



Date of effect	December 2024
Owner	Human Resource Management
Contact	<a href="mailto:HRM.Sen@aph.gov.au">HRM.Sen@aph.gov.au</a>
Audience	Potential, current and former employees
Related documents	<a href="#">Parliamentary Service Act 1999</a> <a href="#">Parliamentary Service Determination 2024</a> <a href="#">Parliamentary Service Commissioner's Direction 2014</a> <a href="#">Fair Work Act 2009</a> <a href="#">Handling Misconduct: A Human Resource Manager's Guide</a>

## Procedures for determining breaches of the Parliamentary Service Code of Conduct and for determining sanctions

I, Richard Pye, Clerk of the Senate (the Clerk), establish these procedures under subsection 15(3) of the *Parliamentary Service Act 1999* (the Act).

These procedures apply from **17** December 2024.

These procedures supersede any previous procedures made for the Department of the Senate (the department) under subsection 15(3) of the Act.

Richard Pye

Clerk of the Senate

## Introduction

### Application of procedures

These procedures must be complied with when determining:

- whether a Parliamentary Service employee, or former employee, has breached the Parliamentary Service Code of Conduct (the Code of Conduct) set out in section 13 or section 15(2A) of the Act;
- any sanction to be imposed on a Parliamentary Service employee in the department who is found to have breached the Code of Conduct or section 15(2A) of the Act.

For the purposes of these procedures, unless otherwise specified, a reference to:

- **employee**, includes a former employee
- **the Clerk**, includes a delegate of the Clerk or a person authorised by the Clerk to exercise the relevant power
- **breach of the Code of Conduct** by a person, includes a reference to a person engaging in conduct set out in subsection 15(2A) of the Act.

Not all suspected breaches of the Code of Conduct need to be dealt with by way of a determination under these procedures. Following preliminary consideration, the Clerk may decide to deal with a concern about an employee's behaviour in another way. Further information about preliminary consideration of employee behaviour can be found in Chapter 4 of the Australian Public Service Commission's [Handling misconduct: A Human Resource Manager's Guide](#).

If the conduct of an employee raises concerns that relate to both effective performance and suspected breaches of the Code of Conduct, the Clerk must have regard to any relevant standards and guidance issued by the Parliamentary Service Commissioner before deciding to make a determination.

### Publication of procedures

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

### Decision makers

Where the Clerk decides a suspected breach of the Code of Conduct is to be dealt with by way of determination under these procedures, the Clerk may appoint a breach decision maker and sanction delegate. A breach decision maker and sanction delegate may be the same person, provided the person has been duly authorised or delegated the power (as appropriate) to make both decisions.

A breach decision maker or sanction delegate must be, and appear to be, independent and unbiased. Generally, an appointed decision maker should not have previously made a report in relation to any of the matters suspected of constituting a breach of the Code of Conduct by the employee.

A breach decision maker or sanction delegate must advise the Clerk in writing immediately if they reasonably believe they are not (or are no longer) independent and unbiased or may not reasonably be perceived to be so, for example, if they are to be a witness to a matter under investigation.

In making decisions under these procedures, a breach decision maker and a sanction delegate will have regard to the Australian Public Service Commission's [Handling misconduct: A Human Resource Manager's Guide](#), as appropriate.

**Note:** The Clerk may decide to suspend an employee at any time prior to, or during, a determination process if the Clerk 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 department's, interest. A decision to suspend an employee is separate from the determination process and must be made in accordance with the [Parliamentary Service Determination 2024](#).

If an SES employee is suspected of breaching the Code of Conduct, the Clerk must:

- consult with the Parliamentary Service Commissioner on the process for determining whether the employee has breached the Code of Conduct; and
- if considering imposing a sanction—consult with the Parliamentary Service Commissioner before imposing the sanction.

### **Determination process to be procedurally fair and informal**

The process of determining whether an employee has breached the Code of Conduct and any sanction to be imposed must be carried out with procedural fairness, as little formality and as much expedition as proper consideration of the matter allows. A formal hearing is not required.

### **Procedure for determining suspected breaches of the Code of Conduct**

#### **Role of breach decision maker and investigator**

A breach decision maker is to determine whether any breach of the Code of Conduct occurred.

An investigator may be appointed to assist the breach decision maker by investigating the matter, identifying the alleged breach/es, gathering evidence and preparing a report of factual findings. The investigator may be an employee of the department, or it may be prudent to appoint an investigator from outside the department, depending on the circumstances.

#### **Information to be given to an employee before a breach determination is made**

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

- be informed in writing of:
  - the name of the decision maker and, where applicable, the investigator
  - the details of the alleged breach of the Code of Conduct, including any subsequent material changes to those details
  - any sanction that may be imposed if the employee is found to have breached the Code of Conduct, including any subsequent material changes to those details
  - the option to have a support person present to assist the employee in any meeting or interview relating to the determination process
  - details of the department's Employee Assistance Program or other support service such as the Parliamentary Workplace Support Service.
- be given reasonable opportunity (usually seven calendar days) to make a written statement, or provide evidence, in relation to the alleged breach.

The employee may be given opportunity to make both a written and oral statement.

If there is a material change in the details of the alleged breach and possible sanction/s notified to the employee, the employee must be notified in writing of the change. The employee must be

given reasonable opportunity (usually seven calendar days) to make a further written statement, or provide further evidence, before a determination is made.

An employee who does not make a statement in relation to an alleged breach of the Code of Conduct is not, for that reason alone, to be taken to have admitted to the alleged breach.

### **An employee's support person**

Prior to any meetings or interviews, the employee will be advised of their right to have a support person present and provided with time to find one. The role of an employee's support person in this context is to provide emotional support and reassurance to the employee. As the purpose is to gather evidence directly from the employee, a support person cannot advocate or answer questions on the employee's behalf. This does not impact an employee's right to be represented by their chosen representative in other contexts.

The department has the right to reasonably refuse a particular support person, for example, if the requested support person is a relevant witness in the investigation.

### **Determination of breach**

The breach decision maker will determine whether the employee has breached the Code of Conduct on the balance of probabilities. The breach decision maker will advise the employee in writing of the determination.

## **Procedure for determining sanctions for breach of the Code of Conduct**

### **Role of sanction delegate**

A sanction delegate is to determine the sanction/s (if any) to be imposed for a breach of the Code of Conduct.

The sanction delegate will take into account the following when considering possible sanctions:

- the nature and seriousness of the breach of the Code of Conduct
- any prior determinations of breach of the Code of Conduct by the employee
- the relevance of the breach of the Code of Conduct to the employee's duties
- whether the misconduct affects the reputation of the department or the Parliamentary Service or the Parliament
- the likelihood of a recurrence of the misconduct
- the effect of the proposed sanction/s on the employee
- the presence of any mitigating factors.

### **Information to be given to an employee before a sanction decision is made**

Before a determination is made in relation to sanction/s for a determined breach of the Code of Conduct by an employee, that employee must:

- be informed in writing of:
  - the name of the sanction delegate
  - the breach determination
  - the sanction/s under consideration
  - the factors under consideration in determining the sanction/s to be imposed
  - details of the department's Employee Assistance Program or other support service such as the Parliamentary Workplace Support Service.

- be given reasonable opportunity (usually seven calendar days) to make a written statement in relation to the proposed sanction/s.

The employee may be given opportunity to make both a written and oral statement.

### **Determination of sanction/s**

**Note:** There is no power to impose sanctions on former employees.

The sanction delegate may impose any of the following sanctions on 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 a fine; and/or
- a reprimand.

The sanction delegate may impose more than one sanction.

The sanction delegate may decide that the employee will be counselled, either instead of or in addition to imposing a sanction.

### **Record of determination**

A record must be made of any determination made under these procedures. A copy of this record will be kept on the employee's personnel file. The record must include:

- details of the suspected breach
- details of the breach determination, and the reasons
- details of any sanction/s imposed, including if no sanction was imposed, and the reasons
- if a statement of reasons was given to the employee, the statement of reasons.

### **Review rights**

Section 33 of the Act provides a right for a non-SES employee to seek a review of an employment-related action, including a determination that the Code of Conduct has been breached and the imposition of a sanction (other than termination of employment). The application must be made to the Merit Protection Commissioner.

The *Fair Work Act 2009* provides a review process for termination of employment.

### **Effect on movements to other parliamentary departments**

The *Parliamentary Service Determination 2024* limits movement to another parliamentary department (including on promotion) of an employee who is being investigated for a suspected breach of the Code of Conduct, until the matter is resolved. Unless the department heads agree otherwise, the movement does not take effect until a breach determination is made, or it is decided that a breach determination is not necessary.

### **Use and disclosure of information obtained in accordance with these procedures**

The department may use personal information obtained in connection with a matter covered by these procedures, as permitted by the Act and the *Parliamentary Service Determination 2024*.