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Suspected breaches of the APS Code of Conduct procedures Human Resources procedures

These procedures apply to all officials of the entity, including Authority and associate members, the eSafety Commissioner and all ACMA staff. ACMA staff includes staff assisting the eSafety Commissioner in performing the Commissioner's roles and exercising the Commissioner's functions.

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Document history

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1.0	November 2025	New policy	Chair and Agency Head

Change control

The Human Resources and Communication Branch is responsible for maintaining and updating this document.

1. Introduction

1.1. About these procedures

- 1.1.1. These procedures outline the procedures to be followed in determining whether an APS employee of the ACMA or a former APS employee of the ACMA (who was employed by the ACMA at the time of the suspected misconduct), has breached the Australian Public Service (APS) Code of Conduct (the Code), in section 13 of the *Public Service Act 1999* (PS Act).
- 1.1.2. These procedures also detail what sanctions might be imposed should it be determined that the employee has breached the Code.
- 1.1.3. In these procedures, a breach of the Code includes a reference to a person engaging in conduct set out in section 15(2A) of the PS Act in connection with their APS employment as an existing or former APS employee of the ACMA.
- 1.1.4. These procedures should be read in conjunction with:
 - 1.1.4.1. Human Resources policy - Workplace respect
 - 1.1.4.2. Human Resources guide - Addressing and reporting unacceptable workplace behaviour
 - 1.1.4.3. Human Resources policy - Conflict of interest
 - 1.1.4.4. Human Resources policy - External employment
 - 1.1.4.5. Human Resources policy and guide - Review of actions
 - 1.1.4.6. Human Resources policy and guide - Public interest disclosures
 - 1.1.4.7. Human Resources fact sheet - Breaches of the APS Code of Conduct Flowchart
 - 1.1.4.8. Human Resources fact sheet - Preliminary Assessment - Breaches of the APS Code of Conduct
 - 1.1.4.9. ACMA Managing Trusted Insiders Policy
- 1.1.5. Contact HRAssist@acma.gov.au regarding information mentioned in this procedure.

1.2. Complying with these procedures

- 1.2.1. All APS employees i.e. Senior Executive Service (SES) employees and non-SES employees, of the ACMA including employees that assist the eSafety Commissioner in eSafety roles and functions must comply with these procedures.
- 1.2.2. Authority Members, the eSafety Commissioner and contractors are not covered by these procedures and are subject to different employment conditions or contract arrangements.
- 1.2.3. For the purposes of these procedures, the term employee will be used to cover all categories of staff contained in paragraph 1.2.1.

1.3. Legislative framework

- 1.3.1. *Fair Work Act 2009*
- 1.3.2. *Privacy Act 1988*
- 1.3.3. *Public Service Act 1999*
- 1.3.4. *Australian Public Service Commissioner's Directions 2022*
- 1.3.5. *Public Service Regulations 2023*
- 1.3.6. *Australian Privacy Principles.*

1.4. Delegations

- 1.4.1. Applicable delegations can be found in Schedule A - People Delegations Authorisations and Powers.

1.5. Principles

- 1.5.1. Section 15(4)(a) of the Public Service Act 1999 recognises that the administrative law principle of procedural fairness applies to all investigations under this procedure.
- 1.5.2. An employee is presumed 'innocent' until a determination is made as to whether they have breached the Code.
- 1.5.3. An employee has the right to not answer questions relating to a matter under investigation where this may incriminate them.
- 1.5.4. An employee has the right to bring a support person to any formal meeting relating to these procedures. Further information is available in the Role of a Support Person Fact sheet.
- 1.5.5. An employee will be provided the opportunity to respond to any adverse material that could influence a decision.
- 1.5.6. Findings are based on evidence that is relevant and logically capable of supporting the findings made.
- 1.5.7. The process for determining whether an employee has breached the Code will be conducted promptly and efficiently, while still ensuring that the matter receives the proper consideration it deserves.

2. Preliminary assessment

- 2.1. Where a concern relating to the conduct of an employee is received, a preliminary assessment will be undertaken to determine whether an investigation under these procedures is warranted.
- 2.2. The preliminary assessment will be conducted by the Executive Manager, Human Resources and Communications, a Human Resources Manager, or a person appointed by the Chair.
- 2.3. A preliminary assessment is conducted with as little formality and as much expedition as a proper consideration of the matter allows.

- 2.4. While the preliminary assessment determines whether formal misconduct action should be taken, it also provides decision makers with an understanding of the concern raised and allows for a proportionate response to the concern.
- 2.5. A preliminary assessment should be undertaken to the extent necessary for a sound decision to be made on how a concern should be handled and does not establish whether the concern is considered a breach of the Code.
- 2.6. A preliminary assessment may also identify a referral to a more appropriate avenue for resolution e.g. Public Interest Disclosure or Australian Federal Police.
- 2.7. Preliminary Assessment - Breaches of the APS Code of Conduct fact sheet provides further information on the steps relating to the preliminary assessment process.
- 2.8. The preliminary assessment may identify that alternative dispute resolution options are appropriate rather than move to a formal investigation. Further information is found on the Alternative dispute resolution options fact sheet.

3. The breach determination process

- 3.1. Once a decision is made to formally investigate a suspected breach of the Code under these procedures, the Breach Decision Maker will make a determination under these procedures as to whether or not a breach of the Code has occurred.
- 3.2. The Breach Decision Maker is the Chair or a person appointed by the Chair. The Chair may appoint a Breach Decision Maker who is not an APS employee where it is more appropriate to ensure they are independent and unbiased.
- 3.3. The Breach Decision Maker must be, and must appear to be, independent and unbiased, have an open mind about the matters under investigation and weigh the evidence fairly and dispassionately.
- 3.4. A person under investigation will be notified at the earliest practicable time of the decision to start a misconduct investigation and of the identities of the person or people involved in investigating the allegations and making the breach determination.
- 3.5. The notice to the person under investigation will include:
 - 3.5.1. the specific behaviour the person is alleged to have engaged in
 - 3.5.2. the element(s) of the Code they are alleged to have breached
 - 3.5.3. the full range of sanctions that may apply
 - 3.5.4. who will be investigating the alleged misconduct, if this is different from the decision-maker (per clause 3.1.6 below)
 - 3.5.5. the decision-maker who will make the determination.
- 3.6. The Breach Decision Maker may undertake the investigation or seek the assistance of an Investigator, who may be internal or external to the ACMA. The Investigator's role is to investigate the alleged breach of the Code, gather evidence and make a report of their findings to the Breach Decision Maker.

- 3.7. The process for determining a breach of the Code must have due regard to procedural fairness.
- 3.8. A determination will not be made in relation to a suspected breach of the Code unless reasonable steps have been taken to inform the employee of:
 - 3.8.1. the details of the suspected breach of the Code (including any subsequent variation of those details)
 - 3.8.2. their opportunity to make a statement in relation to the suspected breach of the Code.

4. The Sanction Decision Maker

- 4.1. Once a determination has been made that an employee has breached the Code, an appropriate sanction will be considered.
- 4.2. The Sanction Decision Maker (Chair or delegate) has the power to decide and impose a sanction in relation to a breach of the Code.
- 4.3. The Sanction Decision Maker must be and appear to be, independent and unbiased.
- 4.4. Where the Sanction Decision Maker is separate to the Breach Decision Maker, it is open to the Breach Decision Maker to recommend a sanction. However, the Sanction Decision Maker needs to exercise the sanction power independently, based on their own consideration of the relevant matters. In making the sanction decision, the Sanction Decision Maker accepts and acts on the basis of the findings of the Breach Decision Maker.

5. The sanction determination process

- 5.1. If a determination is made that an employee has breached the Code, a sanction cannot be imposed on the employee unless reasonable steps have been taken to inform the employee of:
 - 5.1.1. the determination that has been made, including a summary of reasons for the determination arising from the investigation
 - 5.1.2. the sanction or sanctions that are under consideration
 - 5.1.3. who has been appointed as the Sanction Decision Maker
 - 5.1.4. the factors that are under consideration in determining any sanction to be imposed
 - 5.1.5. their opportunity to make a statement in relation to the sanctions under consideration.
- 5.2. A sanction cannot be imposed on a former employee.

6. Record of determination and sanctions

- 6.1. If a determination in relation to a breach of the Code is made, a written record must be made of:

- 6.1.1. the suspected breach
- 6.1.2. the determination
- 6.1.3. any sanctions imposed
- 6.1.4. if a statement of reasons was given to the person - the statement of reasons.

7. Suspension or reassignment of duties

- 7.1. A current employee who is under investigation for a suspected breach of the Code may be:
 - 7.1.1. reassigned to alternative duties, either for a temporary period or on an ongoing basis, under section 25 of the PS Act
 - 7.1.2. suspended from duty under section 28 of the PS Act and section 14 of the Public Service Regulations 2023.
- 7.2. Employees may be suspended from duty, with or without remuneration, where the Chair or delegate (the Suspension Decision Maker) believes on reasonable grounds, that an employee may have breached the Code and where suspension is in the public or the ACMA's interest.
- 7.3. A decision to suspend an employee is not a prejudgement of whether they have breached the Code (in accordance with clause 1.5.2) and is only a precautionary measure to protect the interests and reputation of the ACMA, the public interest, and the interests of other employees.
- 7.4. An employee can be placed on suspension or reassigned duties at the commencement of a process under these procedures or at any point deemed necessary during the process.
- 7.5. The Suspension Decision Maker is required to review the suspension at regular intervals.
- 7.6. If the suspension is to be without remuneration, the period without remuneration must not be more than thirty days unless exceptional circumstances apply.

8. Additional procedural requirements for SES employees

- 8.1. If, following a preliminary assessment, a SES employee is suspected of breaching the Code and an investigation under these procedures is to occur, the Chair or delegate will consult with the APS Commissioner on the process for determining whether the SES employee has breached the Code.
- 8.2. Where consideration is being given to imposing a sanction for an SES employee who has been found to have breached the Code, the Chair or delegate will consult with the APS Commissioner before imposing the sanction.

9. Procedures when an employee seeks to move to another

APS agency during an investigation

- 9.1. Where a current employee seeks to move 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, any move between APS agencies will generally be deferred until after the Breach Decision Maker has made a determination, or it is decided that such a determination is not necessary.

10. Procedures when an employee has moved to another APS agency before a suspected breach is identified

- 10.1. Where a potential breach of the Code comes to light after an employee has moved to another APS agency, the ACMA will undertake a preliminary assessment of the situation.
- 10.2. Where considered appropriate the ACMA will refer the potential breach to the employee's new agency to consider in line with their procedures for determining breaches of the Code.

11. Confidentiality and privacy

- 11.1. At all times during an investigation, all employees involved in the investigations process are required to adhere to the *Privacy Act 1988* and the *Australian Privacy Principles*, ensuring that information disclosed or discussed is relevant and consistent with the purpose of the investigation and the need to know principle. The identities of the complainant and the respondent will be treated confidentially as far as is practicable and consistent with a proper investigation and consideration of the matter. It may be appropriate to disclose the identity of the complainant or witnesses to the respondent to allow for proper investigation of the matter. Consideration of the potential impact on the complainant and witnesses will be considered when information is disclosed to the respondent.
- 11.2. The complainant and witnesses will not be advised of the outcome of an investigation or any sanctions imposed unless there is a need for them to know. The personal information of any employee should not be disclosed when assuring that the concern has been dealt with.
- 11.3. In the course of the investigation, personal information about an employee may be collected including from employees or other people or from records held by the ACMA, eSafety or other sources. The purpose of collecting personal information is to inform the investigation and provide a factual basis for determining whether an employee has breached the Code and, if so, determining what (if any) sanction to apply.
- 11.4. During the course of an investigation or after the investigation is complete, personal information about an employee under investigation may, where necessary, appropriate and reasonable, be disclosed to others.
- 11.5. Where the ACMA is considering disclosing personal information about an employee to another person, body or agency, the employee concerned will be advised in writing and given the opportunity to make a case, prior to the information being

disclosed, as to why their personal information should not be disclosed. The employee will have seven days to provide that case in writing.

12. Right of review

- 12.1. Under section 33 of the PS Act, APS employees are entitled to a review of actions or decisions that relate to their APS employment, with some exceptions. The *Public Service Regulations 1999* (the PS Regulations) provide limits and exceptions to the right of review. The PS Regulations extends that review right to former APS employees found after separating from the APS to have breached the Code.
- 12.2. Under section 33 of the PS Act non-SES employees and former employees who have been found to have breached the Code and who wish to dispute either the determination that a breach has occurred or the sanction imposed or both, may lodge an application for review with the [Merit Protection Commissioner](#).
- 12.3. Other decisions relating to the investigation for suspected misconduct may also be reviewable including i.e. a decision to suspend an employee from duties or to re-assign an employee's duties temporarily while an investigation is underway. Further information is provided in Human Resources policy - Review of employment action.
- 12.4. An employee whose APS employment has been terminated for misconduct cannot apply for review of that decision under section 33 of the PS Act but may have access to the remedies under the *Fair Work Act 2009* by making an application to the [Fair Work Commission](#).

13. Record keeping

- 13.1. All documents and information (including both written documents and other items such as recordings of interviews) are kept confidential, stored in a secure record system and only able to be accessed on a need to know basis with appropriate authorisation.