



**Australian Government**  
**Department of Health**

## Procedures for determining breaches of the APS Code of Conduct and deciding sanctions

I, Glenys Beauchamp, Secretary of the Department of Health ('the Department'), establish these Procedures under subsection 15(3) of the *Public Service Act 1999* ('the Act'). These Procedures commence on 10 January 2018.

These Procedures supersede the previous procedures but those previous procedures may continue to apply for transitional purposes.

### **1. Application of Procedures**

1.1. These Procedures apply in determining whether a current APS employee in the Department, or a former APS employee in the Department who was employed in the Department at the time of the suspected misconduct, has breached the APS Code of Conduct ('the Code') in section 13 of the Act.

Note: These Procedures apply only in relation to a suspected breach of the Code of Conduct by an APS employee or former APS employee in respect of which a determination is to be made. Not all suspected breaches of the Code of Conduct may need to be dealt with by way of a determination. In particular circumstances, another way of dealing with a suspected breach of the Code may be more appropriate.

1.2. These Procedures also apply in determining any sanction to be imposed on an APS employee in the Department who has been found to have breached the Code.

1.3. 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.

### **2. Breach decision maker and sanction delegate**

2.1. As soon as practicable after a suspected breach of the Code has been identified and the Director, Workplace Behaviour, Performance and Conditions Section, or the Assistant Secretary, People Services Branch, or the First Assistant Secretary, People, Communication and Parliamentary Division, or the Deputy Secretary having responsibility for People Services Branch or the Secretary; has decided to deal with the suspected breach under these Procedures, that person will appoint a decision maker ('the breach decision maker') to make a determination under these Procedures. A breach decision maker can be appointed from inside or outside the Department.

2.2. The role of the breach decision maker is to determine in writing whether a breach of the Code has occurred.

- 2.3. The breach decision maker may seek the assistance of an investigator with matters including investigating the alleged breach, gathering evidence and making a report of recommended findings to the breach decision maker.
- 2.4. 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 ('the sanction delegate') will generally be the Director, Workplace Behaviour, Performance and Conditions Section, the Assistant Secretary, People Services Branch, the First Assistant Secretary, People, Communication and Parliamentary Division or the Deputy Secretary having responsibility for People Services Branch. The sanction delegate must hold a delegation of the power under the Act to impose sanctions.

Note: Any delegation of powers under the Act that is proposed to be made to a person who is not an APS employee must be approved in writing in advance by the Secretary. This is required by subsection 78 (8) of the Act. This would include delegation of the power under subsection 15 (1) to impose a sanction.

Note: Appointment as a breach decision maker under these Procedures does not empower the breach decision maker to make a decision regarding sanction. Only the Secretary or a person delegated the power under section 15 of the Act, and related powers, such as under section 29 of the Act, may make a sanction decision.

- 2.5. The sanction delegate can be the breach decision maker in the same matter.

### **3. Formal hearing not required**

- 3.1. For the purpose of determining whether an APS employee or former APS employee in the Department has breached the Code, a formal hearing is not required.

### **4. Information to be given to employee or former employee before determination is made or any sanction imposed**

- 4.1. Before a determination is made in relation to a suspected breach of the Code by an APS employee or former APS employee in the Department, reasonable steps must have been taken to:
  - a) inform that person of:
    - i. the details of the suspected breach of the Code (including any subsequent variation of those details); and
    - ii. if the person is an APS employee, the sanctions that may be imposed on them under subsection 15(1) of the Act (including any limitations on that power contained in regulations made for the purposes of subsection 15(2) of the Act); and
  - b) give the person reasonable opportunity to make a statement, in writing, in relation to the suspected breach within 7 calendar days or any longer period that is allowed.
- 4.2. A person who makes a written statement within 7 calendar days (or, if allowed, any longer period) of being given the opportunity to do so can at the same time as making that statement request the opportunity to make an oral statement in relation to the suspected breach within calendar 7 days after the written statement is made.
- 4.3. A person who does not make a written statement in relation to the suspected breach is not, for that reason alone, to be taken to have admitted committing the suspected breach.

- 4.4. Before a determination is made in relation to a suspected breach of the Code, reasonable steps must be taken to provide the person suspected of the breach with a copy of the draft determination and the reasons for it and to give that person a reasonable opportunity to provide a written response to the draft determination within 7 calendar days or any longer period that is allowed. The breach decision-maker may proceed to determine whether the person has breached the Code if no response is provided within the period allowed, or at any time after a response is provided.
- 4.5. Before a determination is made imposing a sanction as a result of a determination that an APS employee in the Department has breached of the Code, reasonable steps must have been taken to provide the employee with a copy of the breach determination, the proposed sanction and the reasons for the proposed sanction and to give the employee a reasonable opportunity to provide a written response within 7 calendar days, or any longer period that is allowed. The sanction delegate may proceed to impose a sanction in relation to the breach of the Code of Conduct if no response is provided within the period allowed, or at any time after a response is provided.

## **5. Determination process to be informal**

- 5.1. The breach decision maker may determine the most appropriate process for applying these Procedures to determine whether an APS employee or former APS employee in the Department has breached the Code.
- 5.2. The sanction delegate may determine the most appropriate process for applying these Procedures to determine any sanction to be imposed as a result of a determination that an APS employee in the Department has breached the Code.
- 5.3. These processes must be carried out with as little formality and as much expedition as a proper consideration of the matter allows, while still providing procedural fairness.

## **6. Expedient process for determination of breach**

- 6.1. Where the breach decision maker considers that he or she has been provided with sufficient evidence to proceed to determine whether there has been a breach of the Code of Conduct, the decision-maker may do so without carrying out further investigation, but the decision-maker shall otherwise comply with these procedures.

Note: The decision-maker is required to provide natural justice in making his or her determination notwithstanding that he or she may have decided that no further investigation of the facts is required before he or she determines whether a breach has occurred.

## **7. Person making determination to be independent and unbiased**

- 7.1. The Secretary must take reasonable steps to ensure that the breach decision maker and the sanction delegate are, and appear to be, independent and unbiased.
- 7.2. In particular, a person must not be the breach decision maker or sanction delegate if the person has previously made a report in relation to any of the matters suspected of constituting a breach of the Code of Conduct by the employee or former employee concerned.

## **8. Action that may be taken if breach found to have occurred**

- 8.1. If a determination is made that an APS employee in the Department of Health has breached the Code, the employee may be counselled or a sanction may be imposed on the employee under section 15 of the Act.
- 8.2. If a sanction is imposed on the employee, the employee must be given a written statement setting out the sanction, and the reasons for the determination and the imposition of the sanction.

## **9. Notification and record of determination**

- 9.1. After a determination is made in relation to a suspected breach of the Code by an APS employee or former APS employee in the Department, reasonable steps must be taken to notify that person of the breach determination.
- 9.2. After a determination is made imposing a sanction as a result of a determination that an APS employee in the Department has breached of the Code, reasonable steps must be taken to notify that person of the sanction determination.
- 9.3. After a determination is made in relation to a suspected breach of the Code by an APS employee or former APS employee in the Department, a written record must be made of:
  - a) the suspected breach; and
  - b) the determination in relation to that suspected breach; and
  - c) if the employee is an APS employee, the determination in relation to any sanction to be imposed for that breach; and
  - d) any statement of reasons given to the employee in relation to either the breach determination or sanction determination.

Note: The *Archives Act 1983* and the *Privacy Act 1988* apply to a record made under this clause.