



Australian Government

**National Commission for
Aboriginal and Torres Strait Islander
Children and Young People**

Procedures for determining breaches of the Code of Conduct and for determining sanction

I, Lil Gordon, Acting National Commissioner of the National Commission for Aboriginal and Torres Strait Islander Children and Young People (the Commission), establish these procedures under subsection 15(3) of the *Public Service Act 1999* ('the Act').

These procedures commence on the date signed.

These procedures supersede the Department of Social Services procedures under subsection 15(3).

Lil Gordon

A handwritten signature in cursive script that reads "Lillian Gordon".

Dated this 30 day of April 2025.

Application of procedures

1. These procedures apply in determining whether a person who is an APS employee in the Commission, or who was a former APS employee employed in the Commission at the time of the suspected misconduct, has breached the APS Code of Conduct ('the Code') in section 13 of the Act.
2. These procedures apply in determining any sanction to be imposed on an APS employee in the Commission who has been found to have breached the Code.
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 for one in respect of which a decision had been made before the date these procedures commence to begin an investigation to determine whether there had been a breach of the Code.
4. These procedures, as they apply to determining any sanction for breach of the Code, apply where a sanction decision is under consideration on or after the date these procedures commence.
5. 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.
6. In accordance with the *Australian Public Service Commissioner's Directions 2022*, if an SES employee in an agency is suspected of breaching the Code, the Commissioner must consult with the Australian Public Service Commissioner (**APS Commissioner**) on the process for determining whether the employee has breached the Code and, if considering imposing a sanction, must consult with the APS Commissioner before any sanction is imposed.

Note: Not all suspected breaches of the Code need to be dealt with by way of determination under these procedures. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate, including performance management.

Availability of procedures

7. As provided for in subsection 15(7) of the Act, these procedures are publicly available on the Commission's website.

Breach decision-maker and sanction delegate

8. The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
9. The Commissioner or their delegate will appoint a decision-maker to make a determination under these procedures. These procedures do not prevent the Commission's Executive from appointing themselves as the breach decision-maker.
10. The breach decision-maker may conduct an investigation themselves, or seek the assistance of an investigator with matters including investigating the alleged breach, gathering evidence, and making a report of recommended factual findings to the breach decision-maker. The investigator may be internal to the Commission, or an external investigator engaged by the Commission.

11. These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.
12. The breach decision-maker and the sanction delegate must advise the Commissioner in writing if they consider that they may not be independent and unbiased or if they consider that they may reasonably be perceived not to be independent and unbiased; for example, if they are a witness in the matter.

Sanction Delegate

13. 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 must hold an appropriate delegation of the power under the Act to impose sanctions ('the sanction delegate').
14. The breach decision-maker and the sanction delegate must be, and appear to be, independent and unbiased.

Suspension Delegate

15. The delegate determining whether an employee should be suspended from duties is referred to in these procedures as the suspension delegate and will hold a delegation of powers and functions under section 28 of the Act and section 14 of the Public Services Regulations 2023 (the Regulations).
16. Where suspension from duties is being considered, appointing a separate delegate from the breach decision-maker is preferable.

Decision to commence investigation

17. As soon as practicable after a suspected breach of the Code has been identified, the Commissioner or their delegate will consider if it is appropriate for a preliminary assessment to be conducted, to assess whether the suspected breach of Code should be formally investigated under these procedures.
18. Once a decision is made to formally investigate the suspected breach under these procedures, the Commissioner or their delegate will appoint a breach decision-maker to make a determination under these procedures.

Reassignment of duties or suspension from duty during investigation

19. 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 PS Act.
 - b. suspended from duty by the suspension delegate under section 28 of the PS Act and section 14 of the PS Regulations.

To avoid any doubt, this clause also applies to SES employees.

20. In reassigning duties of a current APS employee who is under investigation, the suspension delegate will:
 - a. notify the current APS employee who is under investigation of the proposal; and

- b. give that employee reasonable opportunity (usually, 7 calendar days) to respond before any decision to reassign is taken.
- 21. Sometimes urgent action may be required that will not allow for notification and response outlined at clause 20. In such cases, the suspension delegate may invite the current APS employee who is under investigation to comment on the decision being made. Depending on their response, the suspension delegate has the flexibility to consider alternative arrangements, including suspension.
- 22. In suspending a current APS employee who is under investigation, the suspension delegate will:
 - a. notify the current APS employee, in writing, of the preliminary intention to suspend them, and the reasons for this proposal; and
 - b. give that employee reasonable opportunity to respond (usually, 7 calendar days) before any decision to suspend is taken.
- 23. Sometimes urgent action may be required that will not allow for notification and response outlined at clause 22. In such cases, the suspension delegate may invite the current APS employee who is under investigation to comment after the decision has been made.

The breach determination process

- 24. The process for determining whether a person who is, or was, an APS employee in the Commission has breached the Code must be carried out with as little formality, and with as much expedition, as proper consideration of the matter allows.
- 25. The process must be consistent with the principles of procedural fairness, requiring that:
 - the person suspected of breaching the Code is informed of the case against them (i.e., any material that is before the breach decision-maker that is adverse to the person or their interests and that is credible, relevant and significant);
 - the person is provided with a reasonable opportunity to respond and state their case, in accordance with these procedures, before any decision is made on breach or sanction;
 - the breach decision-maker and sanction delegate act without bias or an appearance of bias;
 - there is logically probative evidence to support the making, on the balance of probabilities, of adverse findings.
- 26. A determination may 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 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; and
 - b) give the person a reasonable opportunity to make a written or oral statement, or provide further evidence in relation to the suspected breach, within 7 calendar days or any longer period that is allowed by the decision-maker.
- 27. 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.

28. For the purpose of determining whether a current or former APS employee in the Commission has breached the Code, a formal hearing is not required.

Sanctions

29. The process for deciding on sanction must be consistent with the principles of procedural fairness.

30. Sanctions which can be imposed are outlined in s 15(1) of the Act.

31. If a determination is made that an APS employee in the Commission 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; and
 - 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 or oral statement in relation to the sanction or sanctions under consideration within 7 calendar days, or any longer period that is allowed by the sanction delegate.

Record of determination and sanction

32. If a determination in relation to a suspected breach of the Code by a person who is, or was, an APS employee in the Commission is made, a written record must be made of:

- a) the suspected breach;
- b) the determination;
- c) where the person is an APS employee, 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 a current employee, regarding the sanction decision, that statement of reasons or those statements of reasons.

Procedure when an employee seeks to move to another Agency during an investigation

33. This clause applies if:

- a) a person who is an ongoing APS employee in the Commission is suspected of having breached the Code; and

- b) reasonable steps have been taken to formally advise the APS employee of the suspected breach in accordance with clause 26; and
 - c) a decision is made to promote the APS employee and the matter to which the suspected breach relates has not yet been resolved before the employee moves to take up the promotion; or
 - 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).
34. Unless the Commissioner and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter to which the suspected breach relates is resolved.
35. For the purpose of clause 34, the matter is taken to be resolved when:
- a) a determination in relation to suspected breach of the Code is made in accordance with these procedures; or
 - b) the Commissioner decides that a determination is not necessary.
36. Where an APS employee moves to another APS agency after the determination of a breach but before the imposition of a sanction, a sanction delegate in the gaining agency may impose a sanction in accordance with that agency's section 15(3) procedures.

Additional procedural requirement for Senior Executive Service Employees

37. If a Senior Executive Service (SES) employee in the Commission is suspected of breaching the Code, the Commissioner must:
- a) Consult with the Public Service Commissioner on the process for determining whether the SES employee has breached the Code; and
 - b) If considering imposing a sanction – consult with the Commissioner before imposing the sanction.