



Procedures for inquiring into and determining breaches of the Code of Conduct by a Parliamentary Service employee or former Parliamentary Service employee

I, Linda Waugh, Merit Protection Commissioner, have established these procedures in accordance with section 48A(2) of the *Parliamentary Service Act 1999* (the Act).

These procedures apply if the Merit Protection Commissioner exercises the function to inquire into and determine whether a Parliamentary Service employee, or former Parliamentary Service employee, has breached the Code of Conduct in section 15 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 a Parliamentary Service employee.

These procedures commence on 20 December 2018.

Dated 19 December 2018

Signed 19 December

Linda Waugh

Parliamentary Service Merit Protection Commissioner

1. Background

1.1 The Merit Protection Commissioner may, for the purposes of section 48(1)(ca) of the Act, inquire into and determine whether a Parliamentary Service employee, or a former Parliamentary Service employee, in a department has breached the Code of Conduct if:

- a) the Secretary 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 Parliamentary Service employee, or the former Parliamentary Service 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 48A(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 a Secretary the Merit Protection Commissioner must ascertain whether the Parliamentary Service employee or former Parliamentary Service 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 Parliamentary Service employee or former Parliamentary Service employee must be given in writing.

3.2 If the Parliamentary Service employee or former Parliamentary Service employee does not agree in writing, the Merit Protection Commissioner will inform the Secretary 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 48(1)(ca) of the Act to determine whether a Parliamentary Service employee or a former Parliamentary Service 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 a Parliamentary Service employee or a former Parliamentary Service 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 a Parliamentary Service employee, or a former Parliamentary Service 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.

Parliamentary Service employee

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

- a) The Merit Protection Commissioner has taken reasonable steps to tell the Parliamentary Service 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 Parliamentary Service employee the sanctions that may be imposed on the Parliamentary Service employee under subsection 15(1) of the Act; and
- c) the Parliamentary Service employee has been given a reasonable opportunity to make a statement in relation to the alleged breach.

Former Parliamentary Service 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 Parliamentary Service employee, unless:

- a) the Merit Protection Commissioner has taken reasonable steps to tell the former Parliamentary Service employee the details of the suspected breach (including any variation of those details); and
- b) the former Parliamentary Service 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 Parliamentary Service employee or the former Parliamentary Service employee has breached the Code of Conduct.

6.2 A copy of the written record will be provided to the Secretary and to the Parliamentary Service employee or former Parliamentary Service employee who is the subject of the inquiry and determination.