



Procedures for Determining Breaches of the APS Code of Conduct

I, Jenny Wilkinson, Secretary of the Department of the Treasury:

- a. acting 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 by Treasury Secretaries under subsection 15(3) of the *Public Service Act 1999*.

This instrument commences the day after it is signed.

Dated 28 January 2026

Jenny Wilkinson
Secretary
Department of the Treasury

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 Act.

the Directions means the *Australian Public Service Commissioner's Directions 2022*.

Employee refers to a current APS employee engaged by the Treasury Secretary (under section 22 of the Act) or a former APS employee who was employed at Treasury at the time of a suspected breach (and who left the APS on or after 1 July 2013).

SES refers to a current Senior Executive Service employee engaged by the Treasury Secretary (and classified as such under section 34 of the Act) or a former SES 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 made under section 15(3) of the Act.

the Regulations means the *Public Service Regulations 2023*.

Breach decision-maker is a person selected by the Secretary, a Deputy Secretary, the Chief Operating Officer or the Chief People Officer, to determine whether a breach of the Code of Conduct has occurred.

Suspension decision-maker is a person who may exercise the power at section 14 of the Regulations, including the Secretary or a delegate under section 105(3) of the Regulations, who has been selected 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 who may exercise the power at section 15(1) of the Act, including the Secretary or a delegate under section 78(7) of the Act, who has been selected to decide 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 who was employed at Treasury at the time of the suspected breach, has 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. Consistent with subsection 15(7) of the Act, these procedures are to be publicly available on Treasury'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 having due regard to procedural fairness.

1.5. As soon as practicable after information that may reasonably lead to a suspected breach of the Code has been identified, the Secretary, a Deputy Secretary, the Chief Operating Officer or the Chief People Officer, may consider if it is appropriate for the suspected breach of the Code of Conduct to be:

- subject first to a preliminary investigation, 'fact find', probe or any other administrative enquiry designed to gather additional facts in an efficient and proportionate manner;
- investigated initially or concurrently as a matter under the *Australian Government's Protective Security Policy Framework*, and referred to the relevant authority;
- referred to a law enforcement agency (such as the Australian Federal Police), where a serious or complex crime is suspected;
- referred to the Integrity Unit for advice, where a suspected breach involves, or may involve, fraud and/or corruption, or may be subject to the *Public Interest Disclosure Act 2013* or the *National Anti-Corruption Commission Act 2022*;
- concurrently dealt with under the *Ombudsman Act 1976* or the *Privacy Act 1988* (or any other relevant enactment);
- formally investigated under these procedures, with the assistance of an investigator, who may be external;

- dismissed or discontinued (for instance, if lacking merit or if further investigation would be unlikely to reach a clear outcome); or
- dealt with in another way (such as through established performance improvement measures or managerial pathways).

- 1.6. Persons involved with determining a breach under these Procedures must, as far as practicable, maintain the confidentiality of all parties involved, and observe privacy and secrecy requirements as required by law.
- 1.7. 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 *Australian Government's Protective Security Policy Framework*.
- 1.8. Relevant guidance from the APS Commissioner must 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 Secretary must comply with any requirements in the Act, Regulations and Directions about handling suspected breaches by SES.

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.

- 1.10. For the avoidance of doubt, an investigation conducted under these procedures may occur without notifying the person (or persons) suspected of breaching the Code of Conduct – for instance where, having regard to all the circumstances, it would be correct and preferable not to notify the person in order to:
 - protect individuals or entities, including the reputations of individuals or entities, from undue or unfair harm;
 - protect witnesses (or disclosers under the *Public Interest Disclosure Act 2013* or another enactment) from the risk of reprisal action;
 - further the objectives of the *National Anti-Corruption Commission Act 2022*;
 - meet the objectives of the *Australian Government's Protective Security Policy Framework*;
 - be consistent with international obligations and/or advance Australia's national interest;
 - maintain commercial or other legitimate confidences (explicit or implied); or
 - otherwise protect the integrity of the investigation.

- 1.11. An investigation into a suspected breach of the Code of Conduct may be discontinued at any time by the Secretary, a Deputy Secretary, the Chief Operating Officer or the Chief People Officer, including without notifying details of the suspected breach to the employee(s) whose conduct was under scrutiny.
- 1.12. Procedural fairness obligations do not apply to a decision by Treasury to commence a process for determining whether there has been a breach of the Code of Conduct. Where an individual has not been notified of an investigation, procedural fairness obligations will be applied to any proposed or actual decisions made as a result of that process, where the individual would be impacted by that decision.

Determining if a breach of the Code of Conduct has occurred

2. Selection of breach decision-maker

- 2.1 After a suspected breach of the Code of Conduct has been identified, the Secretary, a Deputy Secretary, the Chief Operating Officer, or the Chief People Officer will:
 - decide whether the conduct is to be investigated under these Procedures, with the assistance of an investigator, if required, who may be external; and
 - if the conduct is to be investigated under these Procedures, select a breach decision-maker and notify the breach decision-maker in writing of their selection – the breach decision-maker may not be a Treasury official.
- 2.2 If no breach decision-maker is selected, the breach decision-maker will be a Deputy Secretary or other SES Band 3 officer in Treasury.
- 2.3 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, impartial 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.
- 2.4 As soon as practicable after a suspected breach of the Code of Conduct has been identified, Treasury's Security Team should be consulted to consider personnel security obligations under the *Australian Government's Protective Security Policy Framework*.

3. Suspension or reassignment of duties

3.1. A current APS employee in Treasury whose conduct is under investigation for a suspected breach of the Code of Conduct may be:

- reassigned to alternative duties, either for a temporary period or on an ongoing basis, under section 25 of the Act; or
- suspended from duty under section 28 of the Act and section 14 of the Regulations.

Note: Nothing in these Procedures restricts or prevents the normal operation of section 25 or section 28 of the Act (and section 13 of the Regulations), including to manage a security risk to the agency or its employees.

3.2. 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. The Secretary or their delegate may suspend an employee(s) in relation to suspected breach of the Code under section 14 of the Regulations.

3.3. Employees may be suspended, with or without remuneration, where the Secretary or their delegate ('the suspension decision-maker') believes on reasonable grounds that an employee has or may have breached the Code of Conduct and where suspension is in the public interest or Treasury's interest.

3.4. A suspension decision-maker will be selected by the Secretary, a Deputy Secretary, the Chief Operating Officer, or the Chief People Officer. 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, impartial and unbiased;
- where practical, should not also be the breach decision-maker or the sanction decision-maker; and
- may consider alternative actions such as temporary re-assignment of duties.

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.

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 or participate in an interview 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.

5. Imposing a sanction

5.1. Sanction decision-maker

5.2. 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. The Secretary or their delegate ('the sanction decision-maker') may impose a sanction on an employee(s) in relation to a breach of the Code under section 15(1) of the *Act*.

5.3. A sanction decision-maker will be selected by the Secretary, a Deputy Secretary, the Chief Operating Officer, or the Chief People Officer – the sanction decision-maker may not be a Treasury official.

5.4. 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, impartial 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.

7. Record of determination and sanction

7.1. 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.

8. Review

8.1. 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.

- A review may also be sought in respect of a sanction decision, unless the sanction was termination of employment.
- Applications for review should be made to the [Merit Protection Commission](#) directly, within the statutory timeframe.

9. Support person

9.1. An employee whose conduct is under investigation for a suspected breach of the Code of Conduct may have a support person present at any formal discussion relating to the investigation.

9.2. The role of the support person is to support the employee during formal discussions; not to speak or advocate for the employee. The support person should not also be a person who may also be involved in the investigation into the suspected breach of the Code of Conduct, such as a witness.

9.3. Before any formal discussion occurs, the employee should advise the Breach Decision-Maker (or investigator, if assisting) who the support person is.

9.4. The Breach Decision-Maker (or investigator, if assisting) should seek to accommodate the availability of the support person, but the support person's unavailability will not generally be a reason to delay any formal discussion or the investigation.

10. Right of representation

10.1. In matters relating to their employment, including in a Code of Conduct process, employees have a right to be represented by a legal or union representative. Distinct from a support person, a representative may speak on behalf of the employee(s) they are representing.

11. Movement between APS agencies during an investigation

11.1. Where:

- a current, ongoing APS employee in Treasury is suspected of having breached the Code of Conduct; and
- the matter has not been resolved; and
- a decision has been made that, apart from this clause, would result in the movement of the employee under section 26 of the Act to another APS Agency (including on promotion),

the movement will not take effect until the matter is resolved, unless the Secretary (or their delegate) and the Agency Head of the new APS agency agree otherwise.

11.2. For this clause, the matter will be deemed to be resolved when:

- a determination on breach is made; or
- it is decided that a determination is not required.

Note: If a determination of breach is made, the new APS agency is responsible for determining whether a sanction should be applied.

11.3. Referrals of suspected breaches of the Code of Conduct where an employee moves APS agencies before an investigation

11.4. Where Treasury suspects an employee has breached the Code of Conduct, and the employee moves agencies (either by transfer or machinery of government changes) before an investigation commences, (including if the suspected breach occurred while the employee was at Treasury and has since moved), Treasury may refer this suspected breach to the new APS agency, per section 103 of the Regulations.

Note: See sections 42A and 46 of the Directions.

11.5. Resignation during an investigation

11.6. If a current APS employee in Treasury whose conduct is under investigation for a suspected breach of the Code of Conduct resigns from the APS before a determination on breach is made, the Breach Decision-Maker:

- may choose to continue the investigation and make a determination, however no sanction will be applied; or
- may choose to discontinue the investigation.