



Procedures for determining breaches of the Australian Public Service (APS) Code of Conduct and the imposition of sanctions

I, Nathan Hannigan, General Manager, People Branch, Department of Industry, Science, Energy and Resources (the department), have established these procedures in accordance with section 15(3) of the *Public Service Act 1999* (the Act).

These procedures commence on 5 October 2021.

These procedures supersede all previous procedures made under subsection 15(3) of the Act.

1 Application of procedures

1.1 These procedures must be complied with when determining:

- a) whether an employee of the department, or former employee of the department, has breached the APS Code of Conduct (the Code) in s 13 of the Act.
- b) the sanction/s, if any, that should be imposed on an APS employee in accordance with section 15(1), where a breach of the Code has been determined.

1.2 These procedures apply in relation to a suspected breach of the Code by an APS employee, a former APS employee or the actions of an employee prior to commencing with the department as set out in subsection 15(2A) of the Act, in respect of which a determination is to be made.

1.3 Not all suspected breaches of the Code may need to be dealt with by way of a determination under these procedures. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate. The department's Code of Conduct Guidelines set out how reports of suspected misconduct will be assessed.

2 Availability of procedures

2.1 These procedures are made publicly available on the department's website in accordance with subsection 15(7) of the Act.

3 Breach decision maker and sanction delegate

3.1 The department will take reasonable steps to ensure that:

- a) the person who determines whether an APS employee, or former APS employee, has breached the Code is, and appears to be, independent and unbiased; and

- b) the person who determines any sanction to be imposed is, and appears to be, independent and unbiased.

4 Determination process

- 4.1 The process for determining whether an APS employee, or former APS employee, has breached the Code must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.
- 4.2 The process must be consistent with the principles of procedural fairness.
- 4.3 A determination may not be made in relation to a suspected breach of the Code by an APS employee, or former APS employee, unless reasonable steps have been taken to:
 - a) inform the person of:
 - i. the details of the suspected breach of the Code (including any subsequent variation of those details); and
 - ii. the sanctions that may be imposed on them under subsection 15(1) of the Act; and
 - b) give the person a reasonable opportunity to make a statement in relation to the suspected breach (usually 7 calendar days or any longer period as allowed by the decision maker).
- 4.4 A breach decision maker will inform the person in writing whether a breach of the Code has occurred.
- 4.5 These procedures do not prevent the breach decision maker from being the sanction delegate in the same matter where this is considered appropriate.

5 Sanctions

- 5.1 The process for imposing a sanction must be consistent with the principles of procedural fairness.
- 5.2 If a determination is made that an APS employee has breached the Code, a sanction may not be imposed on the APS employee unless reasonable steps have been taken to:
 - a) inform the APS employee of:
 - i. the determination made with respect to breach of the Code; and
 - ii. the sanction or sanctions that are under consideration in accordance with subsection 15(1) of the Act; and
 - iii. the factors that are under consideration in determining any sanction to be imposed; and
 - b) give the APS employee reasonable opportunity to make a statement in relation to the sanction/s under consideration (usually 7 calendar days or any longer period as allowed by the decision maker).

5.3 The sanction delegate will inform the person in writing what, if any, sanction should be imposed as a result of the breach decision maker's determination that the APS employee's conduct has breached the Code.

6 Record of determination and sanction

- 6.1 If a determination is made in relation to a suspected breach of the Code by an APS employee, or former APS employee, a written record must be made of:
- a) the suspected breach; and
 - b) the determination; and
 - c) any sanctions imposed as a result of the determination that the APS employee breached the Code; and
 - d) any statement of reasons provided to the APS employee or former APS employee.

7 Procedure when an employee seeks to move to another Agency during an investigation

- 7.1 These clauses apply if an APS employee seeks to move to another APS agency after they have been formally notified that they are suspected of breaching the Code but before a determination of a breach or a sanction is decided.
- 7.2 Any move between APS agencies including moves on promotion will generally be deferred, under sections 37 and 38 of the *Australian Public Service Commissioner's Directions*, until after a decision has been made about whether or not the APS employee has breached the Code.
- 7.3 Where an APS employee moves to another APS agency with the agreement of both agency heads before a decision has been made about whether or not the APS employee has breached the Code, the gaining agency may initiate an investigation in accordance with that agency's section 15(3) procedures.
- 7.4 Where an APS employee moves to another APS agency after the determination of a breach but before the imposition of a sanction, a sanction delegate in the gaining agency may impose a sanction in accordance with that agency's section 15(3) procedures.

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