

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

I, Blair Comley, the Secretary of the Department of Health, Disability and Ageing (**the Department**), establish these procedures in accordance with subsection 15(3) of the *Public Service Act 1999* (Cth) (**PS Act**).

These procedures commence on the date signed.



Signed by: Blair Comley

Date: 4 May 2026

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### 1. Application of procedures

1.1 These procedures apply when determining:

- a. whether a person who is an Australian Public Service (**APS**) employee in the Department, or who is a former APS employee who was employed in the Department at the time of the suspected misconduct, has breached the APS Code of Conduct (**the Code**) in section 13 of the PS Act; and
- b. any sanction/s to be imposed on a current APS employee in the Department, in accordance with subsection 15(1), where a breach of the Code has been determined.

1.2 These procedures do not apply in instances where an investigation into a suspected breach of the Code commenced prior to commencement of these procedures. In this circumstance, the former procedures dated 10 January 2018 apply.

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 PS Act in connection with their engagement as an APS employee.

1.4 Not all suspected breaches of the Code need to be dealt with in accordance with these procedures. In particular circumstances, another way of addressing a suspected breach of the Code may be more appropriate.

1.5 As a general principle, the more serious the suspected breach or the greater the potential impact on public confidence in the Department, the more appropriate it is that the suspected breach be dealt with in accordance with these procedures.

### 2. Availability of Procedures

2.1 These procedures are made publicly available on the Department's website in accordance with subsection 15(7) of the PS Act.

### 3. Decision maker

3.1 As soon as practicable after a suspected breach of the Code has been identified, and the Secretary or one of the following employees (**authorised officers**) will determine whether it is appropriate to deal with the suspected breach under these procedures:

- a. Senior Executive Service Band 3 officer responsible for the Department's human resources functions;

- b. Senior Executive Service Band 2 officer responsible for the Department's human resources functions;
- c. Senior Executive Service Band 1 officer responsible for the Department's human resources functions;
- d. Executive Level 2 employee responsible for the Department's performance management and conduct functions; or
- e. Other person authorised by any of the above authorised officers;

3.2 Once a decision is made to deal with the suspected breach under these procedures, the Secretary or authorised officer, will appoint a decision maker (**breach decision maker**) to determine, in accordance with these procedures, whether the employee has breached the Code of Conduct based on the balance of probabilities.

3.3 These procedures do not prevent the Secretary or an authorised officer from appointing themselves as the breach decision-maker.

3.4 The breach decision-maker may undertake the investigation, or seek the assistance of an investigator, who may be external to the Department. The investigator is responsible for investigating the alleged breach, including collecting evidence and making recommendations to the breach decision-maker.

3.5 The person who is to decide what, if any, sanction is to be imposed on a current APS employee who is found to have breached the Code must hold a delegation of the power under section 15(1) of the PS Act to impose sanctions (the sanction delegate).

3.6 Nothing in these procedures prevents the breach decision-maker from also being the sanction delegate in the same matter, subject to that person holding a delegation for the purposes of section 15(1) of the PS Act.

#### 4. Decision maker and/or delegate to be independent and unbiased

4.1 Any person acting under these procedures (authorised officer, breach decision-maker, investigator) or exercising a delegated power under the PS Act in connection with these procedures (such as sanction or suspension) must be, and appear to be, independent and unbiased. That person must advise the Secretary or other authorised officer in writing if they consider that they may not be independent or unbiased, or if they consider that they may reasonably be perceived not to be independent and unbiased.

#### 5. Breach determination process

5.1 The process for determining whether a current or former APS employee in the Department has breached the Code must be carried out with as little formality, and as much expedition, as a proper consideration of the matter allows, and must be consistent with the principles of procedural fairness.

5.2 A determination in relation to a suspected breach of the Code cannot be made unless reasonable steps have been taken to:

- a) inform the employee or former employee of:
  - i. the details of the suspected breach (including any subsequent variation of those details); and
  - ii. in the case of a current APS employee in the Department, the sanctions that may be imposed on the employee under subsection 15(1) of the PS Act; and
- b) give the employee or former employee a reasonable opportunity to respond to each suspected breach (or subsequent variation to the initial suspected breach).

- 5.3 The response referred to in 5.3 (b) may be written and/or oral and must be provided within 7 calendar days (or any longer period that is approved by the breach decision-maker).
- 5.4 The breach decision-maker must give proper consideration to the response before making a breach determination.
- 5.5 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.

## **6. Variation during investigation**

- 6.1 If during the course of an investigation it becomes evident that there is a material variation in the nature or extent of the alleged breach initially notified to the employee, the employee must be notified in writing of the variation and any variation in the range of sanctions that may be imposed if the employee is found to have breached the Code.
- 6.2 The employee must be provided with a reasonable opportunity (at least 7 calendar days) to provide a further response and any further evidence, before a determination is made.

## **7. Sanctions**

- 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 current APS employee in the Department has breached the Code, a sanction will not be imposed on the employee unless reasonable steps have been taken to:
- a) inform the employee of:
    - i. the determination of a breach of the Code; and
    - ii. the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the PS Act; and
    - iii. the factors that are under consideration in determining any sanction to be imposed; and
  - b) give the employee a reasonable opportunity to provide a response in relation to each sanction/s under consideration.
- 7.3 The response referred may be written and/or oral and must be provided within 7 calendar days (or any longer period that is approved by the sanction delegate).
- 7.4 The sanction delegate must consider the employee's response before finalising their sanction decision. This process should include an impartial consideration of the employee's comments concerning both the sanction(s) that might be applied, and any information or personal factors that may be relevant to that decision.

## **8. Record of determination and sanction**

- 8.1 If a determination is made in relation to a suspected breach of the Code by a current or former APS employee in the Department, a written record must be made of:
- a) the suspected breach;
  - b) the determination;
  - c) in the case of a current APS employee in the Department, any sanctions imposed as a result of the determination that the employee breached the Code; and
  - d) if a statement of reasons was given to the employee or former employee regarding the determination in relation to a 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.

#### **9. Suspension or reassignment of duties**

9.1 A current APS employee in the department 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 under section 28 of the PS Act and section 14 of the Public Service Regulations 2023.

9.2 Employees may be suspended, with or without remuneration, where the Secretary or their delegate (**suspension delegate**) believes on reasonable grounds, that an employee may have breached the Code and where suspension is in the public interest or the department's interest.

9.3 The suspension delegate is required to review the suspension at regular intervals.

9.4 If the suspension is to be without remuneration, the period without remuneration must not be more than 30 days unless exceptional circumstances apply.

9.5 A suspension delegate may make necessary inquiries to decide whether suspension is appropriate in the circumstances.

#### **10. Additional requirements for current Senior Executive Service employees**

10.1 If a current Senior Executive Service (SES) employee in the Department is suspected of breaching the Code, the Secretary will:

- a) consult, with the APS Commissioner on the process 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. Procedure when an employee seeks to move to another APS agency during an investigation**

11.1 A current APS employee in the Department may seek to move (including on promotion) to another APS agency after they have been formally notified that they are suspected of breaching the Code but before the matter has been resolved.

11.2 In this circumstance, any move to another APS agency will generally be deferred, under subsections 42A(1) and 46(5) of the Directions, until after a decision has been made about whether or not the employee has breached the Code, or if it is decided that such a determination is not necessary.