



Australian Government

Australian Public Service Commission

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

Procedure

I, Gordon de Brouwer, Australian Public Service Commissioner (**Commissioner**), have established these procedures in accordance with subsection 41B(3) of the *Public Service Act 1999* (**PS Act**) for the purpose of inquiring into and determining, under paragraph 41(2)(n) and section 41B of the PS Act, whether an Australian Public Service (**APS**) employee, or former APS employee, has breached the APS Code of Conduct (**Code**) in section 13 of the PS Act.

1. Application

- (a) These procedures must be complied with when conducting an inquiry into, and determining whether an APS employee or former APS employee has breached the Code.
- (b) These procedures apply to any inquiry conducted for the purposes of paragraph 41(2)(n) whether commenced before or after the date of these procedures.
- (c) 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 PS Act.
- (d) Any reference to the Commissioner in these procedures is also a reference to a delegate of the Commissioner.

Note: Pursuant to subsections 78(5) and (5A) of the PS Act, the Commissioner may in writing, delegate to a senior official or former senior official the functions and powers to inquire into, determine and report on whether an APS employee, or former APS employee has breached the Code.

"Senior official" means: (a) a person who holds any office or appointment under an Act; or (b) an SES employee or acting SES employee. "Former senior official" means: (a) a person who held, but no longer holds, an office or appointment under an Act; or (b) a person who was, but is no longer, an SES employee, and who does not hold an office or appointment under an Act.



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2. Background

- (a) These procedures are made publicly available in accordance with subsection 41B(5) of the PS Act.
- (b) An inquiry under paragraph 41(2)(n) of the PS Act must be conducted in accordance with section 41B of the PS Act.
- (c) Under subsection 41B(1) the Commissioner may, for the purposes of paragraph 41(2)(n), inquire into and determine whether an APS employee or a former APS employee has breached the Code of Conduct.
- (d) During an inquiry conducted pursuant to these procedures, aside from the functions in section 41B of the PS Act, other employment matters relating to the APS employee remain the responsibility of the relevant Agency Head during the inquiry. Further, the Agency Head will remain responsible for:
 - (i) determining whether an APS employee should be suspended from duties pursuant to section 28 of the PS Act and section 14 of the *Public Service Regulations (PS Regulations)*; and
 - (ii) imposing any sanction on an APS employee under subsection 15(1) of the PS Act if a breach of the Code is substantiated.
- (e) Under subsection 41B(10) of the PS Act and in accordance with section 53 of the PS Regulations, 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.
- (f) Information obtained in connection with an inquiry under paragraph 41(2)(n) and section 41B of the PS Act is subject to protections in respect of its use and disclosure. The Commissioner, and any other “entrusted person” (within the meaning of subsection 72A(1) of the PS Act), are required to handle



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“protected information” (within the meaning of subsection 72A(1) of the PS Act) in accordance with section 72A of the PS Act.

- (g) Personal information should be handled consistently with the *Privacy Act 1988* (Cth) and section 103 of the PS Regulations.

3. Person making breach determination to be independent and unbiased

- (a) The Commissioner, or any delegate who inquires into and determines an alleged breach of the Code under subsection 41B(1), must be, and must appear to be, independent and unbiased.¹
- (b) A delegate must advise the Commissioner if they consider that they may not be independent or unbiased, or if they consider that they may reasonably be perceived not to be independent or unbiased.

4. The inquiry process

- (a) The process for inquiring into and determining whether an APS employee or a former APS employee has breached the Code must be carried out as quickly and with as little formality as a proper consideration of the matter allows.²
- (b) The process must be consistent with the principles of procedural fairness.
- (c) In conducting a process for inquiring into and determining whether an APS employee or former APS employee has breached the Code the Commissioner may have the assistance of an investigator, who may be external to the Australian Public Service Commission. An external investigator may inquire into the alleged breach, gather evidence and make a report of recommended findings and perform any other functions required to assist the inquiry, at the direction of the Commissioner.

¹ Required by subsection 52(4) of the PS Regulations.

² Required by subsection 52(3) of the PS Regulations.



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- (d) 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:
 - (i) reasonable steps have been taken by the Commissioner to inform the person:
 - A. of the details of the alleged breach of the Code (including any variation of those details); and
 - B. where the person is an APS employee, any sanctions that may be imposed on them under subsection 15(1) of the PS Act.
 - (ii) the person has been given a reasonable opportunity to make a statement, or provide evidence in relation to the alleged breach.
- (e) A response provided by the person may include a written or oral statement, or both.
- (f) A person who does not make a statement in relation to the alleged breach is not, for that reason alone, to be taken to have admitted to committing the suspected breach.
- (g) For the purpose of inquiring into and determining whether an APS employee or former APS employee has breached the Code, a formal hearing is not required.
- (h) The Commissioner will agree to any reasonable request made by the person who is alleged to have breached the Code to have a support person present in a meeting or interview they conduct.



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5. Report on results of inquiry

- (a) A written record must be prepared setting out the determination whether or not the APS employee or the former APS employee has breached the Code.³
- (b) 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 to:⁴
 - (i) the Agency Head; and
 - (ii) if the Prime Minister requested the inquiry – the Prime Minister.
- (c) Where it is found that the APS employee has breached the Code, and the Commissioner is requested by the Agency Head, or the Prime Minister, to recommend sanctions in respect of breach, the Commissioner may recommend any of the sanctions referred to in subsection 15(1) of the PS Act.⁵
- (d) Once an inquiry has concluded and a determination has been made, the current or former APS employee will be notified of the determination and any recommendation(s) of the inquiry, if the Commissioner considers notification appropriate.
- (e) During the course of an inquiry or where it is found that a former APS employee has breached the Code, the Commissioner may refer relevant conduct appropriate authorities as they see fit.

Version	Approved by	Commencement Date	Next Review
2.0	Dr Gordon de Brouwer, Commissioner	29 November 2024	

³ Required by subsection 52(5) of the PS Regulations.

⁴ Required by subsection 41B(8) of the PS Act.

⁵ Required by subsection 41B(9) of the PS Act.