



OFFICIAL

Code of Conduct Procedures

Published: 29 September 2025

Declaration pursuant to s15 of the Public Service Act 1999

I, Penny McKay, Commissioner of the Defence and Veterans' Service Commission and delegate of the Principal Officer of the Defence and Veterans' Service Commission pursuant to s15 of the *Public Service Act 1999* hereby establish these procedures.

These procedures take effect upon execution.

A handwritten signature in blue ink, reading 'Penny McKay'.

Penny McKay

Acting Commissioner Defence and Veterans' Service Commission

29 September 2025

OFFICIAL

Contents

Introduction	3
Application of procedures.....	3
Breach decision-maker	4
Sanction delegate	4
Suspension delegate	4
Decision to investigate	5
Breach determination process.....	5
Support person	6
Right of representation.....	6
Reassignment of duties or suspension from duty	6
Variation in investigation	7
Sanctions	7
Record of determination and sanction.....	8
Additional procedural requirement for current Commission Senior Executive Service employees ...	8
Procedure when an employee seeks to move to another APS agency during investigation	9
Seeking a review of decision.....	9

Introduction

1. The Defence and Veterans' Service Commission (the Commission) is committed to enabling a safe and respectful working environment, characterised by a workforce that upholds the highest standards of ethical and accountable conduct.
2. The APS Code of Conduct (the Code) sets out the behavioural standards expected of APS employees. The Code is set out in section 13 of the Public Service Act 1999 (PS Act). The PS Act requires the head of each agency to:
 - a. establish procedures for determining whether an employee has breached the Code and what sanction, if any, is to be imposed if a breach is found; and
 - b. make the procedures publicly available on the Commission's websites.
3. The Australian Public Service Commissioner's Directives 2022 provides additional instructions for handling suspected breaches of the Code, which are embedded in these procedures.
4. Where allegations of wrongdoing are considered under these *Code of Conduct Procedures* (procedures), the principles of natural justice and procedural fairness are fundamental to the process.

Application of procedures

5. These procedures apply when determining:
 - a. whether a person who is an APS employee in the Commission or who is a former APS employee who was employed in the Commission at the time of the suspected misconduct, has breached the Code, and
 - b. any sanction to be imposed on an employee in the Commission who has been found to have breached the Code.
6. In these procedures, a reference to a breach of the Code includes conduct that occurred before the relevant employee was engaged as an employee that is taken to constitute a breach of the Code pursuant to subsection 15(2A) of the PS Act.
7. Not all suspected breaches of the Code are required to be addressed through these procedures. Depending on the nature of the suspected breach, there may be a range of more appropriate actions, such as:
 - a. matters of suspected corrupt conduct by an employee within the meaning of section 8 of the National Anti-Corruption Commission Act 2022 may be referred to the National Anti-Corruption Commission; and
 - b. matters of suspected serious or complex crime may be referred to the Australian Federal Police.

8. Some of the powers afforded to the Commissioner under legislation (e.g. powers to suspect or reassign duties) referred to in these procedures have been delegated to other employees of the Commission in the Commission's Human Resources Delegation Instrument.

Breach decision-maker

9. The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
10. These procedures do not prevent the Commissioner, or a person listed at paragraph 17 of these procedures, from appointing themselves as the breach decision-maker
11. The breach decision-maker may undertake the investigation, or seek the assistance of an investigator, who may be external to the Commission. The investigator may investigate the alleged breach, gather evidence and make a report of recommended findings to the breach decision-maker.
12. The Breach Decision-Maker:
 - a. must act in accordance with Part 7 of the Directions 'Handling suspected breaches of the Code of Conduct'; and
 - b. must be, and appear to be, independent and unbiased.

Sanction delegate

13. 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. 4.2
14. These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.

Suspension delegate

15. 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).
16. Where suspension from duties is being considered, appointing a separate delegate from the breach decision-maker is preferable.

Decision to investigate

17. As soon as practicable after a suspected breach of the Code has been identified, the Commissioner or one of the following Commission employees will consider if it is appropriate for a preliminary assessment to be conducted to assess whether the suspected breach of the Code should be formally investigated under these procedures:
 - a. the Deputy Commissioner
 - b. the Assistant Commissioner, Oversight and Evaluation
 - c. the Director, People and Culture.
18. To the extent necessary to enable them to make an informed decision about whether the matter should be formally investigated under these procedures, the person responsible for the preliminary assessment may:
 - a. conduct an initial information gathering process to understand the nature of the alleged conduct that gives rise to the suspected breach of the Code
 - b. seek advice from the Australian Public Service Commission, the Director, Legal, or external legal providers.
19. If a decision is made to formally investigate the suspected breach under these procedures, the Commissioner or the employee taking action under paragraph 17 will appoint a decision-maker (the 'breach decision-maker') to make a determination under these procedures.

Breach determination process

20. The process for determining whether a person has breached the Code must be carried out with as little formality, and as much expedition, as a proper consideration of the matter allows.
21. The process must be consistent with the principles of procedural fairness.
22. Before a determination is made in relation to a suspected breach of the Code, the Commission must take reasonable steps to:
 - a. inform the employee of the details of the suspected breach of the Code (including any subsequent variation of those details);
 - b. the sanctions that may be imposed on the employee under subsection 15(1) of the PS Act.
 - c. give the employee a reasonable opportunity to make a statement in relation to the suspected breach.
23. The statement referred to at paragraph 22(d) may be a written or oral statement and must be provided within 7 calendar days or any longer period that is allowed by the breach decision-maker.

Support person

24. An employee who is under investigation for a suspected breach of the Code may bring a support person with them to formal meetings. The support person can support and assist the person under investigation, but is not permitted to advocate or speak on the employee's behalf. The employee under investigation should advise the investigator, or the breach decision maker, who the support person is before the meeting.
25. The support person should not be someone who may also be involved in the investigation, such as a witness. While the investigator should seek to accommodate the availability of the employee's support person, the support person's unavailability will not generally provide a reason to delay the investigation.

Right of representation

26. In matters relating to their employment, and to the operation of the Commission's Determination including in a Code process, employees have the right to be represented by a Department workplace delegate (under section 350A of the *Fair Work Act 2009*), or a legal or union representative. Distinct from a support person, a representative may speak on behalf of the employee(s) they are representing.

Reassignment of duties or suspension from duty

27. A current APS employee who is under investigation for a suspected breach of the Code may be:
 - a. reassigned to alternative duties, either for a temporary period or on an ongoing basis, under section 25 of the PS Act
 - b. suspended from duty by the suspension delegate under section 28 of the PS Act and section 14 of the PS Regulations.
28. To remove any doubt, this clause also applies to SES employees.
29. In reassigning duties of a current APS employee who is under investigation, the suspension delegate will:
 - a. notify the current APS employee who is under investigation of the proposal; and
 - b. give the person reasonable opportunity (usually, 7 calendar days) to respond before any decision to suspend is taken.
30. Sometimes urgent action may be required that will not allow for notification and response outlined at paragraph 29.

31. 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.
32. In suspending a current APS employee who is under investigation, the suspension delegate will:
 - a. notify the current APS employee, in writing, of the Commission'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.
33. Sometimes urgent action may be required that will not allow for notification and response outlined at paragraph 32. In such cases, the suspension delegate may invite the current APS employee who is under investigation to comment after the decision has been made.

Variation in investigation

34. 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 of Conduct.
35. 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.

Sanctions

36. The process for imposing a sanction must be consistent with the principles of procedural fairness.
37. If a determination is made that a current APS employee in the Commission has breached the Code, a sanction may not be imposed on the employee unless reasonable steps have been taken to inform the employee of:
 - a. the determination of a breach of the Code;
 - b. the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the PS Act;
 - c. the factors that are under consideration in determining any sanction to be imposed;
 - d. give the employee a reasonable opportunity to make a statement in relation to each sanction/s under consideration.
38. The statement referred to at paragraph 37(d) may be a written or oral statement and must be provided within 7 calendar days or any longer period that is allowed by the sanction delegate.

39. If a determination is made that a current employee has breached the Code, the following sanctions may be imposed under subsection 15(1) of the PS Act:
- a. a reprimand
 - b. deduction from salary, by way of a fine
 - c. reduction in salary
 - d. re-assignment of duties
 - e. reduction in classification
 - f. termination of employment.

Record of determination and sanction

40. If a determination is made in relation to a suspected breach of the Code by a current or former APS employee in the Commission, a written record must be made of:
- a. the suspected breach;
 - b. the determination;
 - c. in the case of a current APS employee in the Commission, any sanctions imposed as a result of the determination that the employee breached the Code; and
 - d. if a statement of reasons was given to the employee or former employee regarding the determination in relation to a suspected breach of the Code, or, in the case of a current employee, regarding the sanction decision, that statement of reasons or those statements of reasons.

Additional procedural requirement for current Commission Senior Executive Service employees

41. If a current Senior Executive Service (SES) employee in the Commission is suspected of breaching the Code, the Commissioner as the Agency Head of the Commission, or a delegate of the Commissioner as Agency Head, must comply with the requirements at section 64 of the Australian Public Service Commissioner's Directions 2022 (Directions) to consult, with either the Commissioner as the APS Commissioner, or a delegate of the Commissioner for the purposes of this requirement:
- a. on the process for determining whether the employee has breached the Code; and
 - b. if considering imposing a sanction, before imposing the sanction.

Procedure when an employee seeks to move to another APS agency during investigation

42. This clause applies if a current APS employee in the Commission 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.
43. In this circumstance, any move between APS agencies will generally be deferred, under subsections 42A(1) and 46(5) of the 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.

Seeking a review of decision

44. Where a determination has been made that a current or former non-SES employee has breached the Code, the employee may be eligible to seek a review of the action under section 33 of the PS Act. A current employee may also seek a review of decision by the Merit Protection Commissioner (MPC) in respect of a finding that the employee has breached the Code, or a decision to impose a sanction, unless the sanction is termination of employment. The MPC cannot review a decision to terminate an employee's employment. An application for a review of decision should be made to the MPC directly within the statutory timeframe.