



Human resources procedures

Determining suspected breaches of the Parliamentary Service Code of Conduct

The Parliamentary Budget Office (PBO) requires employees to conduct themselves in a way consistent with the *Parliamentary Service Code of Conduct* (Code of Conduct). These procedures are established by the Parliamentary Budget Officer pursuant to section 15(3)(a) and (b) of the *Parliamentary Service Act 1999* (the Act) and outline the process in determining if a current or former Parliamentary Service employee has breached the Code of Conduct.

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Introduction

1. For the purposes of these procedures, unless otherwise specified, a reference to:
 - employee, includes a former employee
 - the Parliamentary Budget Officer, includes a delegate of the Parliamentary Budget Officer or a person authorised by the Parliamentary Budget Officer to exercise the relevant power or function, and
 - a 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, in connection with their engagement as a Parliamentary Service employee; and
 - clause 56 of the *Parliamentary Service Determination 2013* (the Determination), relating to the disclosure of confidential information.
2. In accordance with subsection 15(7) of the Act, these procedures are publicly available on the PBO's website.

Decision to proceed informally

3. Not all suspected breaches of the Code of Conduct need to be dealt with by way of a determination. If the Parliamentary Budget Officer becomes aware of a suspected breach of the Code of Conduct by an employee, the Parliamentary Budget Officer may decide whether to deal with the suspected breach formally using these procedures or to deal with the suspected breach informally.
4. If proceeding informally:
 - a) the process should be carried out with as little formality and as much expedition as a proper consideration of the matter allows,
 - b) a formal hearing is not required, and
 - c) the process must be consistent with the principles of procedural fairness.¹
5. These procedures apply only in relation to a suspected breach of the Code of Conduct by an employee where a determination is to be made – and do not apply where a decision has been taken to proceed informally.

Procedures for determining a breach of the Code of Conduct

Step one – selecting the decision maker and investigator

6. The Parliamentary Budget Officer will appoint a decision maker to make a determination under these procedures, as soon as practicable after deciding to deal with a suspected breach formally. The decision maker may be the Parliamentary Budget Officer, or another person appointed by the Parliamentary Budget Officer. The role of the decision maker is to determine whether any breaches of the Code of Conduct have occurred.

¹ Procedural fairness encompasses two key elements – the right to be heard (including information about the decision-making process and potential consequences, details of the suspected breach, and reasonably opportunity to respond) and right to an impartial decision (including in the investigation of the breach and decision-making process, and absence of bias in the decision maker).

7. The Parliamentary Budget Officer will take reasonable steps to ensure that the decision maker is, and appears to be, independent and unbiased. The decision maker must advise the Parliamentary Budget Officer in writing if they consider that they may not be, or may not reasonably be perceived to be, independent or unbiased.
8. The Parliamentary Budget Officer may also appoint an investigator to assist the decision maker by investigating the matter. The investigator may be an employee of the PBO or an external person. The Parliamentary Budget Officer will take reasonable steps to ensure the investigator is, and appears to be, independent and unbiased.

Step two – provide information to an employee before a determination is made

9. Before a determination is made in relation to a suspected breach of the Code of Conduct by any employee, reasonable steps must be taken to:
 - inform the employee in writing of:
 - the details of the suspected breach of the Code of Conduct
 - the range of sanctions that may be imposed if the employee is found to have breached the Code of Conduct (not applicable to former employees)
 - give the employee a reasonable opportunity (usually 7 calendar days) to make a written or verbal statement in relation to the suspected breach.
10. An employee who does not make a statement in relation to a suspected breach of the Code of Conduct is not to be taken to have admitted to committing the suspected breach.

Variation in investigation

11. During the course of an investigation it becomes evident that there is a material variation in the nature or extent of the suspected breach notified to the employee, the employee must be informed in writing of the variation. The employee must be provided with a reasonable opportunity (usually, 7 calendar days) to make an additional written or verbal statement or provide further evidence before a determination is made.

Step three – determine the outcome

12. The decision maker will make a determination on whether the suspected breach of the Code of Conduct is substantiated.

Step four – determine sanction(s), if applicable

13. If a determination is made that an employee has breached the Code of Conduct, a sanction or sanctions may be imposed on the employee. Sanctions cannot be imposed on former employees.
14. Subsection 15(1) of the Act prescribes the range of sanctions that may be imposed on an employee found to have breached the Code of Conduct
15. The Parliamentary Budget Officer or another person who holds a delegation of power under the Act may impose a sanction or sanctions on an employee who is found to have breached the Code of Conduct (the sanction delegate).²
16. The sanction delegate must advise the Parliamentary Budget Officer in writing if they consider that they may not be, or may not reasonably be perceived to be, independent or unbiased.
17. The process for deciding on a sanction or sanctions must be consistent with the principles of procedural fairness.

² Under these procedures, the decision maker may also be the sanction delegate.

18. Prior to deciding to impose a sanction or sanctions, reasonable steps must be taken to inform the employee in writing of:
 - the proposed sanction or sanctions that are under consideration, and
 - the factors that are under consideration in determining any sanction or sanctions to be imposed.
19. The employee must be given a reasonable opportunity (usually 7 calendar days) to make a written or verbal statement in relation to the proposed sanction or sanctions before any sanction is imposed.

Record of determination and sanction(s)

20. If a determination is made in relation to a suspected breach of the Code of Conduct by an employee, a written record must be made of:
 - the suspected breach,
 - the determination,
 - any sanctions imposed because of a determination that the employee has breached the Code of Conduct, and
 - the statement of reasons given to the employee regarding the determination (if applicable).

Other matters

Review of determination or imposition of sanction(s)

21. Section 33 of the Act allows for a non-senior executive service (non-SES) employee to seek a review of an employment-related action. This includes a determination that the Code of Conduct has been breached and the imposition of a sanction or sanctions (excluding the termination of employment). The application must be made to the Merit Protection Commissioner.
22. The *Fair Work Act 2009* provides a review process for termination of employment.

Effect on movement or promotion to/from other parliamentary departments or the Australian Public Service

23. Clause 35A and 35B of the Determination place limitations on the movement (including on promotion) of employees who are being investigated for suspected breaches of the Code of Conduct. These limitations apply until a determination is made in relation to whether the employee has breached the Code of Conduct.

Use and disclosure of information obtained in accordance with these procedures

24. The PBO may use personal information obtained in connection with a matter covered by these procedures in accordance with section 65AE of the Act and clause 147 of the Determination. The *Information management policy – Privacy* outlines the PBO's approach to collecting, handling, storing, and disclosing personal information.

Suspension or temporary re-assignment of duties

25. In accordance with section 28 of the Act and clause 45A of the Determination, the Parliamentary Budget Officer may suspend an employee from duties if they believe on reasonable grounds that:
 - an employee has, or may have, breached the Code of Conduct, and
 - the employee's suspension is in the public interest or the PBO's interest.
26. Suspension may be with or without remuneration. Clause 45A of the Determination sets out the requirements regarding suspension. Where an employee who has been suspended from duty is subsequently found not to have breached the Code of Conduct, consideration should be given to whether any salary forgone during the period of suspension is to be reinstated.
27. The Parliamentary Budget Officer may decide that it is appropriate to temporarily reassign the employee's duties, in accordance with section 25 of the Act. Action to suspend or temporarily reassign duties may be taken at any time prior to, or during, the suspected misconduct investigation process.³

Further resources

28. These procedures should be read in conjunction with:
 - [Parliamentary Service Code of Conduct](#) (section 13 of the Act), [Parliamentary Service Values \(section 10 of the Act\)](#), and [Parliamentary Service Employment Principles](#) (section 10A(1) of the Act)
 - [Parliamentary Service Act 1999](#)
 - [Parliamentary Service Determination 2013](#)
 - [Parliamentary Service Commissioner's Direction 2014](#).

Review

29. These procedures should be reviewed every two years, as required.

³ Suspension or temporary reassignment of duties while an investigation is proceeding are administrative actions and not sanctions in themselves.