



Procedures for determining breaches of the APS Code of Conduct

Purpose

These procedures have been issued in accordance with section 15(3) of the *Public Service Act 1999* (the Act), which require the Coordinator-General or their delegate to establish written procedures for determining:

- whether an APS employee in the National Emergency Management Agency (NEMA), or a former APS employee who was employed in the NEMA at the time of the suspected misconduct, has breached the APS Code of Conduct (the Code) in section 13 of the Act
- any sanction to be imposed on an APS employee in the NEMA, in accordance with section 15(1), who has been found under these procedures to have breached the Code.

In these procedures, a reference to a breach of the Code includes a reference to a current or former employee who has engaged in conduct set out in section 15(2A) of the Act in connection with their engagement as an APS employee.

Not all suspected breaches of the Code need to be dealt with by way of a determination under these procedures. In particular circumstances, dealing with a suspected breach of the Code in accordance with the NEMA Performance Improvement Policy or an alternative approach may be more appropriate.

These procedures are made publicly available on NEMA's website in accordance with section 15(7) of the Act.

Scope

These procedures apply to all NEMA employees at all levels, and in all forms of employment.

Agency contractors are to comply, always, with the APS Code of Conduct. The procedures outlined below will be applied to all Agency contractors, regarding a suspected breach of the APS Code of Conduct, as outlined in their contract for services with the Agency.

Contact and support

The Chief People Officer and the Integrity team are available to provide further guidance on these procedures as required.

NEMA's Employee Assistance Program (EAP) partner provides 24/7 confidential, free counselling for NEMA employees and their family members including support for managing any work related issues. Information on how to contact the EAP provider is available on the NEMA intranet.

Delegates and decision-makers

The following sections set out the positions that will have the authority to make decisions and take certain steps in accordance with these procedures.

NEMA will take reasonable steps to ensure the breach decision-maker and the sanction delegate are, and appear to be, independent and unbiased.



Breach decision-maker

As soon as practicable after a suspected breach of the Code has been identified, the Coordinator-General or one of the following employees:

- Deputy Coordinator-General
- Chief Operating Officer
- Chief People Officer / Assistant Coordinator-General People Governance and Integrity

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. Once a decision is made to formally investigate the suspected breach under these procedures, the Coordinator-General or that employee will appoint a decision-maker ('the breach decision-maker') to make a determination under these procedures.

These procedures do not prevent the Coordinator-General, or a person in one of the roles listed above, from appointing themselves as the breach decision-maker.

The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.

The breach decision-maker may undertake the investigation, or seek the assistance of an investigator who may be external to NEMA. The investigator may investigate the alleged breach, gather evidence and make a report of recommended findings of fact to the breach decision-maker.

Sanction delegate

The delegate determining whether a sanction should be imposed for any breach of the Code is referred to in these procedures as the sanction delegate and will hold a delegation of the power under section 15(1) of the Act.

These procedures do not prevent the breach decision maker from being the sanction delegate in the same matter.

Suspension delegate

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 the powers and functions under section 28 of the Act and regulation 3.10 of the [Public Service Regulations 1999](#) (PS Regulations).

Where suspension from duties is being considered, appointing a separate decision-maker is desirable.

Determining a breach

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

The process must be consistent with the principles of procedural fairness.

Before a determination is made in relation to a suspected breach of the Code by a current or former APS employee, NEMA must take reasonable steps to:



- inform them of:
 - the details of the suspected breach of the Code (including any subsequent variation of those details); and
 - the sanctions that may be imposed on the APS employee under section 15(1) of the Act
- give them a reasonable opportunity to make a statement in relation to the suspected breach.

When a breach is identified

Imposition of sanctions

The process for imposing a sanction must be consistent with the principles of procedural fairness.

If a determination is made that an APS employee in the NEMA has breached the Code, a sanction may not be imposed on the APS employee unless reasonable steps have been taken to:

- inform them of:
 - the determination that has been made; and
 - the sanction or sanctions that are under consideration in accordance with section 15(1) of the Act; and
 - the factors that are under consideration in determining any sanction to be imposed
- give them a reasonable opportunity to make a statement in relation to the sanction/s under consideration.

If a determination is made that a current APS employee has breached the Code, the following sanctions may be imposed under section 15(1) of the Act:

- a reprimand
- deduction from salary, by way of a fine
- reduction in salary
- re-assignment of duties
- reduction in classification
- termination of employment.

Reassignment of duties or suspension from duty

An employee suspected of breaching the Code may be reassigned to alternative duties pursuant to section 25 of the Act, or may be suspended from duty by the suspension delegate in accordance with regulation 3.10 of the PS Regulations.

Record of determination and sanction

If a determination is made in relation to a suspected breach of the Code by a current or former APS employee in NEMA a written record must be made of:



- the suspected breach; and
- the determination; and
- any sanctions imposed as a result of the determination; and
- any statement of reasons provided to the employee.

Note: The [Archives Act 1983](#) and the [Privacy Act 1988](#) apply to a record made under this clause.

SES employees

In accordance with section 64 of the [Australian Public Service Commissioner's Directions 2022](#), the delegate will consult with the APS Commissioner on the process for determining whether an SES employee has breached the Code, and before any sanction is imposed.

Support for employees under investigation

A current or former APS employee who is under investigation for a suspected breach of the Code may bring a support person with them to formal meetings. The support person can support and assist the person under investigation, but is not permitted to advocate or speak on their behalf. The person under investigation should advise the investigator, or the breach decision-maker, who the support person is before the meeting, and seek permission for them to attend.

The support person should not be involved in the investigation, such as a witness. Although the investigator should accommodate attendance by a support person, their unavailability will not generally provide a reason to delay the investigation. A Factsheet about Support Persons is available for employees on the NEMA Intranet.

Seeking a review of decision

Where a determination has been made that a current or former non-SES employee has breached the Code, they may be eligible to seek 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.

Movement between agencies during an investigation

This clause applies if:

- an APS employee in NEMA is suspected of having breached the Code; and
- reasonable steps have been taken to formally advise the APS employee of the suspected breach in accordance with section 9 of these procedures; and
- a decision is made to promote an 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
- a decision has been made, apart from these procedures, that would result in the movement of the employee under section 26 of the Act to another Agency.



Unless the losing Agency Head and the gaining Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.

For this clause, the matter is taken to be resolved when:

- a determination is made as to whether the APS employee has breached the Code; or
- it is decided that such a determination is not necessary.

Version table

Version	Date	Business Unit	Drafted By	Approved By	Review Date
1.0	11/02/2025	Integrity team	Chief People Officer	Chief People Officer	5/12/2025