



Australian Government
Department of Finance

PROCEDURES FOR DETERMINING BREACHES OF THE APS CODE OF CONDUCT

I, Katherine Jones, Deputy Secretary, Business Enabling Services of the Department of Finance (Finance), revoke the previous Procedures for Determining Breaches of the Code of Conduct made on 23 March 2015 and establish these Procedures under subsection 15(3) of the *Public Service Act 1999* (the Act).

A handwritten signature in black ink, appearing to read 'Katherine Jones'.

Katherine Jones
3 October 2019

1. Application of Procedures

1.1 These Procedures apply in determining whether a person who is an Australian Public Service (APS) employee in Finance, or who is a former APS employee who was employed in Finance at the time of the suspected misconduct, has breached the APS Code of Conduct (the Code) in section 13 of the Act.

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

1.3 These Procedures apply, from their date of commencement, to all new and ongoing processes for determining breaches of the Code and for determining any sanction.

1.4 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.

1.5 As provided for in subsection 15(7) of the Act, these procedures are publicly available on Finance's website.

2. Initial decision maker – initiation of Code process

2.1 Any of the following persons may decide whether or not to initiate an inquiry under these Procedures by which a suspected breach of the Code is to be dealt with under these Procedures (the initial decision maker):

- (a) Secretary
- (b) Deputy Secretary, Business Enabling Services

- (c) First Assistant Secretary, Corporate Services Division
- (d) Assistant Secretary, Human Resources Branch
- (e) any other person authorised by any person listed in paragraph 2.1(a) – (d) to initiate an inquiry under these Procedures.

Note: There is no procedural fairness obligation to provide any employee an opportunity to comment before deciding to initiate an inquiry under these Procedures.

2.2 If an APS employee in Finance has engaged in conduct that may breach the Code or raises concerns relating to effective performance, the initial decision maker must, before making a decision to initiate an inquiry under these Procedures, have regard to any relevant standards and guidance issued by the Australian Public Service Commissioner.

Note: Not all suspected breaches of the Code may need to be dealt with by way of a determination. In particular circumstances, and when dealing with a non-ongoing, irregular or intermittent employee or temporary employee, an alternative course for dealing with a suspected breach of the Code may be more appropriate.

Note: Section 40 of the Australian Public Service Commissioner's Directions 2016 provides that if an APS employee has engaged in conduct that may breach the Code or raises concerns relating to effective performance, the Secretary must, before making a decision to initiate an inquiry under procedures established by the Secretary under subsection 15(3) of the Act, have regard to any relevant standards and guidance issued by the Commissioner. As at July 2019, the relevant standards and guidance issued by the Commissioner are set out at paragraphs 5.1.5 to 5.1.9 of Australian Public Service Commission's publication Handling Misconduct: a human resource manager's guide.

3. Selection of breach decision maker

3.1 The initial decision maker selects the person who determines whether an employee, or a former employee, has breached the Code (the breach decision maker).

3.2 The breach decision maker must be, and appear to be, independent and unbiased.

3.3 These Procedures do not prevent the initial decision maker from being the breach decision maker in the same matter.

4. Sanction delegate

4.1 The Secretary or their delegate has the power to impose a sanction in relation to a breach of the Code. The appointment of a sanction delegate will be consistent with Part 1, Item 1 of the Finance Human Resources Delegation 2019.

4.2 The sanction delegate must be, and appear to be, independent and unbiased.

4.3 These Procedures do not prevent the initial decision maker or the breach decision maker from being the sanction delegate in the same matter.

5. Suspension delegate

5.1 The employee who determines the suspension of an employee from duties, with or without remuneration, in accordance with section 28 of the Act (the suspension delegate) will act consistently with regulation 3.10 of the *Public Service Regulations 1999* (the Regulations).

5.2 The selection of a suspension delegate will be consistent with Part 2, Item 7 of the Finance Human Resources Delegation 2019.

5.3 These Procedures do not prevent the initial decision maker, the breach decision maker or the sanction delegate from being the suspension delegate in the same matter.

6. Information to be given to employee before determination is made

6.1 Before a determination is made in relation to a suspected breach of the Code by an employee, reasonable steps must be taken to:

- (a) inform the employee of:
 - (i) the details of the suspected breach of the Code (including any variation of those details); and
 - (ii) the sanctions that may be imposed on the employee under subsection 15(1) of the Act; and
- (b) give the employee a reasonable opportunity of not less than seven calendar days to make a statement in relation to the suspected breach.

6.2 Before a determination is made in relation to a suspected breach of the Code by a former employee, reasonable steps must be taken to:

- (a) inform the former employee of the details of the suspected breach of the Code (including any variation of those details); and
- (b) give the former employee a reasonable opportunity of not less than seven calendar days to make a statement in relation to the suspected breach.

6.3 An employee, or former employee, who does not make a statement in relation to the suspected breach, is not, only for that reason, to be taken to have admitted committing the suspected breach.

7. Determination process

7.1 The breach decision maker may determine the most appropriate process for applying these Procedures to determine whether an employee, or former employee, has breached the Code.

7.2 The process 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 to the employee.

7.3 Advice to complainants about the outcomes of investigations into alleged breaches of the Code will be consistent with the requirements of the *Privacy Act 1988* and any applicable guidance from the Australian Public Service Commission.

8. Record of Determination

8.1 After a determination in relation to a suspected breach of the Code is made, a written record stating whether the employee, or former employee, has been found to have breached the Code must be prepared. This record must include:

- (a) the suspected breach; and
- (b) the determination; and
- (c) if a statement of reasons was given to the employee, or former employee – the statement of reasons.

8.2 The employee, or former employee, will be notified of the breach decision maker's determination.

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

9. Sanction process

9.1 Where the breach decision maker has determined that an employee has breached the Code, the breach decision maker will separately make a recommendation to the sanction delegate of the recommended sanction(s) to be imposed under subsection 15(1) of the Act subject to any limitations prescribed in the Regulations.

9.2 If a determination is made that an employee has breached the Code, a sanction may not be imposed unless reasonable steps have been taken to:

- (a) inform the employee of:
 - (i) the determination; and
 - (ii) the sanction(s) that are under consideration; and
 - (iii) the factors that are under consideration in determining any sanction(s) to be imposed; and
- (b) give the employee a reasonable opportunity of not less than seven calendar days to make a statement in relation to the sanction(s) under consideration.

10. Record of Sanction(s)

10.1 Following consideration of the recommended sanction and any statement from the employee, the sanction delegate will determine whether or not a sanction will be imposed and what the sanction(s) will be, and advise the employee in writing.

10.2 After the sanction delegate determines the sanction(s) to be imposed a written record must be prepared. This record must include:

- (a) the suspected breach; and
- (b) the determination; and
- (c) the sanction(s) imposed as a result of the determination that the employee breached the Code; and
- (d) if a statement of reasons was given to the employee - the statement of reasons.

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

11. Appropriate procedures if an employee moves to a different Agency

11.1 This clause applies if:

- (a) an ongoing Finance employee is suspected of having breached the Code; and
- (b) the employee has been informed of the details of the suspected breach of the Code and the sanctions that may be imposed under subsection 15(1) of the Act; and
- (c) the matter has not yet been resolved; and
- (d) a decision has been made that, apart from this clause, would result in the movement of the employee under section 26 of the Act to another Agency (including on promotion).

11.2 Unless the Secretary and the new Agency Head agree otherwise, the movement (including on promotion) does not take effect until the matter is resolved.

11.3 For this clause, the matter is taken to be resolved when:

- (a) a determination in relation to the suspected breach is made; or
- (b) it is decided that a determination is not necessary.

Note: This clause restates the requirements of sections 37 and 38 of the Australian Public Service Commissioner's Directions 2016.
