



Procedures for Determining breaches of the Australian Public Service (APS) Code of Conduct and the imposition of sanctions

I, Professor Steve Wesselingh, Chief Executive Officer of the National Health and Medical Research Council (NHMRC), establish these Procedures in accordance with subsection 15(3) of the *Public Service Act 1999* (the Act).

These Procedures take effect from the date this is signed.

These Procedures supersede all previous Procedures made under subsection 15(3) of the Act.

Signed:

Professor Steve Wesselingh
Chief Executive Officer

Date this 29th day of April 2024

Application of procedures

1. These procedures apply for determining:
 - whether a person who is an APS employee at NHMRC, or who is a former APS employee who was employed at NHMRC at the time of the suspected misconduct, has breached the Code in section 13 of the Act, and
 - any sanction to be imposed on an APS employee at NHMRC, in accordance with subsection 15(1) of the Act, where a breach of the Code has been determined.
2. 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.
3. Not all suspected breaches of the Code may need to be dealt with by way of a determination. In particular circumstances, another way of addressing a suspected breach of the Code may be more appropriate.
4. In these procedures, powers afforded to the CEO (e.g. powers to suspend or reassign duties or determine a breach) may be delegated to other employees of NHMRC through the Human Resources Delegations and Authorisation Instrument.



Availability of procedures

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

Breach decision maker and Sanction delegate

6. As soon as practicable after a suspected breach of the Code has been identified and the CEO, or a delegate authorised by the CEO, has decided to deal with the suspected breach under these procedures, the CEO (or delegate) will appoint a breach decision maker to make a determination under these procedures. A separate suspension delegate and sanction decision maker may also be appointed. The responsibilities of each role are outlined below.

Breach decision maker

7. The role of the Breach decision maker is to determine in writing whether a breach of the Code has occurred.
8. The Breach decision maker may undertake the investigation or seek the assistance of an external investigator. The investigator may investigate the alleged breach, gather evidence, and make a report of recommended findings of fact to the Breach decision maker.

Suspension Delegate

9. Where there are allegations of serious misconduct, a decision should be made about reassignment of duties under section 25 of the Act, or suspension from duty (with or without pay).
10. 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 section 14 of the Public Service Regulations 2023 (PS Regulations).
11. Where suspension from duties is being considered, appointing a separate delegate from the breach decision maker is preferable.

Sanction delegate

12. The Sanction delegate is the delegate under subsection 15(1) of the Act determining whether a sanction is to be imposed for any breach of the Code.

Independence of decision maker and delegates

13. These procedures do not prevent the Breach decision maker from being the Sanction delegate in the same matter.
14. The Breach decision maker, Suspension delegate (if any) and the Sanction delegate must be, and must appear to be, independent and unbiased.
15. A decision maker/delegate must advise the CEO 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.



Procedural fairness

16. All investigations into suspected breaches of the Code must be consistent with the principles of procedural fairness:

- a person whose interests or rights may be adversely affected by a decision will be given an opportunity to be heard
- a decision maker must act without bias or self-interest, and
- a decision must be based upon evidence that is relevant and logically capable of supporting the findings made.

Determination process

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

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

19. A determination may not be made in relation to a suspected breach of the Code by an APS employee, or former APS employee, unless reasonable steps have been taken to:

- inform the person 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 them under subsection 15(1) of the Act, and
- give the person a reasonable opportunity to make a written or oral statement in relation to the suspected breach (usually 7 calendar days or any longer period as allowed by the Decision maker).

20. A person who does not make a written or oral statement in relation to the suspected breach is not, for that reason alone, to be taken to have admitted committing the suspected breach.

21. A Breach decision maker will inform the person in writing whether a breach of the Code has occurred.

22. These procedures do not prevent the Breach decision maker from being the Sanction delegate in the same matter where this is considered appropriate.

Reassignment of duties or suspension from duty

23. A current APS employee (including SES) who is under investigation for a suspected breach of the Code may be:

- reassigned to alternative duties, either for a temporary period or on an ongoing basis, under section 25 of the Act, or
- suspended from duty by the suspension delegate under section 28 of the Act and section 14 of the PS Regulations.

24. In reassigning duties or suspending a current APS employee who is under investigation, the suspension delegate will:



- notify the current APS employee who is under investigation of the proposal, including reasons for this proposal, and
- give the person reasonable opportunity (usually, 7 calendar days) to respond before any decision to reassign or suspend is taken.

25. Sometimes urgent action may be required that will not allow for notification and response outlined above. In such cases, the Suspension delegate may invite the current APS employee who is under investigation to comment after the decision has been made.

26. Depending on their response, the Suspension delegate has the flexibility to consider alternative arrangements.

Sanctions

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

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

- inform the APS employee of:
 - » the determination made with respect to breach of the Code, and
 - » the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the Act, and
 - » the factors that are under consideration in determining any sanction to be imposed; and
- give the APS employee reasonable opportunity to make a statement in relation to the sanction/s under consideration (usually 7 calendar days or any longer period as allowed by the decision maker).

29. Sanctions should be proportionate to the nature of the breach of the Code, provide a clear message to the employee that their behaviour was not acceptable, and act as a deterrent to the employee and any others who are aware of the outcome. A determination that misconduct has occurred does not necessarily mean that a sanction must be imposed.

30. The sanctions that are available to be imposed by a sanction delegate are set out in subsection 15(1) of the Act.

31. The Sanction delegate may decide to impose one sanction or, where appropriate, a combination of sanctions.

32. The Sanction delegate will inform the person in writing what, if any, sanction should be imposed as a result of the Breach decision maker's determination that the APS employee's conduct has breached the Code.

Record of determination and sanction

33. If a determination is made in relation to a suspected breach of the Code by an APS employee, or former APS employee, a written record must be made of:

- the suspected breach
- the determination



- any sanctions imposed because of the determination that the APS employee breached the Code, and
- any statement of reasons provided to the APS employee or former APS employee.

Additional procedural requirement for current Senior Executive Service employees

34.If a current Senior Executive Service (SES) employee in the NHMRC is suspected of breaching the Code, the CEO as the Agency Head must comply with the requirements at section 64 of the Australian Public Service Commissioner's Directions 2022 (the Directions) to consult, with either the APS Commissioner, or a delegate of the Commissioner for the purposes of this requirement:

- on the process for determining whether the employee has breached the Code, and
- if considering imposing a sanction, before imposing the sanction.

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

35.These clauses apply if an APS employee seeks to move to another APS agency after they have been formally notified that they are suspected of breaching the Code but before a determination of a breach or a sanction is decided.

36.Any move between APS agencies including moves on promotion will generally be deferred, under section 46 of the Directions, until after a decision has been made about whether or not the APS employee has breached the Code.

37.Where an APS employee moves to another APS agency with the agreement of both agency heads before a decision has been made about whether or not the APS employee has breached the Code, the gaining agency may initiate an investigation in accordance with that agency's subsection 15(3) procedures.

38.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 subsection 15(3) procedures.

Right of review

39.Where a determination has been made that an employee has breached the Code of Conduct, they may be eligible to seek a review of the action under section 33 of the Act.

40.A review may also be sought in respect of a sanction decision, unless the sanction was termination of employment.

41.Applications for review should be made to the Merit Protection Commission directly within the statutory timeframe.