Checklist

Suspension

**Initial considerations**

* Have you been delegated the power to suspend the employee consistent with regulation 9.3 of the PS Regulations and agency policies?
	+ If you are not an APS employee, has the delegation been approved by the Commissioner consistent with regulation 9.3(4) of the PS Regulations?
* Have you been involved in any related inquiry under the agency’s s.15(3) procedures?
* Have you declared any potential conflicts of interest?
* Are you personally satisfied that you will be able to bring an independent and unbiased mind to this matter and that a reasonable bystander would agree?
	+ If in doubt, you may wish to discuss with your manager, HR, or the Ethics Advisory Service.

**Deciding whether or not to suspend**

* Has proper consideration been given to changing the employee’s role or duties, or to alternative management action?
	+ Decisions about the role or presence in the workplace of the person under investigation during the misconduct process should have regard to the nature and severity of the specific risks, and should be proportionate to these risks.
* Before making a decision on suspension, have you considered whether options such as the following would properly mitigate the risks:
	+ directing the person under investigation not to contact a specific person or people
	+ directing the person under investigation not to discuss the matter openly, to maintain the confidentiality and integrity of the process
	+ limiting the employee's access to particular data, files, or electronic systems or applications
	+ limiting direct or unsupervised contact with clients or stakeholders
	+ removing supervisory responsibilities
	+ assigning the employee to different duties, including in a different location.
		- In order to ensure that all relevant facts are considered before making a decision to assign different duties, agencies should notify the person under investigation of the proposal and seek their views. If this is not possible, the person should be invited to comment as soon as possible after the decision is made.
* Do you believe on reasonable grounds that the employee may have breached the Code, and that it is in the public interest, or the agency's interest, to remove the employee from the workplace altogether while an investigation is on foot?
	+ Does the alleged conduct pose a risk to, for example:
		- the safety and wellbeing of other employees or members of the public, including agency clients?
		- the integrity of data held by the agency, including data about members of the public?
		- the integrity of Commonwealth resources, including the public revenue-for example, where the allegations relate to fraud or misappropriation?
		- public confidence in the agency or the APS as a whole—including where the allegations may have impaired public confidence in the agency's capacity to perform its functions.
	+ Is there a risk that:
		- an investigation into the alleged misconduct may be compromised by the employee’s presence in the workplace?
		- the evidence in relation to the alleged misconduct will be compromised if the employee remains in the workplace?
		- the alleged misconduct will be repeated?

**When imposing suspension**

* Have you decided if the suspension will be with or without remuneration? Consider:
	+ the seriousness of the alleged misconduct—suspension without remuneration would usually be appropriate in cases where the sanction imposed might be termination of employment if the alleged misconduct is determined to be a breach of the Code
	+ the agency’s obligations under s.15 of the PGPA Act with respect to the proper use and management of public resources. In the circumstances of the case, decision-makers should consider whether it is appropriate for the suspended employee to be remunerated if they are not working
	+ the estimated duration of the misconduct action
	+ the likely financial hardship, if any, for the employee
		- while the onus is on the employee to substantiate this, they should be given reasonable opportunity to provide relevant information.
* Have you provided the employee an opportunity to make a statement before the suspension decision is made?
* If, before the suspension decision is made, you are satisfied on reasonable grounds that, in the particular circumstances, it would not be appropriate to give the employee an opportunity to comment, have you:
	+ recorded, before the suspension decision is made, your reasons for this, and
	+ advised the employee accordingly and given the employee an opportunity to make a submission immediately after the suspension decision was made?
* Have you considered how you will discharge your obligation under regulation 3.10(4) of the PS Regulations to review the suspension at reasonable intervals and advised the employee when you propose to review the suspension?
	+ A review of suspension under regulation 3.10 is not a review of the original suspension decision. It is a fresh decision as to whether the person under investigation should remain suspended, having regard to the risks posed by the person’s presence in the workplace and whether suspension remains the most effective way to mitigate these risks.
	+ A review of the suspension decision may be conducted at the request of the employee if, for example, the employee raises matters relevant to hardship where suspension is without remuneration.
* Has the employee been advised of what has been decided in respect of work-related events during the suspension such as training courses already booked and entitlement to apply for APS vacancies, and other work-related matters such as access to work premises?
* Has the employee been advised of his or her review rights under s.33 of the PS Act and Part 5 of the Regulations?

**Where suspension is without remuneration**

* Has the employee been given reasonable opportunity to comment on any proposal to suspend without pay, including on any issues of hardship, before any decision is made to suspend without pay?
* Has consideration been given to whether it is reasonable in the circumstances for the employee to access leave credits, having regard to the relevant industrial instrument and agency policies?
* Has the employee been advised that they will still need to comply with agency policies on outside employment if they seek other work during their period of suspension?
* If the period of suspension without pay is proposed to be longer than 30 days, are there exceptional circumstances that apply?

**During suspension**

* Are you reviewing the suspension at reasonable intervals?
* Have you invited the employee to make a submission to those reviews?

**Where it is determined that an employee suspended without remuneration has not breached the Code**

* Is salary forgone during suspension to be reinstated?
* Is it appropriate to re-credit any paid annual leave or long service leave taken during suspension?

**Reasons for ending the suspension**

* Has a sanction been imposed on the employee for the relevant breach? See Regulation 3.10(6) of the PS Regulations, or
* Do you no longer believe that the employee has or may have breached the Code? See Regulation 3.10(5)(a) of the PS Regulations, or
* Do you no longer believe that the suspension is in the public interest or in the agency’s interest? See Regulation 3.10(5)(b) of the PS Regulations.

**At the conclusion of the period of suspension**

* Has the appropriate documentation in relation to ceasing suspension been completed and all relevant documents placed on record?