

# Procedures for determining breaches of the Code of Conduct and for determining sanctions



**Australian Government**

**National Emergency Management Agency**

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## Application of procedures

1. In accordance with s15(3) of the *Public Service Act 1999* (the Act), the Coordinator-General, as the agency head of the National Emergency Management Agency (the Agency), has established procedures for determining whether an Australian Public Service (APS) employee, or former employee, in the Agency has breached the Code of Conduct (the Code) and for determining sanctions.
2. These procedures apply in determining:
  - a. whether a person who is an APS employee in the Agency, or who is a former APS employee who was employed in the Agency at the time of the suspected misconduct, has breached the Code set out in section 13 of the *Public Service Act 1999* (the Act)
  - b. any sanction to be imposed on an APS employee in the Agency who has been found to have breached the Code.
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.
4. The Australian Public Service Commission's [Handling Misconduct – a human resource manager's guide](#) may provide useful guidance when considering a misconduct issue.
5. 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.

## Breach decision-maker and sanction delegate

6. As soon as practicable after a suspected breach of the Code has been identified, and the Coordinator-General, or a person authorised by the Coordinator-General (see below) has decided to deal with the suspected breach under these procedures, the Coordinator-General or that person will appoint a decision-maker to make a determination under these procedures.
7. The person occupying one of the following roles, or another person the Coordinator-General designates, is a person authorised by the Coordinator-General under these procedures:
  - a. Deputy Coordinator-General, Disaster Resilience and Recovery Group
  - b. Chief Operating Officer
  - c. Assistant Coordinator-General, People, Governance and Integrity Branch
  - d. Director, People, Governance and Integrity Branch.
8. The role of the breach decision-maker is to determine whether a breach of the Code has occurred.
9. The breach decision-maker may undertake the investigation, or seek the assistance of an investigator. The investigator may investigate the alleged breach, gathering evidence and making a report of recommended findings to the breach decision-maker.
10. If a breach is determined to have occurred, the Coordinator-General, or a person authorised by the Coordinator-General under these procedures, should appoint a sanction delegate. The

sanction delegate decides what, if any, sanction is to be imposed on an APS employee who is found to have breached the Code. Sanctions cannot be imposed on former APS employees.

11. These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.
12. 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 Australian Public Service Commissioner. 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.

### **Person or persons making a breach determination and imposing any sanction to be independent and unbiased**

13. The breach decision-maker and the sanction delegate must be, and appear to be, independent and unbiased.
14. The breach decision-maker and the sanction delegate must, advise the Coordinator-General, or a person authorised by the Coordinator-General, 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. This may arise, for example, if the decision maker or delegate was likely to be a witness in the matter.

### **The determination process**

15. The process for determining whether a person who is, or was, an APS employee in the Agency has breached the Code must be carried out with as little formality, and with as much expedition, as a proper consideration of the matter allows.
16. The breach decision maker and the sanction delegate must have regard to the Australian Public Service Commission's publication, ['Handling Misconduct: A human resource manager's guide'](#) in making the determination in relation to a breach and the decision in relation to sanction.
17. The process must be consistent with the principles of procedural fairness.
18. 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 the details of the suspected breach of the Code (including any subsequent variation of those details)
  - b. where the person is an APS employee, inform the person of the sanctions that may be imposed on them under subsection 15 (1) of the Act, and
  - c. give the person a reasonable opportunity to make a statement in relation to the suspected breach.
19. The statement may be a written or oral statement and should be provided within seven calendar days, or any longer period that is allowed by the breach decision-maker.
20. 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.
21. For the purpose of determining whether a person who is, or was, an APS employee in the Agency has breached the Code, a formal hearing is not required.

22. The breach decision-maker or an investigator assisting the breach decision-maker, where they consider in all the circumstances that the request is reasonable, must agree to a request made by the person who is suspected of breaching the Code to have a support person present in a meeting or interview they conduct.
23. The breach decision-maker may use the Australian Public Service Commission's publication, ['Handling Misconduct: A human resource manager's guide'](#) in determining whether or not a breach has occurred.

### Sanctions

24. The process for deciding on sanctions must be consistent with the principles of procedural fairness.
25. If a determination is made that an APS employee in the agency has breached the Code, a sanction may not be imposed on the employee unless reasonable steps have been taken to inform the employee of:
  - a. the determination that has been made
  - b. the sanction or sanctions that are under consideration, and
  - c. the factors that are under consideration in determining any sanction to be imposed.
26. The APS employee must be given reasonable opportunity to make a written statement in relation to the sanction or sanctions under consideration. The statement may be a written or oral statement and should be provided within seven calendar days, or any longer period that is allowed by the decision-maker.
27. The sanction delegate may use the Australian Public Service Commission's publication, ['Handling Misconduct: A human resource manager's guide'](#) in determining a sanction.

### Record of determination and sanction

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

### Procedure when an ongoing employee is to move to another agency

29. The *Australian Public Service Commissioner's Directions 2022* places restrictions on the movement of an APS employee who is suspected of having breached the Code. If the matters that relate to the suspected breach have not been resolved, a move can only take effect if agreed by the Coordinator-General and the new Agency Head.

**Document review and change**

<b>Version</b>	<b>Date</b>	<b>Author/s</b>	<b>Summary of changes</b>	<b>Date of next scheduled review</b>
1.0	16 September 2022	Director, People	First version	September 2025
1.1	23 September 2024	Chief People Officer	Updated to reflect title and formatting changes.	September 2025