



Australian Government

Office of the Inspector-General of Aged Care

# Procedures for determining breaches of the APS Code of Conduct and for determining sanctions

Established under subsection 15(3) of the  
*Public Service Act 1999*

October 2023

# Document control

## Contact for enquiries and proposed changes

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## Record of endorsement

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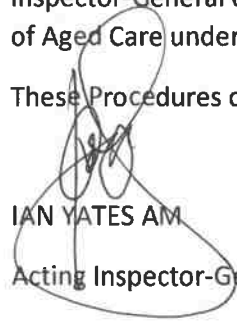
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# Subsection 15(3) Procedures for determining Code of Conduct breaches and sanctions Establishment of these Procedures

I, Ian Yates AM, as Acting Inspector-General of Aged Care and Agency Head of the Office of the Inspector-General of Aged Care, establish these procedures for the Office of the Inspector-General of Aged Care under subsection 15(3) of the *Public Service Act 1999*.

These Procedures commence on 16 October 2023.

A handwritten signature in black ink, appearing to read 'IAN YATES', is written over the printed name and title. The signature is somewhat stylized and overlaps the text below it.

IAN YATES AM

Acting Inspector-General of Aged Care

## Introduction

The APS Code of Conduct (the Code) establishes the standards of conduct required of APS employees, and is set out in section 13 of the *Public Service Act 1999* (the Act).

A breach of the Code constitutes misconduct, and can result in sanctions being imposed.

The determination of whether a breach has occurred, and what (if any) sanction is to be imposed, must be done under written procedures established by the Agency Head under subsection 15(3) of the Act.

The procedures must:

- Comply with the procedural requirements set out in the Australian Public Service Commissioner's (APS Commissioner) Directions 2022.
- Have due regard to procedural fairness.
- Be made publicly available.

To fulfill these requirements, the acting Inspector-General of Aged Care (Inspector-General) has, as the Agency Head, established these procedures under subsection 15(3) of the Act (hereafter, the Procedures).

These Procedures apply to:

- For determining whether the Code was breached – a current or former employee of the Office of the Inspector-General of Aged Care (OIGAC).
- For determining whether to impose a sanction – a current OIGAC employee who has breached the Code.

## 1. Decision to apply the Procedures

The Inspector-General must decide whether to deal with a suspected breach of the Code by initiating an inquiry under these Procedures, or through alternative means (e.g. by counselling or warning the employee).

Where the conduct of an APS employee raises concerns that relate both to suspected breaches of the Code and to effective performance, the Inspector-General must have regard to any relevant standards and guidance issued by the Australian Public Service Commissioner (APS Commissioner) before making a decision to initiate an inquiry under these Procedures.

As at 16 October 2023, relevant standards and guidance issued by the APS Commissioner includes Chapter 4 of the ['Handling Misconduct – A human resource manager's guide'](#).

Where the APS employee suspected of breaching the Code is an SES employee, the Inspector-General must consult the APS Commissioner on whether to deal with the suspected breach under these Procedures, and on any process for doing so.

## 2. General process requirements

The process for determining whether the Code has been breached and the process for determining what (if any) sanction applies to a breach 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.

The person who is suspected of breaching the Code, or against whom sanctions are being considered (hereafter, the affected person), is allowed to have a support person.

The processes must afford procedural fairness to the affected person.

Procedural fairness generally requires that:

- the affected person must be informed of any material before the decision-maker that is:
  - critical of the person or contrary to their interests, and
  - credible, relevant and significant;
- the affected person is provided with a reasonable opportunity to respond and put their case, in accordance with these Procedures, before any decision is made;
- the decision-maker acts without bias or an appearance of bias; and
- there is logically probative evidence (i.e. credible, relevant and significant) to support the making, on the balance of probabilities, of critical findings.

Where the affected person is a non-SES employee, the decision-maker may otherwise conduct the process as they see fit.

Where the affected person is an SES employee, the decision-maker may otherwise conduct the process as they see fit subject to any requirements agreed to by the Inspector-General arising from consultation with the APS Commissioner.

### 3. Selection of breach decision-maker

The Inspector-General must, in writing, select the person who determines whether an APS employee has breached the Code. They will be known as the breach decision-maker.

The Inspector-General must be satisfied that the breach decision-maker is, and appears to be, independent and unbiased.

The Inspector-General may select a non-APS employee as the breach decision maker.

Where the affected person is a SES employee, the Inspector-General must:

- consult the APS Commissioner on the process for determining breach, including the selection of the breach decision-maker; and
- select a breach decision-maker who is not an employee of the OIGAC.

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.

If the breach decision-maker is not the Inspector-General, they must advise the Inspector-General in writing if at any stage in the process 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.

### 4. Determining breach – specific requirements

The breach process must comply with the requirements in ‘2. General process requirements’.

Before the breach decision-maker determines whether a breach has occurred, they must:

- 1) take reasonable steps to inform the affected person of:

- a) the details of the suspected breach of the Code (including any subsequent variation of those details); and
  - b) where the affected person is an APS employee, the sanctions that may be imposed on them under subsection 15(1) of the Act; and
- 2) give the affected person a reasonable opportunity to make a written 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.

An affected person who does not make a statement in relation to the suspected breach is not, only for that reason, to be taken to have admitted committing the suspected breach.

Once the breach decision-maker has determined whether a breach has occurred, they must inform the affected person of the determination in writing. If the breach decision-maker has determined that a breach has occurred, they must also provide a statement of reasons.

## 5. Selection of sanction decision-maker

If the breach decision-maker has determined that a breach has occurred, the Inspector-General must decide whether to personally exercise the power to determine what, if any, sanction to impose. Alternatively, they may delegate to another person the power under subsection 15(1) of the Act to determine what, if any, sanction to impose.

The person who determines what, if any, sanction to impose will be called the sanction decision-maker.

The Inspector-General must be satisfied that the sanction decision-maker is, and appears to be, independent and unbiased.

A non-APS employee may be selected as the sanction decision-maker. However, if the proposed sanction decision-maker is a non-APS employee the Inspector-General must obtain written approval from the APS Commissioner prior to making the delegation.

If the sanction decision-maker is not the Inspector-General, the Inspector-General must delegate to the sanction decision-maker the power under the Act to impose sanctions as well as any related powers, such as the power to terminate employment under section 29 of the Act.

If the sanction decision-maker is not the Inspector-General, the sanction decision-maker must advise the Inspector-General in writing if at any stage in the process 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. Determining sanction – specific requirements

The sanction process must comply with the requirements in '2. General process requirements'.

Before the sanction decision-maker determines what, if any, sanction to impose they must:

- a) inform the employee of:
  - i) the breach determination to which the sanction process relates;
  - ii) the sanction or sanctions that are under consideration; and
  - iii) the factors that are under consideration in determining any sanction to be imposed; and

- b) give the employee a reasonable opportunity to make a 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.

Alternatively, the sanction decision-maker may impose no sanction. They may either decide that no action is required or to select one or more of the following options:

- a) counselling of the employee;
- b) formal direction and warning;
- c) requiring the employee to attend a training program;
- d) critical performance assessment.

Once the sanction decision-maker has determined what, if any, sanction to impose, they must inform the employee of the determination made in writing. If the sanction decision-maker has imposed a sanction, they must also provide a statement of reasons.

## 7. Record of determination and sanctions

If a determination is made in relation to a suspected breach of the Code by a person, a written record must be made of:

- a) the suspected breach; and
- b) the determination regarding breach; and
- c) any sanctions imposed as a result of a determination that the employee breached the Code; and
- d) if a statement of reasons was given to the person—the statement of reasons.

The *Archives Act 1983* and the *Privacy Act 1988* apply to records of determination and sanction.

## 8. Procedure when an employee is to move to another Agency during an investigation

This section applies if:

- a) an ongoing APS employee in an Agency is suspected of having breached the Code; and
- b) the employee has been informed of the details of the suspected breach; and
- c) the matter has not yet been resolved; and
- d) a decision has been made that would result in the movement of the employee under section 26 of the Act to another Agency (including on promotion).

Unless the Inspector-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, or it is decided that a determination is not necessary.