



Australian Government  

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Inspector-General of Taxation  

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Taxation Ombudsman

# **Commonwealth of Australia Public Service Act 1999 - Section 15(3) Procedures for Determining Suspected Breaches of the Code of Conduct**

November 2021

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Where to find the IGTO section 15(3) procedures

# Where to find the IGTO section 15(3) procedures

All Policies, Plans and Procedures and Related Registers can be located:

**Hard Copy:** in the office of the Inspector General of Taxation and Taxation Ombudsman; with the Executive Assistant to the Inspector General of Taxation and Taxation Ombudsman, in the office of the Deputy Inspector General of Taxation and Taxation Ombudsman, with the Risk Manager and in the Library.

**Electronic Copy:** On the IGTO Home Page

## Policy information summary

DESCRIPTION	DETAILS
Commencement Date	1 November 2021
Approved By	Inspector-General of Taxation and Taxation Ombudsman
Version Number	V1 2021-22
Previous Versions	Treasury's Procedure for Commonwealth of Australia Public Service Act 1999 Section 15(3) Procedures for Determining Suspected Breaches of the Code of Conduct as established for the IGTO in December 2016
Last Reviewed	October 2021
Next Review	October 2023
Accountable Officer	Business Operations Director
Relevant Legislation	Public Service Act 1999
Related Policies	All IGTO policies
Related Procedures	<a href="#">Handling Misconduct: A Human Resource Manager's Guide</a>
Key Terms	Link to a <a href="#">Glossary of Terms</a>

Establishment of section 15(3) Procedures

## Establishment of section 15(3) Procedures

WHEREAS under subsection 15(3) of the *Public Service Act 1999*, 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, Karen Payne, Inspector-General of Taxation and Taxation Ombudsman, REVOKE all previous Procedures made under that subsection and ESTABLISH these Procedures.

Dated this 1st day of November, 2021

SIGNED

A handwritten signature in black ink that reads "Karen Payne". The signature is written in a cursive, flowing style.

Karen Payne  
Inspector-General of Taxation and Taxation Ombudsman

## Application of the Procedures

These Procedures must be complied with in determining whether an employee, or a former employee, has 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 an APS employee in the IGTO Statutory Agency referred to in s 36 of the *Inspector-General of Taxation Act 2003*. Unless contrary intention appears, a reference to an employee in an agency includes a reference to a former employee who is suspected of having breached the Code of Conduct while an employee in the agency.

The requirements set out in these Procedures apply only in relation 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.

Determining if a breach of the Code of Conduct has occurred

# Determining if a breach of the Code of Conduct has occurred

## Selection of decision-maker

The person who determines whether an employee has breached the Code of Conduct is to be selected by the Inspector-General of Taxation and Taxation Ombudsman.

The person who determines whether an employee has breached the Code of Conduct must be, and appear to be, independent and unbiased.

In particular, a person must not determine whether the employee has breached the Code of Conduct if the person has previously made a report in relation to any of the matters suspected of constituting a breach of the Code of Conduct by the employee.

## Formal hearing not required

For the purpose of determining whether an employee has breached the Code of Conduct, a formal hearing is not required.

The process for determining whether an employee has breached the Code of Conduct must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.

## Suspension from duties

An employee may be suspended from duties, with or without remuneration, if the delegate believes on reasonable grounds that the employee has, or may have, breached the Code of Conduct and the employee's suspension is in the public, or the IGTO agency's, interest.

The person who determines if an employee will be suspended from duties, with or without remuneration, in accordance with Section 28 of the *Public Service Act 1999*, will act consistently with Regulation 3.10 of the *Public Service Regulations 1999*.

The suspension delegate will be consistent with the Inspector-General of Taxation and Taxation Ombudsman delegations.

Determining if a breach of the Code of Conduct has occurred

## Information to be given to the employee before a determination is made

Before a determination is made in relation to a suspected breach of the Code of Conduct by an employee, the employee must:

1. be informed of:
  - the details of the suspected breach of the Code of Conduct (including any subsequent variation of those details); and
  - the sanctions that may be imposed on the employee under subsection 15(1) of the *Public Service Act 1999* (including any limitations on that power contained in regulations made for the purpose of subsection 15(2) of the *Public Service Act 1999*) (note this does not apply to former APS employees); and
2. be given reasonable opportunity to make a statement, in writing, in relation to the suspected breach. For the purposes of paragraph 5.1.2, the employee will be granted seven (7) calendar days, or any longer period as determined by the decision-maker.
3. If the employee makes a written statement within seven (7) calendar days (or, if allowed, any longer period) of being given the opportunity to do so, the employee must also be given the opportunity to make an oral statement in relation to the suspected breach.
4. An employee who does not make a written statement in relation to the suspected breach is not, only for that reason, to be taken to have admitted committing the suspected breach.

## Providing false or misleading information in connection with engagement as an APS employee

A person who is, or was, an APS employee is taken to have breached the Code of Conduct if the person is found to have, before being engaged as an APS employee:

- knowingly provided false or misleading information to another APS employee, or to a person acting on behalf of the Commonwealth; or
- wilfully failed to disclose to another APS employee, or to a person acting on behalf of the Commonwealth, information that the person knew, or ought reasonably to have known was relevant; or
- otherwise failed to behave honestly and with integrity; in connection with the person's engagement as an APS employee.

## Action that may be taken if a breach occurred

If a determination is made that an employee has breached the Code of Conduct, the employee may be counselled or a sanction may be imposed on the employee under section 15 of the *Public Service Act 1999*. A determination may not be made in relation to a suspected breach of the Code of Conduct by an APS employee unless reasonable steps have been taken to inform the individual of the details of the suspected breach and the sanctions that may be imposed.

# Imposing a sanction

## Sanction delegate

The person who determines any sanction to be imposed must be, and appear to be, independent and unbiased.

The sanction delegate will be consistent with the Inspector-General of Taxation and Taxation Ombudsman delegations.

## Information to be provided before a sanction is imposed

If a sanction is to be imposed on an employee, the employee must:

1. be given a written statement setting out:
  - the determination; and
  - the sanction or sanctions that are under consideration; and
  - the factors that are under consideration in determining any sanction to be imposed; and
2. be given reasonable opportunity to make a statement in relation to sanctions under consideration. For the purposes of paragraph 9.1.2, the employee will be granted seven (7) calendar days, or any longer period as determined by the sanction delegate.

## 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 from salary, by way of fine;
- a reprimand.

Sanctions may not be imposed on former APS employees.



Imposing a sanction

## Record of determination

After a determination in relation to a suspected breach of the Code of Conduct by an employee is made, a written record stating whether the employee has been found to have breached the Code of Conduct must be prepared. The report must set out:

- the suspected breach; and
- the determination; and
- any sanctions imposed as a result of a determination that the employee breached the Code of Conduct; and
- if a statement of reasons was given to the employee – the statement of reasons.

Note: The *Archives Act 1983* and the *Privacy Act 1988* apply to a record made under this section.

## Miscellaneous

### Moving within the APS during an inquiry into a suspected breach of the Code of Conduct

Unless agreed to by the Agency Heads, movements between agencies (including on promotion) do not take effect until the matter is resolved. The matter is taken to be resolved when:

- a determination is made as to whether the APS employee has breached the Code of Conduct; or
- it is decided that such a determination is not necessary.

Consistent with the *Australian Public Service Commissioner's Directions 2013*, this requirement applies if:

- an ongoing APS employee in an agency is suspected of having breached the Code of Conduct; and
- in accordance with procedures established under subsection 15(3), 41B(3) or 50A(2) of the *Public Service Act 1999*, the employee has been informed of the details of the suspected breach; and
- the matter to which the suspected breach relates has not yet been resolved; and
- 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 *Public Service Act 1999*.

If agreed to by the Agency Heads and the employee moves within the APS during an investigation into a suspected breach of the Code of Conduct, but before a sanction is applied by the losing agency, the gaining agency may decide to continue the investigation. If the employee is found to have breached the Code of Conduct, the Agency Head may apply a sanction based on the losing agency's investigation.

Note: An Agency Head's power under section 15 of the *Public Service Act 1999* to apply a sanction extends not only to imposing sanctions on employees in their agency, in respect to findings of breaches made under that agency's Code of Conduct procedures, but also in respect to findings made under another agency's Code of Conduct procedures.

### Handling of personal and sensitive information

Personal information is defined in section 6 of the *Privacy Act 1988* as "information or an opinion...about an individual... whose identity is apparent, or can reasonably be ascertained from the information or opinion". The agency will ensure that, where appropriate, necessary and reasonable, personal information about an employee under investigation will remain confidential.

Sensitive information is defined in section 6 of the *Privacy Act 1988* as "information or an opinion about an individual's race or ethnic origin or political opinions or membership of a political association or religious beliefs or affiliations or philosophical beliefs or membership of a professional or trade association or membership of a trade union or sexual preferences or practices or criminal record that is also personal information or health information about an individual or genetic information about an individual that is not otherwise health information". Special care should be taken in the handling of sensitive information. Sensitive information should generally not be disclosed to a third party without the express consent of the individual concerned.

## Miscellaneous

During the course of a Code of Conduct investigation, or after the investigation is complete, personal information about an employee under investigation may, where necessary, appropriate and reasonable, be disclosed to others, including:

- the complainant;
- other Commonwealth bodies who have been involved in the matter, such as the Commonwealth Ombudsman, the Office of the Privacy Commissioner or the Inspector-General of Intelligence and Security; and
- an APS agency where the employee moves or seeks to move in the future.

During the course of a Code of Conduct investigation, or after the investigation is complete, in accordance with the principles of procedural fairness, the employee may be provided with personal information about an individual who is a party to the investigation. This may include the complainant and any witnesses to the investigation. Disclosure of information about the complainant and any witnesses to the respondent employee or others should be done in accordance with the agency's obligations under the *Privacy Act 1988*.

The Inspector-General of Taxation and Taxation Ombudsman, or delegate, may use personal information in the position, or under the control of the Inspector-General of Taxation and Taxation Ombudsman, if the use is necessary for, or relevant to, the performance or exercise of the employer powers of the Inspector-General of Taxation and Taxation Ombudsman. Furthermore, the Inspector-General of Taxation and Taxation Ombudsman, or delegate, may disclose personal information in the possession, or under the control, of the Inspector-General of Taxation and Taxation Ombudsman, or delegate, if the disclosure is necessary for, or relevant to:

- the performance or exercise of the employer powers of the Inspector-General of Taxation and Taxation Ombudsman or another Agency Head;
- the exercise of a power or performance of a function of the Australian Public Service Commissioner;
- the exercise of a power or performance of a function of the Merit Protection Commissioner; or
- the performance of a function of an Independent Selection Advisory Committee.

Prior to disclosing information about the outcome of Code of Conduct investigation, the agency will have due regard to the *Privacy Act 1988*, including determining whether personal information will be used or disclosed and in what circumstances. General information containing no personal information may be disclosed to others where the agency considers it necessary, appropriate and reasonable to do so.