



CDPP

Australia's Federal Prosecution Service



Procedures for Determining Suspected Breaches of the APS Code of Conduct and Deciding Sanctions

People Branch

I, Raelene Sharp KC, Director of Public Prosecutions, establish these procedures under subsection 15(3) of the [Public Service Act 1999](#) (the **Act**) for the Office of the Director of Public Prosecutions (Cth) (**CDPP**).

These procedures commence on the date they are made.

Signed:

A handwritten signature in blue ink, appearing to read 'R. Sharp', is written over a faint, light blue circular watermark. The signature is fluid and cursive.

Date: 29 November 2024

1. APPLICATION OF PROCEDURES

- 1.1 These procedures apply in determining whether a person who is an Australian Public Service (**APS**) employee in the CDPP, or who is a former employee who was employed in the CDPP 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 also apply in determining any sanction to be imposed on an APS employee in the CDPP who has been found to have breached the Code.
- 1.3 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 CDPP's website.

3. SUSPECTED BREACHES, APPOINTMENT OF BREACH DECISION MAKER AND SANCTION DELEGATE

- 3.1 As soon as is practicable after a suspected breach of the Code has been identified, one of the following positions will consider if it is appropriate for a preliminary assessment to be conducted to assess whether the suspected breach of the Code should be formally investigated under these procedures:
 - a) Commonwealth Director of Public Prosecutions (**Director**);
 - b) Commonwealth Solicitor for Public Prosecutions (**CSPP**);
 - c) Chief Operating Officer (**COO**); or
 - d) Chief People Officer (**CPO**).
- 3.2 Once a decision is made to formally investigate the suspected breach under these procedures the employee in position detailed in 3.1, will appoint a person (the **breach decision maker**) to make a determination under these procedures.

4. THE BREACH DECISION MAKER

- 4.1 The breach decision maker must be, and must appear to be independent and unbiased, have an open mind about the matters under investigation, and weigh the evidence fairly and dispassionately.
- 4.2 The role of the breach decision maker is to determine in writing whether a breach of the Code has occurred, and the process must have due regard to procedural fairness.
- 4.3 These procedures do not prevent the Director, or person listed at 3.1 from appointing themselves as the breach decision maker.

5. THE SANCTION DELEGATE

- 5.1 These procedures do not prevent the breach decision maker from being the sanction delegate in the same matter.
- 5.2 The Director, or their delegate (the **sanction delegate**) has the power to impose a sanction in relation to a breach of the Code.
- 5.3 The sanction delegate must be, and must appear to be, independent and unbiased.

- 5.4 The breach decision maker and/or the sanction delegate must advise the Director or their delegate 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.

6. THE DETERMINATION PROCESS

- 6.1 The process for determining whether a person has breached the Code must be conducted with as little formality and with as much expedition, as proper consideration of the matter allows.
- 6.2 The process must be consistent with the principles of procedural fairness.
- 6.3 A determination will 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 suspected breach;
 - 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 statement in relation to the suspected breach and ensure the decision maker considers the persons statement and response to evidence.
- 6.4 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.

7. SANCTIONS DETERMINATION PROCESS

- 7.1 The process for imposing a sanction must be consistent with the principles of procedural fairness.
- 7.2 If a determination is made that a person 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 statement in relation to the sanction or sanctions under consideration.

8. RECORD OF DETERMINATION AND SANCTIONS

- 8.1 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 CDPP, a written record must be made of:
- a) the suspected breach;
 - b) the determination; and
 - c) any sanctions imposed as a result of a determination that the employee has breached the Code.
- 8.2 If a statement of reasons was given to the person regarding the:
- a) determination in relation to the suspected breach of the Code; or
 - b) sanction decision.
- 8.3 *The Archives Act 1983 (Cth)* and the *Privacy Act 1988 (Cth)* apply to Office records.

9. SUSPENSION AND REASSIGNMENT OF DUTIES

- 9.1 A current APS employee who is under investigation for a suspected breach of the Code may be:
- a) reassigned to alternative duties, either for a temporary period or on an ongoing basis, under section 25 of the Act; or
 - b) suspended from duty under section 28 of the Act and section 14 of the *Public Service Regulations 2023*.
- 9.2 APS employees may be suspended, with or without remuneration, where the Director or their delegate (the **suspension decision maker**) believes on reasonable grounds, that an employee may have breached the Code and where the suspension is in the public interest or the CDPPs interest.
- 9.3 The suspension decision maker is required to review the suspension at regular intervals.

10. PROCEDURE FOR SES

- 10.1 If a SES employee is suspected of breaching the Code, the Director must:
- a) consult with the APS Commissioner on the powers for determining whether the employee has breached the Code; and
 - b) if considering imposing a sanction – consult with the APS Commissioner before imposing the sanction.

11. PROCESS WHERE AN ONGOING EMPLOYEE IS TO MOVE TO ANOTHER AGENCY

- 11.1 This clause applies if:
- a) a person who is an ongoing APS employee in the CDPP is suspected of having breached the Code;
 - b) the employee has been informed of the allegations against them;
 - 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.
- 11.2 The movement (including promotion) will not take effect until the matter is resolved unless the Director and the new agency's head otherwise agree.
- 11.3 The matter is taken to be resolved when:
- a) determination in relation to a suspected breach of the Code is made; or
 - b) the Director or delegate decides that a determination is not necessary.

12. CONTACT AND SUPPORT

- 12.1 People Branch provides advice and assistance about employee conduct within the CDPP.
- 12.2 For further assistance, contact via email HR@cdpp.gov.au