delegated the power under section 15 of the Act, and related powers, such as under section 29 of the Act, may make a sanction decision.

- 3.5. The sanction delegate can be the breach decision maker in the same matter.

4. PERSON OR PERSONS MAKING THE BREACH DETERMINATION AND IMPOSING ANY SANCTION TO BE INDEPENDENT AND UNBIASED

- 4.1 The breach decision maker and the sanction delegate must be, and must appear to be, independent and unbiased.
- 4.2 The breach decision maker and the sanction delegate must advise the Director (or the person authorised by the Director to appoint the breach decision maker) 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.

5. THE DETERMINATION PROCESS

- 5.1 The process for determining whether a person who is, or was, an APS employee in PSR has breached the Code must be carried out with as little formality, and with as much expedition, as proper consideration of the matter allows.
- 5.2 The process must be consistent with the principles of procedural fairness.

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Note: The decision maker is required to provide procedural fairness in making the determination notwithstanding that they may have decided that no further investigation of the facts is required before determining whether a breach has occurred.

- 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 made 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.
 - b) give the person a reasonable opportunity to make a statement in relation to the suspected breach.
- 5.4 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 decision maker.
- 5.5 For the purpose of determining whether a person who is, or was, an APS employee in PSR has breached the Code, a formal hearing is not required.

6. SANCTIONS

- 6.1 The process for imposing a sanction must be consistent with the principles of procedural fairness.
- 6.2 If a determination is made that an APS employee in PSR 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
 - 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.
- 6.3 The statement may be either a written or oral statement and should be provided within 7 calendar days or any longer period that is allowed by the sanction delegate.

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 PSR, a written record must be made of

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- a) the suspected breach,
- b) the determination
- c) any sanctions imposed as a result of a determination that the employee has breached the Code, and
- d) if a statement of reasons was given to the person 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 or those statements of reasons.

Note: The *Archives Act 1983* and the *Privacy Act 1988* apply to a record made under this clause.

2. Document Review

The *Procedures for Managing Alleged Breaches of the APS Code of Conduct and Deciding Sanctions* was reviewed and endorsed by the PSR Executive Management Team at the Management Meeting held on 5 January 2023.

This Policy will be reviewed every 2 years from the date of endorsement. In addition, the policy will be reviewed after events that might affect the contents, such as legislative or major administrative changes.

Date of effect: 5 January 2023

Date of next review: January 2025

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Appendix A

SUBSECTION 15(1) OF THE ACT

Sanctions that may be imposed

- (1) An Agency Head may impose the following sanctions on an APS employee in the Agency who is found (under procedures established under subsection (3) of this section or subsection 41B(3) or 50A(2)) to have breached the Code of Conduct:
- (a) termination of employment;
 - (b) reduction in classification;
 - (c) re-assignment of duties;
 - (d) reduction in salary;
 - (e) deductions from salary, by way of fine;
 - (f) a reprimand.

Note: See sections 29 and 38 in relation to terminating an APS employee's employment.

SUBSECTION 15(2A) OF THE ACT

- (2A) A person who is, or was, an APS employee is taken to have breached the Code of Conduct if the person is found (under procedures established under subsection (3) of this section or subsection 41B(3) or 50A(2)) to have, before being engaged as an APS employee:
- (a) knowingly provided false or misleading information to another APS employee, or to a person acting on behalf of the Commonwealth; or
 - (b) wilfully failed to disclose to another APS employee, or to a person acting on behalf of the Commonwealth, information that the person knew, or ought reasonably to have known, was relevant; or
 - (c) otherwise failed to behave honestly and with integrity;

in connection with the person's engagement as an APS employee.

Note: If the person is an APS employee at the time a finding referred to in paragraph (2A)(a), (b) or (c) is made in relation to the person, the Agency Head of the employee's Agency may impose sanctions on the person as permitted by subsection (1).