

# **Procedures for managing suspected breaches of the APS Code of Conduct**

April 2026



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# About this procedure

## Purpose

Under Section 15(3) of the Public Service Act 1999 (PS Act), an Agency Head must establish procedures for determining:

1. whether an APS employee, or a former APS employee in the agency, has breached the Code of Conduct; and
2. the sanction (if any) that should be imposed on an APS employee who is found to have breached the Code of Conduct.

I, Ruth Owen CBE, Inspector-General of Taxation and Taxation Ombudsman, revoke all previous procedures made under that subsection and establish these procedures on the date signed.

Dated this 18 May 2026

A handwritten signature in black ink, appearing to read 'Ruth Owen', is written over a horizontal line.

Ruth Owen CBE  
Inspector-General of Taxation and Taxation Ombudsman

## Application of procedures

These procedures apply when determining whether a person who is an APS employee in the agency of the Taxation Ombudsman, or who is a former APS employee who was employed with the Taxation Ombudsman at the time of the suspected misconduct, has breached the Code of Conduct.

These procedures also apply when determining any sanction to be imposed on an employee of the Taxation Ombudsman who has been found to have breached the Code of Conduct.

For the purposes of these procedures, a reference to an employee means an APS employee and, unless a contrary intention appears, also means staff as reflected in Section 36 of *the Inspector-General of Taxation Act 2003*.

In these procedures, a reference to a breach of the Code of Conduct includes conduct that occurred before the relevant employee was engaged as an employee that is taken to constitute a breach of the Code of Conduct pursuant to subsection 15(2A) of the PS Act.

The requirements set out in these procedures apply only to suspected breaches of the Code of Conduct by an employee in respect of which a determination may be made. Not all suspected breaches of the Code of Conduct need to be dealt with by way of a determination. In particular circumstances, another way of dealing with a suspected breach of the Code of Conduct may be more appropriate, including performance management.

As provided for in subsection 15(7) of the PS Act, these procedures are publicly available on the Taxation Ombudsman's website.

**References:** [Public Service Act 1999](#)  
[Public Service Regulations 2023](#)  
[Australian Public Service Commissioner's Directions 2022](#)  
[APS Values and Code of Conduct in practice](#)  
[Handling Misconduct - A human resource manager's guide](#)  
[Review of workplace decisions | Merit Protection Commissioner](#)

Owner	Chief Operating Officer
Last updated	May 2026
Next review	April 2029

# Determining whether to initiate these procedures

A suspected breach may come to the Tax Ombudsman's attention through a complaint, a report, an integrity process, or other information indicating a potential Code of Conduct issue.

Where a concern is raised, we consider:

- what conduct is alleged,
- whether the APS Code of Conduct may apply, and
- what process is most appropriate to address the matter (formal determination or another pathway)

## Selecting the initial decision-maker

As soon as practical after a suspected breach of the Code of Conduct is identified, the matter should be brought to the attention of the Inspector-General of Taxation and Taxation Ombudsman or a person occupying one of the following roles:

- a. Deputy Tax Ombudsman – Complaints
- b. Deputy Tax Ombudsman - Reviews

who will act as the **Initial Decision-Maker** to determine whether a suspected breach of the Code should be formally dealt with under these procedures or if another approach is appropriate.

The Initial Decision-Maker may need to undertake an initial information gathering process to understand the nature of the alleged conduct that gives rise to the suspected breach of the Code of Conduct.

In order to determine a suitable and proportionate response to the suspected breach, the Initial Decision-Maker should consider the nature and seriousness of the concerns raised. Not all suspected breaches of the code need to be dealt with under these procedures, however, the more serious the alleged behaviour or the greater its potential impact on the public confidence in the APS, the more likely it is that the suspected breach should be dealt with under these procedures.

If the Initial Decision-Maker determines to deal with a suspected breach of the Code other than under these procedures, the Initial Decision-Maker will determine what approach should be taken. Potential approaches include, for example, an investigation, counselling, mediation between employees, or the provision of further training.

In performing their role, the Initial Decision-Maker should have regard to any relevant standards and guidance issued by the Australian Public Service Commissioner, including the [Handling misconduct: a human resource manager's guide- external](#)

[site](#) published by the Australian Public Service Commissioner (APSC). The Initial Decision-Maker should consider Chapter 4. *When behaviour doesn't meet expectations: preliminary decisions* in the guide when dealing with conduct that may relate to both a suspected breach of the Code and a circumstance where the employee may not be demonstrating effective performance.

## Breach decision-maker

Where the Initial Decision-Maker decides to initiate an inquiry under these procedures, they will select an independent person to determine in writing whether a breach of the Code has occurred (the **Breach Decision-Maker**).

The role of the Breach Decision-Maker is to determine in writing whether a breach of the Code has occurred.

The Breach Decision-Maker may undertake an investigation themselves or seek the assistance of an investigator. The investigator may be another employee of the Taxation Ombudsman or an external investigator. The investigator may investigate the alleged breach, gather evidence and make a report of recommended factual findings to the Breach Decision-Maker and provide any other assistance requested by the Breach Decision-Maker.

## Sanction delegate

The person who is to decide what, if any, sanction is to be imposed on an APS employee who is found to have breached the Code must be the Inspector-General of Taxation and Taxation Ombudsman or hold a delegation of the powers to impose sanctions under section 15 of the PS Act (the **Sanction Delegate**).

The Sanction Delegate's role will commence after a determination is made that an APS employee has breached the Code. The role of the Sanction Delegate is to determine in writing what, if any, sanction or sanctions should be imposed on an APS employee for a breach of the Code.

The process for imposing a sanction must be consistent with the principles of procedural fairness.

The Sanction Delegate may agree to a request made by the person determined to have breached the Code to have a support person when making an oral statement. The Sanction Delegate should make clear that the support person cannot act as a representative.

After any statement is provided by the employee in relation to the proposed sanction or sanctions, the Sanction Delegate will decide whether to proceed with imposing the proposed sanction or sanctions.

The Sanction Delegate may also decide to impose no sanction.

Sanctions may not be imposed on former employees.

## Independence of breach decision-maker and sanction delegate

The Breach Decision-Maker and the Sanction Delegate must be, and must appear to a reasonable person to be, independent and unbiased.

The Breach Decision-Maker and the Sanction Delegate must advise the Initial Decision-Maker in writing if they consider that they may not be independent and unbiased, or if they consider that they may reasonably be perceived not to be independent and unbiased (for example, if they are a witness in the matter).

## Determination procedure

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. The process must be consistent with the principles of procedural fairness. A formal hearing is not required.

A determination may not be made in relation to a suspected breach of the Code by a person unless reasonable steps have been taken to:

- a. inform the person, in writing, of:
  - i. the details of the suspected breach of the Code (including any subsequent variation of those details); and
  - ii. the sanctions that may be imposed on them under section 15 of the PS Act; and
- b. give the person reasonable opportunity to make a statement in relation to the suspected breach or provide further evidence in relation to the suspected breach, within seven (7) calendar days or any longer period that is allowed.

## Record of determination and sanction

If a determination in relation to a suspected breach of the Code is made, a written record must be made of:

- a. the suspected breach;
- b. the determination;
- c. any sanction or sanctions imposed as a result of a determination that the employee has breached the Code; and

- d. if a statement of reasons was given to the employee in relation to the determination and/or the sanction decision — that statement of reasons.

The *Archives Act 1983* and the *Privacy Act 1988* apply to the Taxation Ombudsman's records.

## Sanctions that may be imposed

The sanction delegate may impose the following sanctions to an employee who is found to have breached the Code of Conduct:

- termination of employment
- reduction in classification
- re-assignment of duties
- reduction in salary
- deductions in salary (by way of fine)
- a reprimand.

Sanctions may not be imposed on former APS employees.

## Suspension and temporary reassignment of duties

A decision to temporarily re-assign duties or to suspend an employee suspected of breaching the Code may be made at any time by the **Suspension Delegate** prior to or during the process of determining whether a breach has occurred and what (if any) sanction(s) may be imposed.

Decisions regarding suspension and temporary re-assignment of duties must be made by the Inspector-General of Taxation and Taxation Ombudsman or their delegate in accordance with section 28 of the PS Act.

An employee may be suspended, with or without remuneration, where the Suspension Delegate has formed a view on reasonable grounds that:

- a. the employee may have breached the Code; and
- b. the suspension is in the public interest or the interests of the Taxation Ombudsman.

An employee will not be suspended without remuneration for more than 30 days unless exceptional circumstances apply.

The suspension of an employee will be reviewed by the Suspension Delegate at reasonable intervals.

# Dealing with suspected breaches by SES employees

SES employees have additional obligations under the PS Act to promote the APS Values, the APS Employment Principles and compliance with the Code by personal example and other appropriate means.

When dealing with a suspected breach of the Code by an SES employee, these additional obligations should be considered as well as the greater impact of the conduct of SES employees on the public confidence in the APS.

If an SES employee is found to have breached the Code and a sanction is being considered, the Inspector General of Taxation and Taxation Ombudsman (or their delegate) must consult with the APS Commissioner regarding the determination and proposed sanction before it is imposed.

## Advice to complainants

Advice to complainants about the outcomes of investigations into suspected breaches of the Code will be consistent with the requirements of the *Privacy Act 1988* and any applicable guidance from the APSC.

## Moving to a different agency or resignation

This section applies if:

- a. an ongoing APS employee in the Taxation Ombudsman is suspected of having breached the Code;
- b. the employee has been informed of the details of the suspected breach;
- c. the matter to which the suspected breach relates has not yet been resolved; and
- d. a decision has been made that, apart from this clause, would result in the employee moving to another Agency (including on promotion) under section 26 of the PS Act.

Movement between agencies (including on promotion) for employees suspected of a breach of the Code will not take effect until the matter is resolved, unless agreed by the respective Agency Heads.

Resolution is by:

- a. a determination being made as to whether or not the APS employee has breached the Code; or
- b. a decision that a determination is not necessary.

Should the Agency Heads agree to a move prior to the resolution of a suspected breach of the Code, the receiving agency may continue an investigation, determine whether or not the APS employee has breached the Code and/or impose a sanction based on the former agency's investigation.

Where an employee resigns during the course of an investigation, the Inspector-General of Taxation and Taxation Ombudsman (or their delegate) may choose, depending on the circumstances, to discontinue or continue the process to determine whether or not the APS employee has breached the Code.

## Review rights

Non-SES employees who have been found to have breached the Code and who wish to challenge either the determination that a breach has occurred or the sanction imposed (except in the case of termination) may lodge an application for review. Making an application for review does not stay the action.

An application for review of a determination that an employee has breached the Code or a sanction imposed as a result of the breach must be made to the [Merit Protection Commissioner](#). The application must be made within 60 days of the determination that the employee has breached the Code or a sanction is imposed.

An employee who has been dismissed may have remedies under the *Fair Work Act 2009* or other Commonwealth laws.

## Criminal matters

Where an employee has been charged with a criminal offence (including in relation to activity occurring in a person's private life), the Initial Decision-Maker may decide that it is appropriate to investigate the matter as a possible breach of the Code.

## Contact and support

For further assistance, contact: [enquiries@taxombudsman.gov.au](mailto:enquiries@taxombudsman.gov.au)

## Version control

Date	Version	Summary of changes
18/5/2026	V1 2026-2027	Expectations re procedural fairness and transparency; clear role separation; updated agency stationery/colours
1/11/2021	V1 2021-22	