



Australian Government
Australian Public Service Commission

Suspected breaches of the Code of Conduct by Senior Executive Service employees

Guidance for agencies

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Introduction

This guidance provides advice to agencies engaging with the Australian Public Service Commissioner or Parliamentary Service Commissioner (Commissioner) on suspected Code of Conduct (Code) breaches by Senior Executive Service (SES) employees.

Section 64 of the *Australian Public Service Commissioner's Directions 2022* ([Commissioner's Directions](#)) and section 12 of the *Parliamentary Service Commissioner's Directions 2025* ([Parliamentary Service Commissioner's Directions](#)) requires Agency Heads and Secretaries to engage with the Commissioner on suspected Code breaches by SES employees.

Agency Heads and Secretaries are required to engage with the Commissioner at different stages of a Code process, including:

- on the process for determining whether a SES employee has breached the Code; and
- before imposing a sanction on a SES employee.

This guidance refers to sections in the Commissioner's Directions and the *Public Service Act 1999* (the Act). In most cases, there are equivalent sections in the *Parliamentary Service Commissioner's Directions 2025*, *Parliamentary Service Determination 2024* and the *Parliamentary Service Act 1999*.

Importance of engagement with the Commission

Engagement with the Commissioner on suspected breaches of the Code provides the Commission with timely information on individual SES Code matters and in turn, increased visibility of the adequacy of systems and procedures in agencies for ensuring compliance with the Code.

The information gathered through this process supports the Commissioner's functions under the Act to uphold high standards of integrity and conduct in the APS, ensures greater consistency in decision making across agencies and between classifications, and strengthens institutional integrity across the public service.

The approach to addressing suspected breaches of the Code by SES employees or to sanctions imposed on SES employees, across agencies, or compared with other Australian Public Service or Parliamentary Service employees, should be consistent. An inconsistent approach has the potential to damage trust in senior management and undermine the role of SES employees as integrity stewards, as noted in the [Report into consultations regarding APS approaches to ensure institutional integrity](#).

Role of the Commissioner

The Commissioner does not have a formal decision-making role in respect of each Code matter, but provides agencies and decision makers with guidance and support in an independent advisory capacity.

A Commissioner's certificate is required before an SES employee's employment can be terminated (see section 38 of the Act and section 38 of the *Parliamentary Service Act 1999*). Where an SES employee is found to have breached the Code of Conduct and the decision maker is considering termination of employment as a potential sanction, it will be important that there is early engagement with the APSC. Please contact integrityinvestigations&conduct@apsc.gov.au for guidance on this process.

Preliminary considerations

Agency Heads and Secretaries should have regard to guidance issued by the Commission when considering whether to conduct an investigation into a suspected breach of the Code by an SES employee. The Commission's [Handling Misconduct: a human resource manager's guide](#) (Handling Misconduct guide) has best practice guidance on addressing behaviour that does not meet expectations.

In accordance with the Commission's Handling Misconduct guide, agencies should undertake a preliminary assessment of the alleged conduct and context before proceeding to a formal Code process in accordance with their section 15(3) Code procedures. In this regard, it is appropriate that agencies consider whether alternative action, such as remedial or management action, is a more suitable and proportionate response than Code action in the circumstances. This requires agencies to consider the following factors:

- modifying behaviour to be consistent with the obligation for public servants to exhibit high standards of behaviour and performance; and
- restoration – restoring productive and harmonious working environments, or restoring the public service or agency's reputation.

Agencies also need to consider the seniority of SES employees, and the additional broader duties they have as role models and advocates of public service integrity: see section 35(3)(c) of the Act.

When and how to engage with the Commission

As set out in **Table 1**, levels of engagement with the Commission vary as a Code matter progresses. Levels of engagement are reflected by the different agency actions of:

- consultation – consultation is to be undertaken before key decisions in a Code process are made. This provides the Commissioner with an opportunity to provide support and guidance from a service perspective, and
- notification – regular notification assists the Commission to follow the Code process and ensure efficient and timely consultation.

Agencies should engage with the Commission via IntegrityInvestigations&Conduct@apsc.gov.au. The subject of the request should be marked 'Confidential and sensitive: consultation under s64 / s12 of the Commissioner's Directions'. The Commission will review the information provided and if required, will seek more information from the agency before formally confirming that consultation requirements have been met.

Consultation is required for Code processes concerning substantive and acting SES employees.

Table 1 outlines the type of engagement and information required by the Commission at various points in the Code process.

Table 1: Engagement with the Commission

Engagement	When to engage with the Commission	Information required by the Commission
Consultation	Before commencing a process for investigating a suspected breach of the Code	- Name of SES employee - SES Band Level (the substantive and, if relevant, the acting classification at the relevant time) and role of employee - Brief description of conduct or copy of the allegations - Date employee advised of the allegations (e.g. Notice of Suspected Breach) - Elements of the Code suspected to have been breached - Name, classification and position of the Breach Decision Maker - Whether suspension is being considered and, if so: - whether with or without pay, and - name, classification and position of the Suspension Decision Maker. - Proposed process for determining breach (link to the agency's 15(3) procedures, and whether the investigation will be undertaken externally or in-house) - Agency contact
Notification	When the outcome of the investigation into a suspected breach of the Code is determined	- The outcome of the investigation (breach or no breach) and date of decision - Sections of the Code found to be breached (if relevant) - Whether a Sanction Decision Maker has been appointed and if so, their name, classification and position
Consultation	Where a breach has been found AND prior to the preliminary view on sanction(s) being communicated to the employee	- The preliminary view on sanction(s) - Name, classification and position of the Sanction Decision Maker - Sanctions the agency has previously imposed for similar conduct (SES and non-SES employees) 1. Note: If the agency is considering termination, the Commissioner must issue a certificate under s 38 of the Act before employment can be terminated. The Commission will provide wording to include in the preliminary view on sanction, giving the employee an opportunity to respond to the public interest criteria.
Consultation	If, after receiving a response to the preliminary view on sanction(s), the sanction Decision Maker proposes to impose a different sanction	- Summary or copy of the response received from the SES employee (as relevant to the proposed sanction) - What different sanction(s) are being proposed - Reasons for the change in the view on sanction(s)
Notification	Once a sanction is imposed	The sanction(s) imposed (or if no sanction is imposed)

Engagement	When to engage with the Commission	Information required by the Commission
		Date of sanction decision
Notification	If the SES employee resigns or proposes to transfer to another agency	- Date of resignation or transfer - If transfer, to which agency. 1. Note: unless both Agency Heads agree, an employee's transfer to another agency does not take effect until the Code matter is resolved (s 46 Commissioner's Directions).

Information management

Subsection 103(3) of the [Public Service Regulations 2023](#) permits an Agency Head or delegate to disclose an employee's personal information where the disclosure is necessary for, or relevant to, the:

- exercise of the Agency Head's employer powers; and
- power or performance of a function of the Commissioner.

An employee's personal information is sought during the consultation process so that the Commissioner can more effectively perform their functions under section 41 of the Act.

Agency Heads may like to consider seeking legal advice to ensure there are appropriate measures in place including appropriate delegations, when providing the Commission with an employee's personal information as part of the consultation.

More information

Please contact IntegrityInvestigations&Conduct@apsc.gov.au if you have any questions about this guidance.