



Australian Government
Australian Public Service Commission

Engaging with the APSC - Integrity and Code of Conduct

Presentation at Small Agencies HR Forum - 14 May 2025



Integrity, Performance and Employment Policy Branch

Integrity Investigations and Conduct

- Promote, evaluate and uphold integrity standards in connection with the Code of Conduct

Integrity and Ethics

- Advice and guidance on ethics and conflict of interest to APS employees
- Policy and guidance on the APS Values and Employment Principles

Employment Policy

- Advice on APS employment framework to APS HR practitioners e.g. recruitment and selection, performance management etc.



Integrity, Investigations and Conduct



Engagement with agencies

- Section 64 of the Commissioner's Directions – SES code consultation
- Section 38 of the PS Act – SES termination certificate requests
- Section 20 of the Commissioner's Directions
- Complaints/referrals
- Code of Conduct inquiries – sections 41A and 41B of the PS Act
- Promoting and evaluating Code of Conduct

Section 64 of the Commissioner's Directions

Consultation on SES Code process



Introduction of section 64



- The Sedgwick report ([Report into consultations regarding APS approaches to institutional integrity](#))
- Section 64 was introduced in response to recommendation 8 of the report

That, in future, any Code of Conduct allegations against SES officers be progressed in consultation with the APSC, both in respect of whether and how to investigate an allegation and, if applicable, what sanction(s) to apply (achieved through enhanced guidance or Commissioner's Directions, as necessary).



Section 64 of the Commissioner's Directions

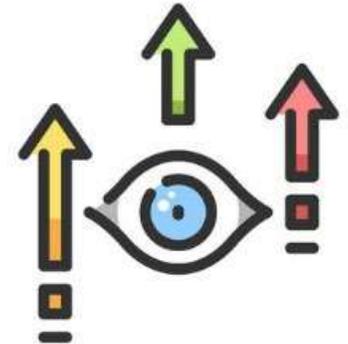
If an SES employee in an Agency is suspected of breaching the Code of Conduct, the Agency Head must:

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



Purpose of consultation

- Increased visibility of SES Code matters and Code systems and procedures
- Information gathered helps strengthen integrity across APS
- Commissioner provides guidance and support



When to engage

Consultation	Notification
When commencing a Code process	At determination of breach (Code outcome)
Where breach established, prior to preliminary sanction	At conclusion of Code process, once sanction imposed
If delegate proposing to change view on sanction	If SES employee resigns or proposes to transfer to another agency



Information requested – suspected breach

- Name of SES Officer subject of Code (optional but preferred)
- SES Band Level (substantive or acting classification at the relevant time)
- Nature of Matter (brief description of conduct)
- Elements of the Code suspected to have been breached.
- The name of the Breach Decision Maker
- Whether suspension is being considered and, if so:
 - whether with or without pay, and
 - the name of the Suspension Delegate.
- Proposed process for determining Code breach (e.g. whether internal or external investigation)



Information requested – sanction

- Outline of the breach findings (e.g. breach determination)
- Name of the Sanction Delegate
- Specific sanction(s) under consideration and why appropriate in the circumstances
- What sanctions the agency has imposed for similar conduct in the past (for SES and non-SES employees)



Consideration of s 64 request

- Section 15(3) procedures
- Consistency with APS practice
- Consideration of other potential avenues
- Consideration of appropriate delegates and process
- If the agency does not proceed to investigation, why and what other action will be taken?
- Record keeping and awareness of APS practice



Example of APSC approach

Code process

- SES employee incorrectly recorded leave
- Considered matter could be dealt with informally
- Refer to *Handling Misconduct Guide*

Sanction

- Whether sanction matches seriousness of breach
- If considered too light, APSC will request information to understand mitigating circumstances



Section 38 of the PS Act

Termination certificates



Section 38 of the PS Act

An Agency Head cannot terminate the employment of an SES employee unless the Commissioner has issued a certificate stating that:

- all relevant requirements of Commissioner's Directions under subsection 11A(1) have been satisfied in respect of the proposed termination; and
- the Commissioner is of the opinion that the termination is in the public interest



Section 38 requirements

- Currently no requirements under s 11A(1) of the Directions
- Commissioner must be satisfied that proposed termination in the public interest
- Public interest factors:
 - Proposed termination of employment on valid ground
 - Objects of PS Act
 - Functions of SES
 - Whether alternative options considered
 - Whether agency followed appropriate process



Before requesting a certificate

- Agencies should consult where termination employment decision is possible (e.g. s 64 consult)
- Agency must first be satisfied of valid ground of termination under s 29(3) and termination appropriate e.g.
 - Employee is excess to requirements
 - Employee lacks/lost essential qualification
 - Non-performance or unsatisfactory performance
 - Inability to perform duties due to physical/mental incapacity
 - Failure to meet condition under s 22 (e.g. health clearance)
 - Breach of Code of Conduct



Requesting a termination certificate



- Agency Head writes to the Commissioner with the following information:
 - Employee details (name, classification and AGSN)
 - Summary of circumstances of request
 - Basis for request and proposed termination
 - Relevant attachments e.g. statement of duties, employee's response to preliminary notice of termination including employee's submission on public interest (if any)
 - Risks



Section 20 of the Commissioner's Directions

Consultation on non-disclosure agreements



Section 20 of the Commissioner's Directions



- Requires an Agency Head to consult with the Commissioner before entering into settlement agreement about sexual harassment and includes non-disclosure or confidentiality provisions
- Commissioner does not have a formal decision-making role
- Ensures visibility and accountability and transparency in agencies' use of NDAs



Information to provide

- Broad context for entering into the non-disclosure or confidentiality agreement
- Details of who requested the non-disclosure or confidentiality provision (agency or employee)
- Scope of non-disclosure provisions within the agreement
- Any exceptions to the non-disclosure or confidentiality provisions (e.g. lodging a Public Interest Disclosure or seeking professional support).



Complaints and referrals



Complaints

- Complaints may come to APSC, and we may come to you to ask for information
- Unlikely to be able to share specific information for privacy reasons
- We can look at APS Census and Agency Survey results

Referrals

- Own motion power for former and current Agency Heads
- Prime Minister or Agency Head must refer APS employees and Commissioner must consider appropriate to inquire
- Very few referrals accepted

Inquiries into alleged breaches of Code



Section 41A of the PS Act

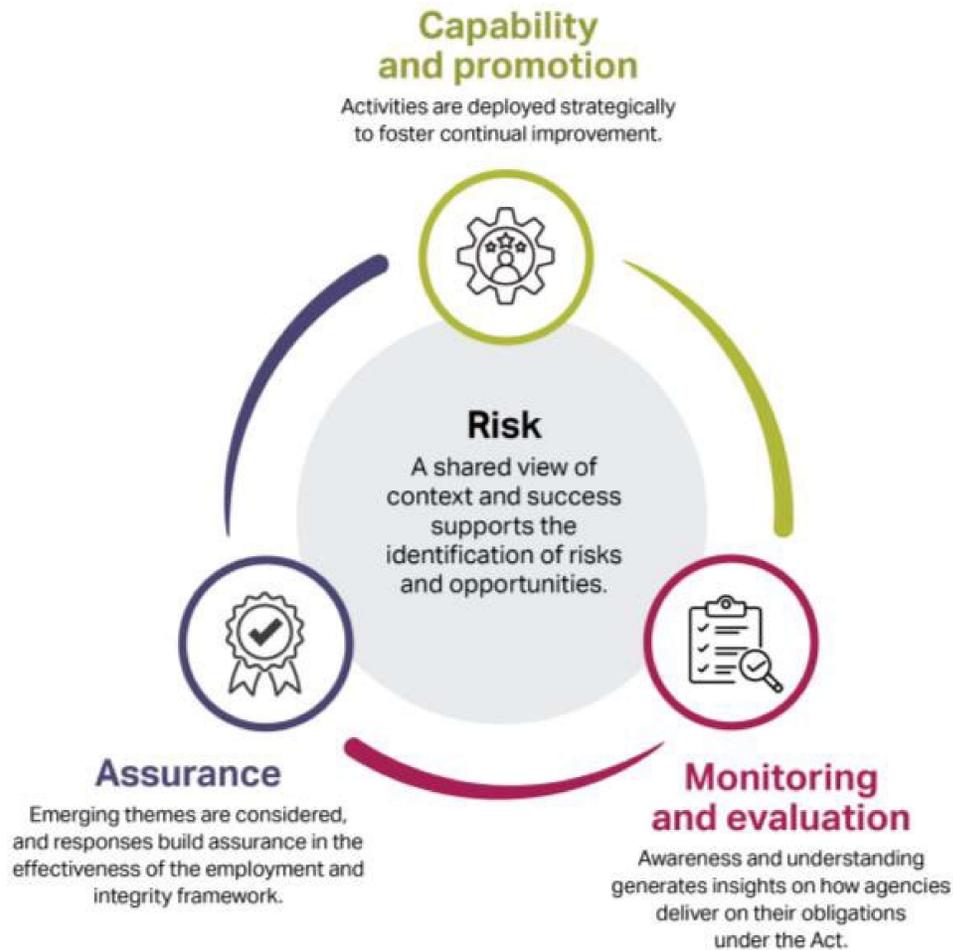
- Commissioner may inquire into and determine whether an Agency Head, or a former Agency Head, has breached the Code.
- Commissioner must report on results of an inquiry to PM if AH was a Secretary or Agency Minister if AH was head of an Executive Agency or Statutory Agency.

Section 41B of the PS Act

- On referral from PM or AH, the Commissioner may inquire into and determine whether an APS employee has breached the Code.

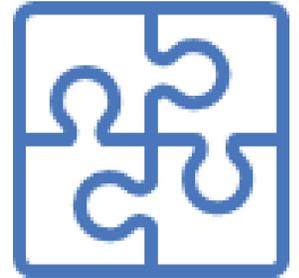


Promoting and evaluating integrity – ss 41(2)(e) and 41(2)(f)



Promoting and evaluating integrity

- Promotion activities aimed at preventing complaints & uplifting integrity in the APS
- Updating Handling Misconduct guide
- Evaluation activities aimed at assessing capability and informing promotion activities



Questions and contact

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Integrity and Ethics

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Employment Policy

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