**Australian Public Service Commissioner’s procedures for inquiring into and determining breaches of the Code of Conduct by an APS employee or former APS employee**

1. **Background**
   1. In accordance with subsection 41B(3) of the *Public Service Act 1999* (‘the Act’) the Australian Public Service Commissioner (‘the Commissioner’) has established procedures for determining whether an Australian Public Service (‘APS’) employee, or former APS employee, has breached the Code of Conduct(‘the Code’).
   2. The Commissioner may, for the purposes of paragraph 41(2)(n) of the Act, inquire into and determine whether an APS employee, or a former APS employee, in an agency has breached the Code if:
2. The Agency Head or the Prime Minister requests the Commissioner to do so; and
3. The Commissioner considers it would be appropriate to do so.
   1. These procedures are made publicly available in accordance with subsection 41B(5) of the Act.
   2. The Commissioner must report on the results of an inquiry and determination (including an inquiry that is discontinued) in relation to an APS employee, or a former APS employee, in an Agency to:
4. The Agency Head; or
5. If the Prime Minister requested the inquiry – the Prime Minister.
   1. Under regulations made for the purposes of subsection 41B(10) of the Act, the Commissioner may discontinue an inquiry into an alleged breach of the Code by an APS employee or a former APS employee if the Commissioner reasonably believes that to continue the inquiry would not be appropriate in all the circumstances.
6. **Application of procedures**
   1. These procedures apply for the purposes of paragraph 41(2)(n) of the Act in determining whether a person who is an APS employee, or who is a former APS employee, in an Agency has breached the Code.
   2. These procedures apply to any allegation of a breach of the Code made after 01 July 2013.
   3. In these procedures, a reference to a breach of the Code by a person includes a reference to a person engaging in conduct set out in subsection 15(2A) of the Act in connection with their engagement as an APS employee.
7. **Person making breach determination to be independent and unbiased**
   1. The Commissioner, or any person authorised by the Commissioner to determine whether an APS employee or a former APS employee has breached the Code, must be, and must appear to be, independent and unbiased.
8. **The determination process**
   1. The process for determining whether an APS employee or a former APS employee in an Agency has breached the Code must be carried out as quickly and with as little formality as a proper consideration of the matter allows.
   2. The process must be consistent with the principles of procedural fairness.
   3. The Commissioner must not make a determination in relation to an alleged breach of the Code by an APS employee or a former APS employee unless:
9. Reasonable steps have been taken to tell the person:
10. The details of the suspected breach of the Code (including any subsequent variation of those details); and
11. Where the person is an APS employee, the sanctions that may be imposed on them under subsection 15(1) of the Act; and
12. The person has been given a reasonable opportunity to make a statement, or provide further evidence in relation to the alleged breach, within 7 calendar days or any longer period that is allowed.
    1. 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.
    2. For the purpose of determining whether a person who is, or was, an APS employee in an Agency has breached the Code, a formal hearing is not required.
    3. The Commissioner may agree to a request made by the person who is suspected of breaching the Code to have a support person present in a meeting or interview they conduct.
13. **Record of determination**
    1. A written record must be prepared stating whether it has been determined that the APS employee or the former APS employee has breached the Code.
    2. Where it is found that the APS employee or former APS employee has breached the Code, and the Commissioner is requested to recommend sanctions in respect of breach by the Agency Head, or the Prime Minister, the Commissioner may recommend any of the sanctions referred to in subsection 15(1) of the Act.