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Breaches of the Code of Conduct procedures  
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# Statement from Agency Head

I, Rosalind Croucher, Agency Head and President of the Australian Human Rights Commission (the Commission), establish these procedures under subsection 15 (3) of the *Public Service Act, 1999* (the Act) and the *Public Service Amendment Act* *2013*.

Rosalind Croucher

President, Australian Human Rights Commission

# Standards of Conduct

The APS Code of Conduct sets out the standards of conduct required of APS employees. These are set out in the *Public Service Act 1999,* the *Public Service Amendment Act 2013,* the Commission’s Enterprise Agreement and listed on the Human Resources intranet site.

# Application and availability of procedures

All Commission employees, the President and Commissioners, ongoing and non-ongoing, are subject to the APS Code of Conduct (the Code).

These procedures apply in determining :-

1. whether a person who is an APS employee in the Commission, or who is a former APS employee who was employed in the Commission at the time of the suspected misconduct, has breached the Code.
2. any sanction to be imposed on an employee in the Commission who has been found to have breached the Code.

In these procedures, a reference to a breach of the Code includes reference to conduct set out in subsection 15 (2A) of the Act in connection with their engagement as an employee.

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

# What is a Breach of the Code of Conduct

A person whose conduct does not comply with an element of the Code can be found to have breached the Code. Where a provision of the Code contains more than one element, it may not be necessary for a person to have breached all elements in order for a breach of the Code to be determined.

The Code specifies different levels of connectedness between the standard of conduct and APS employment as follows:

* in connection with employment;
* at all times.

# Commission Based Codes

The Commission has specified additional codes of conduct in the Enterprise Agreement that are to be observed by Commission staff. These outline the expected conduct standards required. If there is a breach of the Commission’s Code it will be linked to a particular element in the APS Code of Conduct if misconduct procedures are instigated.

# Suspension and Temporary Reassignment of Duties

Section 28 of the PS Act and regulations 3.14 and 3.15 set out the legislative basis for suspending an employee who is suspected of having breached the Code. Employees may be suspended with or without pay if the President or delegate believes on reasonable grounds that an employee has breached the Code and where suspension is in the public or Commission interest.

As an alternative to suspension, the President or delegate, may decide that it is more appropriate to temporarily reassign the employee’s duties.

# Decision-maker and sanction delegate

As soon as practicable, the President or delegate has decided to deal with the suspected breach under these procedures, the President or delegate will appoint a decision maker to make a determination.

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

The decision maker may 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 decision maker.

The decision maker must hold a delegation of the power under the Act to impose sanctions (‘the sanction delegate’).

The decision maker may also be the sanction delegate in the same matter where they have the relevant delegations under section 15 and/or 29 under the Act.

# Independence

The decision maker and the sanction delegate must be, and must appear to be, independent and unbiased. They should have no previous reporting responsibilities in relation to the matters raised in the suspected breach.

They must advise the President 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.

# Determination process

The process for determining whether a person has breached the Code must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.

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

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

1. Inform the person of:
   * 1. The details of the suspected breach of the Code (including any subsequent variation of those details); and
     2. the sanctions that may be imposed on them under subsection 15 (1) of the Act;

and

1. Give the person reasonable opportunity to make a written statement, or provide further evidence in relation to the suspected breach, within 7 calendar days or any longer period that is allowed.

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.

For the purpose of determining whether a person has breached the Code, a formal hearing is not required.

Where the decision maker is conducting a meeting or interview with a person suspected of breaching the Code and they request to have a support person present and it is considered reasonable in the circumstances, this request should be granted.

# Sanctions

Sanctions are intended to be proportionate to the nature of the breach and cannot be imposed unless it has been determined that a breach has occurred. More than one sanction may be imposed.

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

If a sanction is to be imposed on an employee, the employee must:

1. Be given a written statement setting out:
   1. the determination
   2. the sanction or sanctions that are under consideration
   3. the factors that are under consideration in determining any sanction to be imposed; and
2. Be given reasonable opportunity to make a written statement in relation sanctions under consideration within 7 calendar days, or any longer period that is allowed by the sanction delegate. (Note: the sanction delegate may decide to give the employee the opportunity to make both a written and oral statement.)

The President or delegate may impose the following sanctions where an employee of the Commission is found to have breached the Code of Conduct:

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

Sanctions may not be imposed on former employees.

# Record of determination and sanction

If a determination in relation to a suspected breach of the Code by an employee in the Commission is made, a written record must be made of:

1. the suspected breach; and
2. the determination; and
3. any sanctions imposed as a result of a determination that the employee has breached the Code; and
4. If a statement of reasons was given to the employee - that statement of reasons.

*Note:* The *Archives Act 1983* and the *Privacy Act 1988* apply to Commission records.

# Moving to a different Agency during a breach allegation/investigation

Movement between agencies (including on promotion) for employees suspected of a breach of the Code, will not take effect until the matter is resolved, unless agreed by Agency heads.

Resolution is by:

1. a determination being made; or
2. it is decided that a determination is not necessary.

Should the Agency Heads agree to a move prior to the resolution of a suspected breach of the Code, the receiving Agency may continue an investigation and/or impose a sanction based on the losing Agency’s investigation.

# Resignation during the misconduct investigation

Where an employee resigns during the course of an investigation the President or delegate may choose to discontinue the process depending on the circumstances. The legislative framework does not permit action to be taken against former employees.

# Review Rights

Non-SES employees who have been found to have breached the Code and who wish to challenge either the determination that a breach has occurred or the sanction imposed (except in the case of termination) may lodge an application under Part 4 of the Regulations. The making of an application for review does not stay the action. An application for review of a determination that an employee has breached the Code or a sanction imposed as a result of the breach must be made to the Merit Protection Commissioner. Applications for a review of a suspension action in relation to a suspected breach would generally in the first instance be made to the President or delegate.

Both the Australian Public Service Commissioner and the Merit Protection Commissioner may enquire into and determine an alleged breach of the Code by an APS employee:-

* if the President so requests; and
* if the Australian Public Service Commissioner or Merit Protection Commissioner considers that it would be appropriate to do so; and
* if the APS employee agrees, in writing, to the Merit Protection Commissioner doing so.

An employee who has been dismissed may have the right under the unfair dismissal provisions of the *Fair Work Act 2009* for a remedy.

# Criminal Matters

Where it comes to light that an employee through their private actions has been charged with a criminal offence and where the charge relates to behaviour that could have an impact on the person’s ability to maintain honesty and integrity in their APS employment, or it is likely that the employee’s behaviour is otherwise inconsistent with the APS Values or is likely to damage the integrity and/or good reputation of the APS, it may be appropriate to investigate the matter as a possible breach of the Code.

# Record Keeping

Records relating to misconduct should not be placed on the employee’s personal file but kept on a separate misconduct file and held in secure storage.

# References

* *Public Service Act 1999*
* *Public Service Amendment Act 2013*
* APS Commissioner’s Directions 2022
* Australian Human Rights Commission Enterprise Agreement 2024 - 2027
* Public Service Regulations 2023
* *Handling Misconduct: A human resources practitioner’s guide to the reporting and handling of suspected and determined breaches of the APS Code of Conduct - APSC website*
* *Social media – protocols and guidelines*
* *Public comment policy*
* *Whistleblowing Procedures*
* *APS Values and Code of Conduct in Practice: a guide to official conduct for APS employees and Agency Heads.*