



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

I, Lionel Riley of the Department of Climate Change, Energy, the Environment and Water (**department**), have established these procedures in accordance with section 15(3) of the *Public Service Act 1999* (Cth) (**Act**).

These procedures commence on 4 July 2022.

Application of procedures

1. These procedures apply in determining:
 - a. whether a person who is an Australian Public Service (**APS**) employee in the department, or who is a former APS employee who was employed in the department at the time of the suspected misconduct, has breached the APS Code of Conduct set out in section 13 of the Act (**Code**); and
 - b. any sanction to be imposed on an APS employee in the department who has been found under these procedures to have breached the Code.
2. In these procedures, a reference to a breach of the Code 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 an APS employee.

Breach decision-maker and sanction delegate

3. As soon as practicable after a suspected breach of the Code has been identified as a matter that will be dealt with under these procedures, the Secretary, or a person authorised by the Secretary, will appoint a decision-maker to make a determination under these procedures.
4. The role of the breach decision-maker is to determine in writing whether a breach of the Code has occurred.
5. The breach decision-maker may undertake the investigation, or seek the assistance of an investigator. The investigator may investigate the alleged breach, gather evidence and make a report of recommended findings of fact to the breach decision-maker.
6. The person who is to decide what, if any, sanction is to be imposed on an APS employee who is found to have breached the Code will be a person holding a delegation of the powers under the Act to impose sanctions.
7. These procedures do not prevent the breach decision-maker from being the sanction delegate in the same matter.

Person or persons making breach determination and imposing any sanction to be independent and unbiased

8. The breach decision-maker and the sanction delegate must be, and must appear to be, independent and unbiased.
9. The breach decision-maker and the sanction delegate must advise the Assistant Secretary of the department's human resources function in writing if they consider that they may not be independent and unbiased or if they consider that they may reasonably be perceived not to be independent and unbiased (for example, if they are a witness in the matter).

The determination process

10. The process for determining whether a person who is, or was, an APS employee in the department has breached the Code must be carried out with as little formality and as much expedition as a proper consideration of the matter allows.
11. The process must be consistent with the principles of procedural fairness.
12. A determination may not be made in relation to a suspected breach of the Code by a person 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. where the person is an APS employee, 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.
13. The statement referred to at paragraph 12(b) may be a written or oral statement and must be provided within 7 calendar days or any longer period that is allowed by the decision-maker.
14. A person who does not make a statement in relation to the suspected breach is not, for that reason alone, to be taken to have admitted to committing the suspected breach.
15. For the purpose of determining whether a person who is, or was, an APS employee in the department has breached the Code, a formal hearing is not required.

Sanctions

16. The process for imposing a sanction must be consistent with the principles of procedural fairness.
17. If a determination is made that an APS employee in the department has breached the Code, a sanction may not be imposed on the employee unless reasonable steps have been taken to:
 - a. inform the employee of:
 - i. the determination that has been made; and
 - ii. the sanction or sanctions that are under consideration; and

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- iii. the factors that are under consideration in determining any sanction to be imposed; and
 - b. give the employee a reasonable opportunity to make a statement in relation to the sanction or sanctions under consideration.
18. The statement referred to at paragraph 17(b) may be a written or oral statement and must be provided within 7 calendar days or any longer period that is allowed by the sanction delegate.

Record of determination and sanction

19. If a determination is made in relation to a suspected breach of the Code by a person who is, or was, an APS employee in the department, a written record must be made of:
- a. the suspected breach;
 - b. the determination;
 - c. any sanctions imposed as a result of a determination that the employee has breached the Code; and
 - d. if a statement of reasons was given to the person regarding the determination in relation to suspected breach of the Code, or, in the case of an employee, regarding the sanction decision, that statement of reasons or those statements of reasons.

Additional procedural requirements for Senior Executive Service employees

20. If a Senior Executive Service employee in the department is suspected of breaching the Code, the Secretary, or a person authorised by the Secretary, must:
- a. consult with the APS Commissioner, or a person authorised by the APS Commissioner, on the process for determining whether the employee has breached the Code; and
 - b. if considering imposing a sanction—consult with the APS Commissioner, or a person authorised by the APS Commissioner, before imposing the sanction.



Signature

4 July 2022

Date

Lionel Riley

Delegate of the Secretary of the Department of Climate Change, Energy, the Environment and Water

Revision History Date	Description	Approved
4 July 2022	Establishing new procedures	Lionel Riley