



Australian Government

Royal Australian Mint

Procedures for determining suspected breaches of the Australian Public Service Code of Conduct

I, Leigh Gordon, as delegate of the Secretary to the Australian Treasury establish these procedures under subsection 15(3) of the [Public Service Act 1999](#) (the Act).

These procedures apply from **1 December 2023**.

These procedures supersede the previous procedures made for the Royal Australian Mint (the agency) under subsection 15(3) of the Act.

Leigh Gordon AO CSM
Chief Executive Officer
Royal Australian Mint

1. Introduction

Application of procedures

These procedures must be complied with in determining:

- whether an Australian Public Service (APS) employee or former APS employee of the agency has breached the Australian Public Service Code of Conduct (the Code of Conduct) set out in section 13 of the Act; and
- any sanction to be imposed on an Australia Public Service employee in the agency who is found to have breached the Code of Conduct.

For the purposes of these procedures, unless otherwise specified, a reference to:

- ‘employee’, refers to an employee or former employee of the agency;
- ‘the CEO’ refers the Chief Executive Officer of the agency and includes a delegate of the CEO or a person authorised by the CEO to exercise the relevant power or function; and
- a breach of the Code of Conduct 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.

Publication of procedures

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

Decision to commence action by way of determination

If the CEO becomes aware of a suspected breach of the Code of Conduct by an employee, the CEO may decide whether to deal with the suspected breach by way of a determination or to deal with the suspected breach informally.

Not all suspected breaches of the Code of Conduct need to be dealt with by way of a determination. Dealing with a suspected breach informally can include taking administrative action and making a written record of action taken.

If a Senior Executive Service employee is suspected of breaching the Code of Conduct, the CEO must consult with the Australian Public Service Commissioner on the process for determining whether the employee has breached the Code of Conduct and on imposing a sanction for breach (if any) (refer to section 64 of the [Australian Public Service Commissioner’s Directions 2022](#) (the Directions)).

If the conduct of an employee raises concerns that relate to both effective performance and suspected breaches of the Code of Conduct, the CEO must, before deciding to initiate an investigation under these procedures, have regard to any relevant standards and guidance issued by the Australian Public Service Commissioner (refer to section 52 of the Directions).

2. Procedures for determining suspected breaches of the Australian Public Service Code of Conduct

Part 2 of these procedures detail the process for determining whether an employee has breached the Code of Conduct. Part 2 of these procedures are established by the CEO pursuant to subsection 15(3)(a) of the Act.

Selection and role of breach decision maker and investigator

Breach decision maker

As soon as practicable after the CEO becomes aware of a suspected breach of the Code of Conduct that is to be dealt with under these procedures and has decided to deal with the suspected breach by way of a determination, the CEO will appoint a breach decision maker.

The CEO will take reasonable steps to ensure that the breach decision maker is, and appears to be, independent and unbiased. Generally, the appointed breach decision maker should not have previously made a report in relation to any of the matters suspected of constituting a breach of the Code of Conduct by the employee.

The role of the breach decision maker is to:

- determine whether any breaches of the Code of Conduct have occurred;
- prepare a written record stating whether the employee has been found to have breached the Code of Conduct; and
- advise the CEO and the employee of the determination.

Investigator

The CEO may also appoint an investigator to assist the breach decision maker by investigating the matter, gathering evidence and preparing a report of factual findings. The investigator may be an employee or another person. The CEO will take reasonable steps to ensure the investigator is, and appears to be, independent and unbiased.

The determination process

The process of determining whether an employee has breached the Code of Conduct should be carried out with as little formality and as much expedition as a proper consideration of the matter allows. A formal hearing is not required. The process must occur in a manner consistent with the principles of procedural fairness.

Information to be given to an employee before a determination is made

Prior to a determination as to whether an employee has breached the Code of Conduct is made, reasonable steps must be taken to inform the employee in writing of:

- the name of the breach decision maker and, where applicable, the investigator;
- the details of the suspected breach of the Code of Conduct;

- the range of sanctions that may be imposed if the employee is found to have breached the Code of Conduct under subsection 15(1) of the Act;
- the option the employee has to have a support person present to assist the employee in any meetings or interviews relating to the Code of Conduct investigation; and
- details of the agency's Employee Assistance Program.

Opportunity to respond

Reasonable steps must be taken to give the employee a reasonable opportunity (usually 7 calendar days) to make a statement in writing, or provide evidence, in relation to the suspected breach. The employee may also be given a reasonable opportunity to make an oral statement in relation to the suspected breach.

An employee who does not make a statement in relation to a suspected breach of the Code of Conduct is not, for that reason alone, to be taken to have admitted to committing a breach of the Code of Conduct.

Variation in investigation

If, during the course of an investigation, it becomes evident that there is a material variation in the nature or extent of the suspected breach of the Code of Conduct (as notified to the employee), the employee must be notified in writing of the variation of the suspected breach. The employee must be provided with a reasonable opportunity (usually 7 calendar days) to make a further written statement or provide further evidence before a determination is made.

Determination of breach

The breach decision maker will determine whether, on balance of probabilities, the employee has breached the Code of Conduct. The breach decision maker will advise the employee in writing of the determination.

Where it is necessary as a matter of procedural fairness, the breach decision maker will provide the employee with a draft decision in relation to the determination of a breach of the Code of Conduct together with the evidence on which that draft decision is based. The breach decision maker will give the employee a reasonable opportunity to comment on that material before making a final decision on the breach.

3. Procedures for determining sanction

Part 3 of these procedures detail the process for determining the sanction or sanctions (if any) to be imposed on a current employee who is found to have breached the Code of Conduct. Part 3 of these procedures is established in accordance with subsection 15(3)(b) of the Act.

Selection and role of sanction decision maker

The CEO may appoint a sanction decision maker. The sanction decision maker must hold a delegation of the power under subsection 15(1) of the Act to impose a sanction. The CEO will take reasonable steps to ensure that the sanction delegate is, and appears to be, independent and unbiased.

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

If it is determined that an employee has breached the Code of Conduct, the sanction decision maker may decide to impose a sanction or sanctions under subsection 15(1) of the Act. The sanction decision maker cannot impose a sanction on a former employee.

Determination of sanction

The process for deciding whether to apply a particular sanction must be consistent with the principles of procedural fairness.

Subsection 15(1) of the Act prescribes the range of sanctions which may be imposed. The sanction decision maker may decide that the employee will be counselled, either instead of or in addition to imposing a sanction or sanctions.

The sanction decision maker may take into account the following factors when considering a possible sanction or sanctions:

- the nature and seriousness of the breach of the Code of Conduct;
- the degree of relevance to the employee's duties and the reputation of the agency or the APS
- whether the breach was uncharacteristic of the employee;
- the employee's response to the investigation and the likelihood of reoccurrence;
- the expected effect of the proposed sanction on the employee; and
- the presence of any mitigating factors.

Prior to making a decision to impose a sanction or sanctions, reasonable steps must be taken to inform the employee of the sanction or sanctions that may be imposed under subsection 15(1) of the Act, as well as the sanction or sanctions which are proposed to be imposed, and the factors that are under consideration in determining any sanction to be imposed.

Reasonable steps must be taken to give the employee a reasonable opportunity (usually 7 calendar days) to make a statement in writing in relation to the proposed sanction or sanctions under consideration. The employee may also be given a reasonable opportunity to make an oral statement in relation to the proposed sanction or sanctions under consideration.

4. Other matters

Record of determination

There must be a written record of:

- any determination that has been made by the breach decision maker that the employee has breached the Code of Conduct;
- details of the sanction or sanctions (if any) imposed and the reasons for that sanction or sanctions; and
- if a statement of reasons was given to the employee – the statement of reasons.

A record of determination made in relation to an employee's breach or non-breach of the Code of Conduct must be provided to the employee who was the subject of the investigation. A record of the determination made in relation to the imposition of a sanction must be provided to an employee who has been determined to have breached the Code of Conduct.

If a determination is made in relation to an employee's breach or non-breach of the Code of Conduct, the CEO must be provided with information regarding the determination and resulting action including any sanction imposed.

Review of determination or imposition of sanction

Section 33 of the Act makes provision for a non-senior executive service employee to apply for a review of an employment-related action, including a determination that the Code of Conduct has been breached and the imposition of a sanction or sanctions (other than termination of employment). The application must be made to the [Merit Protection Commissioner](#) in accordance with subsection 38(2) of the [Public Service Regulations 2023](#) (the PS Regulations).

The [Fair Work Act 2009](#) provides a review process for termination of employment.

Effect on movements or promotion to and from other APS agencies

Sections 42A and 46 of the Directions place limitations on the movement (including on promotion) of employees who are being investigated for suspected breaches of the Code of Conduct. These limitations apply unless it is agreed otherwise by the CEO and new agency head or until:

- a determination is made in relation to whether or not the employee has breached the Code of Conduct; or
- it is decided that such a determination is not necessary.

Use and disclosure of information obtained in accordance with these procedures

The agency may use and disclose personal information obtained in connection with a matter covered by these procedures in accordance with the section 72E of the Act and section 103 of the PS Regulations.

Suspension or temporary assignment of duties

In accordance with section 28 of the Act and section 14 of the PS Regulations, the CEO may, by notice in writing, suspend an employee from duties if they believe on reasonable grounds that the:

- employee has, or may have, breached the Code of Conduct; and
- employee's suspension is in the public or the Agency's (as defined in the Act) interest.

Suspension may be with or without remuneration.

If the suspension is to be without remuneration, the period without remuneration is as determined by the CEO, to be:

- not more than 30 days; or
- if exceptional circumstances apply – a longer period.

The CEO must review the suspension at reasonable intervals.

The CEO must immediately end the suspension if they no longer believe on reasonable grounds that:

- an employee has, or may have, breached the Code of Conduct; or
- the employee's suspension is in the public interest or the Agency's (as defined in the Act) interest.

The CEO must immediately end the suspension and notify the employee in writing if a sanction has been imposed on the employee for the relevant breach of the Code of Conduct.

In exercising suspension powers, the CEO must have due regard to procedural fairness unless they are satisfied on reasonable grounds that, in the particular circumstances, it would not be appropriate.

The CEO should provide the employee with a written notice of the decision to suspend as soon as practicable after the decision has been made. The notice should include:

- the reason for the decision;
- the date of effect;
- the intervals at which the suspension will be reviewed;
- the specific fortnightly monies to be paid (if varied from regular remuneration); and
- the employee's right of review.

Where an employee who has been suspended from duty is subsequently found not to have breached the Code of Conduct, consideration should be given to whether any salary forgone during the period of suspension is to be reinstated.

The CEO may decide that it is appropriate to temporarily assign the employee different duties. Such an assignment of duties will be undertaken in accordance with section 25 of the Act.

Action to suspend or temporarily assign different duties may be taken at any time prior to, or during, the alleged misconduct investigation process. Suspension or temporary re-assignment of duties while an investigation is proceeding, are administrative actions and not sanctions.

Controlled content information	
Controlled by	Human Resources Branch
Date of effect	1 December 2023
Approved by	Chief Executive Officer
Document no.	D23/53409
CM container	22/582
Contact	Director, Human Resources