



Australian National Audit Office

Procedures for Determining Breaches
of the (APS) Code of Conduct

Document control

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Approved	Ben Sladic, A/g Executive Director, Corporate Management Branch	October 2015
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Procedure

I, **Jacque Walton**, as acting Chief Operating Officer and delegate of the Auditor-General for Australia, establish these procedures for the Australian National Audit Office, under subsection 15(3) of the *Public Service Act 1999*.

These procedures are made publicly available in accordance with subsection 15(7) of the *Public Service Act 1999*.

These procedures commence on 21 June 2024.



Date: 21 June 2024

These procedures supersede the previous procedures made under subsection 15(3) of the *Public Service Act 1999*, but the previous procedures may continue to apply for transitional purposes.

1. Application of procedures and decision to apply procedures

- 1.1 These procedures must be complied with in determining whether an APS employee has breached the Code of Conduct (the Code) set out in section 13 of the *Public Service Act 1999 (PS Act)*, and in determining what, if any, sanction is to be imposed on an APS employee who has breached the Code of Conduct.
- 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 ANAO as set out in subsection 15(2A) of the PS Act, in respect of which a determination is to be made.
- 1.3 The Auditor-General, Deputy Auditor-General or the Chief Operating Officer, can decide whether or not to deal with a suspected breach of the Code of Conduct under these procedures or whether to deal with a suspected breach another way.
- 1.4 Where the conduct of an APS employee raises concerns that relate both to effective performance and to possible breaches of the Code of Conduct, the Auditor-General, Deputy Auditor-General or the Chief Operating Officer must, before making a decision to initiate an inquiry under these procedures, have regard to any relevant standards and guidance issued by the Australian Public Service Commissioner.

2. Availability of procedures

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

3. Selection of decision makers

- 3.1 As soon as practicable after a suspected breach of the Code has been identified and the Auditor-General, or authorised delegate, has decided to deal with the suspected breach under these procedures, the Auditor-General, or authorised delegate, will appoint a decision-maker to make a determination under these procedures.
- 3.2 The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
- 3.3 The breach 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 breach decision-maker.

- 3.4 The delegate determining whether a sanction should be imposed for any breach of the Code is referred to in these procedures as the sanction delegate and will hold a delegation of the power under subsection 15(1) of the PS Act.
- 3.5 These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.
- 3.6 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 14 of the [Public Service Regulations 2023](#).
- 3.7 Where suspension from duties is being considered, appointing a separate delegate from the breach decision-maker is preferable.

4. Additional procedural requirement for current ANAO Senior Executive Service (SES) employees

- 4.1 SES employees have additional obligations under the PS Act to promote APS Values, the APS Employment Principles and compliance with the Code of Conduct by personal example and other appropriate means.
- 4.2 When dealing with a suspected breach of the Code by an SES employee, these additional obligations should be considered as well as the greater impact of the conduct of SES employees on the public confidence of the APS.
- 4.3 In accordance with section 64 of the [Australian Public Service Commissioner's Directions 2022](#), if a current ANAO SES employee is suspected of breaching the Code, the Auditor-General (or delegate) must consult with the APS Commissioner, or a delegate of the APS Commissioner for the purposes of this requirement:
 - 4.3.1 on the process for determining whether the SES employee has breached the Code and;
 - 4.3.2 if considering imposing a sanction, before imposing the sanction.
- 4.4 The APS Commissioner's role is advisory and is not a formal decision-making role.

5. Person or persons making breach determination and imposing any sanction to be independent and unbiased

- 5.1 The breach decision-maker and the sanction delegate must be and must appear to be independent and unbiased.
- 5.2 The breach decision-maker and the sanction delegate must advise the Auditor-General 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.

6. Breach determination process

- 6.1 The process for determining whether a current 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. A formal hearing is not required.

Decision to commence investigation

- 6.2 As soon as practicable after a suspected breach of the Code has been identified, the Auditor-General, or one of the following ANAO employees, will consider if it appropriate for a preliminary assessment to be conducted to assess whether the suspected breach of the Code should be formally investigated under these procedures:
 - 6.2.1 Deputy Auditor-General
 - 6.2.2 Chief Operating Officer
 - 6.2.3 Chief People Officer
- 6.3 Once a decision is made to formally investigate the suspected breach under these procedures, the Auditor-General or authorised delegate will appoint a decision-maker (the 'breach decision-maker') to make a determination under these procedures.

Breach determination process

- 6.4 The process must be consistent with the [principles of procedural fairness](#).
- 6.5 A determination may not be made in relation to a suspected breach of the Code by a current or former ANAO employee unless reasonable steps have been taken to:
 - 6.5.1 inform the employee/former employee of:

- 6.5.1.1 the details of the suspected breach of the Code (including any subsequent variation of those details); and
 - 6.5.1.2 where the person is a current APS employee in the ANAO, the sanctions that may be imposed on them under subsection 15(1) of the Act;
- 6.5.2 give the employee/former employee a reasonable opportunity to make a written or oral statement, or provide further evidence in relation to the suspected breach, within 7 calendar days, or any longer period that is allowed by the breach decision-maker.

Note: *This clause is designed to ensure that by the time the breach decision maker comes to make a determination, reasonable steps have been taken for the person suspected of breach to be informed of the case against them. It will generally also be good practice to give the person notice at an early stage in the process of a summary of the details of the suspected breach that are available at that time and notice of the elements of the Code that are suspected to have been breached.*

- 6.6 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.

Variation in investigation

- 6.7 If during the course of an investigation it becomes evident that there is a material variation in the nature or extent of the alleged breach notified to the employee, the employee must be notified in writing of the variation and any variation in the range of sanctions that may be imposed if the employee is found to have breached the Code.
- 6.8 The employee must be provided with a reasonable opportunity, usually 7 calendar days, to make a further statement or provide further evidence before a determination is made.

7. Reassignment of duties or suspension from duty

- 7.1 A current APS 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 by the suspension delegate under section 28 of the PS Act and section 14 of the PS Regulations.
- 7.2 To remove any doubt, this clause also applies to SES employees.
- 7.3 In reassigning duties of a current APS employee who is under investigation, the suspension delegate will:

- 7.3.1 notify the current APS employee who is under investigation of the proposal; and
 - 7.3.2 give the person reasonable opportunity (usually, 7 calendar days) to respond before any decision to suspend is taken.
- 7.4 Sometimes urgent action may be required that will not allow for notification and response outlined at subclause 7.3. In such cases, the suspension delegate may invite the current APS employee who is under investigation to comment after the decision has been made. Depending on their response, the suspension delegate has the flexibility to consider alternative arrangements, including suspension.
- 7.5 In suspending a current APS employee who is under investigation, the suspension delegate will:
 - 7.5.1 notify the current APS employee, in writing, of the ANAO's preliminary intention to suspend them, and the reasons for this proposal; and
 - 7.5.2 give the person reasonable opportunity to respond (usually, 7 calendar days) before any decision to suspend is taken.
- 7.6 Sometimes urgent action may be required that will not allow for notification and response outlined at subclause 7.5. In such cases, the suspension delegate may invite the current APS employee who is under investigation to comment after the decision has been made.

8. Sanctions

- 8.1 The sanction process must be consistent with the principles of procedural fairness.
- 8.2 If a determination is made that a current APS employee in the ANAO has breached the Code, a sanction may not be imposed on employee in the ANAO unless reasonable steps have been taken to:
 - 8.2.1 inform the employee of:
 - 8.2.1.1 the determination that has been made; and
 - 8.2.1.2 the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the PS Act; and
 - 8.2.1.3 the factors that are under consideration in determining any sanction to be imposed; and
 - 8.2.2 give the employee a reasonable opportunity to make a written or oral statement in relation to the sanction or sanctions under consideration within 7 calendar days, or any longer period as is allowed by the sanction delegate.

9. Record of determination and sanctions

- 9.1 If a determination is made in relation to a suspected breach of the Code by a current or former APS employee in the ANAO, a written record must be made of:
 - 9.1.1 the suspected breach; and
 - 9.1.2 the determination regarding breach; and
 - 9.1.3 in the case of current APS employee in the ANAO, any sanctions imposed as a result of a determination that the employee breached the Code; and
- 9.2 If a statement of reasons was given to the employee or former employee regarding the determination or the sanctions — that statement of reasons.
- 9.3 Records relating to misconduct should not be placed on the employee's personal file but kept of a separate misconduct file.

10. Movement between agencies

- 10.1 If an ongoing employee is suspected of having breached the Code and:
 - 10.1.1 the employee has been informed of the matters mentioned in paragraph 6.5.1; and
 - 10.1.2 the matter has not yet been resolved; and
 - 10.1.3 a decision has been made that, apart from this paragraph, would result in the movement of the employee under section 26 of the PS Act to another Agency (including on promotion).
- 10.2 Unless the Auditor-General and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until a determination is made about whether the employee has breached the Code of Conduct, or it is decided that a determination is not necessary.

11. Advice to complainants

- 11.1 Advice to complainants about the outcomes of investigations into suspected breaches of the Code will be consistent with the requirements of the *Privacy Act 1988* and any applicable guidance from the Australian Public Service Commission.