



Procedures for inquiring into and determining breaches of the Code of Conduct by an APS employee or former APS employee

I, Linda Waugh, Merit Protection Commissioner, have established these procedures in accordance with section 50A(2) of the *Public Service Act 1999* (the Act).

These procedures apply if the Merit Protection Commissioner exercises the function to inquire into and determine whether an APS employee, or former APS employee, has breached the Code of Conduct in section 13 of the Act.

In these procedures a reference to a breach of the Code of Conduct includes a reference to a person engaging in conduct set out in subsection 15(2A) of the Act in connection with their engagement as an APS employee.

These procedures commence on 11 December 2018.

Dated 11 December 2018

Signed 11 December 2018

Linda Waugh
Merit Protection Commissioner

1. Background

1.1 The Merit Protection Commissioner may, for the purposes of section 50(1)(ca) of the Act, inquire into and determine whether an APS employee, or former APS employee, in a agency has breached the Code of Conduct if:

- a) the Agency head requests the Merit Protection Commissioner to do so; and
- b) the Merit Protection Commissioner considers it would be appropriate to do so; and
- c) the APS employee, or the former APS employee, agrees in writing to the Merit Protection Commissioner doing so.

2. Availability of procedures

2.1 These procedures are made publicly available on the Merit Protection Commissioner's APS website in accordance with section 50A(4) of the Act.

3. Written consent of the employee or former employee

3.1 As soon as practicable after the receipt of a request from an agency head the Merit Protection Commissioner must ascertain whether the APS employee or former APS employee agrees to the Merit Protection Commissioner inquiring into and determining whether the person who is the subject of the request has breached the Code of Conduct. The agreement of the APS employee or former APS employee must be given in writing.

3.2 If the APS employee or former APS employee does not agree in writing, the Merit Protection Commissioner will inform the agency head and will take no further action in relation to the request.

4. Inquiry officer and breach decision maker

4.1 The Merit Protection Commissioner may delegate to an APS employee, her powers under section 50(1)(ca) of the Act to determine whether an APS employee or a former APS employee has breached the Code of Conduct.

4.2 The Merit Protection Commissioner, or her delegate, may be assisted by an inquiry officer when determining whether an APS employee or a former APS employee has breached the Code of Conduct.

4.3 The Merit Protection Commissioner must take reasonable steps to ensure that any delegate of the Commissioner or inquiry officer, is, and appears to be, independent and unbiased.

5. The determination process

5.1 The process for 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.

5.2 The process must be consistent with the principles of procedural fairness.

APS employee

5.3 The Merit Protection Commissioner must not make a determination in relation to a suspected breach of the Code of Conduct by an APS employee unless:

- a) the Merit Protection Commissioner has taken reasonable steps to tell the APS employee the details of the suspected breach (including any variation of those details); and
- b) the Merit Protection Commissioner has taken reasonable steps to tell the APS employee the sanctions that may be imposed on the APS employee under subsection 15(1) of the Act; and
- c) the APS employee has been given a reasonable opportunity to make a statement in relation to the alleged breach.

Former APS employee

5.4 The Merit Protection Commissioner must not make a determination in relation to a suspected breach of the Code of Conduct by a former APS employee, unless:

- a) the Merit Protection Commissioner has taken reasonable steps to tell the former APS employee the details of the suspected breach (including any variation of those details); and
- b) the former APS employee has been given a reasonable opportunity to make a statement in relation to the alleged breach.

6. Record of determination

6.1 A written record must be prepared by the Merit Protection Commissioner, stating whether it has been determined that the APS employee or the former APS employee has breached the Code of Conduct.

6.2 A copy of the written record will be provided to the agency head and to the APS employee or former APS employee who is the subject of the inquiry and determination