



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

I, Tim Simpson, Chief People Officer of the Department of Agriculture, Fisheries and Forestry (**the department**), have established these procedures in accordance with subsection 15(3) of the *Public Service Act 1999* (Cth) (**PS Act**).

These procedures commence the date they are signed. They supersede all previous procedures related to determining breaches of the APS Code of Conduct and the imposition of sanctions made under subsection 15(3) of the PS Act at the Department of Agriculture, Fisheries and Forestry.

### 1 Application

- 1.1 These procedures must be complied with when determining:
  - a) Whether an employee of the department, or former employee of the department has breached the APS Code of Conduct (the Code) in section 13 of the PS Act.
  - b) The sanction/s, if any, that should be imposed on an APS employee in accordance with subsection 15(1), where a breach of the Code has been determined.
- 1.2 These procedures apply in relation to a suspected breach of the Code by an APS employee, a former APS employee or the actions of an employee prior to commencing with the department, in respect of which a determination is to be made.
- 1.3 Not all suspected breaches of the Code may need to be dealt with by way of a determination. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate.

### 2 Availability of Procedures

- 2.1 These procedures are made publicly available on the department's website in accordance with subsection 15(7) of the PS Act.

### 3 Breach decision maker and sanction delegate

- 3.1 The department will take reasonable steps to ensure that:
  - a) the person who determines whether an APS employee, or former APS employee, has breached the Code is, and appears to be, independent and unbiased, and
  - b) the person who determines any sanction to be imposed is, and appears to be, independent and unbiased.
- 3.2 The breach decision maker and sanction delegate must advise the Assistant Secretary Integrity, Chief People Officer, Chief Operating Officer, or the Secretary in writing if they consider that they may not be independent or unbiased, or if they consider that they may reasonably be perceived not to be independent or unbiased.
- 3.3 These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.

#### 4 Decision to commence an investigation

- 4.1 As soon as practicable after a suspected breach of the Code has been identified, the Secretary, or one of the following department employees will consider whether the suspected breach of the Code should be formally investigated under these procedures:
- a) Chief Operating Officer
  - b) Chief People Officer
  - c) Assistant Secretary Integrity
- 4.2 Once a decision is made to investigate a suspected breach under these procedures, the Secretary, or one of the employees taking action under subclause 4.1 will appoint a breach decision maker to make a determination under these procedures.
- 4.3 These procedures do not prevent the Secretary or one of the persons listed at subclause 4.1 from appointing themselves as the breach decision maker.

#### 5 Suspension delegate

- 5.1 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 PS Act and section 14 of the [Public Service Regulations 2023](#) (Cth) (**PS Regulations**).
- 5.2 Where suspension from duties is being considered, a separate delegate from the breach decision-maker is preferable.
- 5.3 In exercising powers under section 28 of the PS Act and section 14 of the PS Regulations, the suspension delegate must have due regard to procedural fairness unless the suspension delegate is satisfied, on reasonable grounds, that this would not be appropriate in the particular circumstances.
- 5.4 In suspending an APS employee who is under investigation, the suspension delegate will:
- a) notify the APS employee, in writing, of the department's preliminary intention to suspend them, and the reasons for this proposal, and
  - b) give the person reasonable opportunity to respond (usually 7 calendar days) before any decision to suspend is taken.
- 5.5 In circumstances that will not allow for notification and a response outlined at subclause 5.4, the suspension delegate may invite the employee who is under investigation to comment after the decision has been made.

#### 6 Determination Process

- 6.1 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.
- 6.2 The process must be consistent with the principles of procedural fairness.
- 6.3 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:
- a) Inform the person of:
    - i. the details of the suspected breach (including any subsequent variation of those details), and

- ii. the sanctions that may be imposed on the APS employee under subsection 15(1) of the PS Act.
- b) Give the person a reasonable opportunity to make a statement in relation to the suspected breach (usually 7 calendar days).

## **7 Sanctions**

- 7.1 The Secretary or their delegate has the power to impose a sanction in relation to a breach of the Code.
- 7.2 The process for imposing a sanction must be consistent with the principles of procedural fairness.
- 7.3 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:
  - a) Inform the APS employee of:
    - i. the determination of a breach of the Code, and
    - ii. the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the PS Act, and
    - iii. the factors that are under consideration in determining any sanction to be imposed.
  - b) Give the APS employee reasonable opportunity to make a statement in relation to the sanction/s under consideration (usually 7 calendar days).

## **8 Record of determination and sanction**

- 8.1 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:
  - a) the suspected breach, and
  - b) the determination, and
  - c) any sanctions imposed as a result of the determination that the employee breached the Code, and
  - d) any statement of reasons provided to the employee.

## **9 Additional procedural requirement for Senior Executive Service employees**

- 9.1 If a Senior Executive Service employee in the department is suspected of breaching the Code, the Secretary, or a person authorised by the Secretary, must:
  - a) consult with the APS Commissioner, or a person authorised by the APS Commissioner, on the process for determining whether the employee has breached the Code, and
  - b) if considering imposing a sanction – consult with the APS Commissioner, or a person authorised by the APS Commissioner, before imposing the sanction.

## **10 Procedure when an employee seeks to move to another Agency during investigation**

- 10.1 This clause applies if an 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 on breach or sanction is decided.

- 10.2 In this circumstance, any move between APS agencies will generally be deferred, under sections 42A(1) and 46(5) of the Australian Public Service Commissioner's Directions, until after a decision has been made about whether or not the employee has breached the Code, or it is decided that such a determination is not necessary.
- 10.3 Where an employee moves, with the agreement of both agency heads, the gaining agency may initiate an investigation in accordance with that agency's subsection 15(3) procedures.
- 10.4 Where an employee moves, 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.



**Tim Simpson**

Chief People Officer

People, Property and Security

Delegate of the Secretary of the Department of Agriculture, Fisheries and Forestry

22 July 2024

**Revision History**

Date	Description	Approved
3 November 2011	Final	Dr Paul Grimmes
13 January 2014	Final due to PIC Legislation changes	Malcolm Thompson
4 April 2019	Final – Streamlined version	Giorgina Strangio
11 February 2020	Final – MoG	Neal Mason
29 August 2022	New DAFF Procedures	Jasna Blackwell
22 July 2024	Updated DAFF Procedures	Tim Simpson